



# Payette County Idaho Government Geographic Information System Data Product License Agreement

License# \_\_\_\_\_

This **PAYETTE COUNTY IDAHO GOVERNMENT GEOGRAPHIC INFORMATION SYSTEM DATA PRODUCT LICENSE AGREEMENT** made and entered into this **DATE**, (the "License Agreement") by and between the **Board of County Commissioners of Payette County Idaho** located at 1130 3<sup>rd</sup> Avenue North Rm 104, Payette Idaho 83661 (the "County") and **NAME** located at the **ADDRESS** (the "Licensee").

**WHEREAS**, the County, by and through its Assessor's Office, created a Geographic Information System ("GIS") comprised of maps and other geographic information of and regarding Payette County Idaho; and

**WHEREAS**, the Payette County Assessor's office continuously acquires, develops, maintains and uses the GIS data in support of its internal business functions and the public services it provides; and

**WHEREAS**, the Payette County Planning and Zoning department funds the acquisition, development and maintenance of GIS data in cooperation with and coincident with the Assessors office GIS data, in support of its internal business functions and the public services it provides; and

**WHEREAS**, the Payette County Sheriff's Office (including E-911 and Disaster Services) funds the acquisition, development and maintenance of GIS data in cooperation with and coincident with the Assessor's office GIS data, in support of its internal business functions and the public services it provides; and

**WHEREAS**, the Payette County Road and Bridge department funds the acquisition, development and maintenance of GIS data in cooperation with and coincident with the Assessor's office GIS data, in support of its internal business functions and the public services it provides; and

**WHEREAS**, the GIS data represents a significant financial investment made by Payette County on behalf of its tax payers and Payette County wishes to protect the investment; and

**WHEREAS**, some or all of the GIS data may come under the purview of the Idaho "public records statutes" contained under Idaho Code Title 9, Chapter 3, and may also be subject to Federal regulations that apply to freedom of information and privacy; and

**WHEREAS**, Idaho Statutes, Title 9, Chapter 3, addresses the public's right to examine public records, specifies records exempt from disclosure, establishes requirements for public agencies to separate exempt and non-exempt records from disclosure and allows the establishment of fees to recover costs; and

**WHEREAS**, Idaho Statutes 31-875 establishes the powers and duties of the Board of County Commissioners to impose and collect fees for access to the digital GIS and mapping data; and

**WHEREAS**, County GIS data contains information that may be considered confidential or sensitive and divulging or publishing the information may cause harm or an actionable wrong against a person; and

**WHEREAS**, members of the public, public agencies and commercial businesses have expressed a desire to gain access to the County GIS data; and

**WHEREAS**, the County wishes to make its GIS data available in certain compilations, packages and formats (the "Products") for purchase and use by members of the public, public agencies and commercial businesses subject to the terms and conditions contained in this License Agreement; and

**NOW, THEREFORE**, in consideration of the above recitals, which are hereby incorporated as terms of the License Agreement, in consideration of the License Fee(s) paid by Licensee and in consideration of mutual covenants, conditions and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **1 Rights Granted**

1.1 County hereby grants the Licensee a license to use certain of the County's GIS Products until such time as this Agreement is terminated pursuant to Section 6 hereof or otherwise expires.

1.2 The Products are solely and exclusively for the internal use of the Licensee and not for the use by any other person or entity, including but not limited to any entity which is affiliated with the Licensee unless specifically included in the term Licensee

1.3 The type of Products being provided is/are:

Payette County GIS Data in ESRI Shapefile format to include:

### **LIST OF DATA REQUESTED**

This Agreement will include ? updates upon request by the Licensee.

1.4 This License Agreement merely permits Licensee to utilize the subject Products in accordance with the terms and conditions provided herein and does not constitute a sale of any title or interest in the Products.

County reserves all rights not expressly granted to the Licensee by this License Agreement.

## **2 Assignment**

- 2.1 The Products are being furnished with all rights reserved by the County. Except as otherwise specifically provided herein, the Licensee shall not license, sub-license, assign, release, publish, transfer, sell or otherwise make available the Products in a form substantially similar to that which it is hereby being provided by the County to Licensee to a third party without the expressed written permission of the County.
- 2.2 Neither this License Agreement nor the rights granted by it shall be assigned or transferred by the Licensee under any circumstance whatsoever. This restriction on assignments and transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void

## **3 Royalties and Payment**

- 3.1 Delivery of the Products to the Licensee shall be made by County only after the Licensee has fully executed this License Agreement and returned it to the County together with any associated License fees.
- 3.2 License fees are not in any case refundable.
- 3.3 The fees associated with this agreement shall be as provided by the fee schedule as follows:

Assuming the Products described in 1.3 are purchased, the license fee will be:

**\*\*FEES ?\*\***

## **4 Copyright and Disclaimer**

- 4.1 Licensee acknowledges and agrees that the Products are proprietary products of County and are protected under U.S. and international copyright law and that County retains sole and exclusive right, title, and interest in and to the Products, including associated intellectual property rights.
- 4.2 Any maps, publications, reports or other documents prepared by Licensee or an independent contractor not contracted by the County whose production utilizes digital data provided by the County, either directly or through a contracting agent will credit the County as the

source of the data with the following credit/disclaimer:

*"This (map/publication/report) was developed using Payette County, Idaho GIS data, but this secondary product has not been verified by Payette County and is not County authorized. All digital data provided by Payette County is copyrighted by Payette County and is subject to the exclusion of warranty and statement of liability contained in its GIS Data Licensing Agreement."*

- 4.3 The Licensee shall require any independent contractor, hired to undertake work which will utilize digital data obtained from the County, to agree not to use, reproduce or redistribute Payette County digital data for any purpose other than the specified contracted work. All copies of Payette County digital data utilized by an independent contractor will be required to be returned to the original Licensee at the close of such contractual work. The Licensee hereby agrees to abide by the use and reproduction conditions specified above and agrees to hold any independent contractor to the same terms.

## **5 Warranties, Liabilities and Indemnification**

- 5.1 The Licensee understands and acknowledges that the Products are subject to constant change and that its accuracy and completeness cannot be and are not guaranteed by the County. County makes no warranties or a guarantee, either expressed or implied, as to the completeness, accuracy, or correctness of the Products, nor accepts any liability arising from any incorrect, incomplete or misleading information contained therein. There are no warranties, either expressed or implied, of merchantability or fitness of such Products for a particular purpose.
- 5.2 The County is not responsible for any incidental, consequential, or special damages arising out of the use of the Products provided to the Licensee. The Licensee agrees that the Products shall be used and relied upon only at the sole risk of the Licensee.
- 5.3 The Licensee agrees to indemnify and hold harmless the County, its officials, officers, employees, contractors and servants from any liability, claims, loss, damages, injury, costs and attorney fees arising out of procuring, compiling, collecting, interpreting, producing, using or communicating the Products or information contained therein.

## **6 Termination**

- 6.1 In the event that the Licensee shall not faithfully perform any and all of the obligations by the Licensee to be performed under this License, the County shall have the right to terminate and cancel this License.

Cancellation by the County shall not release the Licensee from its obligation to pay any fees due herein.

- 6.2 County shall have the right to terminate this Agreement if: (a) Licensee attempts to assign its rights without the written consent of County; (b) if Licensee delivers or attempts to deliver the licensed data to another agency, corporation, or person without the prior written consent of the County.

## **7 Remedies**

- 7.1 In the event of a breach or threatened breach of any of the provisions of this Agreement by the Licensee or any employee, representative or agent of the Licensee, County shall be entitled to preliminary and permanent injunctive relief to enforce the provisions hereof; but nothing shall preclude County from pursuing any action or other remedy, including for damages, for any breach or threatened breach of this Agreement, all of which shall be cumulative.
- 7.2 In the event that County prevails in any such action, County shall be entitled to recover from the Licensee all attorney's fees incurred in connection therewith.

## **8 Binding**

- 8.1 The Licensee acknowledges that this Agreement has been read and agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the agreement between the parties and supersedes any oral or written communications or representations relating hereto.
- 8.2 Persons whose signatures appear as or for Licensee represent that they are authorized to do so and represent and warrant that this Licensing Agreement is a legal, valid and binding obligation as to Licensee and is enforceable in accordance with its terms.

## **9 Additional Provisions**

- 9.1 Pursuant to Idaho Code 9-348, Licensee understands and agrees that the information provided by the County is not being distributed for use as a mailing list or telephone number list, and no list of persons prepared by County may be used as a mailing list or a telephone list unless such use is expressly permitted by Idaho law.
- 9.2 The County shall deliver the licensed data through means of tape, disk, printed material, manuals, or other means of communication to Licensee. All such tapes, disks, printed materials, manuals, or other means of communication furnished by County shall be and remain the

property of the County and the Licensee shall, at its own expense, return all of the data and all means of communications to the County when and if directed upon termination

- 9.3 The Licensee will do or cause to be done all things necessary to preserve its rights and meet its obligations under this License Agreement.
- 9.4 This License Agreement contains no financial commitments on the part of County, and any financial commitments on the part of County that become a part of this License Agreement are subject to appropriation by the Board of County Commissioners of Payette County.
- 9.5 This License Agreement shall be governed by the laws of the State of Idaho. The exclusive jurisdiction and venue for any lawsuit between the parties arising out of this License Agreement shall be Payette County, Idaho.
- 9.6 If any provision of this License Agreement is determined to be invalid or unenforceable, the remaining provisions of the License Agreement shall continue to be valid and enforceable.
- 9.7 The County shall in its sole discretion provide or withhold any of the above described Product, and may waive or adjust fees as determined reasonable in any given circumstance.

AGREED TO BY THE PARTIES HERETO:

PAYETTE COUNTY, IDAHO

LICENSEE:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_