

DIGITAL ORTHOPHOTOGRAPHY PARTNERSHIP AGREEMENT

Agreement # CC-100056

between
Pierce County
And
Pierce Transit

Pierce Transit, hereinafter called **Partner**, and Pierce County, hereinafter called **COUNTY**, agree to the terms of this Digital Orthophotography Partnership Agreement.

WHEREAS the County conducts an orthophotography (orthophoto) construction program to develop a high resolution digital orthophotography database and makes this digital data available for use in the Digital Orthophotography Program;

WHEREAS the Partner needs digital orthophotography for viewing, mapping and analysis and wishes to opt in to the County's Digital Orthophotography Program;

NOW, THEREFORE, the Partner and County agree to the following responsibilities and terms of the Digital Orthophotography Partnership agreement effective this 1st Day of January, 2015.

It is agreed by the parties:

Product

1. County will establish the orthophotography specifications and requirements for 1"=100' mapping.
 - 1.1. Imagery is a 1"=800' color photo, pixel size of 0.5 ft, free of cloud cover, and artifacts that obscure physical features.
 - 1.2. Every effort is made to utilize the best available terrain model and maintain the horizontal positional alignment of the dataset as compared to the 1998 county orthophotos. This will benefit Partners who have constructed datasets on top of the orthophotos.
2. County will conduct and manage the timely competitive bid, selection, procurement, development, quality control of the Pierce County orthophotography dataset.
3. Partner will determine what geographic area of the orthophoto database the Partner will opt to use.
4. Orthophotography Partnership program provides to the Partner:
 - 4.1. Orthophoto coverage area defined by: COUNTY
 - 4.2. Orthophotography for the year(s): prior to and including 2018
 - 4.3. Other related data sets: ortho-based contours, lidar contours, and full countywide ortho access.
5. Updates to the orthophotography database will be no less than every four years. The frequency of the update is determined by the County following consideration of Partner concerns, budget issues and any other pertinent factors that may affect the quality or cost of the orthophoto database.

6. Other County products, services or data sets are not a part of this agreement.

Product Use

7. Partner will have access to the orthophotography for viewing, mapping and analysis available in the on-line County's GIS applications.
8. The County licenses the orthophotos from the orthophoto vendor. Access by the Partner to the digital orthophotos and associated data is subject to and governed by this agreement, including the following licensing terms:
 - 8.1. The Partner shall use the orthophoto data for internal business purposes only.
 - 8.2. The Partner may make hardcopy maps of orthophotos (and with other data overlays) for internal or public distribution.
 - 8.3. The Partner selecting the maximum user option may copy portions of the orthophoto database to other internal company servers for use with Autocad or other mapping software upon written approval from County.
 - 8.4. The Partner selecting the maximum user option can request the County to make a copy of the orthophotos and provide this data to consultants or engineers who are performing work under contract for a specific Partner project. Consultants or contractors must adhere to the terms in this agreement and pay the \$80/hr to copy the dataset onto CD or DVD.
 - 8.5. The Partner may not post the orthophotos to any web site.
9. The Partner may not distribute or permit the distribution of the orthophoto database/files in any digital format to other agencies, the public or third parties. Violation of this restriction will result in a) the Partner returning the orthophotography to the County thus ceasing use of the product, b) if using online County GIS application services, orthophoto access will be discontinued or c) the County may also seek legal redress.
10. If the Partner uses County GIS on-line application services, the Partner's GIS users will be provided access to the orthophotography through the on-line application services in CountyView. If the Partner does not have on-line access to the County GIS, the Partner selecting the maximum user option will provide a hard disk to copy the dataset for transfer.
11. The Partner has a perpetual agreement to use the orthophotography as defined in this document unless terminated for cause (section 8) or non-payment of agreement fees.
12. Partner's rights under this agreement are nonassignable, nontransferable, nonsublicensable and nonexclusive.
13. Partner accepts that a limited (larger pxel scale) public domain product may be produced with each acquisition and released with a 6 month schedule delay. This product is for the USGS and National Map program and will be provided only when the USGS contributes funding to the orthophotography program.

Product Fees and Term

14. The Partner will pay agreement fees for the development and maintenance of the orthophotography.

Yearly agreement fees for the countywide dataset:
Annual maintenance fee is: \$1,000 per user per year up to a maximum of \$7,500 per year.

15. After the initial contract term, as agreed to in item# 10, the fees will be adjusted based on the number of Partners and the cost of the products provided in the program. The County will notify Partners of changes to the agreement fees.
16. Non-Appropriations (applies to Governmental Agencies only)
 - 16.1. Partner intends to continue this Agreement for its entire term and to satisfy its obligations hereunder. For each fiscal period during the term of this Agreement: 1) Partner agrees to include in its budget request appropriations sufficient to cover Partner's obligations under this Agreement and 2) Partner agrees to use all reasonable and lawful means to secure these appropriations.
 - 16.2. In the event that Partner is appropriated insufficient funds, by appropriation, appropriation limitation or grant, to continue payments under this Agreement and has no other funding source lawfully available to it for such purpose, Partner may terminate this Agreement by giving County at least two weeks' written notice to terminate as of December 31st of the then current calendar year. Upon termination and to the extent of lawfully available funds, Partner shall remit all amounts due through the date of termination.
17. The Partner may opt out of the County Orthophotography Program by giving County at least two weeks' written notice to terminate as of December 31st of the then current calendar year. Fees are not refundable.
18. In the event the Partner chooses to opt out of the orthophotography program, the Partner will return the orthophotography to the County and discontinue use of the data.
19. The contract period shall be from January 1, 2015 to December 31, 2018. The Contract shall be renewable for one (1) additional three (3) year term, unless either party gives notice of non-renewal not less than 60 days prior to the expiration of the next term.

Limitations

20. The County makes no warranty, expressed or implied, concerning the orthophotography's content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. ALL DATA IS EXPRESSLY PROVIDED "AS IS" AND "WITH ALL FAULTS". The County makes no warranty of fitness for a particular purpose, and no representation as to the quality of any data. Partner users of data are responsible for ensuring the accuracy, currency and other qualities of all products (including maps, reports, displays and analysis) produced from or in connection with County's orthophotography.

Spatial Accuracy

21. Orthophotography can be plotted or represented at various scales other than the original source of the data. The Partner is responsible for adhering to industry standard mapping practices which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets.

No County Liability

22. County shall not be liable to the Partner (or transferees or vendees of Partner) or others for damages of any kind, including lost profits, lost savings or any other incidental or consequential damages relating to the providing of the orthophotography or the use of it. The Partner and any others shall have no remedy at law or equity against the County in case the orthophotography provided is inaccurate, incomplete or otherwise defective in any way.

IN WITNESS WHEREOF, the parties have executed this Agreement this 10th day of December 2015.

PARTNER:

Sue Dreier

Name _____

Signature Sue Dreier Date 10/15/15

CEO

Title of Signatory _____

Mailing Address:

3701 96th St. SW

Lakewood, WA 98496-0070

Street Address. (if different):

Contact Name: Keith Messner

Contact Phone: 253.581.8122

Contact Email: kmessner@piercetransit.org

PIERCE COUNTY:

[Signature]

Deputy Prosecuting Attorney Date
(Approved as to legal form only)

Recommended:

[Signature] Date 12/15/15
Budget and Finance

Approved:

[Signature] Date 11/12/2015
Department Director
(less than \$250,000)

BA 11/4/15

or

Pierce County Executive Date
(\$250,000 or more)

