

AN ORDINANCE 2008-02-14-0109

ACCEPTING THE SOLE SOURCE OFFER OF AND APPROVING A GENERAL LICENSE AGREEMENT WITH PICTOMETRY INTERNATIONAL CORP., FOR THE PURCHASE OF AERIAL PHOTOGRAPHS TO BE USED BY THE FIRE DEPARTMENT, AT A TOTAL COST OF \$63,736.00; AND AUTHORIZING PAYMENT FROM 2006 URBAN AREA SECURITY INITIATIVES GRANT FUNDS.

* * * * *

WHEREAS, Pictometry International Corp. has submitted an offer to the City to furnish the Office of Emergency Management in the Fire Department with current oblique aerial photographs of the City and surrounding areas, and a license agreement providing for use and maintenance of the photographs and software necessary to use the photographs, for a total cost of \$63,736.00; and

WHEREAS, oblique photography is low elevation angled photography taken in multiple directions and is used to facilitate the viewing of structures on all four sides, measuring of heights, and creating 3D representations of buildings, so that a feature, such as a house, building, street light, fire hydrant etc. can be seen in its entirety (for instance, the front door of a house, the back door, the windows etc.); and

WHEREAS, these oblique aerial photographs will be a valuable tool and asset to the Office of Emergency Management in the conduct of its operations; and

WHEREAS, Pictometry International Corp. has been determined to be the sole source from which these oblique aerial photographs and accompanying software and license agreement can be obtained by the City; and

WHEREAS, the Texas Local Government Code indicates that competitive bidding is not required under section 252.022(a)(7)(A) which provides for any items that are available only from a sole source of supply; and

WHEREAS, City Staff recommends that the City acquire these oblique aerial photographs with accompanying software and license agreement from Pictometry International Corp. and enter into a General License Agreement with this company;
NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The offer of Pictometry International Corp. to furnish Office of Emergency Management in the Fire Department with current oblique aerial photographs of the City and surrounding areas, and a license agreement providing for use and maintenance of the photographs and software necessary to use the photographs, for a total cost of \$63,736.00, is hereby accepted.

SECTION 2. Pictometry International Corp. is hereby determined to be sole source of the oblique aerial photographs and accompanying software and license agreement acquired pursuant to this Ordinance.

SECTION 3. That certain *Pictometry International Corp. General License Terms And Conditions*, a true and correct copy of which is attached hereto as Attachment I (“License Agreement”), is hereby approved. The City Manager, her designee, or the Emergency Management Coordinator are each authorized to execute the License Agreement on behalf of the City. The City Manager, her designee, or the Emergency Management Coordinator is authorized forty-five (45) business days from the effective date of this Ordinance within which to execute the License Agreement, substantially according to the terms and conditions set forth in **Attachment I**. If said License Agreement is not negotiated and executed within said forty-five (45) business days, or if the parties cannot agree to terms of such contract within such time, then there shall be no authority to execute said License Agreement unless there is subsequent City Council approval.

SECTION 4. The City Manager, her designee, or the Emergency Management Coordinator are each authorized to exercise the options to extend the term of the License Agreement if sufficient readily available funds have been appropriated by the City Council.

SECTION 5. Fund 2606520001 entitled “Homeland Security” and Internal Order 120000000041 entitled “UASI 2006”, are hereby designated for use in the accounting for the fiscal transaction in the acceptance of this offer.

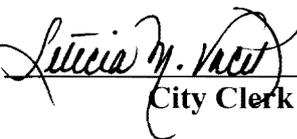
SECTION 6. The sum of \$63,736.00 is hereby appropriated in the above designated fund and will be disbursed from GL 5201040 “Fees to Professional Contractors”. Payment is authorized to Pictometry International Corp. upon issuance of a Purchase Order and receipt of goods.

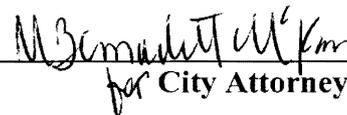
SECTION 7. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 8. This ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 14th day of February, 2008.


MAYOR
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Item:	9 (in consent vote: 6, 8, 9, 10, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 27A, 27B, 27C, 27D)						
Date:	02/14/2008						
Time:	10:14:41 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance accepting the sole source offer of and approving a General License Agreement with Pictometry International Corp., for the purchase of aerial photographs to be used by the Fire Department, at a total cost of \$63,736.00; and authorizing payment from 2006 Urban Area Security Initiatives Grant Funds. [Sharon De La Garza, Assistant to the City Manager; Janie Cantu, Purchasing & Contract Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				x
John G. Clamp	District 10		x				

A T T A C H M E N T I

**PICTOMETRY INTERNATIONAL CORP.
GENERAL LICENSE TERMS AND CONDITIONS**

THIS AGREEMENT is made as of the date set forth below (the "Effective Date") by and between Pictometry International, Corp., a Delaware company with offices at 100 Town Centre Drive, Suite A, Rochester, NY 14623 ("Pictometry"), and the City of San Antonio, a Texas home rule municipal corporation, with offices located at 100 South Flores Street, San Antonio, TX 78204 (the "Licensee"). Intending to be legally bound, Pictometry and the Licensee (each a "party") hereby agree:

1. ARTICLE - DEFINITIONS

- 1.1 **"Images"** Orthogonal and oblique digital images, captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system
- 1.2 **"Community Images"** ("CI") A set of views, each covering the entire sector; one from directly overhead, and two from different oblique angles.
- 1.3 **"Neighborhood Images"** ("NI") A set of overlapping, orthogonal and oblique views blanketing the entire sector, providing for a higher degree of detail
- 1.4 **"Image Sector"** A portion of an image collection project defined as approximately one square mile in area.
- 1.5 **"Geographic MetaData"** ("Metadata") Data supplied by Pictometry that is captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system.
- 1.6 **"Electronic Field Study"** ("EFS") A proprietary software and file structure package that allows for the display, navigation, measurement, annotation and analysis of Pictometric Images.
- 1.7 **"Pictometry Software"** ("Software") Any proprietary software provided by Pictometry. This includes programs such as EFS and Change Analysis or program modules such as 911 or GIS integration / interfaces.
- 1.8 **"Image Warehouse"** ("IW") A hierarchical storage system of Pictometric images, data and elevation models that allows fast, random access by geo-location.
- 1.9 **"Digital Elevation Model"** ("DEM") A general definition for a file containing ground elevation data. This may be a digital elevation model, a digital terrain model or a reflective surface model and is meant to encompass all means of production, including LIDAR and stereo pairs.
- 1.10 **"Documentation"** Written and/or electronic materials containing instructions and other information related to the use of the Images and the Software.

