

CROW WING COUNTY GIS DATABASE LICENSE AGREEMENT

THIS AGREEMENT is made and entered into between Crow Wing County by and through the Crow Wing County Board of Commissioners, hereinafter “County”, and _____, hereinafter “Licensee”.

The parties agree to the following:

ARTICLE I – General Provisions

1.1 Purpose. The purpose of this Agreement is to define the rights and obligations of the parties with respect to the granting by the County of a license to Licensee for the use of the County’s Geographic Information System Database, or a portion thereof , hereinafter referred to as “GIS Database”.

1.2 GIS Database Definition. All or a portion of the geographical database in digital form which incorporates property, planimetric and contour features of the County. The GIS Database was designed and developed by the County with significant expenditure of public funds.

1.3 Terms. Regardless of the date of signatures hereunder, this Agreement shall be in effect from the date of Licensee’s receipt, in digital form, of any portion of the County’s GIS Database until the return or certified destruction of the GIS Database by Licensee, unless earlier terminated by law or according to the terms herein.

ARTICLE II – Ownership/Confidentiality

3.1 Ownership. The GIS Database is the property of Crow Wing County and the County reserves all rights of ownership, title and control to the GIS Database under federal copyright law or other law relating to confidential and/or trade secret information. The parties agree that the development of the GIS Database required the skilled efforts of professionals in its design and compilation and that the end product is the result of the original work of the County, its employees and agents. Pursuant to Minn. Stat. 13.03 subd. 5 (1991), the GIS Database is a trade secret of the County and may only be used as authorized herein.

3.2 Obligation of confidentiality. Licensee acknowledges and agrees that the County reserves all rights of ownership, title and control of the GIS Database. Licensee agrees that it will treat the GIS Database as confidential, and trade secret information. Licensee will not under any circumstances disclose or disseminate the GIS Database or any portion thereof to 1) any other person, firm entity or organization except as expressly authorized herein or 2) any employee of Licensee who does not need access thereto in connection

with Licensee's exercise of its rights under this Agreement. Licensee will use its best effort to keep and maintain the GIS Database in a secure manner so as to preclude unauthorized use, dissemination or disclosure.

3.3 Assistance. Licensee shall use good faith and reasonable efforts to assist the County in identifying any improper use, copying, or disclosure of the GIS Database by any current or former employee of the Licensee or anyone else who may have come in possession of said GIS Database while the same was in Licensee's possession.

3.4 Survival of Confidentiality Obligation. Licensee's obligations respecting confidentiality of the GIS Database shall survive termination of this Agreement.

3.5 Injunctive Relief. Licensee acknowledges and agrees that disclosure or use of the information GIS Database in breach of this Agreement could cause irreparable harm and significant injury to the County, which may be difficult to measure with certainty or to compensate through damages. Accordingly, Licensee agrees that the County may seek and obtain against Licensee and/or any other person or entity, injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other equitable or legal remedies which may be available.

ARTICLE IV – Licensee

4.1 Licensee. The County hereby grants to Licensee a non-exclusive, non transferable license to use the GIS Database in accordance with the provisions stated in this Agreement.

- A. Licensee may use the GIS Database in connection with its projects and developments and not on behalf of any other person, corporation or entity.
- B. Licensee shall keep a record of the location of each copy of the GIS Database.
- C. The Licensee, at its own expense, shall provide all necessary hardware, software and equipment needed to access and use the GIS Database.
- D. Licensee may not use, copy, modify or transfer the GIS Database or any copy, modification or merged portion thereof, in whole or in part, except as expressly provided for in this Agreement. Licensee may modify the GIS Database by: (i) translating the data from the GIS Database to Licensees platform format and database standards, (ii) making ongoing parcel updates, (iii) maintaining data to support Licensees design and construction purposes. If Licensee transfers possession of any copy, modification or merged portion thereof of the GIS Database to another party, the rights granted under the terms of this Agreement are automatically terminated.

- E. If Licensee is required to disclose information in the GIS Database, as modified by Licensee, to governmental agencies as part of a permitting process, any such disclosure will not be considered a violation of this Agreement.

4.2 Copyright Notice The GIS Database is Copyright, 2008, by Crow Wing County. All rights are reserved. All copies of the GIS Database must include the Copyright notice as provided on the original GIS Database.

4.3 Termination. Upon termination of this Agreement, Licensee shall, within thirty (30) days of such such termination, return the GIS database as originally provided by the County, to the County.

4.4 Updates/Additions to GIS Database. The terms of this Agreement shall apply to Licensee's receipt of the GIS Database or any portion thereof, whether prior to, concurrent with or subsequent to the date of execution. Portions of the GIS Database received after execution of this Agreement shall be covered the same as if originally included herein.

ARTICLE V – Payment

5.1 Fees. For said license of the GIS Database, Licensee shall pay the fee determined under the County's GIS Fee Schedule, as it may from time to time be amended. The full amount of the fee shall be paid before data is released.

5.2 Updates. Nothing herein shall be interpreted to preclude or affect the right of the County to charge for additions or updates to the GIS Database whether or not such additions or updates contain the same or all of the GIS Database previously licensed.

ARTICLE VI – Limit on Liability

THIS COUNTY IS FURNISHING THE GIS DATABASE ON AN "AS IS" BASIS, WITHOUT ANY SUPPORT WHATSOEVER, AND WITHOUT REPRESENTATION OR WARRANTY AS TO FITNESS, MERCHANTABILITY OR THE ACCURACY AND COMPLETENESS OF THE DATABASE.

The GIS Database is neither a legally recorded map nor survey and it is not intended to be used as one. The GIS Database is a compilation of records, information and data from various city, county and state offices and other sources and should be used for reference only. **No representation is made that features presented, accurately reflect true location. Crow Wing County or any other entity from which data was obtained assumes no liability for any errors or omissions herein.**

Because the GIS Database is inherently complex and may not be completely free of errors, Licensee is hereby advised to verify its work. In no event will the County be

liable for direct, indirect, special incidental or consequential damages arising out of the use of or inability to use the GIS Database. The County is not responsible for any costs including, but not limited to those incurred as a result of lost profits or revenue, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for other similar costs.

ARTICLE VII – Miscellaneous

7.1 Minnesota Law to Govern. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota.

7.2 Independent Status. It is agreed that nothing contained herein contained is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures or associates between the parties hereto or as constituting Licensee as the employee of the County for any purpose or in any manner whatsoever.

7.3 Rights Cumulative. All remedies available to either party under the terms of this Agreement or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

7.4 Waiver. The waiver of any default by either party, or the failure to give notice of any default, shall not constitute a waiver of any subsequent default or be deemed to be a failure to give such notice with respect to any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be modification for the terms of this Agreement unless stated to be such in writing and signed by authorized representatives of the County and Licensee.

7.5 Assignment. Licensee shall not, in whole or in part, assign, sublease, extend, absorb or otherwise transfer this Licensee Agreement or any right granted under this Agreement

7.6 Modifications. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by Authorized Representatives of the County and Licensee.

7.7 Notices. Any notices required to be given under this Agreement shall be served upon the following:

If to County:

Crow Wing County GIS Department
322 Laurel Street, Suite 14
Brainerd, Minnesota 56401

If to Licensee:

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

COUNTY OF CROW WING

LICENSEE

By _____
Title _____
Date _____

By _____
Title _____
Date _____