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## MEMORANDUM

**To:** Mayor and City Council

**From:** Warren Hutmacher, City Manager

**Date:** November 22, 2010

**Subject:** **Geographic Information System (GIS) Data Sharing Agreement with the City of Sandy Springs**

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### **BACKGROUND**

Attached to this memorandum is a proposed Inter-Governmental Agreement (IGA) with the City of Sandy Springs to share GIS data with the City of Sandy Springs. By charter, the City Manager is not authorized to execute inter-governmental contracts. This is the exclusive domain of the City Council.

The City of Dunwoody has spent considerable funds over the past two years developing a "state of the art" GIS system. The GIS information we have developed is of significant commercial value. This Agreement allows the City of Dunwoody to provide the City of Sandy Springs with selected Dunwoody GIS data. This is to our advantage since we share a common border and have partnerships in place with the City of Sandy Springs. We have plans to use their data in the future and an Agreement is in the works to accomplish this.

This Agreement sets certain limitations and protects the City of Dunwoody. We will use a similar Agreement with other parties in the future if we choose to share our data.

### **RECOMMENDATION**

The attached Agreement has been reviewed by staff and approved by our City Attorney. There is no funding required. I recommend approval.

**CITY OF DUNWOODY GIS DATA LICENSE AGREEMENT**

This Intergovernmental Agreement (the "Agreement"), is entered into by and between the City of Dunwoody, Georgia, a political subdivision of the State of Georgia (hereinafter referred to as "Dunwoody") and the City of Sandy Springs, Georgia, a political subdivision of the State of Georgia (hereinafter referred to as "Sandy Springs").

Principal office address for Dunwoody and Sandy Springs

City of Dunwoody, Georgia  
41 Perimeter Center East  
Dunwoody, Georgia 30346

City of Sandy Springs, Georgia  
7840 Roswell Road, Suite 500  
Sandy Springs, Georgia 30350

**WHEREAS**, Dunwoody has developed a geographic information system ("hereinafter referred to as "GIS"), which is composed of hardware, operating systems, applications software, a proprietary mapping database, and other miscellaneous derived databases; and

**WHEREAS**, Licensee wishes to obtain access to GIS Data, as defined herein, or portions thereof for its own use; and

**WHEREAS**, O.C.G.A. § 50-29-2 authorizes Dunwoody to enter into license agreements to protect the security and integrity of the GIS, to limit Dunwoody's liability for providing the services and products, to restrict the duplication and resale of the services and products provided, and to ensure that the public is fairly and reasonably compensated for the records or information or access provided; and

**WHEREAS**, Dunwoody is willing to make said GIS Data available to Licensee subject to the terms and conditions of O.C.G.A. § 50-29-2, as well as those terms and conditions set forth herein; now

**THEREFORE**, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensee agrees to accept and Dunwoody agrees to grant a license to use GIS Data, as defined herein, in accordance with the terms and conditions of this Agreement. The parties hereto intend to be legally bound hereby, covenant and agree as follows:

**1.0 Definitions**

1.1 GIS Data is defined broadly as the electronic database used to produce Dunwoody maps, the related attribute data for the maps, and any digital aerial imagery.

**2.0 Grant of License**

2.1 Upon this Agreement's execution, Dunwoody grants Licensee, subject to the provisions of this Agreement, a nonexclusive license to use its GIS Data solely for internal use by the Licensee. This is a limited use license, which may not be transferred, sold, assigned, leased, or sub-licensed.

2.2 This Agreement does not constitute a sale of any title or interest in any GIS Data. Dunwoody reserves all rights to the GIS Data not expressly granted to Licensee by this Agreement.

2.3 Licensee expressly acknowledges that Dunwoody is the sole owner of all intellectual property rights and all proprietary interests in the GIS Data, and in any modification thereof, derived work, or work-in-progress

relating thereto. This includes, but is not limited to, all written materials, logos, trademarks, trade names, copyrights, patent applications, patents and/or trade secrets.

- 2.4 GIS Data will be provided or translated and delivered in the format(s) listed on the attached schedule, based on the proprietary software licensed to Dunwoody and used in conjunction with Dunwoody's GIS. Licensee represents and warrants that Licensee has the right to receive the licensed GIS Data in the named format(s).

### **3.0 Licensee Responsibilities**

- 3.1 Licensee, at its own expense, shall provide all necessary hardware, software and equipment needed to access and use the GIS Data.
- 3.2 Licensee shall take reasonable precautions to protect the security and integrity of the GIS Data and to prevent unauthorized access, use, or duplication of the GIS Data or any part thereof by third parties. Reasonable precautions include those Licensee takes to protect its proprietary software, hardware, or information. See O.C.G.A. § 50-29-2(c) (1).
- 3.3 Licensee acknowledges and agrees that GIS Data is developed and maintained solely for Dunwoody government functions. Licensee bears sole responsibility for use and interpretation of the GIS Data. Dunwoody does not provide GIS Data interpretation services or application software support.

