**ORANGE COUNTY DATA ACQUISITION PARTNERSHIP (OCDAP)**

**Participation Agreement between the Southern California Association of Governments, Orange County Council of Governments and [local agency name]**

THIS ORANGE COUNTY DATA ACQUISITION PARTNERSHIP (OCDAP) PARTICIPATION AGREEMENT (“Agreement”) is made and entered into this XX day of XX 2020, by and between [local agency name], hereinafter referred to as “Local Agency", Orange County Council of Governments, hereinafter referred to as “OCCOG” and the Southern California Association of Governments, hereinafter referred to as "SCAG” (hereinafter collectively also the “Parties”).

**RECITALS**

WHEREAS, the County of Los Angeles established a Los Angeles Region Imagery Acquisition Consortium (LARIAC) to lead the acquisition of purchasing Digital Aerial Data, in partnership with cities and agencies to reduce costs and enable participants to acquire more data than would be possible individually;

WHEREAS, the County of Los Angeles entered into an agreement with Pictometry International Corp. (“Pictometry”) dated December 2013, including duly-approved amendments and/or addenda thereto, (collectively, the “LAC Agreement”) after a competitive process, and each Party signing this Agreement acknowledges it has been provided a copy of such LAC Agreement, a true and correct copy of which is available at: <https://scag-my.sharepoint.com/:f:/g/personal/aguilar_scag_ca_gov/EqDGf9DeuuZFmLfG3yq8nuMBJAMpNHlX_Hhmv6fnZ5Dujg?e=K72q5I> .

WHEREAS, the LAC Agreement provides that an External Entity (i.e., City, County, Joint Powers Authority or any governmental entity) may license or otherwise acquire rights to Digital Aerial Data outside of Los Angeles County pursuant to the pricing and other terms of the LAC Agreement;

WHEREAS, SCAG meets the criteria necessary to be an External Entity and SCAG therefore qualifies for the same pricing as the LAC Agreement, and, pursuant to its rights as an External Entity, SCAG is authorized to enter into this Agreement with OCCOG and the Local Agency;

WHEREAS, SCAG and Orange County agencies wish to enter into an agreement to obtain Digital Aerial Data to leverage the same pricing as the LAC Agreement. The group of participating agencies is known as the Orange County Data Acquisition Partnership (“OCDAP”);

WHEREAS, SCAG entered or will enter into an Agreement with Pictometry for Digital Aerial Data (“SCAG Agreement”) for the Orange County Data Acquisition Partnership Project (“Project”), which is substantially in the form attached to this Agreement as Attachment A. The Project includes one (1) cycle of data capture anticipated to begin in June 2020 for the period of July 2020 – June 2022 (“Cycle 1”);

WHEREAS, the Parties intend for any funds contributed under this Agreement in excess of the SCAG Agreement cost to be allocated toward a cycle two (2) of data capture anticipated for the period of July 2022- June 2024 (“Cycle 2”), and to execute an amendment to this Agreement or new participation agreement for Cycle 2;

WHEREAS, the Parties recognize the need to invest in Digital Aerial Data to conduct local and regional planning and to evaluate current and future legislative and regulatory proposals and wish to utilize the Digital Aerial Data from the SCAG Agreement;

WHEREAS, OCCOG is responsible for invoicing the Parties for the Project in Cycle 1;

WHEREAS, the Parties wish to enter into this Agreement to outline the roles and responsibilities for the Project; and

WHEREAS the “Recitals” are incorporated herein by this reference.

**TERMS OF AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Compensation

The Local Agency will compensate SCAG as described in Section 4 for the Digital Aerial Data, described in Section 2 for the data capture in 2020 for Cycle 1. The total cost of Cycle 1 is $383,603.10. The next geospatial data capture is expected in 2022 (“Cycle 2”). Agencies participating in Cycle 1 are not obligated to participate in Cycle 2. Regardless of whether the Local Agency chooses to participate beyond Cycle 1, the Local Agency is authorized to possess and use the Cycle 1 Digital Aerial Data described in Section 2 for its organizational purposes in perpetuity, subject to the use provisions set forth in Section 3 and disclosure provisions of Section 5. If applicable, an amendment to this Agreement or separate participation agreement will be executed by the Parties for Cycle 2 and the distribution of funds for Cycle 2 will be addressed separately by such amendment or separate participation agreement. In such event, funds received in excess of the Cycle 1 costs shall be applied to Cycle 2. In the event that the Local Agency determines not to participate in Cycle 2, funds paid in excess of the Cycle 1 costs shall be forfeited. If the OCDAP does not continue past Cycle 1, any funds collected by OCCOG in excess of the Cycle 1 costs shall be returned to the Local Agencies and SCAG in proportion to their separate contributions.

1. Digital Aerial Data Description
2. Digital Imagery: 3-inch resolution, 4 band (red, green, blue, and near infrared) true natural color digital orthophoto/ortho-rectified data covering Orange County as shown in the map in Attachment A (page 10), attached hereto and incorporated herein by this reference. Digital imagery will be provided in the following formats: GeoTIFF tiles and mosaic of ECW or MrSID tile format (which includes seamline generation, radiometric balancing and final color balancing to ensure seamless consistent coverage of the area of interest). These data will be California State Plane Coordinate System, Zone 6 (US feet), Datum NAD 83.
3. Building footprints: Outlines of building footprints for structures that are 300 square feet or greater will be provided for all Orange County in shapefile format with z values. These data will be California State Plane Coordinate System, Zone 6 (US feet), Datum NAD 83. The vertical datum will be North American Vertical Datum of 1988 (NAVD88), US Feet.
4. Pursuant to the terms of the LAC Agreement, which is fully incorporated herein by reference, the Parties will have access and use of all imagery collected and processed through the online viewing software hosted by Pictometry through the LAC Agreement or be provided copies of the data by SCAG as described in Section 3.
5. Data Delivery

When possible, the digital data will be provided electronically through the online platform hosted by Pictometry or through File Transfer Protocol (FTP) by SCAG. Alternatively, upon request and receipt of a hard drive from the Local Agency, the digital imagery data will be provided by SCAG on such hard drive within 30 days of receipt by SCAG, subject to any use restrictions set forth in the agreement between SCAG and Pictometry or the LAC Agreement.

1. Invoicing/Payment

OCCOG, on behalf of SCAG, will submit an invoice to the Local Agency for $XXX as payment for Cycle 1 Digital Aerial Data. The Local Agency will submit payment to OCCOG within 30 days. This will be a line item invoice for those agencies that also receive an annual invoice for OCCOG dues (for OCCOG member agencies) and CDR fees. OCCOG shall invoice the Parties in July 2020. OCCOG will remit collected payments to SCAG within three months of invoicing Parties. In the event payment is not received by OCCOG from the Local Agency, the Local Agency will be denied access to the online data platform and will not receive copies of the data from SCAG.

The parties further understand and acknowledge that if SCAG does not proceed to approve the SCAG Agreement, this Agreement shall be deemed null and void and the parties will have no further obligations.

1. Disclosure of Information

The Local Agency may distribute the Digital Aerial Data to its subcontractors or consultants on projects that are outsourced from its own operations. The Local Agency shall require each subcontractor or consultant to whom the Digital Aerial Data is transferred or distributed to execute a written acknowledgement and agreement provided as Attachment B, Orange County Data Acquisition Partnership (OCDAP) Authorized User Confidentiality and Non-Disclosure Agreement, attached hereto and incorporated herein by this reference.

1. Representations and Warranties

SCAG warrants that the Digital Aerial Data does not and shall not violate: (a) any applicable law, rule, or regulation (“**Laws**”); or (b) any contracts with third parties; or (c) any third-party rights in any patent, trademark, copyright, trade secret, or any other proprietary or intellectual property right.

SCAG represents that it will identify, obtain and keep current all necessary licenses, approvals, permits and authorizations as may be required from time to time under applicable Laws and third-party contracts with respect to the Digital Aerial Data.

SCAG warrants that it has full authority and sufficient right, title, and interest in and to the Digital Aerial Data subject to the terms set forth in the LAC Agreement to grant and convey the rights accorded to the Local Agency under Section 3.

The Local Agency warrants that its use, grant, and conveyance of the Digital Aerial Data will not violate any applicable terms set forth in the LAC Agreement.

1. Indemnification

SCAG agrees to indemnify and defend the Local Agency and OCCOG against all third-party claims, liabilities, losses, expenses, suits, actions and causes of actions (including reasonable attorneys’ fees and legal expenses), fines, penalties, or damages (collectively, the “**Liabilities**”) to the extent such Liabilities arise out of or result from: (a) the negligent acts or omissions, the willful or intentional misconduct of SCAG or its employees, subcontractors or agents, in the course of providing the Digital Aerial Data; (b) SCAG’s breach of the terms of this Agreement; or (c) any claim that any of Digital Aerial Data provided by SCAG infringes or misappropriates a third party’s intellectual property rights.

The Local Agency agrees to indemnify and defend SCAG and OCCOG, their directors, officers and employees, against all Liabilities to the extent such Liabilities arise out of or result, from: (a) the negligent acts or omissions, the willful or intentional misconduct of Local Agency or its employees, subcontractors or agents under this Agreement; or (b) Local Agency’s breach of the terms of this Agreement.

