

INDEPENDENT SCHOOL DISTRICT 271
Bloomington, MN

REQUEST FOR SCHOOL BOARD ACTION

DATE OF BOARD MEETING: November 12, 2018

SUBJECT: Hennepin County User Agreement for
Aerial Imagery

ORIGINATING DEPARTMENT: Business Office

APPROVAL OF ADMINISTRATIVE
CABINET MEMBER: Rod Y. Zivkovich, Executive Director of
Finance and Support Services *RyZ*

RESOLUTION FOR BOARD TO ADOPT:

RESOLVED, that the School Board of Independent School District 271 approves a User Agreement with Hennepin County allowing the District access to aerial imagery resources and analysis tools provided to Hennepin County through their licensing agreements with Pictometry and Sanborn Maps. This is a one-year agreement with a two-year renewal option.

RECOMMENDATION OF SUPERINTENDENT:

Approve. *R*

DETAILED BACKGROUND:

Hennepin County is providing the District the opportunity to access aerial imagery resources free of charge. The District may utilize, and have limited rights to, licensed technology for the purpose of viewing aerial images, both new and historical, as well as analysis tools that may be helpful for future planning.

This agreement has been reviewed by our district attorney and insurance agent.

HENNEPIN COUNTY USER AGREEMENT

This Hennepin County User Agreement ("HCUA") is between Hennepin County, State of Minnesota, ("COUNTY") and _____, ("USER").

WITNESSETH:

WHEREAS, COUNTY and Pictometry International Corporation ("Pictometry") executed the AGREEMENT FOR THE PURCHASE OF A DIGITAL ORTHO AND OBLIQUE AERIAL PHOTOGRAPH AND INFORMATION SYSTEM LICENSE, as amended, for the licensing of oblique images and related systems (the "Pictometry Agreement");

WHEREAS, COUNTY and The Sanborn Map Company, Inc. ("Sanborn") executed the AGREEMENT FOR THE PURCHASE OF A DIGITAL ORTHO AND OBLIQUE AERIAL PHOTOGRAPH AND INFORMATION SYSTEM LICENSE, as amended, for the licensing of oblique images and related systems (the "Sanborn Agreement");

WHEREAS, Pictometry's hosted software system and Sanborn's hosted software system (collectively the "System") collects, organizes, stores, displays and allows access to a collection of oblique images, metadata, data layers, models, reports and other geographic or structural visualizations or embodiments (collectively "Delivered Content");

WHEREAS, by the terms of the Pictometry Agreement, Pictometry granted COUNTY the right to allow duly authorized political units or subdivisions located totally or substantially within the boundaries of Hennepin County, including cities or townships, to access the System and Pictometry Delivered Content.

WHEREAS, by the terms of the Sanborn Agreement, Sanborn granted COUNTY the right to allow duly authorized political units or subdivisions located totally or substantially within the boundaries of Hennepin County, including cities or townships, to access the System and Sanborn Delivered Content.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements set forth herein, COUNTY and USER agree as follows:

1. Term.

This Agreement shall commence upon November 12, 2018 and shall continue for one (1) year unless terminated earlier in accordance with the provisions of this Agreement. Unless COUNTY otherwise notifies USER within thirty (30) days prior to the expiration of a term of this Agreement, this Agreement shall then

automatically renew for another two (2) year term. However, in no event shall this Agreement continue beyond October 31, 2021.

2. Licenses.

Subject to the provisions herein, COUNTY grants USER a limited, revocable, non-exclusive, royalty-free license to access and use the System and Delivered Content exclusively for the performance of USER's public responsibilities. The rights granted in this paragraph may be referred to as the "License". For clarification and not limitation, the License permits access or use by USER's employees and contracted personnel performing USER's public responsibilities (said employees or contracted personnel may be referred to as "Eligible Personnel" and, as applicable throughout this HCUA, the term "USER" shall include and apply to Eligible Personnel).

USER is solely responsible for implementing the technology necessary to access the System, to retrieve Delivered Content and to use, control and safeguard the Delivered Content pursuant to the obligations set forth herein.

Except as expressly set forth herein, USER shall acquire no right, title or interest in or to the System or Delivered Content.

