

DATA EXCHANGE AGREEMENT

This Agreement is made and entered into this ____ day of _____, _____ by and between **Jackson County, Georgia**, a political subdivision of the State of Georgia (hereinafter referred to as “Jackson County”) and _____ (hereinafter referred to as “Agency”).

WHEREAS, Jackson County has created certain Geographic Information Systems (hereinafter “GIS”) data (hereinafter the “Data”); and

WHEREAS, Agency, pursuant to the terms and conditions of this Agreement desires to utilize the Data; and

WHEREAS, Jackson County desires to license the Data to Agency, pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the sum of ten (\$10.00) dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for and in consideration of the covenants and obligations contained herein, the parties agree as follows:

1. The Data. The Data consists of certain GIS information, including, but not limited to, maps and photographs and may be in either tangible or electronic format, including CDs, DVDs, and/or other electronic storage media.

2. Copyright Protection. (a) Agency acknowledges that the Data is the intellectual property of Jackson County and is protected by United States Copyright law. Agency acknowledges and agrees that Jackson County is the sole owner of the copyright interest in the Data. (b) To the extent that any software or hardware is a part of the electronic storage medium on which the Data is stored, or transmitted, Jackson County claims no copyright interest, or assignable licenses. Agency represents that it will abide by all copyright or licenses agreements affecting or arising out of use of the electronic transfer format, and if necessary, obtain all licenses or other permission necessary to the use of such storage medium or electronic transfer format.

3. Purchase Price. As consideration for the license to use the Data granted in this Agreement, contemporaneously with the execution of this Agreement, Agency shall pay the sum of _____ to Jackson County.

4. License. Subject to the restrictions on use contained in this Agreement, Jackson County hereby grants Agency a non-exclusive, non-transferrable license to use the Data for _____. Any attempt by Agency to transfer or assign this license is null and void and of no force or effect. Jackson County shall deliver the Data to Agency within thirty (30) days of the execution of this Agreement.

5. **Non-disclosure.** Agency will not, directly or indirectly, transmit or disclose all or any part of the Data to any person or entity without the express written consent of Jackson County. Provided that Agency may disclose the Data if and to the extent that such disclosure is required by applicable law, provided that Agency uses reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment and provides Jackson County a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.

6. **Restrictions on Use.**

(a) Agency shall not copy, reproduce, or transmit the Data by any means whatsoever, including, but not limited to, electronic, mechanical, recording, scanning, or by any information or retrieval system for any non-approved purpose without the express written permission of Jackson County.

(b) The Data shall not be used for final design purposes of any survey, site plan, plat, architectural renderings, engineering drawing or plans, schematics, specifications or other design documentation. Any reliance on the data for such purposes shall be the responsibility of the Agency and Agency agrees to indemnify and hold harmless Jackson County from any claims, suits, loss or damages, including costs of defense including reasonable attorney fees, expenses and court costs, arising out of or related to Agency's use of Data in contravention of the terms of this agreement.

(c) In any use of the Data, Agency shall credit Jackson County for the construction and/or compilation of the Data and any maps, reports, papers, or public presentations in which the Data is employed. In any use of the Data, Agency shall include the notation, "© Jackson County, Georgia" on the Data or any part of the Data utilized by Agency.

7. **Data Updates.** Agency agrees to provide Jackson County with any corrections, updates, and/or modifications to the Data within a reasonable time after Agency becomes aware of such corrections, updates, and/or modifications. Agency agrees and acknowledges that any corrected, updated, and/or modified Data is a derivative work of the Data and Jackson County shall be the sole owner of any and all copyright interests in such corrected, updated, and/or modified Data. To the extent that such corrected, updated, and/or modified Data or any of the materials related thereto may not, by operation of law, be a derivative work of the Data, Agency hereby assigns to Jackson County all right, title, and interest in and to any copyright in such corrected, updated, and/or modified Data and Jackson County shall have the right to obtain and hold in its own name any copyrights, registrations, and other proprietary right which may be available.

8. **No Duty to Supplement Data.** Agency agrees and acknowledges that this Agreement is made for a one-time delivery of the Data and that, subsequent to the delivery of the Data to Agency, Jackson County may amend, alter, update, and/or supplement the Data. Jackson County shall be under no obligation to transmit to Agency

any amended, altered, updated, and/or supplemented Data and Agency shall have no right to receive any such amended, altered, updated, and/or supplemented Data.

9. No Guarantee of Accuracy. Agency agrees and acknowledges that the Data are subject to constant change and that the accuracy and/or completeness of the Data is not guaranteed by Jackson County. Agency agrees and acknowledges that any use of the Data by Agency is at Agency's own risk.