2. ARTICLE - INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

- 2.1 **Licensed Products.** The parties acknowledge and agree that Pictometry shall have and retain sole and exclusive ownership and all right, title, and interest in and to any Licensed Images Licensed Metadata, Licensed Software, Licensed DEM and Licensed Documentation provided under this Agreement and all copyrights, patents, and other proprietary rights in or associated with each of the Licensed Products, defined below (hereinafter the "Proprietary Rights"). Licensee agrees: (a) that it will never assert or claim any interest in, or do anything that may adversely affect the validity of, or infringe upon, any Proprietary Right, (b) that it will use reasonable efforts to protect the Proprietary Rights, including placing or maintaining all copyright notices and other indications of Pictometry's ownership on all Licensed Products and on all copies of Licensed Images and all other property of Pictometry when instructed by Pictometry, and (c) that it will notify Pictometry promptly of any known or suspected breach of any Proprietary Rights.
- 2.2 **Use of Pictometry Marks.** Licensee acknowledges that Pictometry owns and retains all ownership rights in trademarks, trade names, logos, and designations used by Pictometry in connection with the Licensed Products. Licensee agrees not to attach any additional trademarks, trade names, logos or designations to any Pictometry product or to any copies of any of the Licensed Images without written approval from Pictometry. Licensee may, however, include a Licensee seal and contact information so long as these annotations in no way obscure or deface the Pictometry marks. Licensee further agrees that Licensee will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Licensed Images and the other Licensed Products. Licensee's nonexclusive right to use Pictometry's trademark is coterminous with this Agreement.
- 2.3 **Electronic and Other Publishing.** Except as provided in Schedule B and Article 4.1 of this Agreement, Licensee is specifically prohibited from publishing in any way (including by making available on the Internet or World Wide Web or any other general access electronic network) any Licensed Product or any Licensed Image, or any portion of any such Product or Licensed Image, whether separately or as part of any other electronic publication.
- 2.4 **Confidentiality of Licensed Software.** The Licensed Products are commercially valuable, proprietary products of Pictometry, the design and development of which reflect an investment of considerable time and money. The Licensed Products are treated by Pictometry as confidential and contain substantial trade secrets of Pictometry. Licensee agrees that it will not disclose, provide a copy of, or disseminate the Licensed Products or any part thereof to any person who does not need to obtain access thereto consistent with Licensee's rights and obligations under this Agreement. Licensee agrees to use its best efforts to assure (a) that all its personnel, and any others afforded access to the Licensed Products, will protect the Licensed Products against unauthorized use, disclosure, copying, and dissemination, and (b) that access to the Licensed Products and each part thereof will be strictly limited. Licensee understands that Pictometry does not disclose source code and Licensee agrees that it will take all

reasonable actions to assure that persons who might access the Licensed Software will not "unlock" or "reverse engineer" any part of the Licensed Software so as to find or uncover the source code or other trade secrets included therein.

3. ARTICLE - GENERAL

- 3.1 Licensed Products.** This Agreement pertains to the particular Images described in Schedule A attached to this Agreement (the "Licensed Images"), the particular copies of the Software listed in Schedule A (the "Licensed Software"), the associated Metadata (the "Licensed Metadata"), the DEM described in Schedule A attached to this Agreement (the "Licensed DEM") all of which, along with the Documentation, are together referred to as the "Licensed Products." This Agreement does not apply to any other Licensed Products that may from time to time be owned, used, published, or distributed by Pictometry.
- 3.2 System Installation.** Pictometry shall install a copy of the Licensed Products on storage media either provided by Licensee or purchased from Pictometry as specified in Schedule A. With the assistance of Pictometry, the Licensee will install the Licensed Products from that media onto computers/servers to be designated by the Licensee. The Licensee will be responsible for assuring that the computer system being used for these purposes will satisfy the minimum system requirements set forth on Schedule A.
- 3.3 Licensee May Authorize Subdivisions, and Users.** The Licensee may authorize any department, sub unit or location within the Licensee (hereinafter "Subdivisions") to have the Licensed Products installed on computers owned (or leased) and used by those Subdivisions (the "Authorized Users") and to use and execute the Licensed Software for official purposes only. The installation of the CIW and EFS and the training of the Authorized Users may be performed only by either the Licensee and/or Pictometry. The Subdivisions authorized for such installation, use, and execution (the "Authorized Subdivisions"), will be designated by the Licensee as provided in Article 6.3 below. All Authorized Subdivisions and Authorized Users shall operate under this Agreement as agents of the Licensee and comply with all obligations of Licensee with respect to the use and distribution of the Licensed Products, and Pictometry may look to the Licensee alone for assuring compliance with the terms and conditions of this Agreement. Licensee agrees: (a) that it will not allow any persons other than Authorized Users to use or operate, or to have any other access to, any of the Licensed Products (other than described in Article 4.1 of this Agreement), (b) that it will not allow access to any of the Licensed Software or any Licensed Images except through Licensee workstations, and (c) that it will cause all Authorized Users to comply with all of the terms, conditions, and limitations applicable to the Licensee under this Agreement.

