

IMPORTANT - READ CAREFULLY BEFORE USING THE WHITLEY COUNTY GEOGRAPHIC INFORMATION SYSTEMS DATA:

WHITLEY COUNTY, INDIANA IS WILLING TO PROVIDE YOU ACCESS TO ITS GEOGRAPHIC INFORMATION SYSTEMS (GIS) DATA ON A LIMITED BASIS ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS DATA USAGE AGREEMENT. PLEASE READ THE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE WHITLEY COUNTY GEOGRAPHIC INFORMATION SYSTEMS DATA. BY MAKING USE OF THE PROVIDED DATA, YOU ARE INDICATING YOUR ACCEPTANCE OF THE WHITLEY COUNTY LIMITED DATA USAGE AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS AS STATED, THEN WHITLEY COUNTY IS UNWILLING TO ALLOW ACCESS TO THE GEOGRAPHIC INFORMATION SYSTEM AND USAGE OF THE DATA. IN SUCH A CASE, ALL ACCESS MUST CEASE AND ALL DATA PRODUCTS MUST BE RETURNED TO WHITLEY COUNTY IMMEDIATELY.

LIMITED DATA USAGE AGREEMENT

This is a limited data usage and access agreement, and not an agreement for sale, between Whitley County, Indiana, located at 220 West Van Buren Street, Columbia City, Indiana 46725 ("Whitley County") and the Licensee identified on the signature page of this Agreement (the "Licensee"). This Limited Data Usage Agreement gives Licensee certain limited rights to use the GIS Data (as herein defined). All rights not specifically granted in this data usage agreement are reserved to Whitley County.

1. **GIS Data Defined.** As used herein, the term "GIS Data" refers to any raw GIS data and data products, electronic maps and/or data layers that is normally stored on Whitley County's server and that is made available to Licensee for Licensee's access and/or use and includes any such raw GIS data, electronic maps and/or data layers that is provided or made available to Licensee on some medium other than Whitley County's server. The term "GIS" refers to Geographical Information System.

2. **Grant of License.** Subject to the terms and conditions of this Agreement, Whitley County hereby grants to Licensee a personal, nonexclusive, nontransferable license to use the GIS Data that Whitley County provides or makes available to Licensee. Licensee shall protect the GIS Data from unauthorized use, reproduction, distribution, or publication. Whitley County reserves exclusive ownership of the data and the right to grant usage and access rights to the GIS Data.

3. **Proprietary Rights and Copyright.** Licensee acknowledges that the GIS Data: (i) contains proprietary and confidential property of Whitley County; (ii) is owned by Whitley County; and (iii) is protected by United States copyright laws and applicable international

copyright treaties and/or conventions.

4. **Permitted Uses.** Licensee may use the GIS Data only in connection with one of the following purposes:

- 4.1 "News" within the meaning of Indiana Code 5-14-3-3.5.
- 4.2 "Nonprofit activities" within the meaning of Indiana Code 5-14-3-3.5.
- 4.3 "Academic research" within the meaning of Indiana Code 5-14-3-3.5.
- 4.4 A public works project within Whitley County.

5. **Permitted Activities.** In connection with any permitted use as provided above:

5.1 Licensee may install the GIS Data onto permanent storage device(s) and reproduce a corresponding number of copies of the GIS Data for Licensee's own internal use by Licensee's own employees. Licensee shall ensure that all of Licensee's employees having access to the GIS Data are aware of and are in compliance with Licensee's obligations under this Agreement. Licensee may make the GIS Data available to third parties only with the prior written consent of Whitley County and only if such third party executes an agreement with Whitley County similar to this Agreement.

5.2 Licensee may modify the data provided by Whitley County and/or merge other data sets with the data and thereby produce derivative data. Licensee may merge the data with other software, programs, functions, and/or digital materials and thereby create derivative works. Derivative data and derivative works shall continue to be subject to the terms and conditions of this Agreement. Derivative data and derivative works shall provide the following copyright attribution notice acknowledging Whitley County's proprietary rights in the data: "Portions of this material include intellectual property of Whitley County, Indiana and are used herein by permission. Information shown on any map or other data provided is not warranted for accuracy or merchantability by Whitley County." If requested by Whitley County, derivative data and derivative works must be provided back to Whitley County in digital form in the same file format (e.g., shapefile, CAD file, etc.) in which the data was originally provided.

5.3 Licensee may use, copy, produce, and/or distribute derivative data and derivative works only in published hard-copy and/or in static, electronic (i.e., gif, jpeg, etc.) formats.

6. **Uses Expressly Not Permitted.** Licensee shall **not**:

6.1 Sell, rent, lease, sublicense, lend, assign, time-share, distribute or transfer, in whole or in part, or provide any third party access to, the GIS Data or Licensee's rights under

this Agreement.

