

CITY OF HOPEWELL, VIRGINIA

GIS DATA LICENSE AGREEMENT FOR DIGITAL PRODUCTS

This is a legal agreement between the **City of Hopewell, Virginia**, herein referred to as "CITY" and, **[company]**, herein referred to as "LICENSEE" and, **[address]**, for the licensing of the LICENSEE as an end user of certain products or data described as set forth in Article 5, hereinafter referred to as "PRODUCT", subject to the conditions set out in this Agreement.

1. RECITALS

- 1.1. **WHEREAS** the CITY has invested in the development of a Geographic Information System, herein referred to as "HWGIS", which includes stored data and information, which makes up the PRODUCT.
 - 1.2. **AND whereas** the LICENSEE wishes to make limited use of the PRODUCT for its own purposes, and more particularly limited by the term of this agreement.
 - 1.3. In consideration of the mutual covenants hereinafter contained and expressed herein and the payment by LICENSEE to the CITY of the License Fee in the amount set forth below, the parties agree with each other as follows.
2. **LICENSE GRANTED.** This GIS Data License Agreement for Digital Products permits you to use the digital PRODUCT shipped with this License on computer systems owned or leased by LICENSEE so long as users outside of the LICENSEE'S premises may not access such data except as specified in Article 3 below. The CITY reserves all rights not expressly granted to LICENSEE pursuant to this Agreement.

The various levels of licensing and associated fees are defined as follows:

- 2.1. **Private Sector Organization** site license includes all the users of the licensed business enterprise located at a single site located within the United States of America. (Planimetrics \$25/tile - \$500 City Wide, Color Orthophotography \$25/tile)
 - 2.2. **Local Franchised Utility Organization** site license includes all the users of the licensed business enterprise located at a single site and further grants the CITY access to any relevant franchised utility network data generated thereof. (Planimetrics \$Free, Color Orthophotography \$10/tile)
 - 2.3. **Local Government Agency** site license includes all the users of the licensed department or agency located at a single site within a Local Government excluding Public Schools. (Planimetrics \$Free, Color Orthophotography \$Free)
 - 2.4. **Public Schools** site license includes all the departments and agencies within the K-12 Public Schools, State Colleges and State Universities located at a single site within the licensed State. (Planimetrics \$Free, Color Orthophotography \$Not Available)
 - 2.5. **State Government Agency** site license includes all the users of the licensed department or agency located at a single site within the State Government, excluding State Colleges and State Universities. (Planimetrics \$Free, Color Orthophotography \$Not Available)
3. **TERM** The license granted under this Agreement shall continue until terminated by the CITY, at any time and for any reason. Upon termination, LICENSEE shall return the PRODUCT to the CITY, and refrain from its further use. Termination of the license shall not affect the other provisions of this Agreement, which shall remain in effect.
4. **OWNERSHIP OF PRODUCT** The magnetic or other physical media on which the PRODUCT is subsequently recorded or fixed shall be owned by the LICENSEE, but an express condition of this Agreement is that the CITY retains title and ownership to the data and the PRODUCT together with ownership of the physical media and all forms of property interest in the PRODUCT recorded on the original physical media and all subsequent copies of the PRODUCT, regardless of the form in or on which the original and other copies of the PRODUCT may exist. LICENSEE acknowledges the right, title and interest in the data in all languages, formats and media, including all copyrights therein are and shall continue to remain the exclusive property of the CITY. This Agreement is not a sale of the PRODUCT or any copy of the PRODUCT.

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5. **PRODUCT** LICENSEE acknowledges that the PRODUCT is current to **3/1/2006** only. The HWGIS data products available consist of citywide Arc Coverages, Shapefiles, or tiled TIF images of the following information: ADMINISTRATIVE FEATURES, TERRAIN FEATURES, HYDROGRAPHIC FEATURES, BUILDING FEATURES, UTILITY FEATURES, ROADWAY FEATURES, RAILROAD FEATURES, PARKING FEATURES, BARRIER FEATURES, PUBLIC SAFETY FEATURES, VEGETATION FEATURES, RECREATION FEATURES, WALKWAY FEATURES, MISCELLANEOUS FEATURES, and optional DIGITAL ORHTOPHOTOGRAPHY.
6. **USES, RESTRICTIONS** LICENSEE shall respect the scale at which use of the maps is appropriate; shall be solely responsible as to being knowledgeable as to the accuracy of the data and shall use the same only as appropriate such as to ensure that the integrity of the accuracy is not compromised. LICENSEE shall add no additional information nor alter the data without either the prior written authority of the CITY or shall clearly identify such additions and changes as such. LICENSEE may make copies of and/or provide access to the PRODUCT solely for the purpose of facilitating use by the licensed entity. LICENSEE may analyze, process, and display the licensed PRODUCT and may make such PRODUCT and the results of such analysis or processing available to employees of LICENSEE'S organization. LICENSEE may make an unlimited number of print copies of the PRODUCT for use outside LICENSEE'S organization, provided that: (1) LICENSEE shall acknowledge the CITY of Hopewell, Virginia HWGIS at each instance that the data or any portion thereof shall be used or reproduced; (2) LICENSEE may not sell, give, loan or allow access to the PRODUCT, or any copies thereof, to any other entity, person or party for any purpose whatsoever, without the CITY'S written consent, except as provided herein below; and (3) LICENSEE shall prohibit this PRODUCT from being electronically downloaded or screen captured by individuals or organizations located outside of the licensed entity. LICENSEE may prepare textual reports and other non-image materials based upon the licensed PRODUCT and publish, sell or distribute such materials, but only if such materials do not reproduce in any way the licensed HWGIS PRODUCT. LICENSEE may make the licensed PRODUCT available to contractors and consultants associated with the LICENSEE, but only for use on behalf of LICENSEE, and only if each such contractor or consultant agrees in writing (a) to be bound by the same limitations on use that apply to LICENSEE; and (b) to return to LICENSEE all PRODUCTS upon completion of the contracting or consulting engagement. **PURPOSES** The PRODUCT shall only be used for the following purposes:

[list what they got]

[list their intended use]

Use by the LICENSEE or any entity associated with it for any other purpose, without the CITY'S written consent, shall be deemed a material breach of this Agreement, for which LICENSEE shall be liable to the CITY the sum of \$500, representing liquidated damages, in addition to any other recourse or remedies the CITY may have at law or in equity. This liquidated damages provision is not meant as a penalty; rather, it recognizes the difficulty in measuring actual damages.

7. **COPYRIGHT AND TRADEMARK** Any and all copyright, servicemark, or trademark interests in the PRODUCT shall be respected and acknowledged by the LICENSEE and nothing in this Agreement shall be construed so as to permit or allow the LICENSEE to be authorized or licensed as a user of any copyright servicemark or trademark in the PRODUCT or in respect to the use of the PRODUCT.
8. **RELATIONSHIP OF PARTIES** LICENSEE shall not represent, portray, or otherwise hold itself out, either directly, indirectly, or by innuendo to the general public as an agent, partner, or representative of the CITY of Hopewell, Virginia in any manner whatsoever, and further acknowledges this Agreement shall not be deemed to create any agency or partnership relationship between the parties whatsoever.

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9. **LIMITED WARRANTY.** The CITY will use its best efforts to ensure that any PRODUCT provided is free of physical defect. The CITY shall have the sole authority to determine whether the PRODUCT, at the time of delivery, was free of physical defect. THE CITY OF HOPEWELL, VIRGINIA DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF THE CITY IS ADVISED OF SUCH PURPOSE. The CITY assumes no liability either for any errors, omissions, or inaccuracies in the PRODUCT provided regardless of the cause of such or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided. **THE CITY'S LIABILITY WITH RESPECT TO ANY SUCH DATA WILL, IN ANY CASE, BE LIMITED TO A REFUND OF THE LICENSE FEE PAID FOR SUCH DATA.**

10. **OTHER.** This Agreement shall be governed by the laws of the Commonwealth of Virginia. The provisions of this Agreement are severable. If any provision is deemed invalid or ineffectual by a court of competent jurisdiction, the remainder of the Agreement shall have full force and effect. The CITY retains all rights not expressly granted. This license is effective until terminated, and will terminate automatically if LICENSEE fails to comply with any of the terms of this License, and on any such termination LICENSEE shall destroy all copies of the PRODUCT. This Agreement shall be binding on the heirs, successors, assigns, and trustees of the LICENSEE.

CITY

LICENSEE:

[company]

BY: _____ (Seal)
City Manager, City of Hopewell

BY: _____ (Seal)
I have authority to bind the corporation

ATTEST:

NAME: _____
WITNESS:

I, _____ a Notary Public in and for the _____ of _____, Commonwealth of Virginia, do hereby certify that whose names are signed above have acknowledged the same before me in my *Presence* and Commonwealth Aforesaid.
Given under my hand and seal this _____ day of _____, _____.

I, _____ a Notary Public in and for the _____ of _____, _____ do hereby certify that whose names are signed above have acknowledged the same before me in my *Presence* and Jurisdiction Aforesaid.
Given under my hand and seal this _____ day of _____, _____.

Notary Public My Commission Expires

Notary Public My Commission Expires

APPROVED AS TO LEGAL FORM AND ADEQUACY

BY: _____ (Seal)
City Attorney, City of Hopewell

APPROVED FOR GIS DATA LICENSE LEVEL

- 2.1. Private Sector Organization
- 2.2. Local Franchised Utility Organization
- 2.3. Local Government Agency
- 2.4. Public Schools
- 2.5. State Government Agency
- LICENSE FEE DUE \$ _____

BY: _____ (Seal)
Director of Development, City of Hopewell