USER shall strictly comply with the following:

- (i) USER shall access the System and access, use, control and safeguard Delivered Content in compliance with the terms of this HCUA;
- (ii) USER shall only access the System and Delivered content by and through a computer workstation or server (i) that is owned or leased by USER; (ii) that is under the exclusive control of USER; and (iii) that is exclusively available for use by USER (an "Authorized System");
- (iii) USER shall not share or distribute System authentication information, usernames or passwords ("Authentication") with any unauthorized third-party;
- (iv) USER shall secure and safeguard the System, Authentication and Delivered Content in USER's possession or control in the same manner that USER secures and safeguards its own critical or confidential systems, software, data, passwords or other information. If there is a conflict between USER's security requirements and COUNTY's security requirements, COUNTY's security requirements shall prevail;

(v) USER shall not access the Delivered Content by any means other than the System including but not limited to scraping, robots, wanderers, crawlers, spiders, etc (as those terms are commonly used and understood in the information technology industry);

(vi) USER shall be solely responsible for accessing, using and otherwise supporting the System including but not limited to paying all costs, expenses and communication charges associated with the same;

(vii) USER shall use, control and safeguard the Delivered Content in compliance with the terms of this HCUA and with applicable law including but not limited to the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13;

(viii) Except as expressly provided herein, USER shall not use, disclose, sell, market, distribute or otherwise make available the Delivered Content during the term of this HCUA or at any time thereafter except as required by law or with COUNTY's express written consent;

(ix) USER shall not allow third-party access to Delivered Content except as follows:

(a) USER may provide Delivered Content to individual members of the public requesting access to data pursuant to the Minnesota Government Data Practices Act subject to the following:

(1) USER may permit inspection of Delivered Content on Authorized Systems;

(2) USER may provide paper copies of Delivered Content; and

(3) USER may provide .pdf or .jpg images of Delivered Content provided that USER may not assemble more than three (3) contiguous images into a single image.

(b) USER may provide Delivered Content to an entity performing services for USER (said entity, including but not limited to the entity's employees or contracted personnel, may be referred to as "Project Participant(s)") subject to the following:

(1) Access and use of the Delivered Content by Project Participants shall be solely for the purpose of performance of tasks or preparation of materials for USER;

- (2) Project Participants shall be identified in writing to Pictometry and Sanborn, respectively, prior to being granted access to the Delivered Content;
- (3) Unless Pictometry and/or Sanborn expressly waives such requirement, Project Participants shall enter a written agreement with Pictometry and/or Sanborn authorizing such access;
- (4) Project Participants shall access and use Delivered Content under USER's supervision;
- (5) USER may provide paper copies of Delivered Content to Project Participants; and
- (6) USER may provide static images of Delivered Content to Project Participants provided that the static image does not include any metadata.

Unless expressly authorized by the provisions herein, all other third-party access to Delivered Content is prohibited;

(x) USER shall not remove, delete, alter or otherwise modify any copyright messages on or associated with the System or Delivered Content, including but not limited to copyright notices from COUNTY or Pictometry or Sanborn.

3. Disclaimers and Limitations of Liability.

COUNTY, BY AND THROUGH PICTOMETRY AND/OR SANBORN, IS PROVIDING THE SYSTEM AND DELIVERED CONTENT ON AN AS-IS BASIS WITH NO SUPPORT WHATSOEVER. THERE IS NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR PARTICULAR USE, NO WARRANTY OF NON-INFRINGEMENT, NO WARRANTY REGARDING THE USE OF THE INFORMATION OR THE RESULTS THEREOF AND NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

WITHOUT LIMITING THE FOREGOING, COUNTY DOES NOT WARRANT THE PERFORMANCE OF THE SYSTEM OR RELATED AND NECESSARY COMMUNICATIONS OR CONNECTIONS TO THE SYSTEM, THAT THE SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SYSTEM IS FREE OF HARMFUL CODE. USER fully understands and agrees that (i) the System is subject to errors, omissions, delays or interruptions; and (ii) COUNTY, by and through Pictometry and/or Sanborn, may modify or change the System in a manner that may impact or restrict USER's access. In any such event, the COUNTY will not be liable for the cost of such changes, damages or other liability which may be sustained by USER.

WITHOUT LIMITING THE FOREGOING, COUNTY DOES NOT WARRANT THE ACCURACY, COMPLETENESS OR TIMELINESS OF THE DELIVERED CONTENT NOR DOES COUNTY WARRANT THAT DEFECTS IN THE SAME WILL BE CORRECTED. USER fully understands and agrees that (i) the Delivered Content is provided by third-parties, including but not limited to Pictometry and/or Sanborn; and (ii) COUNTY does not directly control and is not responsible for the Delivered Content. USER fully understands and agrees that the Delivered Content is subject to errors, omissions, delay or interruptions, including but not limited to (i) delays, errors or omissions in the receipt of the Delivered Content, (ii) changes, adjustments, corrections or modifications of the Delivered Content and (iii) that COUNTY may make modifications, changes and/or adjustments to the Delivered Content at any time and without notice to USER.

