AMENDMENT TO DATA LICENSE & RECIPROCATION AGREEMENT

This Amendment is made as of the 3rd Day of August 2021

B E T W E E N:

THE REGIONAL MUNICIPALITY OF NIAGARA ("**RMN**") OF THE FIRST PART

- and -

MUNICIPAL LICENSEE – Town of Pelham ("TOP") OF THE SECOND PART

WHEREAS the parties entered into a Data License Agreement dated 30th Day of September 2015 ("DLRA") for sub-licensing of orthophotography and associated products originally license by the Niagara Region from Her Majesty the Queen in Right of Ontario, as represented by the Minister of Natural Resources and Forestry ("Ministry");

AND WHEREAS the parties agree to amend that DLRA by including the terms and conditions required by the MNRF as set forth as Schedule "B" hereto;

NOW THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The terms and conditions set forth at Schedule "B" to this Amending Agreement are incorporated into and shall form a part of the DLRA and are in addition to (and do not replace) the terms and conditions set forth in the DLRA.
2. To the extent of any conflict between the terms and conditions of the DLRA and those set forth in Schedule "B" hereto, the terms and conditions the DLRA shall prevail.

IN WITNESS WHEREOF the parties hereto have duly executed this Data License & Reciprocation Agreement on the date first above written.

Regional Municipality of Niagara

By: _____
(Authorized signing officer)

Name: Nicole Guglielmi

Position: Data, Analytics & GIS Manager

Date: _____

Town of Pelham

By: _____
(Authorized signing officer)

Name: Holly Willford

Position: Town Clerk

Date: _____

SCHEDULE "B"

Background
By Participation Agreement July 20, 2020 entered into by the Sub-Licensor and Her Majesty the Queen in right of Ontario as represented by the Minister of Natural Resources ("Ministry"), the Sub-Licensor was licensed to use the Licensed Products, according to the terms and conditions in the Participation Agreement.

This Schedule sets out the requirements that are to be met by the Sub-Licensee as contemplated by the Participation Agreement.

1. DEFINITIONS

1.1 In this Schedule, the following words and phrases have their corresponding meaning as set out below for any matter contemplated in this Schedule:

"Claim" means any liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings;

"Deliverables" means everything developed for, or provided to, the Ministry by the Supplier in the course of performing under the Supplier's Agreement for this Phase of the Project or agreed to be provided to the Ministry under the Supplier's Agreement, and includes the Licensed Products;

"GIS" means "geographic information system";

"Licence" means the licence in respect of the Licensed Products granted to the Participant by the Ministry, in accordance with the Participant Agreement;

"Licensed Products" means the deliverables licensed to the Sub-Licensor by the Ministry, in accordance with the Participant Agreement that include the Sub-Licensed Products;

"Participant Agreement" means the agreement dated July 20, 2020 between the Ministry and the Sub-Licensor, under which the Ministry granted a licence to the Sub-Licensor for use of the Licensed Products;

"Person" if the context allows, includes any individual, government entity, person, firm, partnership or corporation, or any combination thereof;

"Phase" means the third phase of the Project for the geographic area of south-western Ontario and is referred to as "SWOOP 2020";

"Queen's Printer" means the Queen's Printer for Ontario and any duly authorized representative thereof;

"Supplier" means Aeroquest Mapcon Inc..;

"Supplier's Agreement" means the agreement made as of January 26, 2018 between the Ministry and the Supplier and includes the RFP through which the Supplier was selected and its proposal;

"Sub-Licence Agreement" refers to the agreement to which this Schedule is attached, under which the Sub-Licensed Products are licensed to the Sub-Licensee by the Sub-Licensor, and includes any amendment thereto;

"Sub-Licensed Products" refers to those Licensed Products sublicensed to the Sub-Licensee by the Sub-Licensor pursuant to the Sub-Licence Agreement;

"Sub-Licensee" refers to the Person with whom the Sub-Licensor has entered into the Sub-License Agreement to be sublicensed the Sub-Licensed Products;

"Sub-Licensor" refers to the Person with whom the Sub-Licensee has entered into the Sub-License Agreement to sublicense the sublicensed Products;

"SWOOP2020" means the South Western Ontario Orthophotography Project 2020, including the creation and distribution of orthophotographic deliverables to SWOOP2020 Participants; and

"SWOOP Participant" means any of those organizations, including the Ministry and Participant that has agreed to participate in SWOOP2020.

1.2 Notwithstanding any provision to the contrary in the Sub-Licence Agreement or otherwise, the provisions of this Schedule shall apply to any matter in or contemplated by this Schedule. Further, in the event of a conflict with any provision in the Sub-Licence Agreement and a provision of this Schedule, the provision of this Schedule shall govern.