### **4.0 Permitted Uses**

- 4.1 Licensee may install the GIS Data on any computer(s) in its organization, as needed.
- 4.2 GIS Data is licensed solely for the internal use of the Licensee.
- 4.3 Licensee has authority to duplicate the GIS Data only for purposes of back-up and/or recovery. Licensee has the responsibility to protect from loss or damage all items including, but not limited to, any materials, data, applications, tapes, hardware and software programs that have been delivered to Licensee by, or on behalf of, Dunwoody under this Agreement. Once delivery is complete, the replacement of any lost, damaged, or destroyed items shall be at the sole expense of Licensee.
- 4.4 Map data may be plotted or represented at various scales other than the original source of the data. In that case, Licensee is responsible for adhering to standard industry mapping practices, which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets. For example, if the parcel data scale is 1" = 400' and the City boundary data set is 1" = 1000', the data sets should be used at a scale of 1" = 1000' or smaller.

### **5.0 Prohibited Uses**

- 5.1 Licensee shall not disclose, publish, sell, assign, lease, sublicense, market, distribute, loan, offer, or transfer the GIS Data, or any portion thereof, to third parties except as may be specifically authorized in a written addendum to this Agreement. Any unauthorized distribution of GIS Data, or any GIS Data derived products, is prohibited. Licensee shall not use the GIS Data to operate a service bureau, nor shall Licensee engage in any processing of the GIS Data for other persons or entities. Licensee shall not use the GIS Data in any manner or for any purpose not expressly authorized by this Agreement.

- 5.2 Licensee shall not alter, augment, or remove any copyright notice contained in or on the GIS Data.
- 5.3 Licensee shall not duplicate, in whole or in part, GIS Data or GIS Data derived products for purposes of resale. See O.C.G.A. § 50-29-2(c) (3). Licensee is authorized to make copies of the GIS Data solely for backup or archival purposes, as may be necessary. See Section 4.3.
- 5.4 Licensee shall have no additional interests, licenses, or rights to the GIS Data other than those expressly set forth herein or in a written addendum to this Agreement.

## **6.0 Acknowledgments and Data Quality**

- 6.1 Licensee acknowledges that the GIS Data is complex and that it may contain some nonconformities, defects, or errors. GIS Data is dynamic, and the data elements are periodically updated to represent best available information. Work derived from outdated GIS databases could be incomplete and contain errors. For this reason, the period of this license is limited and the use of updated data is recommended. Licensee is solely responsible for obtaining updated data. GIS Data is complete only in the sense that it compiles best available information, and is not the result of comprehensive site specific field surveys. Dunwoody does not warrant that the GIS Data will meet Licensee's needs or expectations, or that all nonconformities can or will be corrected. Licensee accepts the GIS Data "as is."
- 6.2 Dunwoody gives no express or implied warranties, representations, conditions, indemnities of any kind, statutory or otherwise, with respect to GIS data content, accuracy, currency or completeness, or any warranties concerning the results to be obtained from queries or use of GIS data. This includes, but is not limited to, implied warranties of merchantability, quality, and fitness for a particular purpose or those implied warranties arising from a course of dealing or trade usage. All GIS data is expressly provided "as is" and with all faults.
- 6.3 Licensee is responsible for ensuring the accuracy, currency and other qualities of all products (including maps, reports, displays and analysis) produced from or in connection with the GIS Data.
- 6.4 Any authorized use of information derived or supplemented by use of the GIS Data (see Section 5.1) provided in press releases, reports, or publications shall acknowledge Dunwoody as the source, and include the limitations contained in section 6.2.
- 6.5 Licensee acknowledges and agrees that it shall have no remedy at law or in equity against Dunwoody for providing inaccurate, incomplete or otherwise defective data.
- 6.6 No employee or agent of Dunwoody is authorized to waive or modify this Section.

## **7.0 Limitation of Dunwoody's Liability: Indemnity**

- 7.1 Dunwoody shall not be liable under any circumstances for any lost profits, lost savings, or any other consequential damages which may arise from any use of the GIS Data. Dunwoody shall bear no liability if the GIS Data does not meet any particular purpose for which Licensee may use the GIS Data, nor shall Dunwoody be liable under any circumstances for the installation of the GIS Data or for any results obtained from its use. Dunwoody shall not be liable to Licensee under any circumstances for claims of any kind, including, but not limited to, claims for punitive or exemplary damages, claims for indirect, consequential, or specific damages, claims for damages to third party products, and/or any claims for damages relating to work interruptions, delays, errors, or omissions.

7.2 To the extent permitted by Georgia law, Licensee shall indemnify and hold harmless Dunwoody against all loss, damages, claims, expenses or attorneys' fees which may be sustained or asserted against Dunwoody arising from or connected with any breach by Licensee of any provision of this Agreement.

