

DIGITAL ORTHOPHOTOGRAPHY PARTNERSHIP AGREEMENT

Agreement # CC - 100585

between

**Pierce County
And City of Milton**

City of Milton, 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 September, 2016.

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 2020**
 - 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 pixel 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# 19, 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 September 1, 2016 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 19th day of December, 2016.

PARTNER:

MARK HOWLETT
Name

[Signature] 12/15/16
Signature Date

PUBLIC WORKS DIRECTOR
Title of Signatory

Mailing Address:

CITY OF MILTON

1000 LAUREL ST. MILTON, WA 98354

Contact Name: Mark Howlett

Contact Phone: (253)345-9892

Contact Email: mhowlett@cityofmilton.net

[Signature] 1/10/17

**DEBRA PERRY
MAYOR**

PIERCE COUNTY:

[Signature]
Deputy Prosecuting Attorney Date

(Approved as to legal form only)

Recommended:

[Signature] 12/21/16
Budget and Finance Date

Approved:

[Signature] 12/19/2016
Department Director Date
(less than \$250,000)

or

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