

RESOLUTION NO. 36-20

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING AMONG COLORADO SPRINGS UTILITIES, THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, THE EL PASO-TELLER COUNTY E911 AUTHORITY, TELLER COUNTY, AND THE CITY OF FOUNTAIN TO ACQUIRE DIGITAL ORTHORECTIFIED IMAGERY IN 2020

WHEREAS, the City of Colorado Springs ("City"), Colorado Springs Utilities ("Utilities"), El Paso County, Teller County, and the El Paso-Teller County E911 Authority entered into an agreement called the Pikes Peak Geospatial Alliance Intergovernmental Agreement, dated June 24, 2004 ("PPGA IGA") which established the Pikes Peak Geospatial Alliance ("PPGA"); and

WHEREAS, the purpose of the PPGA is to acquire geospatial data and technologies for the benefit of its members; and

WHEREAS, pursuant to the PPGA IGA, members of the PPGA may enter into a memorandum of understanding to cooperatively acquire geospatial data, which such memorandum of understanding shall provide cost sharing arrangements for the geospatial data acquisition projects between the PPGA members and non-member participants to such projects; and

WHEREAS, in accordance with the PPGA IGA, the PPGA has conducted six past projects for acquisition of geospatial data through aerial photography pursuant to memoranda of understanding entered into in the years 2004, 2007, 2009, 2011, 2014, 2016 and 2018; and

WHEREAS, participation in the past PPGA memoranda of understanding for the joint acquisition of geospatial data has been beneficial to the City and Utilities and has resulted in reduced costs for the acquisition of such data; and

WHEREAS, the City, Utilities, El Paso County, the El Paso-Teller County E911 Authority, and Teller County, as members of the PPGA, along with the City of Fountain, as a non-member participant (collectively, the "Parties"), wish to enter into a memorandum of understanding for the acquisition of geospatial data (the "Project"); and

WHEREAS, the City Council of the City of Colorado Springs ("City Council") has determined that it is in the best interests of the City and Utilities to share the costs of geospatial data acquisition in the manner set forth in the memorandum of understanding attached hereto and incorporated herein ("MOU" or "Memorandum of Understanding").

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. The City Council finds that participation in the Project by approval of the Memorandum of Understanding attached hereto and incorporated herein is in the best interests

of the citizens of the City of Colorado Springs and ratepayers of Colorado Springs Utilities and further approves the Memorandum of Understanding.


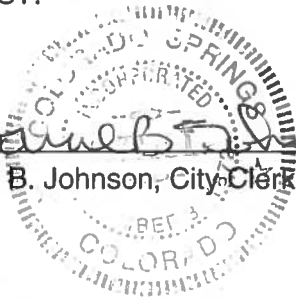
Section 2. The City Council hereby authorizes the Mayor of the City of Colorado Springs or his designee, on behalf of the City, and the Chief Executive Officer of Colorado Springs Utilities or his designee, on behalf of Utilities, to execute the Memorandum of Understanding attached to this Resolution on behalf of the City of Colorado Springs and Colorado Springs Utilities.

Dated at Colorado Springs, Colorado, this 9<sup>th</sup> day of June, 2020.



Council President

ATTEST:

  
Sarah B. Johnson, City Clerk  


## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (“MOU”) is made as of the 14<sup>th</sup> day of April, 2020, 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 2020”);

**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 2020, 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 2020, 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 2020 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 2020 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 2020. The anticipated payment to Contractor for the Base Product deliverables shall not exceed \$126,000. 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 2020 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 these funds to finance the orthorectified imagery in accordance with the terms of the OP 2020. 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 2020, attached hereto as Exhibit A to the Contract and incorporated herein. Such digital orthorectified imagery contractual services are referred to herein as OP 2020.
  - 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 2020. 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 2020 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 2020, each of the fifteen (15) 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 2020 has been made, the accuracy and quality of the OP 2020 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 2020 deliverables. External data distribution may occur only after acceptance and payment for each respective final OP 2020 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 2020 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 2020 Base Product deliverables will be jointly owned by the Parties who co-fund 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

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-fund 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 2020 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: John W. Suthers on this 25<sup>th</sup> day of June, 2020.  
Title: Mayor

Attest: Janet B. Desch  
City Clerk



Approved As to Form:

By: Bethany A. Boyer  
Attorney  
City of Colorado Springs

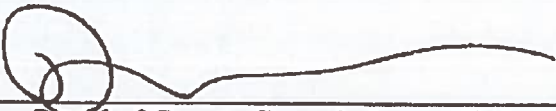
**AND FOR COLORADO SPRINGS UTILITIES, AN ENTERPRISE OF THE CITY OF COLORADO SPRINGS:**

By: **Philip A. Tunnah** Digitally signed by Philip A. Tunnah  
Date: 2020.06.11 14:35:36 -06'00' on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.  
Officer System Programs and Projects

Approved As to Form:

By: *Bethany Bueyer*  
City Attorney's Office

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

By:  on this 5<sup>th</sup> day of May, 2020.  
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: Miles De Young on this 17 day of April, 2020.

