

LEWIS COUNTY IMAGERY LICENSE AGREEMENT

THE PARTIES to this Agreement, are LEWIS COUNTY, Washington, a political subdivision of the State of Washington, hereinafter referred to as the "County", and the _____, a Washington municipal corporation, hereinafter referred to as the "Customer" (collectively, the "Parties").

WITNESSETH:

IT IS HEREBY COVENANTED AND AGREED as follows:

1.0 RESPONSIBILITIES:

1.1 County Responsibilities: Upon completion of the image acquisition and a signed Lewis County Imagery License Agreement between the Parties, the County agrees to furnish the Customer the following products and services:

1.1.1 Login credentials for the use of Eagleview/Pictometry's ConnectExplorer (or its successor program) which provides internet-based access to the oblique and vertical aerial photos, ChangeFinder building footprints, and specialized Eagleview tools/software. Logins/seats to ConnectExplorer will be provided in the quantity and manner specified in Section 1.2.4.

1.1.2 In lieu of, or in addition to, ConnectExplorer, and upon Customer's request, the County will deliver a portable USB hard drive containing all the licensed Eagleview products, including the image library. The blank USB hard drive is to be provided by the Customer or, if provided by the County, such cost shall be reimbursed to the County. Hard drive will include vertical aerial photos, oblique aerial photos, ChangeFinder building footprints, and Eagleview's desktop software: Electronic Field Study (EFS). Other associated files, such as metadata, may be a part of the deliverables as well.

1.1.3 All of the 2021 and 2023 imagery licensed from Washington Consolidated Technology Services (WaTech, a state agency) will be provided to the Customer via a link from which it may be downloaded or via a USB hard drive. If requesting a USB hard drive, the drive is to be provided by the Customer or, if provided by the County, such cost shall be reimbursed to the County. Hard drive (or link) will include vertical aerial photos and any other associated deliverables provided by WaTech, such as metadata.

1.1.4 End User Orientation Training Sessions may be taught on two separate occasions by Eagleview as instructor-led classes, either live or over the internet. The Customer may designate two authorized representatives to attend each training session. In addition, the County may organize one Advanced User Technical Training Session which will be taught by Eagleview. The Customer may designate one authorized representative to attend this session. Additional periodic training for new users or as refresher may be provided either in a live instructor-led format or in a digital recorded tutorial format.

1.1.5 Eight hours of telephone/in-person support per year by the County to help resolve issues and problems in the installation, maintenance, and use of the licensed products provided herewith or other related Geographic Information System (GIS) services.

1.1.6 Annual billing for the use of licensed imagery products. This also includes oversight of the financial accounting between the County and the Customer.

1.1.7 Extended support services beyond the aforementioned requirements for specialized training, support, or other services related to the support of imagery products or other related GIS services. These extended services shall require a work order and financial compensation as specified in Section 5.5 Extended Services and Work Orders.

1.2 Customer Responsibilities: Upon completion of the image acquisition and a signed Lewis County Imagery License Agreement between the Parties, the Customer agrees to the following:

1.2.1 Compliance with this Lewis County Imagery License Agreement, the Eagleview Master Service Agreement (MSA) between the County and Eagleview, and the WaTech Service Level Agreement (SLA) between the County and WaTech.

1.2.2 To designate one person as the Liaison between the County and the Customer as a single point of contact for disseminating information to the Customer's end users. The designated Liaison and their contact information shall be reported to the County. By default, the representatives listed in Section 7.7 shall serve as the Liaisons.

1.2.3 The Liaison or their designee shall distribute the Eagleview and WaTech products to the Customer's authorized users in accordance with this Lewis County Imagery License Agreement, the Eagleview MSA, and the WaTech SLA. The Liaison shall provide additional Eagleview training and technical support to their Authorized Users (as defined in the Eagleview MSA and WaTech SLA).

1.2.4 To furnish the County valid email addresses for use as ConnectExplorer logins/seats and names and contact information that correspond to those email addresses. The number of requested ConnectExplorer logins must equal the number of email addresses furnished. Each ConnectExplorer login can only be used in one location at a time. Eagleview has bundled an unlimited number of logins for ConnectExplorer into the overall program, so there is no separate ConnectExplorer fee. The overall fee calculation in Section 5.1 is in part based on Customer's current number of logins, historic usage, and anticipated future usage. A reasonable limit to login allocation is required for the County to keep the administration of accounts manageable. Customer currently has XX logins and may request up to a maximum total of XX logins under this Agreement. These additional login activations can be requested during the term of this Agreement via coordination between the Parties' Liaisons. Logins in excess of this maximum may be allowed per Section 5.2 but may require an increase in the fees described in Section 5.1.