6.2 Reverse engineer, decompile, or disassemble the GIS Data in an attempt to duplicate the proprietary and copyright-protected Whitley County data model(s) and/or export format(s).

6.3 Sell, market, and/or distribute the GIS Data or any derivative data or derivative works in digital form.

6.4 Remove or obscure any Whitley County copyright, proprietary, or trademark notices.

6.5 Use the GIS Data (or any information contained therein) for the purpose of selling, advertising or soliciting the purchase or sale of merchandise, goods or services or for any type of mass-marketing.

6.6 Sell, loan, give away, or otherwise deliver the GIS Data (or any information contained therein) to any other person or entity for the purpose of selling, advertising or soliciting the purchase or sale of merchandise, goods or services or for any type of mass-marketing.

7. **Term.** The limited data usage rights granted by this Agreement shall commence upon Licensee's receipt of the data and data products and shall continue until such time that: (i) Licensee has completed the contractual obligations for which the GIS Data were provided to the Licensee; (ii) Whitley County terminates this Agreement pursuant to the terms of this Agreement; or (iii) Licensee terminates this Agreement. Upon termination of this Agreement, Licensee shall then return to Whitley County all copies of the GIS Data and any derivative data and derivative works in digital form. Notwithstanding the termination of this Agreement, all provisions of this Agreement that operate to protect the rights of Whitley County with respect to the GIS Data shall remain in full force and effect.

8. **No Warranty.** GIS maps do not constitute a survey nor an engineering drawing. GIS data and data products are not warranted and Licensee expressly acknowledges that the data may contain some nonconformities, defects, or errors. Whitley County does not warrant that the data will meet Licensee's needs or expectations, that the use of the data will be uninterrupted, or that all nonconformities, defects, or errors can or will be corrected. Whitley County is not inviting reliance on this data. Reliance is at the Licensee's risk and Licensee should always verify actual data. **The GIS Data is provided "AS IS", without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.** Whitley County makes no warranties with respect to the intellectual property rights of third parties. If, by reason of any third party infringement claim, Licensee shall be prevented or enjoined from using the GIS Data, Whitley County's liability shall in no event exceed the amount paid by Licensee to Whitley County for the GIS Data.

9. **Exclusive Remedy and Limitation of Liability.** Whitley County's entire liability and Licensee's exclusive remedy under this Agreement shall be to terminate this Agreement upon Licensee returning the GIS Data and any derivative data and derivative works to Whitley County. In no event shall Whitley County be liable for costs of procurement of substitute goods or services, lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any direct, indirect, actual, special, incidental, punitive, exemplary consequential or other damages arising out of this Agreement or use of the GIS Data, however caused, on any theory of liability, and whether or not Whitley County has been advised of the possibility of such damage. These limitations shall apply notwithstanding any failure or essential purpose of any exclusive remedy.

10. **Remedies of Whitley County.** In the event of any breach of this Agreement by Licensee, Whitley County shall be entitled to: (i) terminate this Agreement by giving written notice to Licensee; and/or (ii) prohibit the Licensee from receiving any further electronic data from Whitley County; and/or (iii) institute and exercise any and all other rights and remedies which may be available at law or in equity arising by reason of such breach, including a lawsuit for injunctive relief, specific performance and/or damages; and (iv) recover all reasonable costs and expenses, including attorney fees, legal expenses, consultants' fees and court costs incurred by Whitley County due to such breach, all without relief from valuation and appraisal laws.

11. **No Implied Waivers.** No failure or delay by Whitley County in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Whitley County.

12. **Export Regulation.** Licensee acknowledges that this Agreement and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders relating to the export of data. Licensee agrees to comply with all laws, regulations, and orders of the United States in regard to any export of technical data. Licensee agrees not to disclose or re-export any technical data received under this Agreement in or to any countries for which the United States Government requires an export license or other supporting documentation at the time of export or transfer, unless Licensee has obtained prior written authorization from Whitley County and the U.S. Office of Export Control.

13. **Severability.** If any provision(s) of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14. **Governing Law.** This Agreement, entered into in Whitley County, Indiana, shall be construed and enforced in accordance with and be governed by the laws of the United States of America and the State of Indiana without reference to conflict of law principles. The parties hereby consent to the personal jurisdiction exclusively of the courts of Whitley County, Indiana and waive their rights to change venue.

15. **Entire Agreement.** The parties agree that this constitutes the sole and entire agreement of the parties as to the matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto.

16. **Execution; Authority.** If the Licensee is not an individual, the undersigned individual represents and warrants to Whitley County that the undersigned has full authority to execute this Agreement on behalf of Licensee and that this Agreement, once executed by the undersigned individual, shall be binding on the Licensee.

IN WITNESS WHEREOF, this Agreement is executed by Licensee on the date indicated below.

Name of Licensee:
Street Address:
City, State, Zip Code:
Telephone No.:
Email:

Authorized Signature:

Print:

Office / Title:

Date:
