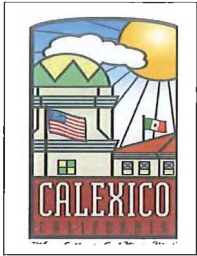


AGENDA  
ITEM

**12**



# AGENDA STAFF REPORT

**DATE:** November 17, 2021

**TO:** Mayor and City Council

**APPROVED BY:** Miguel Figueroa, City Manager *MK*

**PREPARED BY:** Miguel Figueroa, City Manager

**SUBJECT:** Discussion and Potential Action to Approve a Regional Aerial Imagery Acquisition Consortium Memorandum of Understanding with the County of Imperial and Authorize the City Manager to Execute the Agreement

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## Recommendation:

Discuss and approve Consortium Memorandum of Understanding with the County of Imperial for Aerial Imagery and authorize the City Manager to execute the Agreement.

## Background:

The City has participated in similar regional aerial imagery projects. The last update was performed in 2014.

## Discussion & Analysis:

A Regional Aerial Imagery Acquisition Consortium Memorandum of Understanding (MOU) is utilized by several County departments and a consortium of public sector partner agencies includes web hosting in connection with the Countywide Regional Aerial Imagery Acquisition. The member agencies have a mutual interest in having access to updated aerial imagery, which is used for but not limited to planning, economic development, zoning, engineering designs, and grant procurements. The City would have access to all aerial imagery, not just imagery for the City of Calexico.

The 2020 Flight is anticipated to be updated in 2024 and any excess funds collected in 2021, shall be applied towards 2024. If the City does not participate in the 2024 MOU, it forfeits its share of the overage.

## Fiscal Impact:

The total annual cost of the MOU is \$600,000 with the City of Calexico contribution at \$6,800.00 or less than 1% of the total. This expense is budgeted as a Professional Services expense.

<b>AGENDA ITEM</b> <b>12</b>
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**Coordinated With:**

None.

**Attachment(s):**

1. Regional Aerial Imagery Acquisition Consortium Memorandum of Understanding.

**REGIONAL AERIAL IMAGERY ACQUISITION  
CONSORTIUM MEMORANDUM OF UNDERSTANDING**

This Regional Aerial Imagery Acquisition Consortium Memorandum of Understanding (“MOU”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2021, by and between the **COUNTY OF IMPERIAL**, a political subdivision of the State of California, (“COUNTY”), and **CITY OF EL CENTRO, CITY OF BRAWLEY, CITY OF IMPERIAL, CITY OF WESTMORLAND, CITY OF CALIPATRIA, CITY OF HOLTVILLE, CITY OF CALEXICO, IMPERIAL IRRIGATION DISTRICT (“IID”), IMPERIAL COUNTY TRANSPORTATION COMMISSION (“ICTC”), IMPERIAL COUNTY LOCAL AGENCY FORMATION COMMISSION (“LAFCO”), THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (DISTRICT 11) (“CALTRANS”), and SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (“SCAG”),** individually and collectively referred to as “MEMBER” and “MEMBERS” respectively.

**WITNESSETH**

**WHEREAS,** COUNTY entered into that certain Aerial Imagery Acquisition Service Agreement dated December 8, 2020 through Minute Order No. 25 (“Aerial Imagery Agreement”), attached hereto as **Exhibit “A”**, with Pictometry International Corp to perform aerial imagery and web hosting services in connection with the Countywide Regional Aerial Imagery Acquisition Project (“Project”) to be utilized by several COUNTY departments and a consortium of public sector partner agencies (“RAIA Consortium”); and

**WHEREAS,** COUNTY has secured commitments of financial contributions (“RAIA Consortium fee”) from a consortium of partner agencies that will utilize the imagery and information that is acquired, which the COUNTY will maintain, including IID, ICTC, LAFCO, CALTRANS, and SCAG; and

**WHEREAS,** upon payment of the RAIA Consortium fee, any remaining contributions will roll over for the next Consortium project—an anticipated imagery acquisition project slated to kick

off by 2024 (“2024 Consortium project”); and

**WHEREAS**, COUNTY and MEMBERS are desirous of entering into a memorandum of understanding to complete the Project and future projects by establishing the RAIA Consortium.

**NOW, THEREFORE**, COUNTY and MEMBERS hereby enter into this MOU upon the terms and conditions set forth herein.

**1. PARTIES TO AGREEMENT**

1.1. This MOU is by and between COUNTY and MEMBERS.

1.2. It is not the intent of the parties to this MOU to create, and nothing in this MOU shall be construed as creating a joint venture or partnership or any other relationship between the parties. Neither the COUNTY nor MEMBERS authorizes the others to act as their agents or representatives. No employees of COUNTY or any MEMBER shall be deemed the employees of any other party to this MOU.