1.2.5 If the Customer requires the data and software locally installed, it agrees to provide a USB hard drive for the County to use to deliver the Eagleview and WaTech licensed products as stated in Section 1.1.2 and Section 1.1.3 above or agrees to reimburse the County for same.

1.2.6 The Customer shall notify the County within ten business days after the Customer receives notice from Eagleview or WaTech of any Eagleview or WaTech actions, conditions, or circumstances which could affect the Customer's rights under this Agreement.

2.0 SERVICE CONDITIONS AND DATA LIMITATIONS

2.1 Acceptance of Completed Work: The County understands that photos taken when trees are without leaves are preferred by the Customer and, therefore, will make a reasonable effort to secure photos in relative leaf-off condition. The County endeavors to schedule Eagleview image acquisition during March - May (partial leaf-off tree condition to insure more visibility) of 2024. This is contingent upon weather conditions and there is a strong possibility that the image acquisition may occur at later dates. WaTech image acquisition is conducted throughout the year, most often in summer leaf-on conditions; this is customary for their projects, and this was the case in 2021 and 2023. When the image acquisition and processing is complete, County will evaluate the overall datasets for acceptance with Eagleview and WaTech. Once the County has received and approved the products, access to the products may be made to the Customer as stated in Section 1.1. The Customer has 15 calendar days to inspect the products and notify County of any product errors, omissions, flaws, or incomplete work. County will review the original accepted dataset for any problems identified by the Customer and provide a new copy of the original accepted dataset if differences are identified. If no errors are brought to the attention of the County within 15 calendar days, the product delivery to the Customer shall be considered complete.

2.2 Product Archival and Retention: County is not responsible for the backup, retention, or archive of products provided to Customer. In the event that the Customer requests from the County another copy of the Eagleview products, the County shall be financially compensated for their actual costs to create and deliver an additional copy of the Eagleview products.

2.3 Confidential and Proprietary Information: The Customer acknowledges and agrees to the limitations on use and dissemination of the licensed Eagleview and WaTech products as described in the Eagleview MSA and the WaTech SLA. In the event the Customer receives a request for information or intellectual property belonging to Eagleview or WaTech, within five days of receiving such request and prior to providing any materials to the Requestor, the Customer will notify both the County and Eagleview or WaTech of such request. Customer shall clearly mark all confidential or proprietary documents.

2.4 Data Limitations: The County makes no warranty, expressed or implied, concerning the imagery products' content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. All imagery products are expressly provided "As Is" and with all faults. The County makes no warranty of fitness for a particular purpose and no representation as to the quality of any products. No employee or agent of the County or the Customer is authorized to waive or modify this

paragraph or make any representations or provide any warranties, expressed or implied, concerning the imagery products.

2.5 Spatial Accuracy: Electronic spatial data can be printed or represented at various scales other than the original source of the data. Customer is responsible for adhering to industry standard mapping practices, which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets.

3.0 DATA LIABILITY AND INDEMNIFICATION

3.1 Liability: County, its elected or appointed officers, employees, or agents shall not be liable to Customer (or transferees or vendees of Customer) for damages of any kind, including personal injury damages, property damages, lost profits, lost savings, or any other incidental or consequential damages relating to the providing of the data or the use of it. Customer shall have no remedy at law or equity against the County in case the data provided is inaccurate, incomplete, or otherwise defective in any way. Customer's only remedies are those specified in this Agreement. County is supplying this information in good faith and Customer agrees to hold County, its elected or appointed officers, employees, or agents harmless from any liability incurred as a result of using Eagleview products under this Agreement.

3.2 Indemnification: Customer agrees to defend, indemnify, and hold harmless County, its elected or appointed officers, employees, or agents from any and all claims, judgments, settlements, attorney's fees, or any costs by reason of any and all claims and demands made against County, its elected or appointed officials or employees for all damages or loss sustained by any person or persons including third parties, unless such loss or damage is due to the sole negligence of County, its elected or appointed officers, employees, or agents. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

3.3 No Third-Party Beneficiary, Joint Venture or Partnership: It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture or partnership is formed by or as a result of this Agreement.