4. ARTICLE - GRANT OF LICENSE

- 4.1 License Grant, Uses and Certain Fees.** In consideration for the payment of the License Fees provided for in Article 5 below, and subject to the other terms and conditions of this Agreement, Pictometry hereby grants to Licensee, and Licensee hereby accepts, a nonexclusive, nontransferable, limited license (the "License") for the following:
- (a) **Installation and Documentation.** To install the Image Warehouse on servers and related Licensed Software on workstations, all of which shall be owned (or leased) by, shall be located on the property of, shall be under the control of, and shall be used by the Licensee or by an Authorized Subdivision (which Authorized Subdivisions will be designated pursuant to Article 6.3 below). None of the Licensed Products shall be accessed except through such designated servers and Licensee workstations. To copy and use the related Documentation included in the Licensed Products in connection with the activities described in this Article 4.1.
- (b) **Uses.** Through Authorized Users only, to use and execute the Licensed Software on those designated servers and workstations in the conduct of the public business of the Licensee or of the Authorized Subdivisions and to use and print copies of the Licensed Images in the following activities (and no others):
- (1) **For Internal Business.** To use and execute the Licensed Products for internal use in pursuit of its or their public responsibilities.
 - (2) **For Persons Doing Business With Licensee ("Project Participants").** Under the supervision of Authorized Users, allow representatives of persons doing or proposing to do business with the Licensee or an Authorized Subdivision on Licensee Projects (defined below) to use and execute the Licensed Software and to make copies of the Licensed Images with ink or toner on substrate (hereinafter "Hard Copies") at the Licensee or Authorized Subdivisions' facilities only, but not to make any electronic or digital copies (except for a limited number of jpg copies specific to a particular Licensee Project) of the Licensed Images ("Digital Copy"). For these purposes, "Licensee Projects" shall mean any plan or effort, tangible or intangible, such as construction, real estate disposition, facilities management, environmental studies or public information brochures or notices used by the Licensee or an Authorized Subdivision in pursuit of its public responsibilities. The Licensee or Authorized Subdivisions shall cause each Project Participant to agree to use the Hard Copies (or jpg copies) solely in connection with the Licensee's or Authorized Subdivision's Project.
 - (3) **For Public Use.** Through Authorized Users only, to use and execute the Licensed Software solely for the purpose of making Hard and Digital Copies of Licensed Images for persons desiring them (which Hard Copies may contain annotations of information stored in the Licensed Software and related to the property shown). Each Hard Copy or Digital Copy made pursuant to this Article 4.1(b)(3) shall be covered under terms and conditions as more fully provided in the attached Schedule B.

Any Hard or Digital Copy released or delivered by Licensee or any Authorized Subdivision pursuant to any state or Federal Public Records Act or any other similar state law or regulation shall be treated as a Hard or Digital Copy made pursuant to Article 4.1(b)(3) for purposes of determining fees payable pursuant to this Article, and all Hard Copies and all Digital Copies made pursuant to this Article shall remain subject to all of the provisions of this Agreement.

- 4.2 **Limitations on License.** Licensee agrees: (a) that nothing under this Agreement authorizes it to engage in any service bureau work (service bureau work shall be deemed to include, without limitation, use of the Licensed Software to process or to generate output data for the benefit of, or for purposes of, rendering services to any third party over the Internet or other public communications network), to exercise or provide any multiple-user license, or to enter into any time-sharing arrangement, except as expressly authorized with respect to Authorized Subdivisions, (b) that Licensee will not authorize or allow any remote access to the Licensed Products except for licensee workstations, (c) that Pictometry shall not be obligated to revise, improve, or otherwise change the Licensed Software in any way, (d) that the Licensee is responsible for selecting Authorized Users who are qualified to operate the Licensed Software on licensee workstations and are familiar with the Licensed Software, (e) that the Licensee and its Authorized Subdivisions may not copy, download, store, publish, transmit, transfer, sell, or otherwise install or use the Licensed Software or any Images or any portion of the Images in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with Pictometry's prior written permission, or (iii) to the extent not expressly prohibited by this Agreement, as allowed under the fair use provision of the Copyright Act (17 U.S.C. § 107). Licensee agrees that it will deliver to all recipients of any Hard Copies, and to any other persons who may have access to any of the Images, all such disclaimers and other information that Pictometry may request so as to assist those persons in understanding the limitations on the accuracy of the information developed through the Licensed Products.
- 4.3 **Pictometry's Reserved Rights.** Pictometry reserves the right, at its sole discretion and without liability to Licensee, to create new versions of or modules with additional functionality for any part of the Licensed Products, which may be acquired on a nonexclusive basis by Licensee under a separate agreement. Pictometry may, in addition, produce upgrades to enhance operations of the Licensed Products, which will be supplied without additional cost to Licensee.

5. LICENSE FEES

- 5.1 **License Fees.** In consideration for the License, and subject to the other terms and conditions of this Agreement, the Licensee hereby agrees to pay to Pictometry the fees described on Schedule A (altogether the "License Fees"). Payment to be made as provided in Schedule A. Any tax, including sales tax, is in addition to the License Fees and is the responsibility of the Licensee unless documentation of tax exemption is provided to Pictometry. All License Fees shall be earned on the Delivery Date. For the convenience of the Licensee, the payment of these fees may be spread over the term of this Agreement as provided on the attached Schedule A.

6. ARTICLE - OBLIGATIONS OF LICENSEE

- 6.1 **Geographic Data.** If available, Licensee agrees to provide to Pictometry geographic data in industry standard format, shape, DBF, etc., including digital elevation models, street centerline maps, tax parcel maps, centroids, etc., which data shall be incorporated into the Image Library licensed to the Licensee. For any of this data that is owned by the Licensee, Licensee agrees Pictometry may distribute this data with the Image Library for use in the Pictometry On-Line product and in licensing the Image Library to other licensees. At no time shall Pictometry claim ownership of this data.
- 6.2 **Technical Support Contacts.** Licensee agrees to name Licensee personnel to act as Licensee's technical support contacts for Licensee and these contacts will receive technical training as provided in Schedule A. These contacts will coordinate all requests and inquiries from all Licensee Authorized Users and only these named technical support contacts will have access to telephone support from Pictometry.
- 6.3 **Designation of Authorized Subdivisions.** Licensee agrees that, within thirty (30) days after receipt of the Licensed Products (and on an as-needed basis to update), it will furnish to Pictometry lists of all Authorized Subdivisions, as provided in Article 3.3 above.
- 6.4 **Notification.** Licensee will: (a) notify Pictometry in writing of any claim or proceeding involving any of the Licensed Products within ten (10) days after Licensee learns of the claim or proceeding; and (b) report promptly to Pictometry all claimed or suspected defects in any Licensed Product.

