

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (“MOU”) is made as of the ___ day of March, 2018, by and between:

- Colorado Springs Utilities, an enterprise of the City of Colorado Springs, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903 (“Utilities”)
- the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 30 S. Nevada Avenue, Colorado Springs, Colorado, 80903
- El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, with its principal place of business at 200 S. Cascade Avenue, Colorado Springs, Colorado, 80903
- the El Paso-Teller County E911 Authority, with its principal place of business at 2350 Airport Road, Colorado Springs, Colorado, 80910
- the City of Fountain, a Colorado home rule city and municipal corporation, with its principal place of business at 116 S. Main Street, Fountain, Colorado, 80817
- Teller County, with its principal place of business at PO Box 959, Cripple Creek, Colorado, 80813.

(individually referred to as “Party” or collectively as the “Parties”).

WITNESSETH:

WHEREAS, the City of Colorado Springs, Utilities, El Paso County, Teller County, and El Paso – Teller County E911 Authority entered into an agreement called the Pikes Peak Geospatial Alliance Intergovernmental Agreement dated June 24, 2004 (“PPGA IGA”), attached hereto as Exhibit 1, to establish the Pikes Peak Geospatial Alliance (“PPGA”);

WHEREAS, the Parties desire to be Participants, as defined in the PPGA IGA, to execute a common Memorandum of Understanding to acquire digital orthorectified imagery for an area encompassing El Paso County and Teller County (“OP 2018”);

WHEREAS, although not a Member of the PPGA, the City of Fountain has chosen to participate in this MOU and is considered a Non-Member Agency for the purpose of data related to the OP 2018, as defined in the PPGA IGA, Article 5.02-Subsection (b);

WHEREAS, the acquisition cost to individual Parties can be substantially reduced by jointly acquiring this data;

WHEREAS, the cost to each Party was determined by the PPGA IGA steering committee and the formula takes into account factors such as the size of area of interest, overlapping areas of interest, and desired resolution and accuracy;

WHEREAS, each Party has identified funds for the joint acquisition of the digital orthorectified imagery;

WHEREAS, with respect to the OP 2018, the Parties wish to establish the funding and contracting procedure, the specification of requirements and deliverables, and the guidelines for ownership and distribution of data;

WHEREAS, as applicable, the articles and stipulations of the PPGA IGA shall be adhered to by all Parties;

WHEREAS, Utilities entered into a contract for orthorectified imagery with The Sanborn Map Company, Inc., (“Contractor”) which was selected through a competitive RFP process in January 2016; a copy of the Contract with Contractor and all Exhibits and Appendices thereto is attached and incorporated herein as Exhibit 2;

WHEREAS, each of the Parties that co-funds or solely funds any Primary Product shall receive an original copy of the OP 2018 Base Product deliverables indicated in Appendix A to the Contract;

WHEREAS, each of the Parties that co-funds or solely funds any Secondary Product deliverables indicated in Appendix A to the Contract shall receive an original of such OP 2018 Secondary product deliverable.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

ARTICLE 1: COVENANTS OF THE PARTIES

The Parties represent, covenant, and warrant as follows:

- 1.1 Each Party is duly authorized to execute and deliver this MOU and further represents, covenants and warrants that all requirements have been met and procedures have been completed in order to ensure the enforceability of this MOU, and each Party has complied with its public procurement requirements, if any, which are necessary to make this MOU enforceable.
- 1.2 Each Party agrees to abide by the articles and stipulations of the PPGA IGA.
- 1.3 Subject to the provisions of this MOU and the PPGA IGA, each Party agrees to recognize and honor in perpetuity the licensing agreements, copyrights, and other proprietary claims for software, databases, collateral information, and products established or produced by any other Party and the vendors furnishing said items to such Party.

ARTICLE 2: PURPOSE

The purpose of this MOU is to provide joint funding for a contract with Contractor. Contractor is to provide Professional Services for OP 2018. The anticipated payment to Contractor for the Base Product deliverables shall not exceed \$167,000. The anticipated payment to Contractor for Secondary Product deliverables shall not exceed \$43,000. This MOU specifies the project requirements and deliverables and articulates the guidelines for ownership and distribution of those deliverables.