Title: Chairman

Attest: 

AND FOR TELLER COUNTY, COLORADO:

By: [Signature] on this 23 day of April, 2020.  
Title: Board of County Commissioners Chair

Attest:

By: [Signature]  
County Clerk and Recorder

Approved As to Form:

By: [Signature] 4/24/2020  
County Attorney's Office

AND FOR THE CITY OF FOUNTAIN, COLORADO:

By: [Signature] on this 5<sup>th</sup> day of May, 2020.

Title: City Manager

Attest: [Signature]  
Deputy  
Title: City Clerk



Approved as to Form:

By: [Signature]  
City Attorney's Office

7-8-04  
Contract Nos.  
04-68

PPGA IGA

## Pikes Peak Geospatial Alliance Intergovernmental Agreement

This Pikes Peak Geospatial Alliance Intergovernmental Agreement, dated this \_\_\_ day of \_\_\_\_\_, 2004, is made by and between the following governmental entities:

- the City of Colorado Springs, a Colorado municipal corporation and home rule city
- the Colorado Springs Utilities, an enterprise of the City of Colorado Springs
- El Paso County, Colorado
- Teller County, Colorado
- El Paso – Teller County E911 Authority

The Parties to this Intergovernmental Agreement hereby agree as follows:

### **Article I. Authority**

This intergovernmental agreement is made under authority of Colorado Constitution, Article XX, Section 6; Colorado Constitution Article XIV, Section 18; and Section 29-1-203 C.R.S.

### **Article II. Purpose**

This intergovernmental agreement establishes the Pikes Peak Geospatial Alliance (PPGA) and defines its membership, organization and activities. The primary purpose of the PPGA is to acquire geospatial data and technologies for the benefit of its members. This agreement does not supercede existing agreements between the member agencies unless stated otherwise herein or in follow-up memorandums of understanding (MOU).

### **Article III. Membership**

#### ***Section 3.01 Charter Members***

PPGA charter agencies include the City of Colorado Springs, Colorado Springs Utilities, El Paso County, Teller County and El Paso – Teller County E911 Authority. Each agency's governing body must formally adopt this intergovernmental agreement for their membership to become official.

#### ***Section 3.02 Additional Membership***

Additional governmental agencies may be added to the PPGA through the unanimous consent of the charter members. Each charter member will execute an IGA addendum followed by the candidate agency executing the original IGA and all addendums before the candidate agency's membership is considered to be complete.



## **Article IV. Steering Committee**

The PPGA steering committee is hereby established to administer the terms and conditions of this agreement and conduct the routine business of the Alliance. The steering committee will generally meet on a monthly basis to maintain communication between member agencies.

### **Section 4.01 Membership**

Each member agency shall designate one representative to serve on the PPGA steering committee. The representative or their proxy will communicate their agency's position on PPGA business items through participation in PPGA meetings.

The representatives for the Steering Committee are as follows:

- (a) Colorado Springs Representative: Geographic Information Officer
- (b) Colorado Springs Utilities Representative: Resource Technology Services Manager
- (c) El Paso County Representative: Information Technologies GIS Manager
- (d) Teller County Representative: LIS/GIS Coordinator
- (e) El Paso – Teller E911 Representative: E9-1-1 System Manager

### **Section 4.02 Responsibilities**

- (a) Administer IGA terms and conditions
- (b) Identify and prioritize PPGA projects
- (c) Discuss PPGA projects with members, other governments and local entities as appropriate to determine level of financial interest
- (d) Develop cost sharing formulas and proposed agreements
- (e) Participate in the development of request for information/request for proposal (RFI/RFP) language
- (f) Participate in vendor selection and contract maintenance
- (g) Participate in quality assurance/quality control (QA/QC) processes
- (h) Administer data distribution processes as defined in Article VI, Geospatial Data Distribution, and in the project-specific MOUs
- (i) Communicate the Geographic Information Systems (GIS) needs and

capabilities of member agencies to state and federal interests (grants, user groups, etc.)

- (j) Other implied responsibilities not explicitly defined

### **Section 4.03 Governance**

- (a) Chairperson

The steering committee chairperson is hereby established to act as a point of contact for the PPGA. Additional responsibilities include the organization of PPGA meetings and coordination of external data distribution requests. The chairperson role will rotate on an annual basis to each of the member agency representatives.

- (b) Decision-Making

Steering committee decision-making will be based on unanimous consent.

