



Data Exchange License Agreement

THIS LICENSE AGREEMENT (hereinafter referred to as the "AGREEMENT") made and dated this _____ day of _____ 2001, by and between TRUCKEE DONNER PUBLIC UTILITY DISTRICT (hereinafter referred to as the "District"), a Public Utility District organized and operating pursuant to California Public Utilities Code Section 15501, et seq., with offices at 11570 Donner Pass Road, Truckee, California and _____, a _____ with offices at _____, (hereinafter referred to as "Recipient"). Each or both may also hereinafter be referred to as the "Party" or "Parties" respectively.

WHEREAS, the District represents that it possesses certain technical, digital, documentary, Land Base, Facility, photographic, or other information or data which the District considers proprietary to it and relates to its Geographic Information System (GIS) data base (hereinafter referred to as "PROPRIETARY INFORMATION"), and

WHEREAS, Recipient desires to use portions of the District's PROPRIETARY INFORMATION for the purposes of developing maps and mapping applications, and Recipient desires to obtain the right to use the District's PROPRIETARY INFORMATION and updates thereto in exchange for;

- A. Access to Recipient's GIS database, as updated. The access shall consist of supplying requested Land Base data, aerial photos, and/or Facility data.
- B. Authorization to use GIS information obtained from Recipient to update and augment the District's PROPRIETARY INFORMATION. Recipient shall be under no obligation as a result of data quality used to augment the District's PROPRIETARY INFORMATION.
- C. Maps and other types of data developed with the aid of the District's PROPRIETARY INFORMATION.

WHEREAS, it is recognized that in anticipation of any current or future need to share information or coordinate projects between the Parties, it may be both necessary and desirable that the District provide to Recipient the above-described PROPRIETARY INFORMATION.

NOW, THEREFORE, in consideration of these promises, and of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. The District shall provide to Recipient certain PROPRIETARY INFORMATION for LIMITED USE ONLY as set forth in Section 3 of this Agreement, including requested Land Base, Aerial Photos, and/or Facility Data. The PROPRIETARY INFORMATION to be disclosed by the District may be contained in documents, electronic media (Arc/Info Geodatabase, Arcview Shapefile, DXF and/or .TIF format only), and other materials.

2. The Parties hereto agree that the District retains all right, title, and interest in and to the disclosed PROPRIETARY INFORMATION and that Recipient is not hereby granted any right, license or interest in the PROPRIETARY INFORMATION, except as specifically provided in this Agreement. Recipient shall not distribute, sell, license, or reproduce the PROPRIETARY INFORMATION, except as specifically set forth herein. The District shall be under no obligation as a result of this Agreement to disclose any PROPRIETARY INFORMATION other than the PROPRIETARY INFORMATION listed in Exhibit A, attached.
3. The District grants Recipient the right to make limited public disclosure of the PROPRIETARY INFORMATION obtained from the District. This disclosure may include posting data on any website operated or controlled by Recipient, producing and distributing paper or mylar using the data (eg. Construction drawings, plan sets, maps), publishing articles relying on or citing the data, or such other types of disclosure as the District may authorize in advance in writing. Any disclosure or release of data obtained from the District shall attribute the data to the District; such attribution shall take the form of text incorporated into example maps and drawings and summary data tables as well as all project reports, papers, and articles presented or published for public disclosure. Such authorized disclosure of information shall in no way operate to modify Recipient's obligation to protect the propriety nature of other PROPRIETARY INFORMATION in accordance with the terms of this AGREEMENT. All information disclosed pursuant to this paragraph shall no longer be deemed PROPRIETARY INFORMATION in accordance with paragraph 8c, but this reclassification, as nonproprietary information shall only affect the particular form in which the PROPRIETARY INFORMATION is disclosed. (Limited disclosure of PROPRIETARY INFORMATION as permitted pursuant to this AGREEMENT shall not change the proprietary character of the PROPRIETARY INFORMATION, but the District shall have no proprietary interest in the example maps, drawings, summary data tables, or other forms in which the PROPRIETARY INFORMATION is disclosed.)
4. The District is not providing, nor is Recipient obtaining, the right to make copies of the PROPRIETARY INFORMATION furnished pursuant to this AGREEMENT, except that Recipient may make backup copies for its own use. Recipient shall also not obtain as a result of this Agreement the right to make the District's PROPRIETARY INFORMATION available to or distribute to third parties in either computer or non-computer readable form, except as set forth in Paragraph 3, or the right to use the District's PROPRIETARY INFORMATION for purposes of design, analysis, or any information gathering for third parties. The District reserves the entire right to reproduce and make available to others, on such terms and conditions as the District may determine, the District's PROPRIETARY INFORMATION in either computer or non-computer readable form. The points of contact for the parties with respect to the provision of PROPRIETARY INFORMATION are as follows:

FOR Truckee Donner Public Utility District

Geographic System Information Coordinator
P.O. Box 309
11570 Donner Pass Road,
Truckee, California 96160
530-582-3952

For _____
Name: _____
Title: _____
Address: _____
City: _____
Phone: _____

5. Recipient shall further restrict disclosure of such PROPRIETARY INFORMATION to only those employees who have a job-related need for the PROPRIETARY INFORMATION and who have been advised of and agreed to the restrictions on disclosure and use. Upon discovery by Recipient of any unauthorized use or disclosure, Recipient shall immediately notify the District and shall endeavor to prevent further unauthorized use or disclosure.

