

FOURTH AMENDATORY AGREEMENT

THIS FOURTH AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **DENVER REGIONAL COUNCIL OF GOVERNMENTS**, a non-profit Colorado corporation, with an address of 1290 Broadway, Ste 100 Denver, Colorado 80203, hereinafter referred to as (“DRCOG”), collectively referred to as (the “Parties”).

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated July 8, 2008 and amended the Agreement on April 14, 2010, and March 24, 2014, to provide a license agreement for aerial image acquisition (the “Agreement”); and

WHEREAS, the Parties wish to amend the Agreement to amend the term, increase the compensation to DRCOG and to update other contract language as follows: and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Article 2 of the Agreement entitled “**TERM**” is hereby amended to read as follows:

“2. **TERM**: The term of this Agreement shall be from July 8, 2008 through December 31, 2023.”

2. Article 5(b) of the Agreement entitled “**PAYMENT AND LICENSE**” is amended to read as follows:

“5. **PAYMENT AND LICENSE**:

b. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the DRCOG under the terms of this Agreement for any amount in excess of the sum of **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO 00/100 (\$1,500,000.00)**. DRCOG acknowledges that the City is not obligated to execute an agreement or an amendment hereto for any further phase of work other than the work described herein, and that any work performed by DRCOG beyond that specifically described is performed at Contractor’s risk and without authorization under the Agreement. It is understood and agreed that any payment obligated of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purposes of the Agreement, encumbered by the expending City agency upon receipt of DRCOG’s invoice for the purpose of the Agreement, and paid into the Treasury of the City. DRCOG acknowledges the (i) the

City does not by this Agreement, irrevocably pledge present case reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City acknowledges that it is not entitled use of the Product until amount due therefore have been paid.”

3. Attached to this Fourth Amendment is the LICENSING AGREEMENT EXHIBIT. The terms and conditions of this Exhibit are incorporated herein and in the event that the terms and conditions of this Exhibit conflict with any prior exhibit terms and conditions, the terms and conditions of this Exhibit shall prevail.

4. This Fourth Amendatory Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

5. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

[SIGNATURE PAGES FOLLOW]

LICENSING AGREEMENT EXHIBIT

DENVER REGIONAL COUNCIL OF GOVERNMENTS

1290 Broadway, Suite 100
Denver, Colorado 80203
(DRCOG)

and

CITY AND COUNTY OF DENVER

201 West Colfax Avenue, Department 1207
Denver, Colorado 80202
(PARTNER)

for

DENVER REGIONAL AERIAL PHOTOGRAPHY PROJECT

Project Number: 820018

Agreement Number: RV 17005

RECITALS

WHEREAS, the parties desire to cooperate in the acquisition, preparation, use, and distribution of digital orthoimagery (hereinafter referred to as the "Product") developed through the Denver Regional Aerial Photography Project (hereinafter referred to as "DRAPP" or "Project" interchangeably).

WHEREAS, the Partner is a governmental or public service entity.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. Purposes

The purposes of this Agreement are to define the rights and obligations of the parties with respect to the Product and to protect and control the rights, reproduction, and resale of the Product. For purposes of this Agreement, current Product shall mean the version released as part of the most current Project, and past Product shall mean those versions of the Product that have since been replaced with a current Product version or those versions that are more than two years old. Current and past Products may be referred to collectively as "Product."

2. Term

The term of this Agreement shall be from the date of execution of this Agreement and shall be valid for up to Six (6) Years.

3. Partner Participation

The Partner will be notified by DRCOG of planned Projects, which typically occur every two (2) years. At that time, the Partner will be asked to submit a Letter of Intent to participate in the current Project. The Partner will also be asked to commit funds as appropriate in its Letter of Intent. If the Partner chooses not to participate in the current Project, it should not submit a Letter of Intent. Following receipt of the Partner's Letter of Intent and upon completion of updated financial projections,

DRCOG will invoice the Partner for its portion of the current Project costs, in accordance with Section 5. In the event that enough local Partner funds are not collected in order to fund the Project, DRCOG may choose not to continue with the current Project. The Partner can continue to use the past Product in accordance with the terms of this Agreement.

4. Termination

If through any cause, either party should fail to fulfill in a timely and proper manner its obligations under this contract or violate any of the covenants or stipulations in this Agreement, the wronged party has the right to terminate this contract by giving sixty (60) days written notice to the other party of such termination. If DRCOG is at fault in this instance, the Partner will be refunded any payments received for the current Product. If the Partner is at fault, the Partner will return all copies of the current Product in its possession.