The Parties acknowledge and agree that, notwithstanding any of the provisions in this MOU, the PPGA IGA, or any related documents to the contrary, delivery of specific end product(s) is required under this MOU and the SOW defined in Section 3.2 below, so this MOU does not constitute a public contract requiring the furnishing of labor, time or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. Therefore no explicit certification from the Contractor related to hiring practices is required to comply with C.R.S. §8-17.5-102(1).

ARTICLE 3: ORTHORECTIFIED IMAGERY FUNDING AND PARTICIPATION

3.1 The Parties agree that Utilities has been selected by the PPGA IGA steering committee as lead agency and as such has contracted on behalf of the Parties with Contractor. Such contract shall be referred to herein as “Contract”. The Parties further agree that this orthorectified imagery benefits them all, and that each Party’s funding share and in-kind contributions will be provided by each Party to Utilities in the amounts or percentages set forth in Exhibit 3. OP 2018 project costs in excess of the limit provided in Article 2 shall be paid by the Parties hereto in proportion to their financial contributions in Exhibit 3, subject to additional appropriations and approval by each Party in advance. Utilities shall use all of these funds to finance the orthorectified imagery in accordance with the terms of the OP 2018. In the event any funds are reimbursed under terms of the Contract, those funds will be distributed to the Parties in proportion to the funding provided by each Party.

3.2 Utilities agrees to perform the following duties under this MOU:

- A. Issue the "Statement of Work with Appendices" (“SOW”) approved by the PPGA IGA steering committee to Contractor for the digital orthorectified imagery contractual services in 2018, attached hereto as Exhibit A to the Contract and incorporated herein. Such digital orthorectified imagery contractual services are referred to herein as OP 2018.
- B. Ensure that Contractor delivers the specific products listed in the Deliverable Products and Acceptance section of the SOW by the approximate dates indicated.
- C. Fully perform its obligations in accordance with standard business practices and such other professional standards as may be appropriate.

- D. During the term of the Contract, or until the conclusion of any matters on which Contractor works hereunder, whichever shall occur last, Utilities shall take no position contrary to those advocated by the Parties in the contracted matters, nor represent any client whose interests are in conflict with the positions advanced by the Parties in the contracted matters.
 - E. Maintain a complete file of all records, documents, communications, and other written materials which pertain to the performance of the Contract, including the delivery of services, and shall maintain such records for a period of three years after the date of completion of OP 2018. Each Party shall have the right to audit records at reasonable times and upon reasonable notice.
- 3.3 The Parties to this MOU shall pay Utilities an amount not to exceed that set forth in Article 2 according to the percentages listed on Exhibit 3, attached hereto, upon receipt of invoices from Utilities. Utilities will issue one invoice to each Party that will be issued at a mutually agreed upon time following the start of the OP 2018 project. The final amounts shall be determined when the Contract is finalized and shall be based on the same funding proportions as those currently listed in Exhibit 3.
- 3.4 The Parties agree that all digital products, as listed in Exhibits 2 and 3, that are delivered by the Contractor shall be subject to the terms of the PPGA IGA and the rights and restrictions defined in Articles 5 and 6 of this MOU.
- 3.5 Subject to the terms of the PPGA IGA, for the purpose of OP 2018, each of the eighteen (18) primary orthorectified imagery deliverables (collectively the “Base Product deliverables” – Sub Areas 1-3 and “Secondary Product deliverables” – Sub Area 4) will be made available to the Parties for internal use only after written “preliminary acceptance” of each deliverable. The Parties recognize that until final written acceptance and payment for each imagery deliverable of OP 2018 has been made, the accuracy and quality of the OP 2018 deliverables may be subject to correction, and any Party that uses or relies on any such deliverables prior to each acceptance assumes the risk of use of such OP 2018 deliverables. External data distribution may occur only after acceptance and payment for each respective final OP 2018 deliverable. The allocation of risk provisions in this Section also apply to any Secondary deliverables. Procedures for Quality Assurance are included in the SOW.
- 3.6 Final Report. Utilities shall prepare and submit to the Parties a final accounting of all expenses of the OP 2018 at the termination of the project.

