

DIGITAL DATA DISTRIBUTION AGREEMENT

PURPOSE AND NATURE OF THE AGREEMENT

YOU ("User") have been granted access to the File Transfer Protocol Site ("FTP Site") hosted by the CITY OF WEST DES MOINES, IOWA ("West Des Moines"). The FTP Site provides access to digital geographic data and map documents ("GIS Data") developed by West Des Moines. Access to the FTP Site and GIS Data is provided solely as a convenience to assist User in supporting West Des Moines' and User's business activities. Downloading, opening, or viewing the GIS Data from the FTP Site shall constitute evidence of User's acceptance of a non-exclusive, non-transferable, revocable license to use the GIS Data subject to the restrictions and limitations set forth in the agreement.

RECITALS

WHEREAS, West Des Moines has developed and maintained certain portions of a Geographic Information System, specifically digital geographic data and map documents of West Des Moines. This data is referred to hereinafter simply as "GIS Data"; and

WHEREAS, User has requested GIS Data from West Des Moines and West Des Moines has agreed to distribute its GIS Data to User for the sole purposes and subject to the terms and conditions set forth in this agreement; and

WHEREAS, West Des Moines has agreed to allow User access to the GIS Data, subject to the terms of this agreement, and at no cost to User

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties agree as follows:

I. DESCRIPTION OF GIS DATA

A. Products Included

The GIS Data distributed by West Des Moines are in the North American (horizontal) Datum 1983 (NAD83), Iowa South Zone, State Plane 1983 Coordinate System. The GIS Data are distributed as ArcView shapefiles or geodatabases, Microsoft Access databases, MicroStation DGN files, portable document format (PDF) files, ArcMap map documents (MXD), published map files (PMF), or similar formats. All data to be distributed pursuant to this agreement shall be distributed on the FTP site.

B. Products and Services Excluded

West Des Moines is not responsible for providing to User any hardware, software, or technical support needed to access and use the FTP Site or GIS Data.

II. USE OF THE GIS DATA

A. Permitted Uses

1. User may make internal digital copies of the GIS Data solely for the purpose of supporting its business activity.
2. User may make hard copies of the GIS Data solely for the purposes of supporting its business activity. This shall not restrict User from making hard copies for public and non-commercial use.

B. Restrictions

1. User shall not sell, loan, rent, assign, distribute or otherwise transfer the GIS Data in any digital form or format except for the purpose of supporting its business activity.
2. User shall not duplicate the GIS Data in digital format except as provided by the agreement. User may translate the GIS Data into other digital formats. These “conversions” shall be subject to the same restrictions as the GIS Data under this agreement.
3. User shall not distribute the GIS Data publicly via email, FTP, or internet URL.
4. The above-listed restrictions shall apply to the extent allowed under Iowa Code Chapter 22 or other applicable federal and state public disclosure provisions.

C. Rights Reserved

1. User is granted the right to use the GIS Data supplied by West Des Moines solely for its use under the terms set out in this agreement. All other rights, title, and interest to this GIS Data are retained by West Des Moines including, but not limited to, the right to license the products covered by this agreement to other users.

III. LIMITED WARRANTY

A. Limited Warranty of GIS Data

1. West Des Moines has agreed to provide access to the GIS Data to User free of charge for User's benefits. As such, the GIS Data is provided "AS IS" without warranty or any representation of accuracy, timeliness, or completeness.
2. The burden for determining accuracy, timeliness, completeness, and fitness of the GIS Data for the appropriateness of use rests solely on User.
3. West Des Moines makes no warranties, express or implied, as to the use of the GIS Data. There are no implied warranties of fitness for a particular purpose.
4. User acknowledges and accepts the limitations of the GIS Data, including the fact that it is dynamic and in a constant state of maintenance, correction, and update.
5. User also acknowledges and accepts the terms and conditions of any disclaimers which may accompany the delivery of the GIS Data.
6. West Des Moines assumes no liability for the completeness or changes in the GIS Data. West Des Moines at its sole discretion may provide updates to the GIS Data.

B. Liability

West Des Moines shall not be liable for any activity involving the GIS Data with respect to the following:

1. Loss or damage to public or private property and/or the death or injury of public agents or private persons
2. The fitness of the GIS Data for a particular purpose
3. The use of the GIS Data or the results obtained therefrom.

C. Remedy

1. User's sole and exclusive remedy for breach of this limited warranty will be to discontinue use of the GIS Data.
2. West Des Moines shall, at its sole discretion and for the time it deems sufficient, repair or update the GIS Data.

IV. ASSIGNMENT AND TRANSFER

User shall not disclose, lease, sell, distribute, make, transfer, sublicense, assign, or otherwise make public the GIS Data, or engage in any other transaction which has the effect of transferring the right of use of the GIS Data without the prior written consent of West Des Moines.

V. DURATION AND TERMINATION

The term of this agreement shall not be restricted to time (except as provided in the next paragraph).

The term of this agreement shall expire at such time as User discontinues the use of the GIS Data unless User fails to comply with any of the terms and conditions provided herein at which time the agreement shall be revoked.

This agreement and User's right to use the GIS Data shall terminate if it fails to comply with any provision of this agreement. Additionally, West Des Moines may terminate this agreement by discontinuing User's access to the GIS Data at any time.

VI. CREDIT

Any hard copy maps produced utilizing the GIS Data shall clearly indicate the source. If the GIS Data or map has been modified in any way, those modifications must be described on the hard copy map. User specifically agrees not to misrepresent any data, nor to imply that changes were approved by West Des Moines.

The source to be listed is: City of West Des Moines.

VII. INDEMNIFICATION

User agrees to indemnify and hold harmless West Des Moines and its elected officials, officers, agents, consultants, contractors and employees against any and all liability, claims, actions, demands, or damages arising from or connected with User's use of the FTP Site and GIS Data, including the costs of defense and attorney's fees.

VIII. MISCELLANEOUS

The parties agree to the following additional conditions:

1. In the event of a dispute, jurisdiction shall reside in the state of Iowa, and this agreement shall be governed and controlled by the laws of the state of Iowa..
2. Should any of the provisions of this agreement be held invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be impaired thereby.
3. No action, regardless of form, arising out of this agreement may be brought by either party more than two years after the cause arising therefrom.