7. ASSIGNMENT

- 7.1 **General.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns, but shall not be assignable by either party except as provided in Sections 7.2 and 7.3 below.
- 7.2 **Assignment By Licensee.** This Agreement will not be assignable by Licensee, and Licensee may not delegate its duties hereunder without the prior written consent of Pictometry.
- 7.3 **Assignment By Pictometry.** Pictometry shall have the right to assign its rights to receive License Fees under this Agreement, but no such assignment shall affect Pictometry's obligations hereunder. In addition, Pictometry shall have the right to assign all its rights to any person or entity, provided the assignee has assumed all of Pictometry's obligations under this Agreement. Except as provided above in this Section 7.3, this Agreement will not be assignable by Pictometry.

8. DURATION AND TERMINATION OF LICENSE

- 8.1 **Initial Term.** The initial term of this Agreement shall commence upon the installation of substantially all of the Image Warehouse and shall expire, unless sooner terminated in accordance with Article 8.3, or as indicated on Schedule A, no earlier than the second anniversary thereof.
- 8.2 **Renewal.** Effective as of that second anniversary (detailed in Article 8.1) or later anniversary as more fully described in Schedule A, Pictometry will grant an extension of the licensing of Products covered in this Agreement, only in accordance with the following:
- (1) If no later than the 90th day before that second anniversary or later anniversary as more fully described in Schedule A, the Licensee enters into a License Renewal Agreement with Pictometry (for an additional two or more years) for new Licensed Images (with an annual value equal to or greater than that of the existing Licensed Images), then Pictometry will grant Licensee a perpetual License for the existing Products licensed under this Agreement; or
 - (2) If no later than the 90th day before that second anniversary or later anniversary as more fully described in Schedule A, the Licensee enters into a License Renewal Agreement with Pictometry (for an additional two or more years) for new Licensed Images (with an annual value of at least 50% of that of the existing Licensed Images), then Pictometry will grant Licensee a perpetual License for the existing Licensed Products upon the payment of a Perpetual License Conversion Fee. Fee is calculated on the difference between the annual fee payable under this Agreement and the new annual fee;
 - (3) If no later than the 10th day after that second anniversary or later anniversary as more fully described in Schedule A, the Licensee pays Pictometry an additional payment of a Perpetual License Conversion Fee, then Pictometry will grant a Perpetual License to Licensee for the Products licensed under this agreement.

Any extensions (or Perpetual Licenses) will be subject to the same terms and conditions as are provided in this Agreement except that the annual fee (under Article 5.1 and Schedule A) will be eliminated and the Licensee will no longer be able to add images to the existing Image Library. Nevertheless, Licensee's obligations as provided in Schedule B, shall continue during any such extension under this Article 8.2.

- 8.3 **Termination for Cause.** This Agreement may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this Agreement, if that other party has failed to cure that failure or breach within thirty (30) days after receipt of written notice thereof from the other party.
- 8.4 **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, Licensee shall immediately cease any and all further use of the Licensed Products and shall promptly purge all copies of the Licensed Products from all computers and workstations on which any of them may be stored or available at the time. In addition, the Licensee shall destroy all remaining inventory of Hard Copies of Images in its possession or under its control (excluding those images produced in the activities described in Article 4.1(b)(2) above). Within thirty (30) days of the date of termination or expiration of this Agreement, Licensee shall also pay Pictometry all amounts due hereunder. The provisions of Articles 2, 7, 8, 9, and 10 of this Agreement shall survive any termination or expiration of this Agreement.
- 8.5 **Access to Records.** During the term of this Agreement and for a period of one (1) year after the date of its termination or expiration, Licensee shall make available to Pictometry for inspection and copying, on reasonable notice and at reasonable hours, all books and records (including electronically retained information) pertaining to Licensee's compliance with the provisions of this Agreement.

9. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES; LIMITED REMEDIES

- 9.1 **Limited Warranties.** Pictometry warrants:
- a) that the Licensed Images and the Licensed Software installed by Pictometry on any Authorized Workstation supplied by Licensee pursuant to this Agreement will be true and usable copies as of the date of capture;
 - b) that the information concerning the accuracy of the Licensed Products set forth on the attached Schedule C is substantially true;
 - c) that the Licensed Images and the Licensed Software will be installed by Licensee with Pictometry's assistance on each Authorized Workstation supplied by Licensee in a good and workmanlike manner, and will be fully functional and operational for all intended purposes upon such installation; and
 - d) that at any and all times that any employee(s) of Pictometry are on any premises of Licensee for any purpose(s) related to this License, Pictometry will have and maintain in full force and effect (i) worker's compensation insurance in applicable statutory amounts and coverages and (ii) general liability insurance providing coverage of at least \$1,000,000 for liability of Pictometry resulting from any act or omission directly or indirectly related to any purpose(s) to be accomplished pursuant to this License.

Upon notice to Pictometry of any breach of the warranty in clause (a) and/or (b) above, Pictometry will use its reasonable efforts to correct the problem so as to allow the Licensed Products to produce Images and related data that are usable for the general purposes intended. The foregoing warranty is the sole and exclusive warranty that Pictometry makes with respect to the Licensed Products, and the remedies set forth above are the sole and exclusive remedies for breach of those warranties.

- 9.2 **Disclaimer of Other Warranties.** Except as provided in Section 9.1 above, EACH OF THE LICENSED PRODUCTS IS PROVIDED TO LICENSEE "AS IS" AND "WITH ALL FAULTS" PICTOMETRY MAKES NO WARRANTIES OR

REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NONINFRINGEMENT, ARE HEREBY DISCLAIMED AND EXCLUDED BY PICTOMETRY.

