

**CITY OF AURORA GEOGRAPHIC INFORMATION SYSTEMS (G.I.S.)
DIGITAL DATA LICENSE AGREEMENT**

This Agreement ("Agreement") is made and entered into by and between the City of Aurora, a Colorado municipal corporation (the "City"), and _____, a _____, (the "Licensee"), who together are the "Parties" hereto.

WITNESSETH:

WHEREAS, Licensee has requested from City a license to use certain Geographic Information Systems ("GIS") digital data ("Data") that has been developed and is owned by the City; and

WHEREAS, City is willing to grant to Licensee a license to use said Data pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the City and Licensee hereby agree as follows:

SECTION I - SCOPE OF AGREEMENT

A. The City hereby grants Licensee a personal, non-exclusive, non-assignable, and non-transferrable license for the term of this Agreement to use the Data for the sole purpose of:

B. The Data shall consist of:

; in exchange for which Licensee shall provide to the City:

C. This Agreement does not constitute a sale or transfer of any title or ownership interest in the Data to Licensee. Ownership of the Data and of any authorized copies of the Data made by Licensee shall remain vested in the City, subject to the rights herein granted to Licensee. The City reserves all rights not expressly granted to Licensee by this Agreement.

D. Licensee understands and agrees that this is a one-time delivery and that the City has no continuing or ongoing responsibility for updating the Data or any part thereof. Licensee understands and agrees that the City shall have no obligation or responsibility to provide any maintenance, training, or support.

E. Except for hardcopy map production by Licensee, no part of the Data may be copied, reproduced or transmitted in any form or by any means whatsoever. Licensee shall not license, sub-license, assign, lease, release, publish, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Data or any part thereof in any form or media without the express written permission of the City. Licensee agrees to notify

its employees, agents, and any contractors of the restrictions contained in this Agreement and to ensure the compliance of such persons with said restrictions.

SECTION II - TERM OF AGREEMENT

This Agreement shall commence upon execution by the Parties. The Agreement shall remain in force and effect unless and until terminated by either Party, with or without cause, upon thirty (30) days prior written notice, or unless terminated as provided in Section III, IV, or V below. The provisions of this Agreement restricting the use and disclosure of the Data and Sections IV, V, VI, and VII, shall survive termination of this Agreement.

SECTION III - NO WARRANTIES

Licensee understands and acknowledges that the Data was developed for the City's sole use, and that any use thereof by Licensee or any other person is at the user's sole risk. All GIS data is subject to change, and the accuracy and completeness of the Data cannot be and is not warranted or guaranteed by the City. THE DATA IS DISTRIBUTED "AS IS". THE CITY MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AS TO THE COMPLETENESS, ACCURACY, OR CORRECTNESS OF THE DATA, NOR SHALL THE CITY INCUR ANY LIABILITY FROM ANY INCORRECT, INCOMPLETE, OR MISLEADING INFORMATION CONTAINED THEREIN. THE CITY MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, OF VALUE, DESIGN, CONDITION, TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE CITY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THE AUTHORIZED OR UNAUTHORIZED USE OF THE DATA OR THE INABILITY TO USE THE DATA OR OUT OF ANY BREACH OF WARRANTY WHATSOEVER.

SECTION IV - NON-ASSIGNABILITY

This Agreement and the rights and obligations created herein shall not be assigned or transferred by Licensee under any circumstance whatsoever. This restriction shall apply to assignments or transfers by operation of law, as well as by contract, merger, consolidation, or otherwise. Any attempted assignment or transfer in derogation of this prohibition shall be null and void, and the license granted herein shall immediately cease.

SECTION V - CHARTER, LAWS AND ORDINANCES

Licensee shall at all times observe all applicable Federal, State and Local Laws, Ordinances and Charter Provisions, and all rules and regulations issued pursuant thereto, which in any manner affect or govern the rights and obligations arising from this Agreement. LICENSEE UNDERSTANDS AND AGREES THAT ANY ILLEGAL USE OF THE DATA BY LICENSEE OR BY ANY PERSON WHO OBTAINS THE DATA OR ANY PART THEREOF FROM OR THROUGH LICENSEE, WHETHER BY LAWFUL OR UNLAWFUL MEANS, CONSTITUTES A MATERIAL BREACH OF THIS AGREEMENT BY LICENSEE AND IS LIKELY TO CAUSE IRREPARABLE HARM TO THE CITY.

SECTION VI - EQUAL OPPORTUNITY AND NON-DISCRIMINATION

No person shall, on the grounds of race, color, national origin, ancestry, religion, creed, age, sex (gender), physical or mental disability, or veteran status be discriminated against or denied employment or participation in connection with the performance of this Agreement.

SECTION VII - BREACH AND REMEDIES

In the event Licensee breaches any of the terms, conditions, covenants, or promises contained in this Agreement, the license granted herein by the City shall immediately cease, and in addition, the City shall have the right to any and all legal or equitable remedies, including but not limited to injunctive relief. Licensee understands and agrees that any use or disclosure of the Data in violation of this Agreement is likely to cause irreparable harm to the City.

SECTION VIII - INDEMNIFICATION AND IMMUNITY

- A. To the extent permitted by law, Licensee shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents, from and against any claim, loss, damage, cost, injury or liability, including reasonable attorneys fees, arising out of the performance or non-performance of this Agreement or from the procuring, compiling, collecting, interpreting, producing, using, or communicating the Data or any part thereof.
- B. Nothing herein shall be construed to waive or limit any right or defense available to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as amended.

SECTION IX - INDEPENDENT CONTRACTOR STATUS

Each Party shall perform its respective obligations as an INDEPENDENT CONTRACTOR, and nothing herein is intended or shall be construed to imply an employer-employee relationship, a joint venture, a partnership, or any other association between the City and Licensee.

SECTION X - SPECIAL CONDITIONS

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and the United States of America, and the exclusive venue for any lawsuit between the Parties arising out of this Agreement shall be the state District Court in and for Arapahoe County, Colorado, and/or the Federal District Court for the District of Colorado.
- B. This Agreement contains the entire agreement of the Parties. No other representation, whether oral or written, may be relied upon by either Party other than those that are expressly set forth herein. No employee, agent, or other representative of either Party is empowered to alter any of the terms herein unless done in writing and signed by an authorized representative of each of the Parties.
- C. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.
- D. The enforcement of all terms and conditions of this Agreement and all rights and actions relating thereto shall be strictly reserved to the City and Licensee, and nothing herein shall

give or allow any claim or right of action to or by any other or third person. It is the intent of City and Licensee that any person other than the City and the Licensee receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

- E. All notices or communications given pursuant to this Agreement shall be in writing and delivered in person, or sent by certified mail, return receipt requested (and shall be deemed given three (3) days after mailing), or by confirmed facsimile if followed by regular mail, postage pre-paid. Notice shall be given to the Parties at the following addresses:

The City:

The Licensee:

City of Aurora - Aurora Water
General Manager
15151 E Alameda Pky
Aurora, Colorado 80012

- F. The undersigned signatory for Licensee warrants that he/she has full power and authority to enter into this Agreement on behalf of Licensee, and where applicable, to act as the agent of the Licensee and to bind Licensee to perform its obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Geographic Information Systems (G.I.S.) Digital Data License Agreement to be executed by their duly authorized representatives this _____ day of _____, _____.

CITY OF AURORA, COLORADO

LICENSEE

GIS Supervisor

Signature: _____

Title: _____

ATTEST:

ATTEST:

Title: _____

APPROVED AS TO FORM:

City Attorney's Office