6. In the event of any breach of this AGREEMENT by Recipient, Recipient agrees that injunctive relief will be essential for the District's protection. Accordingly, the District and Recipient agree and consent that in the event of any breach or violation of this AGREEMENT, the District may obtain such injunctive relief, in addition to any other legal remedy and/or damages, as it believes necessary in order to prevent any continued violation of the terms of this AGREEMENT. Recipient further acknowledges that any disclosure of PROPRIETARY INFORMATION in breach of this AGREEMENT may result in substantial damages to the District, and that the District has the right to initiate legal action to recover its damages in the event of such a breach. In the event that the District based on this AGREEMENT seeks injunctive relief, Recipient further agrees to waive the requirement that the District post a bond or other security.

7. Any PROPRIETARY INFORMATION delivered by the District to Recipient pursuant to this AGREEMENT shall be for use solely as specified above. No other use of PROPRIETARY INFORMATION may be made without the prior written consent of The District.

8. Recipient's obligations with respect to disclosing and using PROPRIETARY INFORMATION, as set forth in this AGREEMENT, are not applicable to any such information or data if same is:

- a. In the public domain at the time of receipt or comes into the public domain thereafter through no act of Recipient in breach of the AGREEMENT, or
- b. Known to Recipient prior to disclosure by the District, or
- c. Disclosed with the prior written approval of the District, or
- d. Independently developed, without aid from the District's PROPRIETARY INFORMATION, by Recipient, or
- e. Lawfully disclosed to Recipient by a third party under conditions permitting such disclosure, or
- f. Made available by the District to a third party without restriction.

9. The term of this AGREEMENT shall be for as long as the information is in possession of Recipient, or until the District supplies Recipient with new PROPRIETARY DATA, or until terminated by either Party. Either Party shall have the right to terminate the AGREEMENT upon 30 days notice to Recipient.

10. Upon expiration or termination of this AGREEMENT, in accordance with its terms, Recipient will, within a reasonable period of time thereafter, return all PROPRIETARY INFORMATION received from the District under this AGREEMENT along with all copies thereof, or certify in writing that all such PROPRIETARY INFORMATION has been destroyed.

11. PROPRIETARY INFORMATION transmitted to Recipient pursuant to this AGREEMENT shall not constitute any representation, warranty, assurance, guarantee or inducement by the District to Recipient that any patent or other proprietary intellectual property rights owned or controlled by any third party have not been infringed, and nothing in this AGREEMENT shall be construed as a warranty or representation of any kind with respect to the content or accuracy of data, documents and information transmitted by the District under this AGREEMENT.

12. Recipient agrees to indemnify and hold harmless the District against any and all claims, causes of action or damages, liabilities, or attorneys' fees brought as a result of or arising from Recipient's use of the PROPRIETARY INFORMATION.

13. The Parties hereto agree that any suits or claims arising from this AGREEMENT shall be brought in the County of Nevada, State of California.

14. This AGREEMENT shall be governed by and interpreted in accordance with the laws of the State of California.

15. This AGREEMENT contains the entire understanding between the Parties relative to the protection of PROPRIETARY INFORMATION and supersedes all prior and collateral communication, reports, and understandings between the Parties in respect thereto. No change to, modification of, alteration of, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of both Parties.

16. This AGREEMENT shall apply in lieu of and notwithstanding any specific legend or statement associated with the PROPRIETARY INFORMATION, and the duties of the Parties shall be determined exclusively by the aforementioned terms and conditions.

17. If Recipient is a public agency subject to the disclosure requirements of the California Public Records Act (California Government Code Sections 6250-6270), the federal Freedom of Information Act, or any other state legislation which would require public disclosure of the PROPRIETARY INFORMATION upon request, Recipient shall notify the District immediately of any and all Public Records Act requests received regarding the PROPRIETARY INFORMATION. The District will respond within five (5) business days and inform Recipient of the District's approval or disapproval of disclosure. In the event that the District disapproves of disclosure, the District will hold Recipient harmless against any legal challenges to nondisclosure of the PROPRIETARY INFORMATION. The decision of the District concerning the applicability or inapplicability of the Public Records Act to a given request for information shall be final. Disclosure of PROPRIETARY INFORMATION by Recipient in response to a Public Records Act request where the District has determined that the requested information is not subject to disclosure shall constitute a breach of this AGREEMENT.

The duly authorized officers of the Parties have executed this AGREEMENT on the date first set forth above.

Truckee Donner Public Utility District

By: _____

Date: _____

ATTEST: _____

Recipient: _____

By: _____

Date: _____

ATTEST: _____