9.3 **Limitations and Exclusions of Remedies.** The respective remedies set forth in Section 9.1 are the sole and exclusive remedies provided for breach of the warranties given. With respect to any other claims that Licensee may have at any time against Pictometry on any matter relating to this Agreement, or the installation, operation, design, distribution, or use of the Licensed Products, the total liability of Pictometry shall in the aggregate be limited to the aggregate amounts of money that Licensee has paid to Pictometry under this Agreement. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED PRODUCTS, OR IMAGES (INCLUDING UNDER THEORIES INVOLVING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY), FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR BY ITS CUSTOMERS OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. GENERAL

- 10.1 **Entire Agreement.** This Agreement, which includes the attached Schedules, contains the entire agreement between the parties and supersedes all written or oral agreements, descriptions, representations, and understandings with respect to the subject matter hereof. Where differences occur between the main body of the Agreement and the attached Schedules, the Schedules shall supersede the Agreement. Licensee acknowledges that it is not entering into this Agreement on the basis of any representations not expressly contained herein. Any modifications of this Agreement must be in writing and signed by a duly authorized officer of each party.
- 10.2 **Rights of Others.** This Agreement is solely intended to provide rights to and be enforceable by Pictometry and Licensee (including its Authorized Subdivisions). No other person shall acquire or enforce any rights or any representations or warranties given under this Agreement.
- 10.3 **Waiver.** The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.
- 10.4 **Notices.** All notices and demands hereunder shall be in writing and shall be delivered by personal service, mail, or confirmed facsimile transmission at the address of the receiving party set forth below (or at such different address as may be designated by one party by written notice to the other). All notices or demands by mail shall be sent by certified or registered United States mail, return receipt requested, and shall be deemed complete upon receipt.

If to Licensee:

Contact Name: Chris Stokes
Address: 115 Auditorium Circle
San Antonio, TX 78205
Email: cstokes@sanantonio.gov
Phone: (210) 207-8196
Fax: (210) 207-7971

If to Pictometry:

Pictometry International, Corp.
100 Town Centre Drive, Suite A
Rochester, NY 14623
Attn: Michael J. Neary
Phone: 585-486-0093 Fax: (585) 486-0098
Email: mike.neary@pictometry.com

- 10.5 **Export Control.** Licensee agrees to comply fully with the export laws and regulations of the United States Government with respect to the Licensed Products supplied by Pictometry. Accordingly, Licensee agrees that all technical data, software, or other information or assistance (other than publicly available information) furnished by Pictometry, and any product thereof, shall not be re-exported by Licensee, or its authorized transferees, if any, directly or indirectly from the United States unless explicitly permitted by U.S. export control laws and regulations. These obligations of the Licensee shall survive any satisfaction, expiration, termination, or discharge of this Agreement.
- 10.6 **Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect.
- 10.7 **Force Majeure.** Pictometry shall not be responsible for any failure to perform due to unforeseen circumstances or to causes

beyond Pictometry's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, failure to obtain export licenses or shortages or delays of transportation, facilities, fuel, energy, supplies, labor, or materials. In the event of any such delay, Pictometry may defer the delivery of Licensed Products for a period equal to the time of the delay.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the latest of the signature dates specified below.

PICTOMETRY INTERNATIONAL, Corp.

Licensee: CITY OF SAN ANTONIO, TEXAS

By: Michael J. Neary

By: _____

Name: Michael J. Neary

Name: _____

Title: Ex VP Administration

Title: _____

Address: 100 Town Centre Drive, Suite A
Rochester, NY 14623

Address: _____

Date: Dec 13, 2007

Date: _____

Attachments:

Schedule A: Description of Licensed Products – **Must be initialed by Licensee**

Schedule B: Charges for Image Reproduction

Schedule C: Digital Imagery Specifications

Schedule D: Sectorized Map – **Must be initialed by Licensee**

NOTE: "Notices" information must be entered in Article 10.4 of this Agreement.

4) DEPARTMENT WIDE PRICING ALTERNATIVE

DEPARTMENT TOTAL COST \$63,736

B. US Census Bureau TIGER line files of County or a base map supplied by Licensee.

C. DEMS (Digital Elevation Models) – check one:

 X U.S.G.S Digital Elevation Models (DEMs) (provided by Pictometry)
DEMs in TBD format (provided by Licensee).
Licensee DEMs must be provided to Pictometry within 30 days of signing this agreement.

2. Documentation: Pictometry shall furnish 1 digital copy of the Documentation for the Licensed Software.
3. This is a City of San Antonio Emergency Operations Center/GIS department-wide license only and no Authorized Subdivisions may be named by Licensee. The use of Licensed Imagery and Licensed Software shall be limited to Authorized Users in City of San Antonio Emergency Operations Center/GIS.
4. Training: Pictometry shall conduct two End User orientation sessions of up to 25 people per orientation session for employees of the Licensee at the Licensee's site. In addition, there will be Advanced User technical training for one group of up to 10 employees of the Licensee at Licensee's site and using Licensee computers.
5. Telephone Support: Pictometry shall provide 10 hours of telephone support to each employee who has completed the Advanced User technical training and who are individually identified by Licensee.
6. Licensed Software: Pictometry shall supply one copy of the Pictometry Electronic Field Study (EFS) software, latest version, on the Storage Media supplied as specified herein. Licensee may download updated versions of the Licensed Software free of charge for a period of two years from the date of installation, along with a copy of the updated documentation.
7. Total Image License Fee of Sixty-three Thousand Seven Hundred Thirty-six Dollars (\$63,736.00).
 - This is the total image license fee for the Images, Software, Documentation and support.
 - The initial duration of the License is two (2) years at the above Total Image License Fee.
 - This License may be converted into a perpetual License at the end of the initial term by:
 - Entering into a new License for new Images
 - Paying a one-time Perpetual License Conversion Fee of 10% of the Total Image License Fee.
 - Support for EFS for a perpetual License is 2.5% of the Total Image License Fee.