At the point of initial contact with any Delivered Content provided to the public, USER shall include the disclaimer set forth in the preceding three paragraphs, in the same or substantially similar format with necessary adjustments for accuracy and applicability, including but not limited to defining "Delivered Content".

IN NO EVENT SHALL COUNTY BE LIABLE FOR ACTUAL, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT, LOSS OF BUSINESS OR ANY OTHER FINANCIAL LOSS OR ANY OTHER DAMAGES EVEN IF THE COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. COUNTY'S SOLE LIABILITY AND USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGES RELATED TO THIS HCUA OR FOR ANY BREACH OF THIS HCUA, INCLUDING BUT NOT LIMITED TO LIABILITY FOR SYSTEM OR DELIVERED CONTENT NONPERFORMANCE, ERRORS OR OMISSIONS, SHALL BE LIMITED TO RESTORING OR CORRECTING THE SYSTEM OR DELIVERED CONTENT TO THE EXTENT AND DEGREE COUNTY IS CAPABLE OF PERFORMING THE SAME AND AS IS REASONABLY POSSIBLE UNDER THE PERTINENT CIRCUMSTANCES.

4. Royalty Free License.

The License is royalty free. COUNTY is not providing any implementation, maintenance, support or other services hereunder and, as such, USER shall not pay COUNTY any amount for services pursuant to this HCUA.

5. Compliance with Applicable Law and Data.

USER and COUNTY shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.

Subject to the provisions set forth in Section 2 above, the parties, their officers, agents, owners, partners, employees, volunteers and subcontractors shall

abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. USER shall promptly notify COUNTY if USER becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA.

6. Termination.

If COUNTY reasonably believes that USER is not complying with any terms of this HCUA, including but not limited to the license or related limitations, COUNTY may immediately terminate this HCUA and thereby terminate the License and USER's access to and use of the System and Delivered Content.

Either party may terminate this HCUA without cause at any time by upon thirty (30) day written notice to the other party.

Notwithstanding the term set forth herein, the parties expressly agree that COUNTY may (i) terminate the license granted herein for either the Pictometry Delivered Content or the Sanborn Delivered Content; or (ii) terminate this HCUA upon the expiration or termination, for any reason, of either or both the Pictometry Agreement and/or the Sanborn Agreement.

7. Liability.

USER agrees to defend, indemnify, and hold harmless the COUNTY, their officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from USER's use of or access to the System or Delivered Content, from USER's failure to comply with the terms of this HCUA or from failure to perform any duties and obligations required by applicable law and/or this HCUA.

As applicable, a party's liability shall be governed by the provisions of applicable law including but not limited to the Municipal Tort Claims Act, Minnesota Statutes Chapter 466, and other applicable law. The statutory limits of liability for some or all of the parties may not be added together or stacked to increase the maximum amount of liability for any party. This paragraph shall not be construed to bar legal remedies one party may have for the other party's failure to fulfill its obligations under this HCUA. Nothing in this HCUA constitutes a waiver by the USER or COUNTY of any statutory or common law defenses, immunities, or limits on liability.

8. Miscellaneous Provisions.

The Hennepin County Geographic Information Systems Manager, or his/her designee, shall manage this HCUA on behalf of the COUNTY and perform the other duties expressly set forth herein.

Except as directed by COUNTY, USER shall not use the term "Hennepin County", or any derivative thereof in USER's advertising, external facing communication and/or marketing, including but not limited to advertisements of any type or form, promotional ads/literature, client lists and/or any other form of outreach, without the written approval of the Hennepin County Public Affairs/Communications Department, or their designees.

USER and COUNTY intend that this HCUA will not benefit or create any right or cause of action in or on behalf of any person or entity other than the parties.

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of this HCUA and the legal relations between the parties and their performance.

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COUNTY AUTHORIZATION

Reviewed by the County
Attorney's Office

COUNTY OF HENNEPIN
STATE OF MINNESOTA

By: _____
Hennepin County Administrator

Date: _____

USER warrants that the person who executed this Agreement is authorized to do so on behalf of USER as required by applicable articles, bylaws, resolutions or ordinances.*

USER

By: _____

Printed Name: _____

Printed Title: _____

Date: _____

*USER shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time USER returns the Agreement to COUNTY. Documentation is not required for a sole proprietorship.