- (c) By-laws

The steering committee shall establish by-laws as necessary to carry out the responsibilities defined in Section 4.02.

## **Article V. Geospatial Data Acquisition**

A principal role of the PPGA is to acquire mutually beneficial geospatial data.

### **Section 5.01 Purpose**

Cooperative geospatial data acquisition reduces costs by eliminating redundancies and capturing economy of scale discounts while providing additional data sets for decision makers. Cooperation on joint agency projects may be streamlined due to a single data acquisition project.

Cooperative geospatial data acquisition may be used for concurrent geospatial analysis, joint agency projects or to support the independent operations of member agencies.

### **Section 5.02 Participation**

Participating agencies (Participants) are defined as PPGA members and non-member entities that agree to the terms of an individual project by executing a common MOU and following through with any financial commitments identified therein.

- (a) PPGA Member Agencies

Member agencies are eligible to participate in any project undertaken by the PPGA. PPGA member agencies that originally decline participation and wish to acquire the project data after MOUs have been executed will be charged the non-participant acquisition rate.

**(b) Non-Member Agencies**

Public or private sector agencies may participate on individual PPGA projects by unanimous approval of the PPGA steering committee. Non-member agencies must agree to the terms and conditions of the project through the execution of the project MOU by their governing body or authorized agency representative. Execution of the project MOU indicates an agency's commitment to abide by the project funding formula and distribution restrictions.

**Section 5.03 Project Selection**

The PPGA steering committee will meet as necessary to discuss the data needs of both individual agencies and any ongoing or upcoming agency cooperative efforts. A prioritized list of projects will be developed based on interest, feasibility and funding. External agencies that might benefit from candidate projects will be contacted to determine their level of interest and availability of funds.

Each PPGA member agency will be given the opportunity to participate in all projects organized pursuant to this intergovernmental agreement. Member agencies have the right to decline participation in any individual PPGA project. Agencies that decline to participate in individual projects surrender all rights to project deliverables.

Each project will result in a geospatial data set jointly owned by the participating PPGA member agencies. Usage of the jointly owned data shall be subject to all terms and conditions in this agreement as well as any additional conditions contained in the accompanying project MOU.

**Section 5.04 Funding**

**(a) Co-Funding Model**

Geospatial data acquisition will utilize a co-funding model that allows multiple agencies to fund and obtain the benefit and use of an individual project procured by a single member agency. The PPGA steering committee will develop a funding formula for each project that defines the contribution percentages of participating agencies.

**(b) Lead Agency**

The PPGA steering committee will select a lead agency to act as the procuring and contracting authority on each project. The lead agency will provide documentation on their procurement and contracts procedures to the participating agencies for review. Agencies unable or unwilling to comply with the lead agency's procurement procedures will withdraw from participation.

(c) Memorandum of Understanding

An interagency MOU will be drafted and executed by each participating agency prior to starting each project. The MOU will formalize the participant funding formula, procurement and data distribution guidelines that will govern the project. Agencies unable or unwilling to sign the MOU will withdraw from participation in the project identified by said MOU.

(d) Expenditures

All participants acknowledge that the purpose of this Agreement is to jointly accomplish activities that could be performed separately by each Party. It is agreed and understood for purposes of the Colorado Constitution, Article X Section 20 that any funds contributed for data acquisition or otherwise contributed under this Agreement by any Party to this Agreement, is and remains an expenditure of that Party only.

***Section 5.05 Proposal Solicitation***

A scope of work and schedule of deliverables will be developed and approved by the PPGA steering committee and submitted to the lead agency for inclusion into requests for proposals. The procurement and contracting policies of the lead agency govern the formal acquisition process. All projects must be advertised for competitive bid by the lead agency.

***Section 5.06 Proposal Evaluation***

The procuring and contracting agency shall include all participating members of the PPGA steering committee to serve on their project evaluation and selection process. Non-technical members of the evaluation and selection committee will be determined by the lead agency based on their internal guidelines. Participating members of the PPGA steering committee may also select, through unanimous consent, additional non-voting members to provide technical expertise to the evaluation and selection committee. Each PPGA steering committee member must accept the lead agency evaluation and selection participation requirements, including but not limited to confidentiality agreements and/or other disclosures. Vendor selection proceedings and contract administration will be governed by the internal policies of the lead agency.

***Section 5.07 Contract Administration***

Members of the project evaluation and selection committee will assist the lead agency with contract administration including, but not limited to, pilot area selection, interim deliverable acceptances, quality assurance, quality control and final product acceptance. Additional contract support may be requested by the lead agency.

***Section 5.08 Deliverables***

Participating PPGA member agencies shall receive an original set of all project deliverables. Non-member participants are entitled to receive an original of the

project deliverable that corresponds to the area of interest used to define their funding contribution.

