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ELBERT COUNTY

OFFICE OF THE COUNTY ASSESSOR

“Fair, Uniform, & Equitable Assessments, Within the Law”



Geographic Information System (GIS) Digital Data License Agreement

This agreement (“Agreement”) is made and entered into by and between the County of Elbert, Colorado (the “County”) and _____ (the “Licensee”) who together are the “Parties” hereto.

Witnesseth:

Whereas, Licensee has requested from the County a license to use certain Geographic Information System (“GIS”) digital data (“Data”) that has been developed and is owned by the County;

Whereas, County 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 County and Licensee hereby agree as follows:

Section I - Scope of Agreement

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

B. The Data shall consist of all that is checked:

- | | | | | |
|--|--|--|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Parcel | <input type="checkbox"/> Tax District | <input type="checkbox"/> Road | <input type="checkbox"/> Site Address | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Fire District | <input type="checkbox"/> Vote Precinct | <input type="checkbox"/> School District | <input type="checkbox"/> Park & Rec | <input type="checkbox"/> Municipality |

In exchange for which Licensee shall provide to the County:

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 made by Licensee shall remain vested in the County, subject to the rights herein granted to Licensee. The County 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 County has no continuing or ongoing responsibility for updating the Data any part thereof. Licensee understands and agrees that the County 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 County. Licensee agrees to notify its employees, agents, and any contractors of the restrictions contained in the 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 VIII, shall survive termination of this Agreement.

Section III - No Warranties

Licensee understands and acknowledges that the Data was developed for the County'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 County. The Data is distributed "as is". The County makes no warranties or guarantees, express or implied, as to the completeness, accuracy, or correctness of the data, nor shall the county incur any liability from the incorrect, incomplete, or misleading information contained therein. The County makes no warranties, either express or implied, of value, design, condition, title, merchantability, or fitness for a particular purpose. The County 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 obligation 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 contact, merger, consolidation, or otherwise. Any attempted assignment or transfer in derogation of this prohibition shall be null and void, and license granted herein shall immediately cease.

Section V - Laws, Resolutions and Ordinances

Licensee shall at all times observe all applicable Federal, State, and Local laws, Resolutions, Ordinances, 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 county.

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 and 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 County shall immediately cease, and in addition, the County 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 County.

Section VIII - Indemnification and Immunity

A. To the extent permitted by law, Licensee shall indemnify and hold harmless the County it's elected and appointed officials, employees, and agents from and against any claim, loss, damage, cost, injury, or liability, including reasonable attorney's 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 County under the Colorado Governmental Immunity Act, C.R. S. 24-10101 et. Seq., as amended.

Section IX - Independent Contractor Status

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 Elbert 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 County 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 the County and Licensee that any person other than the County 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 set 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:

County: Elbert County

P.O. Box 26

Kiowa, Colorado 80117

Licensee: _____

GIS Data License Agreement

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 System (GIS) Digital Data License Agreement to be executed by their duly authorized representatives this ____ day of _____, 2018.

County

Licensee

County Assessor

Title: _____