**2. TERM OF AGREEMENT**

This MOU shall be conterminous with the Aerial Imagery Agreement.

**3. COMPENSATION**

3.1. The compensation for services required to be performed under the Aerial Imagery Agreement (2020 Flight) is \$455,465.62. The total contribution amount under this MOU is \$600,000. \$144,534.38 of the \$600,000 shall be reserved towards the 2024 Consortium project. Now therefore, MEMBERS and COUNTY shall contribute an RAIA Consortium fee in the following amounts:

Entity	Contribution
SCAG	\$300,000.00
IID	\$120,000.00
Imperial County	\$100,000.00
ICTC	\$30,000.00
LAFCO	\$15,000.00
City of El Centro	\$7,675.00
City of Calexico	\$6,800.00

City of Brawley	\$4,550.00
City of Imperial	\$3,250.00
City of Calipatria	\$1,275.00
City of Holtville	\$1,075.00
City of Westmorland	\$375.00
Caltrans	\$10,000.00
<b>Total</b>	<b>\$600,000.00</b>
Cost of 2020 Flight	\$455,465.62
Reserves for Next Flight	\$144,534.38

A more detailed description is included in the attached **Exhibit “B”**, incorporated by this reference as though fully set forth herein.

- 3.2. The MEMBERS listed in 3.1 are governmental entities that will have access to the data upon payment of the RAIA Consortium fee to the County Executive Office. Each MEMBER shall pay the COUNTY the required RAIA Consortium fee within thirty (30) days of invoice. All MEMBERS understand that each RAIA Consortium fee must be paid prior to being able to access the data. If any MEMBER fails or refuses to pay its RAIA Consortium fee within the required thirty (30) day period, each of the other MEMBERS shall pay the RAIA Consortium fee on a proportional basis in the same fashion as the original fee amount was calculated.
- 3.3. Notwithstanding Section 3.2 above, SCAG shall pay the COUNTY \$150,000.00 within thirty (30) days of invoice and shall be provided with access to the data upon payment. SCAG shall provide the remaining \$150,000 upon receiving, reviewing and approving the provided data.
- 3.4. Agencies participating in this current consortium are not obligated to participate in the 2024 Consortium project. Regardless of whether a MEMBER chooses to participate beyond Cycle 1, the MEMBER is authorized to possess and use the current consortium Digital Aerial Data for its organizational purposes in perpetuity. If applicable, an amendment to this Agreement or separate participation agreement will be executed by the

Parties for the 2024 Consortium project and the distribution of funds for the 2024 Consortium project will be addressed separately by such amendment or separate participation agreement. In such event, funds received in excess of the current consortium costs shall be applied to the 2024 Consortium project. In the event that a MEMBER determines not to participate in the 2024 Consortium project, funds paid in excess of the current consortium costs shall be forfeited. If COUNTY does not continue past the current consortium, any funds collected by the COUNTY in excess of the current consortium costs shall be returned to the MEMBERS in proportion to their separate contributions actually made.

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**4. PRODUCTS**

- A. Digital Imagery: 3-inch resolution and 6-inch resolution, 4 band (red, green, blue, and near infrared) true natural color digital orthophoto/ortho-rectified data covering Imperial County project area. Digital imagery will be provided in the following formats: GeoTIFF tiles and mosaic of ECW or MrSID tile format (which includes seamline generation, radiometric balancing and final color balancing to ensure seamless consistent coverage of the area of interest). These data will be California State Plane Coordinate System, Zone 6 (US feet), Datum NAD 83.
- B. Building footprints: Outlines of building footprints for structures that are 300 square feet or greater will be provided for Imperial County project area in shapefile format with z values. These data will be California State Plane Coordinate System, Zone 6 (US feet), Datum NAD 83. The vertical datum will be North American Vertical Datum of 1988 (NAVD88), US Feet.
- C. External Hard Drive with contents stated above.
- D. Vendor web hosting services (Pictometry Connect) and related products for duration of agreement.

**5. INDEMNIFICATION**

Each MEMBER shall defend, indemnify and hold harmless COUNTY and the other MEMBERS from any and all claims, damages or loss arising out of the MEMBER's performance of this MOU, their agents or employees, or any obligation imposed thereby, or any act of or failure to act by such MEMBER. Notwithstanding the foregoing, no MEMBER shall be

liable for the negligent act or omission, or the willful misconduct, of any other MEMBER.

**6. INSURANCE REQUIREMENTS**

MEMBERS hereby agree to obtain and maintain in full force during the entire term of this MOU insurance coverage acceptable to COUNTY and MEMBERS.

**7. WITHDRAWAL**

MEMBERS may withdraw from this MOU by giving all other parties to this MOU thirty (30) days prior written notice. In the event of withdrawal, MEMBER'S forfeit any fees paid.