## **Article VI. Geospatial Data Distribution**

Distribution of geospatial data acquired by the Participants under this agreement will be conducted on an individual project basis. For each project, Participants must agree to the following data distribution guidelines. All data distribution transactions will require the product recipient to execute a license agreement with the issuing agency. Agencies will use due diligence in distributing data.

The following general guidelines apply to all geospatial data sets acquired under this agreement. Additional distribution restrictions may be implemented on an individual project basis through inclusion in the project MOU.

### ***Section 6.01 Internal Data Distribution***

Internal data distribution is defined as the release of project deliverables by a Participant to internal departments, offices, units and enterprises, and is permitted by this Agreement.

Law, fire, and EMS agencies in El Paso and Teller Counties and Public Service Answering Points (PSAP) shall, for the purposes of this IGA, also be considered as internal departments to the El Paso – Teller E-911 Authority.

Project deliverables may also be released to a Participant's consultant. A consultant is defined as an entity under contract and financial commitment to a Participant. Exhibit A will be used for internal consultant licensing.

### ***Section 6.02 External Data Distribution***

External data distribution is defined as the release of project deliverables to a non-participating entity and shall require payments as provided in this Section 6.02. Exhibit B will be used for external customer licensing.

Non-member Participants are prohibited from releasing any project deliverables to external entities except as noted in Section 6.01.

Distribution of project deliverables to external customers or for Colorado Open Records Act requests is subject to Colorado Revised Statutes. Additional distribution constraints may be applied based on agency, local, regional or national security policies, as defined by project MOUs.

Each PPGA project will be assigned a unit price factor as determined in the project specific MOU, that will be used to categorize individual data transactions into those over and under \$1000.

(a) Transactions under \$1000

Single or collective transactions to individuals or agencies totaling less than \$1000 as calculated using the data's unit price factor will be governed by the internal data distribution policies of the agency receiving the request. Once the cumulative requests total \$1000 or more, the process detailed in section (b) below apply.

(b) Transactions equal to or over \$1000

Single or collective transactions to individuals or agencies totaling \$1000 or more as calculated using the data's unit price factor shall be forwarded to the PPGA steering committee chairperson. Data distribution will be administered by the chairperson with proceeds of said transaction returned to participant Members in proportion to their project contribution rate. The individual or agency receiving the data shall separately and directly compensate each participant Member agency accordingly.

Data delivered under this process will only be licensed by complete tile(s).

## **Article VII. Infrastructure Acquisition**

A potential role of the PPGA is to acquire mutually beneficial infrastructure assets including geospatial technologies. While the exact nature of these technologies is not totally known, the intent is to provide a mechanism to amend this Agreement to exploit future technology opportunities.

## **Article VIII. General Terms and Conditions**

### ***Section 8.01 Term***

This Agreement shall commence upon final execution and end twenty-five (25) years thereafter unless sooner terminated or extended hereunder. Regardless of the date of execution or termination, this Agreement shall be in full force and effect from the date of a Party's receipt, in digital form, of any jointly acquired GIS Data, and for so long as any portion of said geospatial data, in any form whatsoever, remains in the possession of the other Party or any of its employees, agents, contractors or subcontractors. This Agreement shall remain in effect unless a Party terminates this Agreement by giving the other Parties six (6) months' written notice. The provisions set forth in Articles VI and VII herein shall survive the termination of this Agreement.

### ***Section 8.02 Assignment***

No Member shall assign or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of the other Members.

### ***Section 8.03 Law***

This Agreement 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.

***Section 8.04 Expenditures***

Expenditures and Fees of Each Party Deemed Expenditures of that Party: The Parties to this Agreement agree that the purpose of this Agreement 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 this Agreement to another Party to this Agreement are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.

***Section 8.05 Appropriation of Funds***

In accord with the Colorado Constitution, Colorado Law, and the Colorado Springs City Charter, performance of a Member's obligations under this Agreement are expressly subject to appropriation of funds by the governing body of that Member and the availability of those funds for expenditure under this Agreement.

***Section 8.06 Integration***

This is a completely integrated Agreement and contains the entire agreement between the Members. Any prior written or oral agreements or representations regarding this Agreement shall be of no effect and shall not be binding on the Members.

***Section 8.07 Headings***

The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

***Section 8.08 Local Concern***

The Members agree and acknowledge that the activities undertaken pursuant to this Agreement are matters of local concern only, and that the Members have mutually joined together for the performance of the matters of local concern, and that nothing in this Agreement shall be construed as making any of the concerns covered herein matters of mixed or statewide concern.

