



# City of Madera Community Development Department

## License for the use of geographic information system data products

Complete all components of the application.

### I. Parties

Date: \_\_\_\_\_

Licensor: City of Madera Name: Gary Conte, Planning Manager  
(Issuing Agency) (Please Print Name)

Licensee: \_\_\_\_\_ Signature: \_\_\_\_\_  
(Please Print Name of Individual)

Firm/Agency: \_\_\_\_\_ Title: \_\_\_\_\_

Data/Product Description(s): \_\_\_\_\_

### Terms and Conditions

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B. TERM. The term of this license shall expire at such time as the LICENSEE should fail to comply with any of the terms and conditions provided herein.

C. LIMITED WARRANTY. Geospatial data or database information issued under license by City of Madera is regarded as planning and resource level information, having been generated specifically for use within the local entity geographic information systems (GIS). By acceptance of any such data sets so issued, a licensee acknowledges the above limitations, and that such data are subject to continuous updating. **NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, ARE PROVIDED, INCLUDING USAGE, CONTENT, INTERPRETATION, SEQUENCE, ACCURACY, CURRENCY OR TIMELINESS.** City of Madera explicitly disclaims any representations and warranties, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose. A licensee or user accepts the data so issued as is, with any and all defects, if any. **THE LICENSOR DOES NOT WARRANT IN ANY WAY THAT THE DATA SO ISSUED WILL MEET THE LICENSEE'S REQUIREMENTS, OR THAT THE DATA WILL BE COMPLETE, UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECTS WILL BE CORRECTED.** The entire risk as to quality, performance and usefulness of the data rests with the licensee.

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#### D. USE.

1. PERMITTED USAGE. The permitted usage of data product(s) licensed under this agreement shall be as follows:

- a. Reformatting by LICENSEE for internal purposes of LICENSEE, provided source data and format of LICENSOR are not altered or corrupted.
- b. Making one (1) copy for internal archival or backup purposes.
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2. RESTRICTED USAGE. The restricted usage of data product(s) licensed under this agreement, and acceptance of data for such use, or so used, shall indicate the LICENSEE'S agreement to indemnify and hold harmless the LICENSOR, including the LICENSOR'S agents, consultants, contractors and employees, from any and all liability claims or damages to any person or property arising from, or in connection with such usage as follows:

- a. An altered, modified, translated, merged or otherwise manipulated formatting of data product(s) for value added commercial resale or mass distribution of a new product.
- b. Mass copying or reproduction for distribution, to include distribution over the internet.
- c. Sale, relicensure, transfer, lease, assign or otherwise transfer the right of usage, in whole or in part, to a third party outside of the terms and conditions of this licensing agreement.
- d. Alteration or removal of any notice of copyright, disclaimer or proprietary legend.

3. INDEMNIFICATION. The licensee agrees not to provide a copy or partial copy of any data received from City of Madera to any person in any respect without disclosing that the copy or partial copy is the property of the City of Madera and without attaching a duplicate of these Terms and Conditions to any such copy or partial copy.

The licensee further agrees that to the fullest extent allowed by law, the licensee will indemnify, hold harmless and defend the City of Madera from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged intentional negligent or willful acts or omissions by the licensee in which the data provided is involved or any authorized or unauthorized use of data the licensee obtains from the City of Madera. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist. This indemnity is in addition to and exists independently from any insurance coverage, which the licensee may have against which a claim can be made by the City of Madera.

#### E. RELEASE.

The LICENSEE releases the LICENSOR, its agents, consultants, contractors or employees, from any and all claims, actions, or causes of action for damages including, but not limited to, any costs of recovering, reprogramming or reproducing any programs or data stored in or used in connection with the data product(s) so licensed herein, and for any damages for personal injury or for any lost profits, lost savings, incidental or consequential damages which may arise out of the use of, or the inability to use the data product(s) so licensed herein, even if the LICENSEE has been advised of the possibility of such damages.

#### F. GENERAL PROVISIONS

1. APPLICABLE LAW. This agreement shall be construed and interpreted under and pursuant to the laws of the State of California, and any local ordinances of the County and City of Madera. The parties to this agreement agree that venue for any action or claim arising out of, or in connection with this agreement shall be in the Superior Court for County of Madera, California.

2. INVALIDITY. If any term, condition or provision of this agreement, or the application thereof, to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this agreement shall not be affected thereby, and each and every other term, condition or provision of this agreement shall be valid and enforced as written to the fullest extent permitted by law.

3. AUTHORITY. Persons whose signatures appear hereon as LICENSEE represent that they are authorized to do so and represent and warrant that this license agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms and conditions.

4. SEVERABILITY. The illegality or invalidity of any provision or portion of this AGREEMENT shall not affect the validity of the remainder of the AGREEMENT and this AGREEMENT shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this AGREEMENT unenforceable.

5. NO ASSIGNMENT. Licensee shall not assign, transfer or delegate any right, obligations or duties under this AGREEMENT without the prior written consent of the City.

6. NO PARTNERSHIP. The parties are associated with each other only for the purposes and to the extent set forth in this AGREEMENT. Each party is and shall be an entity separate and distinct from

the other party and shall have the right to supervise, manage, operate, control and direct performance of the details incident to its duties under this AGREEMENT.

7. NO THIRD PARTY BENEFICIARIES. It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions of any part of the AGREEMENT to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms of provisions of the AGREEMENT.

8. PAROL EVIDENCE. This AGREEMENT constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this AGREEMENT specifically displays a mutual intent to amend a particular part of this AGREEMENT, general conflicts in language between any such attachment and this AGREEMENT shall be construed consistent with the terms of this AGREEMENT. Unless otherwise specifically authorized by the terms of this AGREEMENT, no modifications or amendment to this AGREEMENT shall be binding upon the parties unless the same is in writing and signed by the respective parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT the day and year shown below.

\_\_\_\_\_  
City of Madera - Licensor                      Licensee

By \_\_\_\_\_                      By \_\_\_\_\_