

CITY OF BIG RAPIDS – GIS DATA LICENSING AGREEMENT (TERMS AND CONDITIONS)

This agreement is a license given to the LICENSED USER, (“USER”), by the City of Big Rapids.

WHEREAS, the City of Big Rapids is the designer and developer of product(s) specified in the agreement (referred to as “PRODUCT”) with the right to license and distribute the PRODUCT; and

WHEREAS, the USER is an individual, an organization, a corporation, a government entity or a member of a joint venture who will make lawful use of the PRODUCT in USER’s business activity; and

WHEREAS, the USER desires a license to use the PRODUCT and the City of Big Rapids desires to grant a license to the USER for the sole purpose of permitting the USER to use the PRODUCT in the USER’s business activity and for no other purpose whatsoever;

NOW, THEREFORE, the parties agree:

1. PRODUCT

1.1 Licensed PRODUCT(s). This license applies to the digital photographs and data from the City’s Geographic Information System, and enhanced access to that system.

1.2 Grant of License. For and in consideration of the USER’s covenant, payments under Section 5, and the USER’s compliance with the terms and conditions of this license, the City of Big Rapids hereby conveys to USER a nonexclusive license to use the PRODUCT.

2. USE

2.1 Permitted Use. This license is granted for the sole purpose of permitting the USER to use the PRODUCT in its lawful business activity and for no other purpose whatsoever.

2.2 Restrictions on Use.

(a) Unauthorized Use. USER shall not use the PRODUCT on behalf of any other person or organization (including, but not limited to networks, timesharing, or multiple CPU arrangements) unless authorized in writing by the City of Big Rapids.

(b) Copies. USER shall not duplicate the PRODUCT except for the following:

1. USER may make copies of the PRODUCT for backup purposes as long as the USER agrees not to use the backup copy for any purpose other than to replace lost or damaged original data.

2. USER may translate the PRODUCT into other formats and/or media. These “reformats” shall be subject to the same restrictions as the PRODUCT under this agreement.

2.3 Reserved Rights. The City of Big Rapids retains all rights, title and interest in the PRODUCT, including the right to license the PRODUCT.

3. MAINTENANCE OF DIGITAL DATA

3.1 Periodic Update. At its option, the City of Big Rapids may supply a data update service in its current format for an additional fee.

4. TERM

4.1 The term of this agreement shall not be restricted as to time, except as set forth in 4.2 below, and shall commence the date the agreement is signed.

4.2 The term of the license shall expire at such time as the USER discontinues use of the PRODUCT, unless the USER fails to comply with any term or condition provided herein at which time the license shall be revoked. The license shall be revoked by the City of Big Rapids by written notice of revocation to the USER.

5. PAYMENT

5.1 Time for Payment. Initial payment of fees shall be made at the time the license is granted, or as set forth in 5.2. Fees will be charged according to the rate schedule adopted by the Big Rapids City Commission.

5.2 Periodic Update Option. The fees for the periodic update option are due and payable upon receipt of the PRODUCT.

5.3 Payment Requirements. Full payment is required at the time the PRODUCT is purchased. Upon receiving full payment, the PRODUCT will be available for the USER.

6. DELIVERY

The City of Big Rapids shall deliver the PRODUCT to USER according to the following conditions:

(a) The City of Big Rapids shall package, ship and deliver the PRODUCT to the USER at the address specified in the agreement or a designated alternate address.

(b) The City of Big Rapids shall not assume any liability for shipment of the PRODUCT.

(c) The City of Big Rapids shall choose the method of delivery in the absence of prior shipping instructions.

(d) Dates specified for delivery of the PRODUCT shall be postponed automatically if the City of Big Rapids is prevented from meeting those dates by any cause beyond its reasonable control.

7. WARRANTY

7.1 Limited Warranty.

(a) The City of Big Rapids shall use its best efforts to ensure that the PRODUCT is delivered free of physical defect.

(b) The City of Big Rapids shall have the sole authority to determine whether the PRODUCT, at the time of delivery, was free of physical defect.

(c) The City of Big Rapids disclaims all other warranties, express or implied, regarding the PRODUCT.

7.2 Remedy.

(a) USER’s sole and exclusive remedy for breach of this limited warranty will be to return the PRODUCT within 60 days of receipt.

(b) The City of Big Rapids shall, at its discretion, retain the returned PRODUCT and refund the fee for the license, or replace the PRODUCT, or repair the PRODUCT and return it to the USER.

8. ASSIGNMENT AND TRANSFER/NON-DISCLOSURE

USER 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 to use any part of the PRODUCT without the prior written consent of the City of Big Rapids.

9. NO LIABILITY

The City of Big Rapids and local government agencies who provide information in the PRODUCT shall not be liable for any activity involving the PRODUCT or the use of the product.

10. TERMINATION

10.1 USER Rights. Upon the expiration or revocation of this license, the rights of the USER shall cease.

10.2 Expiration. The license expires when the USER ceases to use the PRODUCT.

11. MISCELLANEOUS

11.1 Applicable Law: Venue. The parties agree that venue for any action or claim arising out of the PRODUCT or this license shall be in Mecosta County, Michigan.

11.2 Entire Agreement. This license contains the entire agreement of the parties.

11.3 Authority. Persons whose signatures appear as “LICENSED USER” on this license agreement represent that they are authorized to sign for themselves and the business or entity identified as the USER.

12. WAIVER AND RELEASE

The USER waives all claims against the City of Big Rapids regarding the nature, quality and usefulness of the PRODUCT, and releases the City of Big Rapids from all liability arising out of the use of the PRODUCT.

Printed Name of Licensed User

Address of Licensed User

Signature of Licensed User

Date