8. Storage Media.

Licensee will make available on Licensee's Server(s) enough disk storage space to accommodate the Licensed Images and Licensed Software. This is estimated to be 743 GB in a NTFS file system, in other file systems the size may vary. Licensee will also provide a 100 Mb/s network link to the server. On delivery Pictometry shall copy the Licensed Images and Licensed Software from Pictometry's computer to the Licensee server via the network connection.

Total Cost: The Total Cost of this License Agreement is Sixty Three Thousand Seven Hundred Thirty Six Dollars (\$63,736).

The Total Cost shall be paid by Licensee to Pictometry within sixty (60) days after Licensee's receipt of all Licensed Software and Images to be furnished by Pictometry to Licensee under the terms of this License.

9. Taxes: All License Fees or other prices listed in this Agreement are exclusive of Federal, State and Local taxes. Licensee will be responsible for any taxes due under this License Agreement.

10. Payment: The Licensee shall remit to Pictometry the Total Cost within sixty (60) days of the delivery of all Licensed Software and Images, as specified in this Schedule A. All delivery efforts by Pictometry International Corp. shall be coordinated with the Licensee. Fees past due for 30 days shall be charged a late fee of 1.5% per month.

11. Delivery Schedule: All Licensed Software and Images subject to this License shall be delivered, installed on Licensee's equipment by Pictometry, and Invoiced to Licensee not later than December 31, 2007. All shipping, handling, and any other delivery expenses shall be borne and paid by Pictometry. The parties acknowledge and agree that time is of the essence in the delivery and installation of the Licensed Software and Images subject to this License. Pictometry shall make its best efforts to comply with the delivery scheduled established in this Section of this License.

12. Recommended Minimum System Requirements for Electronic Field Study. A Pentium III with a 450 MHz processor, 128MB memory minimum 256MB+ recommended, Windows NT/2000/XP, a video card with 4 MB memory capable of 1024 x 768 resolution, 100MB NIC and 50MB free disk space for software.

13. Support Services: Additional training and support services are available at the additional costs listed:

Products & Services

Price

At Implementation

-Additional user training sessions – End User or Advanced User. \$500/session

Post Implementation Training

-At Licensee Location

-End User or Advanced User. \$500/session*

-At Pictometry Location

-Advanced User \$500/Person
/Day

-Via the Internet

\$350/Session

Post Implementation Technical Support

-Telephone Support for Licensee Support Contacts – 5 Hour Blocks \$500

-On Customer Site

-Senior Engineer - Per Hour, Min 8 Hr. \$200 *

-Customer Support Engineer – Per Hour, Min 8 Hr. \$125 *

Electronic Field Study Operations Manuals

- Printed Manuals \$50

- Plus meal, lodging and travel expenses not to exceed Licensee's standard reimbursement provisions and maximum allowable rates.

License Agreement - Pictometry International Corp - Schedule A - Final Version - 12-13-07

SCHEDULE "B"
Charges for Image Reproduction

1. All Licensed Images provided pursuant to this License Agreement are and shall remain the property of Pictometry International Corp. and shall contain Pictometry's copyright notices.
2. Reproductions of individual (or limited quantities of) Licensed Images using the Licensed Software, or reproduction or copying of the Licensed Images in any form by any other means by Licensee or an Authorized Subdivision thereof, shall be permitted for distribution to Licensee's or Subdivision's constituency.
3. Licensee may charge reproduction fees or no fees to the persons or entities receiving the Images.

SCHEDULE "C"
Digital Imagery Specifications

Dimensions and Resolution:

All values are approximates based on target height-over-ground. The actual values vary due to elevation changes.

Individual Images:

Community Images

C5 Oblique (Nominal 12 Inch)

Footprint:

Front Line: 3,400 feet (1036 meters)
Back Line: 4,800 feet (1463 meters)
Front to Back: 4,400 feet (1341 meters)

Ground Sample Distance:

Front Line: 0.85 feet/pixel (0.25 meters/pixel)
Middle Line: 0.99 feet/pixel (0.30 meters/pixel)
Back Line: 1.19 feet/pixel (0.36 meters/pixel)

C5 Orthogonal (Nominal 12 Inch)

Footprint: 3,300 x 2,200 feet (1006 x 671 meters)

Ground Sample Distance: 0.87 feet/pixel (0.27 meters/pixel)

C3 Oblique (Nominal 12 Inch)

Footprint:

Front Line: 3,200 feet (975 meters)
Back Line: 5,000 feet (1524 meters)
Front to Back: 4,300 feet (1311 meters)

Ground Sample Distance:

Front Line: 0.79 feet/pixel (0.24 meters/pixel)
Middle Line: 0.97 feet/pixel (0.30 meters/pixel)
Back Line: 1.24 feet/pixel (0.38 meters/pixel)

C3 Orthogonal (Nominal 12 Inch)

Footprint: 4,000 x 2,700 feet (1219 x 823 meters)

Ground Sample Distance: 1.01 feet/pixel (0.31 meters/pixel)

Premiere Community Images

Oblique (Nominal 9 Inch)

Footprint:

Front Line: 2,800 feet (850 meters)
Back Line: 4,000 feet (1,220 meters)
Front to Back: 3,500 feet (1,066 meters)

Ground Sample Distance:

Front Line: 0.70 feet/pixel (0.21 meters/pixel)
Middle Line: 0.85 feet/pixel (0.25 meters/pixel)
Back Line: 1.00 feet/pixel (0.30 meters/pixel)

Orthogonal (Nominal 9 Inch)

Footprint: 2,780 x 1,850 feet (848 x 564 meters)

Ground Sample Distance: 0.69 feet/pixel (0.21 meters/pixel)

Neighborhood Images

Oblique (Nominal 5 Inch)

Footprint:

Front Line: 1,600 feet (488 meters)

Back Line: 2,400 feet (732 meters)

Front to Back: 2,200 feet (671 meters)

Ground Sample Distance:

Front Line: 0.4 feet/pixel (0.12 meters/pixel)

Middle Line: 0.5 feet/pixel (0.15 meters/pixel)