1. Amendments

No alteration or deviation of the terms of this Agreement shall be valid unless made in writing and properly executed by the Parties.

1. Notices

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

To SCAG: **Cindy Giraldo**

Chief Financial Officer

Southern California Association of Governments

900 Wilshire Blvd., Suite 1700

Los Angeles, CA 90017

Phone: (213) 630-1413

giraldo@scag.ca.gov

To OCCOG: **Marnie Primmer**

Executive Director

Orange County Council of Governments

3972 Barranca Pkwy., Suite J-127

Irvine, CA 92606

marnie@occog.com

To Local Agency Name:

1. Force Majeure

No Parties shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, pandemics, or any other similar cause beyond the reasonable control of the Parties.

1. Entire Agreement

This Agreement represents and contains the entire agreement of the Parties with respect to the matters set forth herein. This Agreement supersedes any and all prior negotiations, discussions and, if any, previous agreements between the Parties.

1. Execution of Agreement or Amendment

This Agreement, or any amendment related thereto (Amendment), may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The signature page of this Agreement or any Amendment may be executed by way of a manual or authorized digital signature.  Delivery of an executed counterpart of a signature page to this Agreement or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this Agreement or any Amendment.

**SIGNATURE PAGE TO**

**ORANGE COUNTY DATA ACQUISITION PARTNERSHIP (OCDAP) AGREEMENT**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates indicated below:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| By |  | By |
| XXX  Local agency name |  | Cindy Giraldo  Southern California Association of Governments |
| Date |  | Date |

|  |
| --- |
|  |
| By |
| Marnie Primmer, Executive Director  Orange County Council of Governments |

Date

ATTACHMENT “A”

SCAG Agreement for the Orange County Data Acquisition Partnership Project

ATTACHMENT “B”

ORANGE COUNTY DATA ACQUISITION PARTNERSHIP (OCDAP)

AUTHORIZED USER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

[See Following Page]

**ATTACHMENT B**

**ORANGE COUNTY DATA ACQUISITION PARTNERSHIP (OCDAP)**

**AUTHORIZED USER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This ORANGE COUNTY DATA ACQUISITION PARTNERSHIP (“OCDAP”) AUTHORIZED USER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“NDA”) is entered as of \_\_\_\_\_\_\_, 2020 by and between [Local Agency Name] and the undersigned entity (“Authorized User”).

1. Pictometry International Corp., a Delaware company with offices at 100 Town Centre Drive, Suite A, Rochester, HY 14623 (“Pictometry”), and the Southern California Association of Governments (“SCAG”) have entered into that certain agreement dated \_\_\_\_\_\_ (“Agreement”) for the delivery of licensed digital mapping data and software (“Licensed Products”) to SCAG. Under the Agreement, certain governmental entities, including SCAG departments and non-SCAG Authorized Participants, which participate in OCDAP (“OCDAP Member Agencies”) shall be granted copies of or otherwise provided access to the Licensed Products through a Participation Agreement (“Participation Agreement”) with SCAG.
2. Pursuant to the Participation Agreement and for purposes of this NDA, the OCDAP Member Agency includes [Local Agency Name].
3. Pursuant to Section 5 of the Participation Agreement, Licensed Products may only be accessed or otherwise used by other entities besides SCAG such as OCDAP Member Agencies. OCDAP Member Agencies in turn may choose to share Licensed Products with other partners, contractors or consultants that use the Licensed Products either at their facilities or for any Project (as defined below).
4. The undersigned (“Authorized User”) desires to use the Licensed Products solely for noncommercial use and for purposes no greater than reasonably needed to achieve the objectives of an actual project (“Project”).
5. The undersigned Authorized User understands and agrees that the Licensed Products contain trade secret and/or confidential information (“Confidential Information”) of Pictometry. Therefore, by signing this NDA, the Authorized User agrees that it will use, and require any of its authorized employees, agents or consultants to use, the Licensed Products solely for the Project, which is a nonexclusive, nontransferable and non-assignable right, from the effective date of this NDA in perpetuity. The Authorized User understands and hereby acknowledges that it shall be solely responsible for assuring its authorized employees, agents and consultants comply with the terms of this NDA and shall implement whatever methods it deems necessary to assure such compliance.

IN WITNESS WHEREOF, the undersigned Authorized User, by his/her authorized signature, agrees to all terms and conditions of this NDA as of the date set forth below.

**AUTHORIZED USER:**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Organization: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City/Zip: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Local Agency Name]:**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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