

# **DIGITAL ORTHOPHOTOGRAPHY CONSORTIUM AGREEMENT**

**Agreement # 84881**

**between  
Pierce County  
And  
Port of Tacoma**

**Port of Tacoma**, hereinafter called **PARTNER**, and **Pierce County**, hereinafter called **COUNTY**, agree to the terms of this Digital Orthophotography Consortium 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 **Consortium** members;

**WHEREAS** the **Partner** needs digital orthophotography for viewing, mapping and analysis and wishes to join the **County's** Digital Orthophotography Consortium;

**NOW, THEREFORE**, the **Partner** and **County** agree to the following responsibilities and terms of the Digital Orthophotography Consortium agreement effective this 1<sup>st</sup> day of March, 2013.

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 utilize.
4. Orthophotography Consortium program provides to the **Partner**:

- 4.1. Orthophoto coverage area defined by: **COUNTY** with input from **Partners**
- 4.2. Orthophotography for the year(s): prior to and including 2014
- 4.3. Other related data sets: ortho-based contours, lidar data and contours, planimetrics and OrthoViewer application.
5. Updates to the orthophotography database will be as frequent as every three years and 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. The **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 and the vendor product license which includes 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** 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** 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 area. 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** or Vendor may also seek legal redress.

10. The **Partner** has a perpetual use license to the orthophotography as defined in this document unless terminated for cause (section 8) or non-payment of consortium fees.
11. **Partner's** rights under this agreement are nonassignable, nontransferable, nonsublicensable and nonexclusive.
12. **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***

13. The **Partner** will participate in covering the cost for the development, maintenance, and deployment of the orthophotography.

Initial fee for the 2011 orthophotography and access to historical and current Orthophotography, LiDAR, Planimetrics and associated data: \$19,500

and

Yearly fees for the Orthophotography Consortium dataset:

Annual maintenance fee is: \$1,000 per user per year up to a maximum of \$6,500 per year and optionally;

An additional \$2,500 to allow on-site use of current orthophotos on local **Partner** network and **Partner's** internal applications outside the County GIS system.

14. Non-Appropriations (applies to Governmental Agencies only)

- 14.1. **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.
- 14.2 In the event that the **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, the **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, the **Partner** shall remit all amounts due through the date of termination.

15. The **Partner** may unsubscribe to 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.
16. In the event the **Partner** chooses to unsubscribe to the orthophotography program, the **Partner** will return the orthophotography that maybe on site to the **County** and discontinue use of the data.
17. The contract period shall be from February 1, 2012 to January 31, 2015.

#### ***Limitations***

18. The **County and Consortium** make 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 and Consortium** 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 orthophotography.

#### ***Spatial Accuracy***

19. 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***

20. **County and Consortium** shall not be liable to the **Partner** (or transferees or vendees of the **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 and Consortium** in case the orthophotography provided is inaccurate, incomplete or otherwise defective in any way.

IN WITNESS WHEREOF, the parties have executed this Agreement this 15<sup>th</sup> day of MARCH, 2012.

**PARTNER:**

By Purchasing Manager  
Title of Signatory  
Alyce Benge, CPP 2.7.12  
(Signature) Date

**Mailing Address:**

PO Box 1837  
Tacoma WA 98401-1837

**Street Address, if different:**

One Sitzum Plaza  
Tacoma WA 98421

Contact Name: Jennifer Radcliff

Contact Phone: 253.592.6215

Contact Email: jradcliff@portoftacoma.com

**COUNTY:**

By Jay W  
Deputy Prosecuting Attorney Date  
Approved as to legal form only

**Recommended:**

By W Gary Tolman 3/15/12  
Budget and Finance Date

**Approved:**

By Karen J. Kendall 2/27/2012 c18  
Department Director Date  
(less than \$250,000)

or

By N/A  
Pierce County Executive Date  
(\$250,000 or more)

FULLY EXECUTED  
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