Back Line: 0.6 feet/pixel (0.18 meters/pixel)

Orthogonal (Nominal 5 Inch)

Footprint: 1,650 x 1,100 feet (503 x 335 meters)

Ground Sample Distance: 0.42 feet/pixel (0.15 meters/pixel)

Premier Neighborhood Images

Oblique (Nominal 4 Inch)

Footprint:

Front Line: 1,400 feet (427 meters)

Back Line: 2,000 feet (610 meters)

Front to Back: 1,800 feet (549 meters)

Ground Sample Distance:

Front Line: 0.35 feet/pixel (0.11 meters/pixel)

Middle Line: 0.41 feet/pixel (0.12 meters/pixel)

Back Line: 0.49 feet/pixel (0.15 meters/pixel)

Ortho (Nominal 4 Inch)

Footprint: 1,385 x 923 feet (422 x 281 meters)

Ground Sample Distance: 0.35 feet/pixel (0.11 meters/pixel)

Sector Tiles:

One-Meter Sector Tiles

Footprint: 5,280 x 5,280 feet (1,609 x 1,609 meters)

Pixel Size: 3.28 feet/pixel (1.0 meters/pixel)

Source Imagery: Community Orthogonal (12 and 9 inch) and/or Neighborhood Orthogonal (Premier and Standard)

Radiometry: Not radiometrically balanced, may have observable cut lines and could consist of imagery taken over a period of several days.

File Size (Approx.): 8,000 KB (TIFF format)

One-Foot Quarter Sector Tiles

Footprint: 2,640 x 2,640 feet (805 x 805 meters)

Pixel Size: 1.0 feet/pixel (0.3048 meters/pixel)

Source Imagery: Community Orthogonal (12 and 9 inch) and/or Neighborhood Orthogonal (Premier and Standard)

Radiometry: Not radiometrically balanced, may have observable cut lines and could consist of imagery taken over a period of several days.

File Size (Approx.): 20,900 KB (TIFF format)

Six-Inch Quarter Sector Tiles

Footprint: 2,640 x 2,640 feet (805 x 805 meters)

Pixel Size: 0.5 feet/pixel (0.1524 meters/pixel)

Source Imagery: Premier Neighborhood Orthogonal and/or Neighborhood Orthogonal

Radiometry: Not radiometrically balanced, may have observable cut lines and could consist of imagery taken over a period of several days.

File Size (Approx.): 83,500 KB (TIFF format)

Custom Ortho-Mosaics:

Pictometry can create custom ortho-mosaics based on the resolution of the imagery captured. If a custom ortho-mosaic is desired, the full specifications will be spelled out in a separate addendum. It is important to note that while the ortho-mosaic can be created at any pixel resolution, up or down, creating an ortho-mosaic with a pixel size smaller than the ground sample distance of the input imagery will not contain any more information than the resolution of the input imagery. In other words, if you create a six-inch ortho-mosaic from one-foot imagery, even though the pixels will be six-inch, the overall image data resolution will still only be one-foot. For this reason, it is important to ensure the base imagery purchased meets or exceeds the resolution requirements of any ortho-mosaics you need. Under-sampling, for instance creating a one-foot ortho-mosaic from six-inch resolution imagery, is not a problem and generally produces very good results.

Pictometry also has licensed partners who can create an ortho-mosaic product that can be certified to a particular accuracy. In general, ortho-mosaics from Pictometry's neighborhood orthogonal imagery can meet NMAS 1:1200 (1.0-meter RMS error at 95% confidence interval) in relatively flat terrains or areas with good elevation data. For areas with highly variable terrain or areas with poor elevation data, this number generally drops to NMAS 1:2400 (2.0-meter RMS error at 95% confidence interval). Certified ortho-mosaics can be created from Pictometry's community orthogonal imagery, but only under certain capture parameters. As such, it is important to include any custom ortho-mosaic requirement with the image capture requirements such that the community orthogonal imagery can be captured in a way consistent with certification requirements.

General Specifications:

Orthogonal Images

Sensor Size	Pixels: 4008 x 2672 (or 3208 x 2672 for some Community level imagery) in a Landscape orientation.
Image Format	Industry-standard image format with proprietary image trailer, including JFIF (JPEG), TIFF, and BMP.
Image Quality	Images will have an unobstructed view of the ground. In controlled airspace around airports, etc., and in areas of rapid elevation changes, the image footprint sizes and resolutions may vary. There may be varying degrees of ground illumination and color variations due to lighting and cloud shadows.
Measurement Accuracy	<0.5% measurement error, excluding user pixel selection error
Pixel Placement Accuracy	Pictometry provides a visualization system and therefore does not certify image accuracy. However, some Pictometry customers have done their own certification on the Pictometry data after delivery and have shared their results. On average, customers have been seeing better than 1.0-meter RMS error at a 95% confidence level (NMAS 1:1200) for orthogonal imagery over relatively flat terrain or in areas with accurate elevation data, and 2.0-meter RMS error at a 95% confidence level (NMAS 1:2400) for more varied terrain or in areas with poor elevation data. However, Pictometry does not guarantee these accuracies and your results may vary.
Sensor Orientation	Pictometry utilizes an IMU (Inertial Measurement Unit), ground station post-corrected differential GPS, and Kalman filtering to achieve a high degree of positional and directional accuracy.
Sensor Positional Accuracy	mean 15cm absolute
Sensor Directional Accuracy	0.015 degrees absolute (roll/pitch) 0.035 degrees absolute (heading)
Ortho-Rectification	The images are ortho-rectified to back out the optical deviations of the capture system and the variations due to elevation changes (utilizing the best DEM data available, including customer provided DEM data), resulting in geographically square pixels aligned to a rectilinear grid. This grid can be one of any number of coordinate systems, including Latitude/Longitude, State Plane, UTM, and more. The desired

coordinate system should be specified in the contract, or a default coordinate system will be used.

