

AGREEMENT RELATING TO THE 2020 AERIAL MAPPING PROJECT

This Agreement Relating to the 2020 Aerial Mapping Project (Agreement), is entered into by and between the cities of Bellevue, Bothell, Des Moines, Issaquah, Kenmore, Kirkland, Mercer Island, Newcastle, Sammamish, SeaTac, Shoreline, Northshore Utility District (Participants) and eCityGov Alliance (Alliance) all of which may be referred to hereinafter individually as "Party" or collectively as the "Parties."

1. PURPOSE

The purpose of this Agreement is to establish a collaborative framework for the 2020 Aerial Mapping Project (Project), which is a joint effort between the eCityGov Alliance (Alliance) and certain government entities that are a party to this Agreement (Participants) in the Puget Sound Region. This Agreement provides an overall scope, schedule and funding structure for the Participants to cost-share in acquiring high-quality orthophotography imagery to be used by each Participant for various planning purposes, including infrastructure, utilities and community development. This Agreement is a binding commitment by each Participant to honor the financial and schedule requirements set out in the sections below. The overarching goal of this Agreement is to achieve a positive Project outcome for all Participants, which will require each Participant to fully engage in, and expeditiously act on, defined Project milestones.

2. BACKGROUND

There is an extensive history of aerial mapping projects in the Puget Sound Region going back many decades – some of it is agency-specific and some collaborative or consortium-based. Overall, these efforts have had varied outcomes ranging from excellent to satisfactory to barely acceptable. Work continues sporadically among professional organizations and ad hoc committees to refine, focus, and execute an effective, workable approach to regional aerial mapping – better expressed as a subset of primary data acquisition for geographic information systems (GIS) and other applications.

With the ongoing development of Seattle's suburban perimeter, the need for current aerial imagery – ideally, high-resolution color orthophotography and related products suitable for large-scale urban mapping uses – continues to be a priority for many jurisdictions. These products have resulted in major financial gains for some jurisdictions when focused on targeted organizational business needs (for example, updated impervious fee structures resulting in increased revenue streams).

3. AUTHORITY

The Alliance is a governmental administrative agency formed pursuant to an Amended and Restated Interlocal Agreement Establishing eCityGov Alliance (Interlocal Agreement) and chapter 39.34 (Interlocal Cooperation Act) of the Revised Code of Washington (RCW), organized as a nonprofit corporation under chapter 24.06 RCW. Pursuant to the Interlocal Agreement, the Alliance has the responsibility for developing, owning, operating, and managing Alliance programs and services on behalf of its governing body and customers. Pursuant to chapter 39.34 RCW, the Alliance may enter into service agreements directly with any other public entity created and governed by the State of Washington, or any other public entity provided by any other State and Local laws governing public entities.

The Alliance is committed to put in place the Project structure and resources to assure a positive outcome for the Project. It has experience facilitating such collaborative efforts, including working relationships with the Participants, and the stakeholder support, to manage the Project professionally and in a fiscally-responsible fashion. It currently manages three technology products providing services to over 20 public entities within the State of Washington, who each pay fees to the Alliance for these services.

4. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the following meanings:

A. ADMINISTRATIVE FEES

Administrative Fees are incurred through the administrative tasks necessary to manage the Project. This includes the responsibilities of the Alliance Executive Director, Project Manager and Administrative Staff responsibilities such as contract drafting, invoicing, finance management, issue identification and resolution, and technical support.

B. BASE PRODUCT

The base product is the acquisition of aerial imagery suitable for production of high-quality digital elevation data, high-resolution color orthophotography, and map compilation for the agreed upon project area. The product will be used to produce new ortho imagery and optionally, to update existing impervious surface features and topographic contours.

C. PARTIAL PAYMENT

Partial payment may be implemented if a Participant withdraws from the Project within the agreed upon timeframe as outlined below in item 11-A below. Additionally, partial payment may be utilized if a Vendor deliverable has not been completed/accepted according to the Agreement.

D. PARTICIPANT

Participants are local governments that would like to participate in the Project by executing this Agreement.

E. PROJECT MANAGER or PM

An independent contractor selected by Alliance who will provide regular communications, schedule updates, coordination among the Participants to this Agreement, and some data quality control services for the Project through a contract with the Alliance.