3.4. Non-Conforming Service Remedy: For any services which fail to conform to the specification of this Agreement and/or of any Work Order issued pursuant to this Agreement, and if such failure is caused solely by the negligence of County, no charge will be invoiced. If both Parties are negligent, they agree to apportion cost between them according to the damage attributable to the actions of each.

3.5. Equipment Damage: For any equipment damaged as the result of negligence by either party, that party will be obligated to pay for repair or replacement of that equipment. If both Parties are negligent, the Parties agree to apportion between them the damage attributable to the actions of each.

4.0 TREATMENT OF ASSETS

4.1 Property Title: Eagleview products are licensed through Eagleview and are subject to the provisions of the Eagleview MSA between Eagleview and the County. The WaTech products are licensed through WaTech and are subject to the provisions of the WaTech SLA between WaTech and the County.

4.2 Use of Property: Any property furnished by County to Customer shall, unless otherwise provided in this Agreement or approved by the owner, be used solely for the performance of this contract.

4.3 Notification: If any County property is lost or stolen, the Customer shall immediately notify both Eagleview and the County and shall take all reasonable steps to protect the property.

5.0 SERVICE CHARGES AND PAYMENT PROVISIONS

5.1 Imagery Product Fees: With Eagleview's and WaTech's approval, the County is making products available to Authorized Users as defined in the MSA between the County and Eagleview and the SLA between the County and WaTech. The Customer is identified as an Authorized User and therefore is eligible to purchase Eagleview and WaTech products from the County (subject to the requirements outlined in Section 2.1).

5.1.1 Fees are determined based on the Customer's previous contribution to the 2013-2021 imagery project as a percentage of the whole – or, if Customer is a new contributor, by matching to a similar previously contributing entity. The calculated percentage for the Customer is __XX.XX__% and the fees for both Eagleview and WaTech imagery will be based on applying that percentage to the total invoice amounts for both of those annual invoices.

5.1.2 The total contracted amounts for imagery services to the County from both Eagleview and WaTech are as follows, along with calculated Customer fees based on percentage in Section 5.1.1:

2024: \$60,723.69, Customer Fee = \$ _____

2025: \$57,723.69, Customer Fee = \$ _____

2026: \$47,723.69, Customer Fee = \$ _____

5.1.3 The Customer shall pay a total of \$ __XXXX.XX__ for up to a three-year license of imagery products (aerial images, building footprints, and EFS desktop software), which will then turn into a perpetual use license for the existing EFS software and imagery. This cost will be invoiced annually as described in Section 5.3. The customer may also elect to get an initial invoice for the total \$ __XXXX.XX__ amount and pay it off at once. The cost of future software updates and technical support is not covered by this Agreement.

5.2 Excess ConnectExplorer Seats Effect on Fees: A reasonable limit to Eagleview ConnectExplorer login/seat allocation is required for the County to keep the administration of accounts manageable. Additional seats in excess of the maximum stated in Section 1.2.4 may be allowed but may require an amendment to this Agreement and an increase of fees in Section 5.1.

5.3 Payment Dates: The first payment for the deliverables described in Sections 5.1 is due one month after the Customer has received the final products. The second and third payments are due no later than one year and two years, respectively, after the first payment due date.

5.3.1 If this Agreement is enacted in the second calendar year following a flight, the first two payments are due simultaneously no later than one month after delivery, with the third and final payment due on the next anniversary.

5.3.2 If this Agreement is enacted in the third calendar year following a flight, the full amount of all three payments is due no later than one month after delivery.

5.3.3 The entire three-year payment amount for deliverables described in Section 5.1, or any remaining amount, can be paid off in full, in advance of the regular schedule described above, at any time.

5.3.4 These payment amounts include fees for items in Section 5.1, but do not include any fees for delivery of the products on a USB hard drive per Sections 1.1.2 and 1.1.3 or for extended services per Section 5.5. Payment for items in 1.1.2, 1.1.3, and 5.5 will be due upon fulfillment of those services, if requested.

5.4 Continuation Beyond Three Years for Additional Projects: This Imagery License Agreement is for three years, providing for WaTech's 2021-2023 imagery products and Eagleview's 2024 imagery products.