Image Export JFIF (JPEG), TIFF, BMP
EFS software can be utilized to export the images into any of the above industry-standard formats. The orthogonal images can optionally be re-projected during this export process, and an associated geography file can be created as well for use in importing the images into GIS mapping software.

Image Tiling Individual orthogonal images are edge-feathered and mosaiced to produce orthogonal image tiles with tile sizes selected to balance single image coverage as well as manageability of open images. These orthogonal tiles provide continuous coverage across the area of interest. While some color balancing is done, these orthogonal tiles are not fully radiometrically balanced or edge-matched.

Oblique Images

Sensor Size Pixels: 4008 x 2672 (or 3208 x 2672 for some Community level imagery) in a Landscape orientation.

Image Format Industry-standard image format with proprietary image trailer, including JFIF (JPEG), TIFF, and BMP.

Image Quality Images will have an unobstructed view of the ground. In controlled airspace around airports, etc., and in areas of rapid elevation changes, the image footprint sizes and resolutions may vary. There may be varying degrees of ground illumination and color variations due to lighting and cloud shadows. Due to the nature of oblique aerial photography, there may also be artifacts such as haze and glint and glare caused by reflected sunlight.

Measurement Accuracy <0.75% measurement error, excluding user pixel selection error

Pixel Placement Accuracy Pictometry provides a visualization system and therefore does not certify image accuracy. However, some Pictometry customers have done their own certification on the Pictometry data after delivery and have shared their results. On average, customers have been seeing better than 2.0-meter RMS error at a 95% confidence level (NMAS 1:2400) for oblique imagery over relatively flat terrain or in areas with accurate elevation data, and 4.0-meter RMS error at a 95% confidence level (NMAS 1:4800) for more varied terrain or in areas with poor elevation data. However, Pictometry does not guarantee these accuracies and your results may vary.

Sensor Orientation Pictometry utilizes an IMU (Inertial Measurement Unit), ground station post-corrected differential GPS, and Kalman filtering to achieve a high degree of positional and directional accuracy.

Sensor Positional Accuracy mean 15cm absolute

Sensor Directional Accuracy 0.015 degrees absolute (roll/pitch)
0.035 degrees absolute (heading)

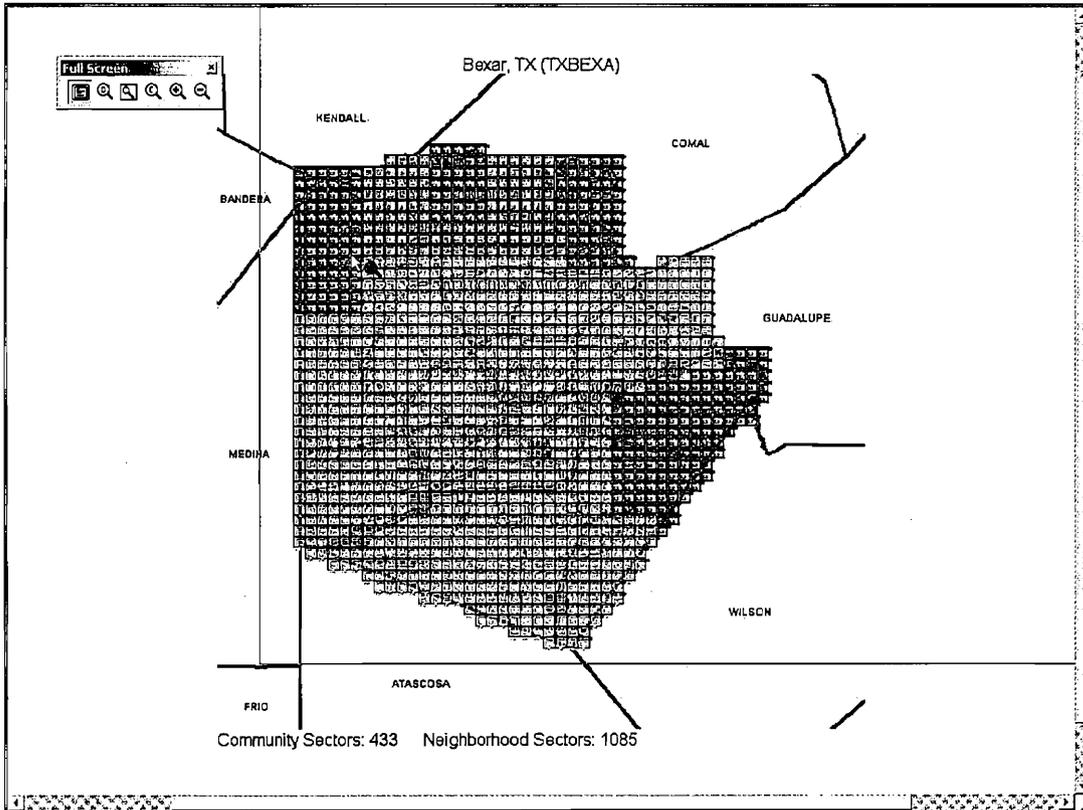
Image Export JFIF (JPEG), TIFF, BMP
EFS software can be utilized to export the images into any of the above industry-standard formats.

Notes

1. The existing National Map Accuracy Standards focus on conventional analog aerial photography products. When used for digital mapping products, it is necessary to specify the approximate image scale (e.g. 1:1200) when stating NMAS requirements.
2. Pictometry's orthogonal images provide the coordinate accuracy fulfilling most planimetric requirements, however, Pictometry data is not intended for authoritative definitive mapping or surveying replacement. If there is a need for

authoritative mapping products, additional work is required by licensed individuals in order to certify Pictometry's orthogonal imagery. Alternatively, a separate, authoritative orthogonal image capture can be done and those orthogonal images used inside of Pictometry. Our oblique images are unique to Pictometry and are intended to provide data not available elsewhere and lateral views with more visual information, such as building stock analysis. In Pictometry the orthogonal and oblique images are linked for your convenience and additional study. With a few clicks you can find the revealing lateral views, height measurements, and other information afforded by the oblique images while using the coordinate accuracy afforded by the orthogonal images.

SCHEDULE "D" Sector Map



MJN