**Section 8.09 No Third Party Beneficiary**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Members hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on this Agreement. It is the express intention of the Members hereto that any person or entity, other than the Members of the Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

**Section 8.10 Compensation**

No Party to this Agreement shall be required to pay any compensation to the other Party or the other Party's personnel for any services rendered hereunder. Nothing in this agreement shall be construed to place the personnel of any Party under the control or employment of another Party. Each Party remains responsible for all pay, entitlement, employment decisions, and worker's compensation liabilities, for its own personnel. Nothing in this agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

**Section 8.11 Modification**

This Agreement may only be amended in writing with the approval of the governing bodies of the Members under this Agreement.

**Section 8.12 Dispute Resolution**

- (a) The parties intend that all disputes, as defined below, shall be resolved in accordance with these dispute resolution procedures. The parties shall continue to perform their respective obligations under the terms of this Agreement until the stages of dispute resolution have been completed.
- (b) Disputes include any controversy or claim, whether based in contract, tort or otherwise, arising out of, relating to, or in connection with this Agreement or the scope, breach, termination or validity thereof ("Dispute").
- (c) In the event of a Dispute, a party will deliver written notice of the Dispute to the other parties of its intent to invoke resolution of the Dispute (the "Dispute Notice"). A party may assert the existence of a Dispute against the other party or parties until delivery of such Notice. Within thirty (30) days after the date of delivery of the Notice of Dispute the receiving party shall submit to the other a written response ("Dispute Notice Response"). The Dispute Notice Response shall include (i) a statement of the party's position and a summary of the evidence and arguments supporting the



party's position, and (ii) the name and title of the person who will represent that party.

- (d) If a Dispute Notice is given, the parties shall promptly and diligently attempt to negotiate a settlement of the Dispute through direct negotiations between representatives of the parties who are authorized to enter into settlements on behalf of the parties. The representatives shall meet at a mutually acceptable time and place within twenty (20) days after the date of delivery of the Dispute Notice Response and thereafter, as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. If an authorized representative intends to be accompanied at a meeting by an attorney, the other authorized representative shall be given at least three (3) working days notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for the purposes of the Federal Rules of Evidence and State Rules of Evidence. No subpoenas, summonses, citations, or other processes shall be served at or near the location of any negotiation upon any person who may be entering, leaving, attending, or in transit to any negotiation session.
- (e) If the Dispute has not been resolved within sixty (60) days following the first negotiations, either party may initiate litigation in Colorado, in the courts described below, upon thirty (30) days written notice to the other party. For the purpose of litigating any Dispute, the party's consent to the jurisdiction of the District Court of El Paso County, Colorado.
- (f) All deadlines specified in this Section may be extended by mutual agreement.
- (g) Each party is required to continue to perform its obligations under this Agreement, pending final resolution of any Dispute.
- (h) The procedures specified in this Section shall be followed for the resolution of Disputes between the parties arising out of; or relating to this Agreement; prior to the filing on any litigation between the parties, except for cases where undue prejudice would be caused by delay; a party may seek a preliminary injunction or other preliminary judicial relief; if in the judgment of that party, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite the initiation of any such judicial proceedings, the parties will continue to participate in good faith in the procedures specified in this Section. As between the parties, all applicable statutes of limitation shall be tolled while the procedures specified in this Section are pending and the parties will take all actions, if any, required to effectuate such tolling. If these procedures are not successful in resolving the dispute, the procedures set forth in Section 8.12e shall apply.

- (i) The parties commitment to resolve Disputes, pursuant to this Section, survives the expiration or termination of this Agreement.

***Section 8.13 Termination***

A withdrawing Member must provide at least six months written notice of intent to terminate participation. The terminating Member shall continue to be financially responsible for and pay its share of any financial obligations entered into, pursuant to an MOU signed by the terminating agency, during the period when the terminating agency was a member of the PPGA.

As long as a terminating Member continues to possess data acquired under the auspices of the this IGA and associated project MOUs, that Member shall continue to be bound by the data distribution polices set forth in this IGA and project MOUs.

**Exhibit A: Internal Consultant Geospatial Data License Agreement**

**Exhibit B: Customer Geospatial Data License Agreement**

**THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENTAL AGREEMENT.**

**FOR THE CITY OF COLORADO SPRINGS:**

By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**FOR COLORADO SPRINGS UTILITIES:**

By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**FOR EL PASO COUNTY:**

By *Michael R. Burr* this 8<sup>th</sup> day of July, 2004.

Title: *Boon (Chairman)*

ATTEST: *[Signature]*

*Deputy County Clerk*

**FOR TELLER COUNTY:**

By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

PPGA IGA

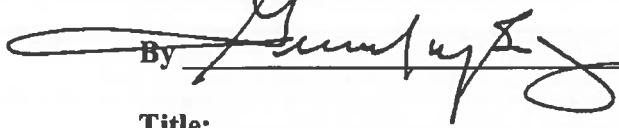
**FOR EL PASO-TELLER COUNTY E911:**

**By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.**

**Title: \_\_\_\_\_**

**ATTEST: \_\_\_\_\_**

FOR TELLER COUNTY:

By  this 27 day of July, 2004.