**8. NOTICES**

8.1. Any notice by either party to the other shall be personally delivered to the party or sent by certified mail, return receipt requested, to the addresses set forth below:

COUNTY:

Imperial County Executive Office  
940 Main Street, Suite 208  
El Centro, CA 92243

MEMBERS:

City of El Centro  
1275 W. Main St.  
El Centro, CA 92243

City of Calipatria  
125 N. Park Ave.  
Calipatria, CA 92233

City of Holtville  
121 W. 5<sup>th</sup>  
Holtville, CA 92250

City of Westmorland  
355 S. Center  
Westmorland, CA 92281

City of Brawley  
400 Main Street  
Brawley, CA 92227

City of Imperial  
420 S. Imperial Ave.  
Imperial, CA 92251

City Manager  
City of Calexico  
608 Heber Ave.  
Calexico, CA 92231

Imperial Irrigation District  
P. O. Box 937  
333 E. Barioni Blvd.  
Imperial, CA 92251

State of California  
Department of Transportation

Imperial County Transportation  
Transportation Commission



District 11, MS-50  
2829 Juan Street  
San Diego, CA 92110

1503 N. Imperial Ave., Suite 104  
El Centro, CA 92243

Imperial County Local Agency  
Formation Commission  
1122 State Street, Suite D  
El Centro, CA 92243

Southern California Association  
of Governments  
1503 N. Imperial Ave., Suite 104  
El Centro, CA 92243

8.2. Any party may change its address for notice by providing written notice to the other parties in accordance with Paragraph 7.1. Notices shall be deemed effective on the date of delivery.

**9. ENTIRE AGREEMENT**

This MOU contains the entire contract between COUNTY and MEMBERS relating to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements, understandings, provisions, negotiations, representations, or statements, either written or oral.

**10. MODIFICATION**

No modification, waiver, amendment, discharge, or change of this MOU shall be valid unless the same is in writing and signed by all parties.

**11. PARTIAL INVALIDITY**

If any provision in this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**12. WAIVER**

No waiver of any breach or of any of the covenants or conditions of this MOU shall be construed to be a waiver of any other breach or to be consent to any further or succeeding breach of the same or any other covenant or condition.

**13. CHOICE OF LAW**

This MOU shall be governed by the laws of the State of California. This MOU is made and entered into in Imperial County, California. To the extent permitted by law, any action brought by

any party with respect to this MOU shall be brought in a court of competent jurisdiction within said County.

**14. ATTORNEYS' FEES**

If a party herein brings an action to enforce the terms thereof or declare rights hereunder, each party shall be responsible for its own attorneys' fees.

**15. AUTHORITY**

15.1. Each of the individuals executing this MOU on behalf of COUNTY and MEMBERS represents and warrants that:

15.1.1. He or she is duly authorized to execute and deliver this MOU on behalf of COUNTY or MEMBER as applicable;

15.1.2. Such execution and delivery on behalf of COUNTY is duly authorized by the Board of Supervisors and within the authority of the signatory identified below.

15.1.3. MEMBERS warrant that the party executing this MOU on behalf of MEMBER is authorized to do so by MEMBER'S legislative or governing body, consistent with California Gov. Code §6502.

**16. COUNTERPARTS**

This MOU may be executed in counterparts.

**17. REVIEW OF AGREEMENT TERMS**

This MOU has been reviewed and revised by legal counsel for COUNTY and MEMBERS, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of the same or any subsequent amendments thereto.

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**IN WITNESS WHEREOF**, the parties have caused this MOU to be executed the day and year first above written.

**COUNTY OF IMPERIAL**

By: MICHAEL W. KELLEY  
Chairman of the Board of Supervisors

**ATTEST:**

By: Blanca Acosta  
Clerk of the Board of Supervisors

**APPROVED AS TO FORM:**

COUNTY COUNSEL  
ADAM G. CROOK

By: Eric Havens  
Assistant County Counsel

**APPROVED AS TO FORM AND CONTENT:**

**CITY OF EL CENTRO:**

**CITY OF HOLTVILLE:**

**CITY OF CALEXICO:**

**CITY OF BRAWLEY:**

**CITY OF IMPERIAL:**

**CITY OF CALIPATRIA:**

**CITY OF WESTMORLAND:**

**IMPERIAL IRRIGATION DISTRICT:**

**STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION (DISTRICT 11):**

**IMPERIAL COUNTY TRANSPORTATION  
COMMISSION:**

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**IMPERIAL COUNTY LOCAL  
AGENCY FORMATION  
COMMISSION:**

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**SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS:**

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Approved as to form by:

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Michael R.W. Houston, Chief Counsel