10. Disclaimer of Warranties and Limitation of Damages. UNDER NO CIRCUMSTANCES SHALL JACKSON COUNTY BE LIABLE TO AGENCY OR ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS, BUSINESS INTERRUPTION, OTHER PECUNIARY LOSS, OR OTHER INCIDENTAL, TORT, ECONOMIC, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF THE DATA AND/OR ANY USE OF THE DATA, EVEN IF JACKSON COUNTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. JACKSON COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

11. Indemnification and Hold Harmless. Agency, for itself, its agents, employees, successors and assigns to indemnify and hold Jackson County, its employees, agents, successors, assigns, officers, directors, and commissioners harmless from and against any and all claims, actions, causes of action, damages, losses, costs, liabilities, charges, fees (including attorney's fees), and court costs claimed as a result of the use of the Data by Agency, its agents, employees, successors and assigns. Furthermore, Agency shall assume responsibility and liability for any damage, loss, or injury (including death) of any kind or nature whatsoever to person or property (including employees and property of Jackson County) caused by or resulting from any error or omission of Agency or the negligent act of Agency or its officers, agents, servant, or employees, arising from the performance of this Agreement. Agency shall defend, indemnify, and hold harmless Jackson County, its employees, agents, successors, assigns, officers, directors, and commissioners from and against any and all claims, loss, damage, charge, or expense to which they or any of them may be put or subjected by reason of any such damage, loss, or injury. Agency expressly agrees to defend against any claims brought or actions filed against Jackson County, where such claim involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

12. Termination. Jackson County shall have the unilateral right to terminate this Agreement, in whole or in part, for Jackson County's convenience, or due to the failure of Agency to fulfill any of its obligations under this Agreement. If the Agreement is terminated for convenience of Jackson County, termination shall be effective thirty (30) days after the sending of written notice of termination from Jackson County to Agency. If the Agreement is terminated due to the breach of the Agreement by Agency,

the termination shall be effective immediately upon the sending of written notice of termination from Jackson County to Agency. Upon termination of this Agreement, Agency shall return the Data and all copies thereof (whether in tangible or electronic form) to Jackson County immediately.

13. Notices. All notices required or permitted to be given under the terms of this Agreement shall be delivered via overnight delivery or certified mail, return receipt requested to the following addresses:

To Jackson County:
67 Athens Street
Jefferson, Georgia 30549
Attention: GIS Manager

With a copy to:
Julius M. Hulsey
Hulsey, Oliver & Mahar, LLP
P.O. Box 1457
Gainesville, Georgia 30503

To Agency:

14. Miscellaneous.

(a) **Severability.** The covenants set forth herein are separate and independent. If any portion of any covenant is held to be invalid, void or unenforceable in any court of competent jurisdiction, such defect shall not render invalid, void or unenforceable any other portion of this Agreement. If any portion of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction because its duration, territory, or definition(s) of activities or information covered is invalid or unreasonable, the invalid or unreasonable term shall be redefined or replaced such that the intent of the parties in entering this Agreement will not be impaired and the provision in question will be enforceable to the fullest extent of the applicable laws.

(b) **Waiver.** The waiver by Jackson County of a breach of any of the provisions of this Agreement will not operate or be construed as a waiver of any other or subsequent breach.

(c) **Reasonableness and Relief.** Agency agrees that the covenants contained herein are reasonable and necessary means to protect Jackson County's interests in the Data. Agency agrees that any breach by it of these covenants will cause irreparable harm

and injury to Jackson County and will leave Jackson County with no adequate remedy at law. Agency agrees that such a breach will entitle Jackson County to injunctive relief in any court of competent jurisdiction without the necessity of posting a bond and that such injunctive relief will be in addition to any damages that may be recoverable by Jackson County as a result of his breach

(d) **Governing Law.** This Agreement will be deemed to be made in and will in all respects be governed by the laws of the State of Georgia (without giving effect to the conflict of law principles thereof). No provision of this Agreement will be construed against, or interpreted to the disadvantage of any party hereto by any court or any governmental or judicial authority by reason of such party having, or being deemed to have, structured or drafted such provision.

(e) **Forum Selection.** Jackson County and Agency hereby irrevocably submit to the jurisdiction of the Superior Court of Jackson County, Georgia in any action or proceeding arising out of or related to this Agreement, and each party hereby irrevocably agrees that all claims in respect to such action or proceeding shall be heard and determined in such Superior Court.

(f) **Entire Agreement.** This Agreement is intended to be the final and complete expression of the parties' agreement with respect to its subject matter, notwithstanding any prior representations or agreements to the contrary. This Agreement supersedes any former agreements governing the same subject matter and may be modified only by a written instrument signed by each of the parties hereto.

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

Jackson County, Georgia

By: _____ (SEAL)

Print name/title: _____

Agency:

By: _____ (SEAL)

Print name/title: _____