F. SUPPLEMENTAL FEES

Supplemental fees are in addition to the Vendor Fees for supplemental products requested by Participants and invoiced separately from the Vendor Fee invoices.

G. SUPPLEMENTAL PRODUCT

Participants who request supplemental products such as topographic contours and impervious surface mapping that are not part of the Base Product are considered a Supplemental Product.

H. VENDOR

An expert aerial mapping firm, or team of firms, selected by Alliance to enter into a professional services agreement (PSA) covering the duration of the Project, who will have the responsibility of completing the scope of work (SOW) attached to this Agreement (see Attachment 1).

I. VENDOR FEES

Vendor fees will be based on a per-map cost negotiated with the Vendor, with Participant totals varying depending on project area extents and adjacent agency project area overlaps. The Alliance will distribute a Project pricing spreadsheet to all Participants as a summary of what these costs will be.

5. ROLES AND RESPONSIBILITIES

The Alliance and the Participants hereby agree as follows:

A. Alliance

The Alliance agrees to serve as fiscal, administrative, coordinating and contracting agency on the Project through completion, estimated to be through January 31, 2021. The Project involves engaging three parties/Vendors including the following:

- i. An aerial mapping vendor/vendor team (Vendor) to utilize industry best practices and technology solutions to develop products meeting Participants' business needs for the urban mapping environment.
- ii. An experienced orthophotography coordinator who will act as the dedicated Project Manager to who will monitor all Project phases and communicate effectively with Alliance, Participants, and the Vendor.
- iii. Alliance administrative staff who will assist with contract creation, financial transactions and other administrative support for the Project. The contract creation effort includes the *Memorandum of Agreement* for all participants, *Professional Services Contracts* and *Scopes of Work* for the Project Manager, as well as the Vendor.

The Alliance will assign appropriate resources to manage the Project and act as managing agency with Alliance Executive Director as overall Project Administrator, who will also manage the staff providing administrative support and the Project Manager.

B. Participant

The following Participants are considered committed entities who have indicated interest, business need, and available budget to participate in the Project. Participants agree to the commitments and contingencies as outlined further below in section 10.

- City of Bellevue
- City of Bothell
- City of Des Moines
- City of Issaquah
- City of Kenmore
- City of Kirkland
- City of Mercer Island
- City of Newcastle
- Northshore Utility District
- City of Sammamish
- City of SeaTac
- City of Shoreline

In exchange for the services to be provided by the Alliance pursuant to this Agreement, each Participant agrees to budget for and pay the fees outlined in section 9.

6. OVERSIGHT AND ADMINISTRATION

The Alliance will conduct the Project as contracting agent, coordinator, and overall manager. The Project theme of *collaboration* is emphasized as a key ingredient in progressing satisfactorily through the various Project tasks and achieving a successful outcome. Accordingly, the Alliance will develop a Project plan and timeline that will serve as the blueprint for all Project activities.

Except for those items described in Section 10 below, Alliance regards the Project as a relatively straightforward and mostly routine technology initiative following well-defined technical specifications and aerial mapping industry best practices.

The Alliance shall select a Project Manager (PM) to manage Project tasks as an independent representative of the Alliance, working diligently to ensure timely completion and delivery of high-quality deliverables within the specified timeline and budget. Tasks include but are not limited to communicating project status and other related information among all Participants and the Vendor, attending participant/project/vendor meetings, updating the project schedule as needed, and presenting project status reports. The PM shall be retained by separate agreement to be executed by the Alliance, which shall state that the PM is and shall act as an independent consultant and not as the employee, agent, or representative of the Alliance in the performance of any services for the Alliance.

The PM is expected to oversee an effective execution of Project tasks and activities, including regular interaction with both the Participants and Vendors.

The Alliance shall select a Vendor to perform and deliver Project deliverables as an independent entity from the Alliance or the Participants, working diligently to ensure timely completion and delivery of high-quality deliverables within the specified timeline and budget. Tasks to be performed by the Vendor are substantially defined in Attachment 1 to this Agreement. The Vendor shall be retained by separate agreement to be executed by the Alliance, which shall state that the Vendor is and shall act as an independent consultant and not as the employee, agent, or representative of the Alliance in the performance of any services for the Alliance.

7. EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the signature date of the Alliance represented at the end of this Agreement (Effective Date) and may be executed from time to time by a Participant desiring services from the Alliance relating to the Project. A Participant may continue receiving services under this Agreement until such Participant has notified the Alliance in writing that its Project deliverables have been received, reviewed, and accepted, and that the Alliance has satisfactorily completed financial transactions between itself and the Participant, and between itself and the Vendor. The end date of this contract, and therefore Agreements with the above Participants, is expected to be no later than January 31, 2021.

8. DELIVERABLES

This Project is intended to provide an expedient data set to multiple entities who have identified business needs for current aerial mapping products, but who may lack resources to accomplish such an effort independently. A collaborative effort offers various tangible and intangible benefits, not the least of which is shared costs. This includes Project administrative and Project management costs, but most notably reduced costs where Participant project areas overlap. In this situation, the deliverable project costs are reduced, at an individual mapping unit level, for each Participant to $1/n$, where n is the number of overlapping map areas.

The deliverables include aerial mapping products, and the base product will be high-resolution color orthophotography suitable for large-scale urban mapping applications as described in Attachment 1. The orthophotography will cover each Participant's indicated area of interest in its entirety. Some Participants have expressed an interest in supplemental products such as topographic contours and impervious surface mapping. These needs will be accommodated as secondary priorities within the overall project scope, with the color orthophotography being the primary deliverable. Supplemental products are to be invoiced to the requesting Participant as those deliverables are completed.

All data requested and paid for within a Participant's area of interest will be provided to each Participant as the main deliverable, including both base product and supplemental product data. Each Participant will own full legal title to such deliverables paid for and received pursuant to this Agreement. If a Participant terminates its participation in this Agreement, it will own any deliverables that it paid for and received, but it will not have any right to receive further deliverables relating to the Project under the terms of this Agreement.

9. FINANCIAL TERMS AND PAYMENT PROCESS

The Alliance agrees to serve as contracting agent for this Project, executing and administering a professional services agreement with its selected Vendor. The funding for the Project will be shared by the Participants and be of three types:

- A. Vendor fees. Alliance will distribute a Project pricing spreadsheet to all Participants as a summary of what these costs will be as shown in Attachment 2. These amounts will be based on a per-map cost negotiated with the Vendor, with Participant totals varying depending on the extent to which Participant areas of interest overlap. In the case of overlapping areas among Participants, the cost for an overlapping map area will be split among the overlapping Participants.
- B. Administrative fees. Alliance will also include an administrative fee for each Participant as part of the total costs to Participants as shown in Attachment 2. These amounts are based on costs incurred by Alliance to pay for the contracted PM and the administrative work associated with the Project. Administrative work includes contract creation and management, financial management and transactions, contractor management and general Project oversight.
- C. Supplemental fees. Participants requesting supplementary mapping products such as topographic contours and impervious surface mapping will be invoiced as those deliverables on a request per Participant basis. These fees will be set based on the contract with the Vendor to conduct this additional work and will be invoiced by the Alliance to pay the Vendor.

Alliance will invoice Participants for progress payments using the following milestones/schedule.

- 1. Flight preparation (target January 31, 2020) – 50%
- 2. Orthophotography submission for review (target June 1, 2020) – 30%
- 3. Orthophotography final acceptance (target September 1, 2020) – 20%

NOTE: The dates above are for Alliance accounting purposes only and are not the dates of the actual deliverable milestones from the vendor's work. These are dates to allow for up to 60 days of invoice collection in preparation for payment to the vendor closer to the actual deliverable dates.

Since Vendor payment by Alliance is contingent on Participant payment to Alliance, prompt payment of each of these invoice cycles is required, in no case more than 60 calendar days from invoice receipt by Participant. It is each Participant's responsibility to conduct deliverable reviews and acceptance within these time constraints so that Alliance can process Vendor payments as quickly as possible.

10. COMMITMENTS

In signing this Agreement, each Participant commits to the following.

- A. The Project scope of work and technical specifications as shown in Attachment 1.
- B. Each Participant's fees as shown in Attachment 2.
- C. The addition of new Participants to the Project by the execution, from time to time, of additional Participants to this Agreement; provided, however, any such addition shall be agreed to by the Vendor and shall not adversely impact the Project schedule.
- D. Commitment to complete the Project, including full payment for services/products received, except for the contingency described in Section 11.
- E. Assignment of adequate staff or other resources to review Project deliverables within the indicated time constraints. Any deliverables returned to the Vendor for rework will also be subject to a redelivery/review/acceptance timeline.

11. CONTINGENCY

In the event that a suitable leaf-off weather window (February 1 – April 1) is unavailable, each Participant will be asked to indicate to the Alliance its preference to one of the following:

- A. Terminate its participation in this Agreement (with partial payment of Vendor flight mobilization fees and Alliance expenses), OR
- B. Defer the flight either until:
 - i. The next suitable weather window, but no later than July 1, 2020, or
 - ii. Spring 2021 (with partial payment of vendor flight mobilization fees and Alliance expenses); OR
- C. Cancel the Project (with partial payment of vendor flight mobilization fees and Alliance expenses).

The Alliance shall review Participant responses and proceed based on the preference of a majority of the Participants; provided, however, in the absence of a majority vote, the Alliance shall, in its own discretion, determine a suitable contingency plan in the best interest of the Alliance and the Project.

12. AMENDMENT, MODIFICATION AND TERMINATION

- A. Amendment or Modification. The parties to this Agreement may amend or modify this Agreement, in whole or in part, by mutual agreement. Any amendment or modification shall be signed by the parties hereto.
- B. Termination for Convenience. If a Participant elects to terminate its participation in this Agreement due as a convenience for the Participant's need, it may do so by submitting written notice as described in Section 14. Participants who chose to terminate their participation in the Project are responsible for partial payment, which includes Vendor and Administrative fees. The remaining fees for the remaining Participants will be recalculated by Alliance and presented to the remaining Participants.
- C. Termination by Mutual Agreement. The parties may terminate this Agreement, in whole or in part, at any time, by mutual agreement. In this case any already incurred costs will be invoiced to the terminating Participant and the remaining fees for the remaining Participants will be recalculated by the Alliance and presented to the remaining Participants.

13. DISPUTE RESOLUTION

The general approach to this Project is a supportive collaboration of cost-sharing among its Participants. The first step for resolving any disputes will be for Participants to work together to resolve the dispute through discussion and negotiation among the Participants.

In the event of a dispute between Participants that cannot be resolved by the Participants, the Alliance Executive Director will serve as the mediator and resolve those disputes where feasible and appropriate. Alliance reserves the right to decide on the outcome of any dispute among Participants that pertains to the specifics of this Agreement, but is not a legal matter among Participants, in which case parties should follow their appropriate legal processes and remedies set by their respective entities.

Any dispute between Participants that is not resolved by the Alliance Executive Director, or any dispute between Participants and Alliance, or any decision by Alliance that needs elevation to a higher authority will be referred to the Alliance Executive Board. The Alliance Executive Board reserves the right to decide on the outcome of any dispute among Participants that could not be resolved by the Alliance Executive Director or is a dispute with the Alliance Executive Director, but is not a legal matter among Participants and the Alliance, in which case parties should follow their appropriate legal processes and remedies set by their respective entities.

Any dispute not able to be resolved by the Alliance Executive Board will be referred to public entity mediation or any appropriate legal processes and remedies set by the parties' respective entities.

14. NOTIFICATIONS

Any notices to be given under Section 12 of this shall be in writing and shall be delivered electronically via email, and by physical mail addressed to:

eCityGov Alliance
Attention: Executive Director
PO Box 90012
Bellevue, WA 98009-9012
info@ecitygov.net

Other notices to be given under this Agreement may be given electronically.

15. SEVERABILITY

If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall continue in full force and effect. If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which shall remain in effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement. To this end, the provisions of this Agreement are declared to be severable. Should the invalidated provision be necessary to accomplish the purpose of the Agreement, the parties agree to negotiate a provision which will allow such purpose to be accomplished. If agreement cannot be reached on a replacement provision, the Agreement will be deemed terminated as of the date required by the invalidation.

16. APPLICABLE LAWS

The parties hereto shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement.

17. HOLD HARMLESS AND INDEMNIFICATION

To the extent permitted by state law, and for the limited purposes set forth in this Agreement, each party to this Agreement shall protect, defend, hold harmless and indemnify the other parties, their officers, elected officials, agents and employees, while acting within the scope of their duties as such, from and against any and all claims (including demands, suits, penalties, liabilities, damages, costs, expenses, or losses of any kind or nature whatsoever) arising out of or in any way resulting from such party's own negligent acts or omissions related to such party's participation and obligations under this Agreement. Each party agrees that its obligations under this subsection extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other parties only, any immunity that would otherwise be available against such claims under the industrial insurance act provision of Title 51 RCW. The provisions of this subsection shall survive and continue to be applicable to any party exercising the right of termination.

18. NO PRECLUSION OF ACTIVITIES OR PROJECTS

Nothing herein shall preclude any party from choosing or agreeing to fund or implement any work activities or projects associated with any of the purposes hereunder by separate agreement or action, provided that any such decision or agreement shall not impose any funding, participation or other obligation of any kind on the other Participants.

19. ENTIRETY OF COMPLETE AGREEMENT

This Agreement supersedes all prior negotiations, representations and agreements between the Participants to the subject matter hereof and constitutes the entire agreement between the parties hereto.

20. COUNTERPARTS

This Agreement may be executed by facsimile or electronic mail in any number of current parts and signature pages hereof with the same effect as if all Participants had all signed the same document. All executed current parts shall be construed together, and shall, together with the text of this Agreement, constitute one and the same instrument.

21. MAINTENANCE OF RECORDS

The Alliance and its fiscal agent shall maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel from any party hereto, other personnel duly authorized by any party hereto, the Office of the State Auditor, any person making a request for information under the Public Records Act, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after expiration of the Agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the Participants shall have full access and the right to examine any of these materials during this period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

22. PUBLIC INFORMATION

All parties to this Agreement acknowledge that they are subject to chapter 42.56 RCW, the Public Records Act and related public information requirements.

23. MISCELLANEOUS

- A. *Equal Opportunity.* No party to this Agreement shall discriminate against any person based on any ground prohibited under federal, state or local law including race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, veterans and military status, political affiliation or belief or the presence of any sensory, mental or physical handicap in violation of any applicable federal law, Washington State Law Against Discrimination (chapter 49.60 RCW) or the Americans with Disabilities Act (42 USC 12110 et seq.).
- B. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If any dispute arises between the parties under any of the provisions of this Agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.
- C. *Non-Waiver of Breach.* The failure of a party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.
- D. *No Joint Venture or Partnership.* No joint venture, separate administrative or governmental entity, joint board, or partnership is formed as a result of this Agreement.
- E. *Assignment.* The Parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other Party.
- F. *Prior Acts.* All acts taken by the Parties hereto but prior to the effective date of this Agreement are hereby ratified and confirmed.

The Participants hereby agree to the foregoing Agreement, which shall be effective immediately upon full execution by the signatories listed on the following pages, including the Alliance, who will be the last signatory.

ECITYGOV ALLIANCE:

Name: _____ Title: _____

Date: _____

PARTICIPANTS:

Name: _____ Title: _____

Date: _____ Agency/City: **City of Bellevue**

Name: _____ Title: _____

Date: _____ Agency/City: **City of Bothell**

Name: _____ Title: _____

Date: _____ Agency/City: **City of Des Moines**

Name: _____ Title: _____

Date: _____ Agency/City: **City of Issaquah**

Name: _____ Title: _____

Date: _____ Agency/City: **City of Kenmore**

Name: Tracy Dunlap Title: Deputy City Manager

Date: 12/13/19 Agency/City: **City of Kirkland**

Name: _____

Title: _____

Date: _____

Agency/City: **City of Mercer Island**

Name: _____

Title: _____

Date: _____

Agency/City: **City of Newcastle**

Name: _____

Title: _____

Date: _____

Agency/City: **Northshore Utility District**

Name: _____

Title: _____

Date: _____

Agency/City: **City of Sammamish**

Name: _____

Title: _____

Date: _____

Agency/City: **City of SeaTac**

Name: _____

Title: _____

Date: _____

Agency/City: **City of Shoreline**