ARTICLE 4: TERMINATION

- 4.1 A Party may terminate its participation in this MOU by providing 30 days’ written notice to the other Parties by certified mail, return receipt requested. If notice is so given, the Party’s participation in this MOU shall terminate on the expiration of the thirty days, and the liability of the Party hereunder for the further performance of the terms of this MOU

shall thereupon cease, provided the Party shall not be relieved of the duty to perform their obligations under Article 6, Restrictions on Use of the Data, and provided further, that if this MOU is terminated after a Contract has been negotiated by Utilities, all monies obligated by the terminating Party but not yet paid over to Utilities for the performance of the Contract shall be due to Utilities and shall be paid to Utilities within thirty (30) days of the date of termination.

- 4.2 If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, the Contractor's obligations under the awarded Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the awarded Contract, any Party to this MOU shall thereupon have the right to terminate that Party's participation in this MOU for cause by giving written notice to the other Parties, and subject to payment of the terminating Party's funding obligations per the above paragraph. In the event of Contract termination, remaining project funds will be reimbursed to the Parties in proportion to the funding provided.
- 4.3 In the event of nonperformance by Contractor, Utilities may pursue any available remedy at law or in equity against Contractor on behalf of the Parties or individually as provided for under the Contract either on its own or as directed by the PPGA steering committee.

ARTICLE 5: DATA OWNERSHIP

- 5.1 The OP 2018 Base Product deliverables will be jointly owned by the Parties who co-funded those products. Ownership of Secondary products is defined by those participants that co-fund each Secondary product as specified in Exhibit 3. PPGA project participants shall only receive products they fund. Each Party's decision regarding whether to participate in and fund each Secondary product shall be confirmed in writing. In the event that a Party chooses not to fund a Secondary product (referenced within Exhibit 3), the proportionate payment requirements for that non-participating Party shall be zero for such Secondary product, and the proportionate payment requirements for the remaining participating Parties shall be adjusted accordingly.
- 5.2 Any products delivered in hard-copy format, such as camera calibration reports and other supporting documents, shall be owned by the Parties as specified in Exhibits 1 and 3.
- 5.3 All additional, optional products that are included as deliverables and are not otherwise addressed herein shall be discussed with the PPGA steering committee. After each Party, including Non-Member Participants, has had a reasonable opportunity to provide input to the PPGA steering committee, cost sharing, usage, and ownership of additional products shall be determined by the PPGA steering committee and in accord with the PPGA IGA.

ARTICLE 6: RESTRICTIONS ON USE OF THE DATA

- 6.1 Each Party shall be bound by the data distribution guidelines specified in Article VI of the PPGA IGA.

- 6.2 Each Party shall have the right to use the digital data to prepare presentations such as maps, exhibits, memoranda, reports, etc., on paper, mylar, or other printed media. These hard-copy materials may be distributed to the public as governed by the internal policies held by each Party.
- 6.3 Each Party shall have the right to use the digital data to prepare presentations such as maps, exhibits, memoranda, reports, etc., in electronic document form for distribution to the public via electronic media or via the Internet. These electronic documents may be distributed to the public as governed by the internal policies held by each Party as defined in the PPGA IGA.
- 6.4 Each Party shall have the right to use the digital data for internet map applications. Internet map applications that deliver orthorectified imagery data as map images to the end user may be developed at the discretion of the Parties, subject to the display area restrictions described in Section 6.5. The PPGA steering committee shall be advised of the application and data security architecture of any internet map applications that propose to deliver aerial photography feature data to the end user. The Parties agree to mitigate any data security concern raised by a PPGA steering committee member before deploying orthorectified imagery applications that deliver feature data.
- 6.5 The Parties agree that the sublicensing of the digital data for a fee to the general public or to other agencies, organizations, or commercial businesses can only be undertaken by PPGA members and only in accordance with Article 6 of the PPGA IGA. Digital products and their unit prices are defined as follows:
- 4000 by 4000 foot tile shall be \$50 for 1 foot resolution imagery
 - 4000 by 4000 foot tile shall be \$100 for 6 inch resolution imagery

These price figures are based upon current business strategies and policies. The distribution and fee schedules for Secondary products will be addressed by an amendment to this MOU if necessary. Release of the digital data to external customers (or to a non-participating PPGA member) requires the execution of a License Agreement by the respective issuing agency in a form substantially similar to Exhibit B of the PPGA IGA (“Customer Geospatial Data License Agreement”). Any Party may, in its sole discretion, designate certain portions of the digital orthorectified imagery, not to exceed 1% of project area, as “Confidential” due to security concerns. Security concerns in excess of 1% must be unanimously approved by the PPGA. The Parties shall be prohibited from sub-licensing and releasing confidential digital data.