5.4.1 The County has contracted with WaTech for two years to provide two photo acquisition projects. The 2021 project was paid in a single flat fee; the 2023 project is to be paid off in equal annual installments in 2024 and 2025. Another potential WaTech project is expected to occur in 2025 to be paid for in 2026-2027, but the specifications and costs are currently unknown.

5.4.2 The County has contracted with Eagleview for six years to provide two photo acquisition projects (in 2024 and 2027) at constant rates, paid off in equal annual installments.

5.4.3 Should the Customer wish to continue as a participant and contribute to these subsequent photo acquisition projects (2025 WaTech or 2027 Eagleview) or to initiate and pay for a special (extra-scheduled) photo acquisition project through Eagleview, this Agreement may be amended to provide for the additional project(s).

5.5 Extended Services and Work Orders: Per Section 1.1.7, the Customer may require extended support services in addition to the County's responsibilities as stated in Section 1.1. These additional services may include specialized training, technical support, product development, data development or conversion, or other related GIS services ("Extended Services").

5.5.1 Rates for Extended Services provided by the County will be at the Lewis County Board of County Commissioners adopted rate for GIS Division staff custom labor as amended from time to time.

5.5.2 Extended Services availability may be limited by the County GIS Division's regular workload and shall not interrupt or interfere with said work. The services may be initiated through coordination between the Parties' Liaisons and the subsequent drafting of a Work Order and estimate by the County.

5.6 Annual Support and Maintenance: In the case that the Customer chooses not to participate in future flights or the contract between the County and Eagleview terminates early, an annual fee will be required for continued technical support and software updates from Eagleview. If the Customer chooses not to purchase the annual maintenance, the licensed software will not be supported or upgraded, but the Customer may continue to use the existing EFS software to view the imagery per the terms of the perpetual use license.

6.0 AGREEMENT TERM AND TERMINATION

6.1 Agreement Term: This Agreement commences upon execution by signature of the Parties and shall terminate on **March 31st, 2027**, unless renewed.

6.2 Termination for Public Convenience: Either party may terminate this Agreement in whole or in part upon 30 days' written notice to the other whenever County or Customer determines, in its sole discretion, that such termination is in its best interests. In the event this Agreement is terminated in accordance with this paragraph, the County shall be entitled to receive just and equitable compensation for products and services provided up to the date of termination. Full payment for all three years of the imagery products shall be made if the Customer keeps copies of any of the data.

7.0 MISCELLANEOUS AGREEMENT PROVISIONS

7.1 Invoices and Late Payment: County will invoice Customer when products are delivered and accepted per the payment provisions in Section 5.0. Payment is due upon receipt of the invoice by the Customer and shall be paid 30 days thereafter. A late payment charge may be applied to any remaining balance 60 days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of 1% per month. Agreements with balances more than 90 days past due may be terminated and services discontinued. Amounts disputed by the Customer are not subject to late payment charges.

7.2 Disputes: Customer will promptly notify County of disputes regarding invoices and of services which Customer believes do not conform to the agreed upon terms of this Agreement or a Work Order.

7.3 Venue and Choice of Law: This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in the courts of competent jurisdiction in Lewis County, Washington.

7.4 Assignment: This Agreement may not be assigned by either party to a third party without the prior written consent of both County and Customer.

7.5 Waiver: If a breach of a provision of this Agreement is waived for a particular transaction or occurrence, waiver for a similar breach in a subsequent similar transaction or occurrence may not be implied.

7.6 Severability: If any term or condition of this Agreement or application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application.

7.7 Party Representatives: Listed below are the Parties' representatives/liaisons for the purpose of carrying out this Agreement. All notices and communications which may be required by this Agreement shall be in writing and may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

Customer: *Organization Name*
Contact: *Name, Title, Department*
Mailing address
City, WA zip code
Phone number
Email

County: Lewis County
Contact: Matt Hyatt, GIS Manager, Public Works
57 W Main St
Chehalis, WA 98532
360-740-1128
Matt.Hyatt@lewiscountywa.gov

8.0 ACCEPTANCE:

LEWIS COUNTY, WASHINGTON

ORGANIZATION NAME

Agreed to:

Agreed to:

Josh Metcalf
Public Works Director

Date

Name
Title

Date

Approved as to Form:

Approved as to Form:

Civil Deputy Prosecuting Attorney

Title