Title: \_\_\_\_\_

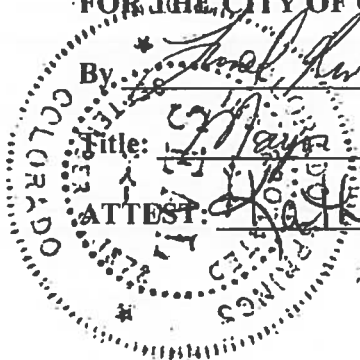
ATTEST: \_\_\_\_\_

FOR THE CITY OF COLORADO SPRINGS:

By: [Signature] this 23<sup>d</sup> day of July, 2004.

Title: [Signature]


ATTEST: [Signature]



FOR COLORADO SPRINGS UTILITIES:

By Phillip H. Tolleson this 26th day of July, 2004.

Title: CEO

ATTEST: 

My Commission expires  
3/5/2007



FOR EL PASO-TELLER COUNTY E911:

By James R. Day this 28<sup>th</sup> day of July, 2004.

Title: \_\_\_\_\_

ATTEST: [Signature]



## EXHIBIT A

# Pikes Peak Geospatial Alliance Internal Consultant Geospatial Data License Agreement

This Consultant Geospatial Data License Agreement is made and entered into as of the < Day > day of < Month, Year > by and among (check one):

- El Paso County, Colorado
- The City of Colorado Springs, a home rule municipality
- The Colorado Springs Utilities, an enterprise of the City of Colorado Springs
- Teller County, Colorado
- El Paso – Teller County E911 Authority

(hereafter "Licensor") and

< \_\_\_\_\_ Company \_\_\_\_\_ > (hereafter "the Consultant"), with its principal place of business at < \_\_\_\_\_ Address \_\_\_\_\_ >.

The parties understand that they are independent entities, and that this Agreement does not create a joint venture, partnership, or other similar relationship between them. Further, no agent, employee, or servant of the Consultant shall be deemed to be an employee of Licensor.

The undersigned warrants to Licensor that he/she has full power and authority to enter into, and where applicable, to act as the agent of the Consultant and be bound to perform its obligations under this Agreement.

### 1. LICENSOR'S AGREEMENT TO PROVIDE PRODUCTS:

Licensor agrees to provide the following geospatial data:

in an area described as follows:

approximate area in square mile(s):

to conform to the requirements of Licensor Purchase Order/Contract Number: \_\_\_\_\_ (hereafter "the Purchase Order(s)").

a. Licensor agrees to deliver Products to the Consultant within thirty (30) days of Consultant's execution of the original of this Agreement and its return to Licensor, provided that Licensor has the products available for delivery to the Consultant. Licensor and the Consultant understand that this Agreement facilitates a one-time delivery of Licensor's Product. This Agreement is not intended to impose upon Licensor any duty to provide the Consultant with Products on any ongoing basis. Further, Licensor has no duty or responsibility for updating the Products contained therein. Licensor may provide semi-annual updates of the Products to the Consultant as consideration for any updated data and information the Consultant may acquire and provide to Licensor as such data becomes available in the future.

b. Licensor makes no warranties or guarantees, either expressed or implied, as to the completeness, accuracy, or correctness of such Products, nor accept any liability, arising from any incorrect, incomplete or misleading information contained therein. There are no warranties, either expressed or implied, of merchantability or fitness of such Products for a particular purpose.

## **2. CONSULTANT'S AGREEMENT TO PROVIDE DATA:**

a. As consideration under this Agreement, and in exchange for the use of the data provided to the Consultant, the Consultant shall provide Licensor with the following:

b. Unless otherwise provided for in the Purchase Order(s), the Consultant agrees to deliver the data identified above in the State Plane Coordinate System, Colorado Central Zone, Datum NAD83.

c. The Consultant agrees that all physical material, photographs, reports, drawings, studies, information, specifications, estimates, maps, computer tapes, digital data, computations, intellectual property and other data (hereinafter referred to collectively as "Material" or "Products") prepared by or for the Consultant or prepared by or for any affiliate consultant or subcontractor under the terms of the project agreement are the property of the Licensor and the Licensor owns the copyright to the same. The Consultant understands that the Licensor may, at a later date, have the copyrighted Material registered with the U.S. Copyright office.

## **3. TIME OF CONSULTANT'S PERFORMANCE AND USE OF LICENSOR PRODUCTS:**

The Consultant is granted the right to use the Products Licensor provides to it for the period of the Purchase Order(s), but in no instance beyond < Date >, at which time the Consultant shall cease all use of the Products, and shall delete the Licensor Products data from their computer systems. This grant of time shall be renewable by mutual consent of the parties.

