

RESOLUTION NO. 25  
SERIES OF 2017

INTRODUCED BY: DAN SHELDON  
SECONDED BY: AL BLUM

A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF CHERRY HILLS VILLAGE  
RATIFYING APPROVAL OF A LICENSING AGREEMENT BY AND  
BETWEEN THE DENVER REGIONAL COUNCIL OF GOVERNMENTS AND  
THE CITY OF CHERRY HILLS VILLAGE AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE A LETTER OF INTENT FOR THE 2018 DENVER  
REGIONAL AERIAL PHOTOGRAPHY PROJECT AND FUTURE LETTERS  
OF INTENT SUBJECT TO BUDGET APPROPRIATION BY CITY COUNCIL

WHEREAS, the City of Cherry Hills Village ("City") is a member of the Denver Regional Council of Governments ("DRCOG"), a nonprofit, voluntary association of local governments in the Denver region; and

WHEREAS, the City and DRCOG desire to continue to cooperate and have cooperated in the acquisition, preparation, use, and distribution of digital orthoimagery developed through the Denver Regional Aerial Photography Project (the "Project"); and

WHEREAS, in order to participate in the Project, in 2013 the City entered into a license agreement with DRCOG executed by the Community Development Director; and

WHEREAS, pursuant to the terms of the license agreement, the City is entitled to participate in periodic Project activities upon submittal of a letter of intent and commitment of funds as described in the applicable letter of intent; and

WHEREAS, the City desires to participate in the 2018 Denver Regional Aerial Photography Project through execution of a letter of intent; and

WHEREAS, the City Council desires to authorize: (1) the City's continued participation in the Project through ratification of the 2014 license agreement (Attachment A); and (2) the City Manager to execute letters of intent as provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE:

Section 1. The City Council hereby approves and ratifies the 2014 License Agreement by and between the Denver Regional Council of Governments and the City of Cherry Hills Village (Attachment A) and authorizes the City Manager to execute a letter of intent to participate in the 2018 Denver Regional Aerial Photography Project and future letters of intent subject to budget appropriation by the City Council.

Section 2. This Resolution shall be in full force and effect from and after its passage and approval.

Introduced, passed and adopted at the  
regular meeting of City Council this 17<sup>th</sup> day  
of October, 2017, by a vote of 6 yes and 0 no.

(SEAL)

  
\_\_\_\_\_  
Laura Christman, Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Laura Smith, City Clerk

  
\_\_\_\_\_  
Linda C. Michow, City Attorney

**ATTACHMENT A TO RESOLUTION 25, SERIES 2017:  
2014 LICENSE AGREEMENT BY AND BETWEEN THE DENVER REGIONAL COUNCIL OF  
GOVERNMENTS AND THE CITY OF CHERRY HILLS VILLAGE**

**LICENSING AGREEMENT BY AND BETWEEN THE  
DENVER REGIONAL COUNCIL OF GOVERNMENTS**  
1290 Broadway, Suite 700  
Denver, Colorado 80203  
(DRCOG)

and

**CITY OF CHERRY HILLS VILLAGE**  
2450 East Quincy  
Cherry Hills Village, CO 80113  
(PARTNER)

for

**DENVER REGIONAL AERIAL PHOTOGRAPHY PROJECT**

Project Number: 820014

Agreement Number: RV13030

**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 as long as the entity is using the Product.

**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.

DRCOG shall provide an invoice to the Partner for the fee due (in part or in full) in accordance with Partner's Letter of Intent. Partner shall remit the undisputed invoiced amount within thirty (30) days after receipt of an invoice.

#### **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.

**15. Integration and Amendment**

This Agreement represents the entire agreement between the parties, and there are no oral or collateral agreements or understandings. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by both parties.

**16. Authority.**

The undersigned signatories of Partner represent that they have been duly authorized to execute this Agreement and have full power and authority to bind

Partner to the terms and conditions hereof, and certify that their signatures below, whether handwritten, electronic, or digital or submitted by facsimile or electronic mail are their own. Partner further understands and agrees that no further certification authority or third party verification is necessary to validate any signature hereto and that the lack of such certification or verification will not in any way affect the enforceability of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 20 day of December, 2013 and acknowledge that electronic or digital signatures hereto are the legally binding equivalent to handwritten signatures.

**DENVER REGIONAL COUNCIL  
OF GOVERNMENTS  
"DRCOG"**

By: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Administrative Officer

**CITY OF CHERRY HILLS  
VILLAGE  
"PARTNER"**

By: Robert M. [Signature]  
Community Development  
Director

ATTEST:

By: Cesaria [Signature]  
Community Development  
Clerk