**8.0 Licensee's Duties upon Expiration or Termination**

8.1 Immediately upon expiration or termination of the License granted by this Agreement, Licensee shall delete from its computers, workstations, and other storage devices all copies of all or any portions of the GIS Data which are in its possession, custody, or control.

**9.0 Term and Termination**

9.1 The term of this License is perpetual and does not expire.

9.2 Without limiting other remedies available in law or equity, in the event Licensee breaches its obligations under this Agreement, Dunwoody shall have the right to terminate this Agreement immediately by furnishing Licensee written notice of the breach and notice of its intent to terminate. Upon termination, Licensee shall immediately return all copies of its GIS Data to Dunwoody.

**10.0 Payment by Licensee**

10.1 Dunwoody shall grant the license at no charge to the Licensee.

**11.0 Delivery**

11.1 Dunwoody shall make Licensee's copy of the GIS Data available to the Licensee not later than fifteen (15) working days following the effective date of this Agreement. Delivery is contingent upon advance payment or payment at the time the GIS Data is made available to Licensee.

11.2 Dunwoody shall in no event be liable for any damages or penalty for delay in delivery, or for failure to give notice of delay in delivery.

11.3 Dunwoody shall be excused from performance hereunder during the time and to the extent it is prevented from obtaining or performing the service, by reason of act of God, fire, reduction or failure of power source, failure of the system's environment, commandeering of materials, products, plants or facilities by the state or federal government, or for any reason outside of Dunwoody's control.

**12.0 Independent Contractor**

12.1 Dunwoody is authorized by O.C.G.A. § 50-29-2 to enter into contracts for the distribution and sale of GIS Data, which is generally public record. Accordingly, this Agreement in no way establishes or evidences a partnership or joint venture between the parties. Further, this Agreement shall not be construed or interpreted as making Licensee, its agents and/or employees, the agents, employees or representatives of Dunwoody and vice versa.

**13.0 Miscellaneous**

- 13.1 This Agreement and any attachments constitute the complete and exclusive agreement between Dunwoody and Licensee relating to its subject matter. This Agreement supersedes all prior and contemporaneous representations, correspondence, proposals, or agreements relating to its subject matter, whether oral or written.
- 13.2 Neither this Agreement nor any of the rights granted by it may be assigned or transferred by Licensee. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.
- 13.3 This Agreement shall be governed by the laws of the State of Georgia. The parties agree that the Superior Court of DeKalb County shall be the proper forum for resolving any dispute that may arise under this Agreement.
- 13.4 If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.
- 13.5 Licensee shall be responsible for payment of all taxes, fees, assessments, or levies on the items covered by this Agreement or arising out of or imposed by reason of the transactions contemplated by this Agreement.
- 13.6 Licensee agrees that Dunwoody has the right to modify or discontinue the GIS Data License at any time whatsoever, without prior written notice to Licensee. In the event the GIS Data is modified or discontinued, Dunwoody shall have no obligation to modify, replace, or make any refund with respect to any copy of the GIS Data previously delivered to Licensee.

(Signatures on next page)

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and affixed their seals this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

SANDY SPRINGS, GEORGIA

ATTEST:

\_\_\_\_\_  
Eva Galambos  
Mayor

\_\_\_\_\_  
Michael Casey  
City Clerk (SEAL)

Approved as to Form:

Approved as to Substance:

\_\_\_\_\_  
Wendell K. Willard  
City Attorney

\_\_\_\_\_  
John McDonough  
City Manager

DUNWOODY, GEORGIA

ATTEST:

\_\_\_\_\_  
Ken Wright  
Mayor

\_\_\_\_\_  
Sharon Lowery  
City Clerk (SEAL)

Approved as to Form:

Approved as to Substance:

\_\_\_\_\_  
Brian Anderson  
City Attorney

\_\_\_\_\_  
Warren Hutmacher  
City Manager

CITY OF DUNWOODY GIS DATA PRICE SCHEDULE

Data is provided upon receipt of a signed City of Dunwoody GIS Data License Agreement. Data is provided on either CD or DVD only. Data is shipped via FedEx standard from the City. Currently, the following data is available:

*Data Set No. 1: Cadastral*

*Contents:* City boundary, land district and land lot boundaries, subdivision boundaries, tax parcels  
*Format:* SHP  
*Price:* \$ 600.00 (includes handling and shipping)  
*Notes:* Covers the entire City. Does not contain ownership or tax assessment information.

*Data Set No. 2: Aerial Orthographic Photography*

*Contents:* Full color, 0.5 foot pixel resolution  
*Format:* MrSID  
*Price:* \$  
*Notes:*

*Data Set No. 3: Topography*

*Contents:* 2 foot interval contours  
*Format:* ESRI Geodatabase  
*Price:* \$  
*Notes:*