

Caroline County

Planning & Codes Administration



Health & Public Services Bldg.
403 S. 7th Street, Suite 210
Denton, Maryland 21629-1335
Telephone: (410) 479-8100
Facsimile: (410) 479-4187

Kathleen Freeman, Director
David Porter, County Engineer

SPATIAL DATA LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made and entered into this ___ day of _____, 20___, by and between Caroline County, hereinafter called the “Licensor”, and _____ hereinafter called “Licensee.”

WHEREAS, the Licensee has requested Licensor to provide or produce Geographic Information Systems, (hereinafter called “GIS”), data identified in Article II below.

NOW, THEREFORE, in consideration of mutual covenants set forth herein and for such other consideration as the parties deem sufficient, the parties agree to the following:

I Terms and Definitions

As used in this Agreement, the following terms shall have the meaning indicated:

1. GIS Data: Shall mean the data generated by the GIS, and takes the form identified in Article II.
2. Updates: Shall mean data maintenance which includes current geographical data.
3. Medium: Products used to store and access digital data.

II License

1. Licensor hereby grants to the Licensee and Licensee hereby accepts, a nonexclusive and nontransferable license (the “License”) to use the GIS data, in accordance with the terms and conditions of this Agreement unless terminated pursuant to the terms of this Agreement.
2. This Licensor has provided GIS digital data to the Licensee in the form of digital medium requested by the Licensee, including CD’s, DVD’s, and e-mail, which are identified on the GIS DATA PRODUCTS ORDER FORM.

III Term and Termination

1. The term of this Agreement shall commence as of the date of this Agreement and continue indefinitely on a perpetual basis.
2. Either party may terminate this Agreement upon sixty (60) days notice to the non-terminating party.
3. In the event that the Licensee shall not faithfully perform any and all of the obligations required to be performed under this License, the Licensor shall have the right to terminate and cancel this License immediately. Termination of the License by the Licensor shall not release the Licensee from its obligation to pay any fees due herein.
4. The Licensor may terminate this License if:
 - a. Licensee attempts to assign its rights without the written consent of the Licensor

- b. If the Licensee delivers or attempts to deliver the licensed data to another agency, corporation, or person outside of its immediate organization without the prior written consent of the Licensor;
 - c. Licensee attempts to derive revenue from the licensed data. If the damages exceed compensation, the Licensor may pursue any and all remedies available under this Agreement as well as any remedies at law or in equity.
5. The failure of either party to this Agreement to demand the performance of any of the terms and conditions of this Agreement, or the failure to demand cure of any breach of any of the terms and conditions of this Agreement, shall not be construed as a waiver of such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

IV Warranties, Liabilities and Damages

1. The Licensor makes no warranty of any kind, expressed or implied, as to the use or appropriateness of the use of the GIS data, by the Licensee including, but not limited to, warranties of merchantability or fitness for a particular purpose or with respect to accuracy. The Licensee acknowledges that the Licensor does not guarantee or warrant that the GIS data is complete or current and the Licensee further acknowledges that the GIS data is subject to constant change and Licensor is under no obligation to update. Any use of this GIS data is done at the sole risk and liability of the Licensee.
2. The Licensor shall not be subject to liability for human errors, defect or failure of machines, or any material used in connection with the machines, including, but not limited to, CD's, and DVD's.
3. Any liability Licensor may have for damages, regardless of the form of action, shall not exceed the License fee paid under this Agreement. In no event, shall the Licensor be liable for lost profits, consequential damages, or claims against third parties.
4. The Licensor warrants that the medium on which the GIS digital data was provided is free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery, as evidenced by a copy of the invoice or receipt. If the Licensor cannot deliver a replacement for the digital data on a medium that is free of defects in materials and workmanship, the Licensee may return the data and the License fee will be refunded.