- 6.6 The Parties who co-funded the Base Product agree that the jointly owned Base Product deliverable will be made publicly available free of charge following a period of two (2) years after final acceptance of the entire OP 2018 project or when the PPGA executes final acceptance of a subsequent Orthorectified Imagery Project of the same scope, whichever comes first.

ARTICLE 7: CONFIDENTIALITY

- 7.1 Any confidential and/or proprietary information that any Party discloses to any third party with respect to this MOU shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure. Each Party shall require the recipient to hold such information confidential to the extent provided by law and shall require the recipient not to engage in any use or disclosure of such information unless such use or disclosure is expressly provided for in this MOU. Some of the Parties to this MOU are public entities subject to the provisions of the Colorado Open Records Act (“CORA”). In the event a Party receives a request for such confidential and/or proprietary information from a third party, notice thereof shall promptly be given to the other Parties. Each Party shall take all reasonable steps to prevent any unauthorized possession, use, transfer, or disclosure of such confidential information. Should a Party learn of any such unauthorized possession, use, transfer, or disclosure, it shall promptly notify the other Parties.
- 7.2 The disclosure provisions of Section 7.1 above shall not apply to information that a) a Party had in its possession prior to disclosure by another Party; b) becomes public knowledge through no fault of the recipient; c) a Party lawfully acquires from a third party not under an obligation of confidentiality to the Parties to this MOU; or d) is required to be disclosed by law or court order.

ARTICLE 8: ADDITIONAL PROVISIONS

- 8.1 This MOU is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.
- 8.2 Expenditures and Fees of Each Party Deemed Expenditures of that Party: The Parties to this MOU agree that the purpose of this MOU is to jointly accomplish pursuant to C.R.S. Section 29-1-203 activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes of the Colorado Constitution, Article X Section 20, and the Colorado Springs City Charter, that any fees contributed or paid, or otherwise provided by any Party to another Party are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.
- 8.3 In accord with the Colorado Constitution, Colorado Law, and the Colorado Springs City Charter, performance of a Party’s obligations under this MOU is expressly subject to appropriation of funds by the governing body of that Party and the availability of those funds for expenditure under this MOU.
- 8.4 Counterparts; Facsimile: This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument. This MOU may be executed and delivered by facsimile transmission.

THE PARTIES HERETO HAVE EXECUTED THIS MEMORANDUM OF UNDERSTANDING.

FOR THE **CITY OF COLORADO SPRINGS**, A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION:

By: _____ on this _____ day of _____, 2018.
Title: Mayor

Attest: _____
City Clerk

Approved As to Form:

By: _____
Attorney
City of Colorado Springs

AND FOR **COLORADO SPRINGS UTILITIES**, AN ENTERPRISE OF THE CITY OF COLORADO SPRINGS:

By: _____ on this _____ day of _____, 2018.
Title: Chief Water Services Officer

Approved As to Form:

By: _____
City Attorney's Office

AND FOR **EL PASO COUNTY, COLORADO:**

By: _____ on this _____ day of _____, 2018.
Title: Board of County Commissioners Chair

Attest:

By: _____
County Clerk and Recorder

Approved As to Form:

By: _____
County Attorney's Office

AND FOR **EI PASO – TELLER COUNTY E911:**

By: _____ on this _____ day of _____, 2018.

Title: _____

Attest: _____

AND FOR **TELLER COUNTY, COLORADO:**

By: _____ on this _____ day of _____, 2018.

Title: _____

Attest:

By: _____
County Clerk and Recorder

Approved As to Form:

By: _____
County Attorney's Office

AND FOR **THE CITY OF FOUNTAIN, COLORADO:**

By: _____ on this _____ day of _____, 2018.

Title: City Manager

Attest: _____

Title: City Clerk

Approved as to Form:

By: _____
City Attorney's Office