## **4. RESTRICTIONS ON CONSULTANT'S USE OF THE PRODUCTS:**

The undersigned authorized agent of the Consultant acknowledges that Licensor has imposed upon the Consultant certain limitations and restrictions on the use of the Products and the information contained therein as follows:

a. Licensor grants the Consultant the right to use Licensor's Products solely for the Consultant's internal use and as specified in paragraph 2 above. Licensor prohibits the release of its Products by the Consultant to any third party contractor without the written permission of Licensor. The Consultant agrees to use the Products for the following sole purpose:

Any other use of the Products shall be deemed a breach of this Agreement. The Consultant agrees to allow Licensor to inspect the Consultant's records regarding any possible misuse of the Products or their unauthorized release to third parties.

b. This Agreement does not constitute a sale of any title or interest in the Products. Licensor reserves all ownership rights to its Products and such other rights not expressly granted to the Consultant by this Agreement.

c. The Products are protected by the copyright laws of the United States and are being furnished with all rights reserved. The Consultant shall not copy or transmit in any form or by any means whatsoever Licensor's Products, including but not limited to, electronic, mechanical, photocopying, recording, scanning, or by any information or retrieval system for any non-approved purpose without the expressed written permission of Licensor. The Consultant shall not license, sublicense, assign, release, publish, transfer, sell or otherwise make available the Products or portion thereof to any third party without the expressed written permission of Licensor. This restriction on assignments and transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.

d. The Products have been developed solely for Licensor's internal use. The Consultant understands and acknowledges that Licensor's geospatial database and data in the Products are subject to constant change and that its accuracy and completeness cannot be guaranteed. **UNDER NO CIRCUMSTANCE SHALL LICENSOR MAPPING BE USED FOR FINAL DESIGN PURPOSES.**

e. The Consultant agrees to recognize and honor in perpetuity the copyrights, and other proprietary claims for survey control information, databases, collateral information, and products established or produced by Licensor or the vendors furnishing said items to Licensor.

f. The Consultant will do or cause to be done all things necessary to meet the restrictions imposed on the use of the Products and to meet its obligations under this Agreement.

g. Assignment: Contractor shall not assign or otherwise transfer this agreement or any right or obligations therein.

#### **5. BREACH OF AGREEMENT, DAMAGES, CLAIMS:**

a. In the event the Consultant breaches any of the terms, conditions, covenants, or agreements contained in this Agreement, the license granted herein shall immediately cease, and Licensor shall thereupon have the right to any and all legal or equitable remedies, including but not limited to injunctive relief and damages.

b. Upon any termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and the Consultant shall immediately discontinue all use of the Products and delete the Products from their files and storage media. Upon Licensor's request, the Consultant shall promptly confirm in writing that they have complied with the foregoing.

c. Licensor is not responsible for incidental, consequential, or special damages arising out of the use of the Products provided to the Consultant. The Consultant agrees that the Products shall be used and relied upon only at the risk of the Consultant. The Consultant agrees to indemnify and hold harmless Licensor, its officials, officers, employees and servants from any liability, claims, loss, damages, injury, costs and attorney fees arising out of procuring, compiling, collecting, interpreting, producing, using or communicating the Products or information contained therein.

**6. MISCELLANEOUS:**

a. This Agreement contains no financial commitments on the part of Licensor, and any financial commitments on the part of Licensor that become a part of this Agreement are subject to the appropriation by the governing body of the Licensor.

b. This Agreement 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.

c. If any provisions of this Agreement are determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.

d. This Agreement together with the terms of the Purchase Order(s)/Contract embodies the entire agreement between the Consultant and Licensor. The parties shall not be bound by or liable for any statement, representation, promise, inducement, or understanding of any kind or motive not set forth herein. No additional agreements or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the parties.

e. Place of Performance: The place of performance for this Agreement is deemed to be:

< licensor jurisdiction >

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this < Day > day of < Month, Year >.

\_\_\_\_\_  
CONSULTANT

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

For Licensor: \_\_\_\_\_

If applicable:  
Approved as to Form: \_\_\_\_\_

## EXHIBIT B

# Pikes Peak Geospatial Alliance Customer Geospatial Data License Agreement

The undersigned on behalf of

\_\_\_\_\_ (hereafter referred to as "the Customer") in accepting geospatial Products from (check one):

- El Paso County, Colorado
- The City of Colorado Springs, a home rule municipality
- The Colorado Springs Utilities, an enterprise of the City of Colorado Springs
- Teller County, Colorado
- El Paso – Teller County E911 Authority

(hereafter "Licensor") hereby acknowledges the limitations of the Products and the information contained therein and restrictions on its use:

1. Licensor grants the Customer a non-exclusive, non-transferable license to use the Products for internal use by the Customer and its clients and contractors. The Products are being provided to the Customer for the sole purpose of:

2. The types of Products being provided are:

3. The period of time for which the Customer is granted the right to use the Products is: < Years > years beginning < Date >. All Licensor geospatial product usage and storage must be discontinued by the customer by < Date >.