2. COPYRIGHT IN THE SUB-LICENSED PRODUCTS, PROVINCIAL MARKS

2.1 The Sub-Licensee acknowledges and agrees that the Queen's Printer retains the copyright in full in the Sub-Licensed Products.

2.2 The Sub-Licensee shall not alter or remove any copyright notice or proprietary legend contained of the Queen's Printer in or on the Sub-Licensed Products. Any embodiment of the Sub-Licensed Products shall contain the following notice ("Queen's Printer Notice"): "**INCLUDES MATERIAL © [INSERT YEAR] OF THE QUEEN'S PRINTER FOR ONTARIO. ALL RIGHTS RESERVED."** The Sub-Licensee shall also ensure that the terms and conditions of its website include the Queen's Printer Notice for any Sub-Licensed

Products posted on its website and that any Licensed Products posted or transmitted through the internet shall include the Queen's Printer Notice.

3. NO AGENCY ETC. WITH THE CROWN

2.1 The Sub-Licensee shall not state, indicate, or imply that the Sub-Licensee represents or acts as agent of the Ministry, the Queen's Printer or Government of Ontario. This restriction shall include, but not be limited to, the use of the name of the "Ministry of Natural Resources", "Minister of Natural Resources" or "Queen's Printer for Ontario".

4. SUB-SUB-LICENSING

4.1 The Sub-Licensee agrees, that during the two (2) years after March 31, 2016:

(i) where it chooses to provide, sell, transfer or sub-sublicense the use of the Sub-Licensed Products it shall do so, at a cost/sub-Sub-Licence fee calculated at no less than $50.00 per orthophotography tile comprising the Sub--Licensed Products, unless the Sub-Licensee has obtained the prior written consent of the Ministry; and

(ii) it shall not acquire any of the Sub-Licensed Products from the Supplier or from another SWOOP Participant or enter into an agreement with the Supplier or any other SWOOP Participant for the use of any of the Licensed Products.

Upon the expiry of the two (2) years after the Effective Date of the Licence, this section 4.1 shall be of no further effect.

5. LIMITATION OF LIABILITY, ETC.

5.1 The Sub-Licensee expressly waives as against the Ministry and Queen's Printer any Claim in respect of the Sub-Licensed Products, including without limitation any in respect of implied warranties or conditions of merchantable quality and fitness for a particular purpose of the Sub-Licensed Products and those arising by statute or otherwise in law or from course of dealing or usage of trade.

5.2 The Sub-Licensee agrees that the Ministry, including the Minister of Natural Resources for Ontario and the Queen's Printer, any of their appointees, employees, agents, representatives and contractors, shall not be responsible to any third party for any and all Claims arising out of the Sub-Licensee's (or that of any Person's possession, use, disclosure or publication of the Sub-Licensed Products).

5.3 The Ministry shall not be liable for any damages, including lost profits or lost opportunity costs, suffered by the Sub-Licensee with respect to any Claim arising out of or in connection with the Sub-Licence Agreement, including any Claim referred to in section 5.2.

5.4 Any reference in the Sub-Licence Agreement (either express or implied) to the Ministry providing an indemnity or any other form of indebtedness or contingent liability that would

directly or indirectly increase the indebtedness or contingent liabilities of the Crown in right of Ontario, whether at the time of execution of this Sub-Licence Agreement or at any time during the Term, shall be void and of no legal effect.

5.5 The limitations, exclusions and disclaimers expressed in this Article 5 shall apply irrespective of the nature of any Claim, including but not limited to breach of contract, negligence, strict liability, tort or any other theory of law, and irrespective of whether such Claim relates to loss of rights, loss of or damage to property, injury or death, and shall survive any fundamental breach and any termination or expiration of the Sub-Licence Agreement.

6. TERMINATION OF THE PARTICIPATION AGREEMENT

6.1 The Sub-Licensee acknowledges that the Participation Agreement provides for termination of the license thereunder in certain instances (e.g. material default of the Participation Agreement by the Sub-Licensor) whereupon the Sub-License Agreement and its sublicence to the Sub-Licensee shall also terminate.

6.2 Upon termination of the Participant Agreement and the Sub-Licence Agreement and sublicence to the Sub-Licensee, the Sub-Licensee shall immediately cease using any of the Sub-Licensed Products and shall use commercially reasonable efforts to delete and/or destroy all Sub-Licensed Products and shall provide the Sub-Licensor with written confirmation thereof.

7. SUBSEQUENT SALES, etc.

7.1 The Sub-Licensee shall ensure that any sale, sub-sub licence, distribution or disposal howsoever of any of the Sub-Licensed Products (and any subsequent sale, sub-sub-sub licence, distribution, disposal howsoever and thereafter) includes the provisions of this Schedule, *mutatis mutandi*.

8. SURVIVAL

8.1 The provisions of this Schedule shall survive the expiry or termination of the Sub-Licence Agreement.

SCHEDULE "C"

Signed Participant Agreement