5. Payment and License

In consideration for the payment to DRCOG of the license fee set forth in the Partner's Letter of Intent to participate in DRAPP, DRCOG grants the Partner a non-exclusive, non-transferable license to the Product to be used strictly and only in accordance with the provisions stated in this Agreement. If the Partner participates in the latest Project, the Partner will receive the current Product (in an electronic format determined by DRCOG) for the geographical area it has specified. If the Partner is unable or chooses not to participate in the current Project, it shall not receive the current Product but may continue to use the past Product in accordance with the terms of this Agreement.

6. Use of Product

a. Past DRAPP Products

i) Permitted Use

- (1) The Partner may use the Product that they have purchased to meet the goals and objectives of their organization.
- (2) Derivative images based on the Product may be displayed on the Partner's website as long as they are not publicly available for download.
- (3) The Web Mapping Service ("WMS") may be used in the Partner's web maps as view-only to the public.
- (4) Past Product may be distributed freely to the public, with the exception of WMS as provided herein.

ii) Restricted Use

- (1) The Partner shall never sell the Product without the written consent of DRCOG.

b. Current Product

i) Permitted Use

- (1) The Partner may use the current version of the Product only to meet the goals and objectives of its governmental activities.
- (2) Contractors engaged by the Partner providing contractual services directly to the Partner may use the current version of the Product in order to fulfill these contractual services, so long as there is written agreement between the Partner and the Contractor that the Product will not be utilized by the Contractor for any other purpose.

- (3) Derivative images based on the Product may be displayed on the Partner's internet site and derivative images may be further used, copied, and displayed to meet the goals and objectives of its governmental activities, which activities may include provision of governmental services for or on behalf of participating public entities. However, partner may not distribute physical copies of DRAPP imagery tiles.
- (4) The Web Mapping Service ("WMS") may be used in the Partner's web maps as view-only to the public.
- ii) Restrictions on Use
 - (1) Outside of the Permitted Uses listed above, the Partner shall not permit access to the current Product by third parties unless authorized in writing by DRCOG.
 - (2) The Current Product is considered proprietary for a period of two years following product release. After two years, the Product is categorized as a Past Product Version.

7. Product Resale

- a. The Partner shall not resell the Product (current or past versions).
- b. The Partner authorizes DRCOG to sell the Product and any Product derivations through DRCOG's authorized reseller.
- c. The Partner authorizes DRCOG to collect proceeds from sales of the Product and any Product derivations and to hold and use this money for any future projects or purposes authorized to DRCOG.
- d. Whenever applicable, the Partner agrees to direct purchase requests for the Product to DRCOG or DRCOG's authorized reseller(s).

8. Limited Warranty and Remedy

- a. Limited Warranty
 - i) DRCOG shall use its best efforts to ensure that the Product is delivered free of physical defect.
 - ii) DRCOG disclaims any other warranties, express or implied, respecting these terms and conditions or the Product.
- b. Remedy
 - i) Partner's sole and exclusive remedy for breach of this limited warranty will be to return the Product within 60 days of receipt.
 - ii) DRCOG shall, at its discretion, replace the Product or repair the Product and return it to the Partner.

9. Assignment and Transfer

Partner shall not disclose, lease, sell, distribute, make, transfer or assign the Product or engage in any other transaction which has the effect of transferring the right of use or part of the Product without the prior written consent of DRCOG, except as noted in Section 6 above.

10. Liability

Without waiving the privileges and immunities conferred by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., each party shall be responsible for any claims, damages, demands or suits arising out of its own negligence.

DRCOG shall not be liable for any activity involving the Product with respect to the following:

- a. The fitness of the Product for a particular purpose.
- b. The use or interpretation of the Product, or the results obtained.

11. Colorado Law to Govern

This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Colorado.

12. No Continuing Waiver

The waiver of any default by either party or the failure to give notice of any default shall not constitute waiver of any subsequent default or be deemed to be a failure to give notice with respect to any subsequent default. Waiver of the breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by authorized representatives of both parties.

13. Governmental Immunity

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of the negligence of either party, their departments, institutions, agencies, boards, officials, and employees are controlled and limited by the provisions of Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

14. Invalid/Unenforceable Provision(s)

If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced as written to the fullest extent permitted by law.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: TECHS-CE83038-04

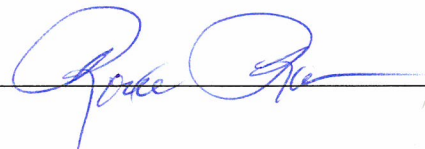
Contractor Name: DENVER REGIONAL COUNCIL OF GOVERNMENTS

By:  _____

Name: Douglas W. REX
(please print)

Title: Acting Executive Director
(please print)

ATTEST: [if required]

By:  _____

Name: Roxie Ronsen
(please print)

Title: Administrative Officer
(please print)