4. Delivery of the Products to the Customer shall be made by Licensor only after the Customer has fully executed this unmodified agreement and returned it to Licensor.

5. This Agreement does not constitute a sale of any title or interest in the Products. Licensor reserves all rights not expressly granted to the Customer by this Agreement.

6. The Customer understands this is a one-time delivery and that Licensor has no responsibility for updating the Products or information contained therein.

7. Upon any termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and the Customer shall immediately discontinue all use of the Products and delete the Products from their files and storage media. Upon Licensor's request, the Customer shall promptly confirm in writing that they have complied with the foregoing.

8. The Products are protected by the copyright laws of the United States and are being furnished with all rights reserved. No part of the information may be copied, reproduced or transmitted in any form or by any means whatsoever, including but not limited to, electronic, mechanical, photocopying, recording, scanning, or by any information or retrieval system for any non-approved purpose without the expressed written permission of Licensor. The Customer shall not license, sublicense, assign, release, publish, transfer, sell or otherwise make available the Products or portion thereof to a third party without the expressed written permission of Licensor.

9. The Products have been developed solely for internal use only. The Customer understands and acknowledges that Licensor geospatial data in the Products are subject to constant change and that its accuracy and completeness cannot be guaranteed. UNDER NO CIRCUMSTANCE SHALL THESE PRODUCTS BE USED FOR FINAL DESIGN PURPOSES. Licensor makes no warranties or guarantees, either expressed or implied, as to the completeness, accuracy, or correctness of such Products, nor accept any liability, arising from any incorrect, incomplete or misleading information contained therein. There are no warranties, either expressed or implied, of merchantability or fitness of such Products for a particular purpose.

10. Non-Federal/State customers: Licensor is not responsible for incidental, consequential, or special damages arising out of the use of the Products provided the Customer. The Customer agrees that the Products shall be used and relied upon only at the risk of the Customer. The Customer agrees to indemnify and hold harmless Licensor, its officials, officers, employees and servants from any liability, claims, loss, damages, injury, costs and attorney fees arising out of procuring, compiling, collecting, interpreting, producing, using or communicating the Products or information contained therein.

10a. Federal/State customers: Licensor is not responsible for incidental, consequential, or special damages arising out of the use of the Products provided the Customer. The Customer agrees that the Products shall be used and relied upon only at the risk of the Customer.

11. In the event the Customer breaches any of the terms, conditions, covenants, or agreements contained in this Agreement, not only shall the license granted herein immediately cease, but Licensor shall thereupon have the right to any and all legal or equitable remedies, including but not limited to injunctive relief and damages.

12. The Customer agrees to recognize and honor in perpetuity the copyrights, and other proprietary claims for survey control information, databases, collateral information, and products established or produced by Licensor or the vendors furnishing said items to Licensor.

13. This Agreement embodies the entire agreement between the Customer and Licensor. The parties shall not be bound by or liable for any statement, representation, promise, inducement, or understanding of any kind or motive not set forth herein. No additional agreements or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the parties.

14. Neither this Agreement nor the rights granted by it shall be assigned or transferred by the Customer under any circumstance whatsoever. This restriction on assignments and transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.

15. The Customer will do or cause to be done all things necessary to preserve its rights and meet its obligations under this Agreement.

16. This Agreement contains no financial commitments on the part of Licensor, and any financial commitments on the part of Licensor that become a part of this Agreement are subject to the appropriation by the governing body of the Licensor.

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17. This Agreement 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.

18. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.

19. The undersigned warrants to Licensor that he/she has full power and authority to enter into, and where applicable, to act as the agent of the Customer and be bound to perform its obligations under this Agreement.

20. Place of Performance: The place of performance for this Agreement is deemed to be:

< licensor jurisdiction >

21. Other restrictions imposed on the use of such products are:

Customer Signature line:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company or Organization Name

PPG Exhibit B

Approved:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title



FOR EL PASO COUNTY:

By *Chuck Brown* this 8<sup>th</sup> day of July 2004.

Chuck Brown

Title: Board of County Commissioners Chairman

ATTEST: *Richard A. Schuler*  
Deputy County Clerk

FOR EL PASO COUNTY:

By *Chuck Brown* this 8<sup>th</sup> day of July 2004.

Chuck Brown

Title: Board of County Commissioners Chairman

ATTEST: *Deputy County Clerk*  
Deputy County Clerk