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3. The Licensee will not be liable for inadvertent unauthorized use of proprietary data or information, provided that upon discovery of such inadvertent, unauthorized use, the Licensee notifies the City and cooperates to prevent any further unauthorized use of the proprietary data and information in the Licensee's possession.
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2. To the extent the City discloses proprietary data and information pursuant to this Agreement, the Licensee acknowledges that the City claims and reserves all rights and benefits afforded proprietary information under law, that this Agreement does not effect any transfer of title or interest in or to any proprietary data or information of the City, and that Licensee is granted only a limited right of use of such proprietary data and information as set forth in this Agreement.

## **LIMITED WARRANTY**

1. The City warrants that it has the right to convey the data and information provided under this Agreement, and that the Licensee's use of the data in accordance with the terms of this Agreement does not and will not violate any applicable law, rule or regulation; any contracts with third parties; or any third-party rights in any U.S. patent, U.S. copyright, trademark, trade secret, or similar right.
2. **ALL DATA AND INFORMATION PROVIDED UNDER THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS. NO LIABILITY IS ASSUMED BY THE CITY FOR THE ACCURACY, COMPLETENESS, CONDITION, SUITABILITY OR PERFORMANCE OF THE DATA AND INFORMATION PROVIDED HEREUNDER. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, THE CITY DISCLAIMS ALL WARRANTIES RESPECTING THE DATA AND INFORMATION PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** The Licensee will be solely responsible for the selection, installation, use, efficiency and suitability of the data and information.

## **LIMITATION OF REMEDIES**

1. Except for City liability for damages for infringement of intellectual property rights, the City will not be liable for any indirect, exemplary, incidental or consequential damages arising out of or otherwise relating to the use of the data or information, however caused, including, but not limited to, loss of data, business interruption, loss of profits, or other economic loss, even if the City has been advised of the possibility of such damages.
2. City shall have no other liability with regard to the Data. City does not warrant that the Data will meet the requirements of Licensee or that the operation of the Data will be error free, or that Data defects will be corrected. The entire risk as to the quality and usefulness of the data

and the entire risk arising out of the use or performance of this Data and documentation rests with Licensee. In no event shall City, or anyone else involved in the creation, production or delivery of this Data, be liable for any damages whatsoever whether in contract or in tort, including but not limited to lost profits, lost savings, lost data, business interruption, computer failure or malfunction, or other pecuniary loss or any direct, indirect or incidental damages or other economic consequential damages, or for any claim or demand against Licensee by any other party, arising out of the use or inability to use this Data, even if City, or anyone else involved in the creation, production or delivery of this Data, has been advised of the possibility of such damages.

The limitation of remedies described in this Section also apply to any third-party supplier of materials to City. The limitations of liabilities of City and its third-party suppliers are not cumulative. Each such third-party supplier is an intended beneficiary of this Section.

## **GENERAL**

1. This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind between the parties, and the rights and obligations of the parties will be only those expressly set forth in this Agreement. Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between the City and either the Licensee or any employee or agent of the Licensee. The Licensee will be liable to the City for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
2. Neither party will be liable for any costs or damages due to nonperformance under this Agreement arising out of any cause or event not within the reasonable control of such party and without its fault or negligence. Such circumstances will include, but will not be limited to, acts of God, acts of war, civil commotions, riots, strikes, lockouts, disruptions of telecommunications transmissions, accident, fire, water damages, flood, earthquake, or other natural catastrophes.
3. This Agreement will be governed and construed in all respects in accordance with the laws of the State of Arizona.
4. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral or written agreements concerning the use of such data and information. Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties.
5. The City agrees to defend, at its own expense, and to indemnify and hold harmless the Licensee and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys' fees, suffered or incurred by the Licensee as a result of any claim that the data and information provided within

the scope of this Agreement infringes any U.S. patents, U.S. copyrights, trademarks, trade secrets or other intellectual property rights of third parties, provided that the City is promptly notified in writing of such claim. The City will have the sole right to control the defense of all such claims, lawsuits and other proceedings including the right to settle the same. In no event will the Licensee settle any such claim, lawsuit or proceeding without the City's prior express written approval. The Licensee will cooperate with the City in a reasonable way to facilitate the settlement or defense of such claim. The foregoing states the entire liability of the City with respect to infringement of any intellectual property rights by the data or information or any parts thereof. The City's obligations under this paragraph shall survive the termination of this Agreement for any reason.

The foregoing provisions of this Section will not apply to the extent that such infringement or unauthorized use arises from, or which could have been avoided except for (1) the Licensee's modification of the data and information or use thereof in a manner not contemplated by this Agreement, (2) the failure of the Licensee to use any corrections or modifications made available by the City, (3) data, information, materials, instructions, or specifications provided by or on behalf of the Licensee, or (4) the use of the data and information in combination with any data and information not provided by the City, unless the City's data and information infringes the third party's intellectual property rights in the absence of such combination.

**IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.**

Company Name: \_\_\_\_\_ (if applicable)

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email \_\_\_\_\_

(optional & used only to assist us to notify owners of the GIS CD-ROM when new updates are available)