V Use Restrictions and Other Prohibited Activities

1. The Licensee understands and agrees that the GIS data is solely owned by the Licensor and that the GIS data shall not be reproduced or reformatted without the Licensor's prior written consent, which shall be at the Licensor's sole discretion.
2. The Licensee is familiar and understands the provisions of the National Map Accuracy Standards and assumes the responsibility and liability for the use of this data at other than the compilation scale (scale at which the digital data was intended to be output in hard copy format).
3. The Licensee understands that the GIS digital data is licensed solely for the internal use of the Licensee. The Licensee has the right to copy this data for use on multiple machines or to a file server within the immediate organization. The

data cannot be transferred to any other organization without the prior knowledge and consent of the Licensor. The data can also be copied for backup purposes only, but for no other purposes.

4. The Licensee shall not provide, transfer or allow access to the data to any party not part of the License Agreement.
5. The Licensee may modify the digital data or merge the data with other data sets or file structures. Any portion of the digital data modified or merged continues to be subject to the conditions of this Agreement.
6. The Licensee may derive hard copy products or printed tabular listing from the digital data that may be used in publications and presentations, provided that published credit is given to the Licensor.
7. The Licensee may not derive digital or hard copy product from the GIS data with the intent to sell them.
8. The Licensee is solely responsible for the integration between the GIS digital data in the format requested from the Licensor and the Licensee's software accessing the data.
9. Licensee shall comply with all laws, rules, regulations, whether Federal, State, County, or local, relating to the possession and use of the above-described data.

VI Updating Data

1. The Licensee is solely responsible for obtaining updated data at its own expense.
2. All updates will be covered by, and subject to, the provisions of this Agreement.
3. Updates may be obtained by any of Licensee's authorized employees or agents during the term of this Agreement.

VII Indemnification

Licensee hereby agrees to indemnify and hold the Licensor, its employees, agents and officials harmless from any claim, suit, proceeding or damages of any kind arising out of the use of the GIS data licensed hereunder including, but not limited to, attorney's fees, any cost of recovering, reprogramming or reproducing any programs or data stored in or used with GIS data, damage to property, damages for personal injury or for any lost profits, lost savings, or other special, incidental or consequential damages arising out of the use of or inability to use the GIS data, even if said parties have been advised of the possibility of such damages.

VIII Licensee Representations

1. If the Licensee is a Corporation, it represents that it is duly formed and validly existing under the laws of _____ and is qualified to do business and is in good standing in the State of Maryland.
2. The person executing this Agreement for the Licensee warrants that he/she is duly authorized by the Licensee to execute this Agreement on the Licensee's behalf.

IX General Provisions

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the data of this Agreement shall not be binding upon either party, except to the extent incorporated in this Agreement.

X Modification

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each part.

XI Governing Law

This Agreement shall be governed by the laws of the State of Maryland and Caroline County, Maryland.

XII Assignment

This Agreement may not be assigned by the Licensee without the express written consent of the Licensor.

XIII Severability

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

XIV Counterparts

This Agreement may be executed in any number of counterparts and by different parties hereto in separate Counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

XV Fees

Caroline County is providing this licensed GIS data to the Licensee for a reproduction fee and a data maintenance fee. The cost of the fees is described by a fee schedule on the ESRGC website (www.esrgc.org).

XVI Provision to County Contractors

1. Caroline County will provide this licensed GIS data for a production fee only for use on a specific project as referenced by a job number. The Licensee may use the data for the specific project only, pursuant to this Agreement.
2. Upon completion of the specified project, GIS data provided by Caroline County must be removed from all County Contractor's computer systems. The data may not be used for other non-County projects unless requested and purchased.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

LICENSEE:

Print Name: _____

Company Name: _____

Signature: _____

Date: _____

LICENSOR:

Caroline County, Maryland

By: _____

David Porter, County Engineer
Department of Planning, Codes, and Engineering

By: _____

Nick Chamberlain, GIS Specialist
Department of Planning, Codes, and Engineering

By: _____

Kevin Clark, Planner III/GIS Manager
Department of Planning, Codes, and Engineering