AGREEMENT BY AND BETWEEN
THE CITY OF CONYERS
AND

_____

This Agreement (which shall hereinafter be referred to as "Agreement") is made and entered into this __ day of _____, 20____, by and between the City of Conyers, Georgia, a municipal corporation chartered and existing under the laws of the State of Georgia, acting by and through its Mayor and Council (hereinafter referred to as "City") and _____, a (limited liability company)(corporation) organized and existing under the laws of the State of Georgia (hereinafter referred to as "Licensee") whose address is _____;

WITNESSETH:

WHEREAS, the City has created and maintains a geographic information system (GIS) in electronic form;

WHEREAS, in accordance with the authority provided under O.C.G.A. §50-29-2, the City may contract to provide access to such GIS records and information, and the City may license and establish fees for providing access to such records and information;

WHEREAS, the Licensee desires to access certain GIS records and information from the City in exchange for paying certain fees;

WHEREAS, the City desires 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, in consideration of the mutual undertakings and covenants contained herein, and for other and further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City agrees and covenants to grant Licensee a license to use geographic information system data on the terms and conditions provided herein as follows:

1. **Recitals.** The foregoing recitals, each being true, hereby are made a part of this Agreement by reference.

2. **Definitions.**
   a. "GIS Data" shall be defined broadly and shall include, but not be limited to, the electronic database used to produce maps, the related attribute data for maps and any digital aerial imagery.

3. **Grant of License.**
   a. Upon the execution of this Agreement, the City grants to Licensee a nonexclusive license to use the City's GIS Data for Licensee's own internal usage.
   b. This Agreement does not constitute a sale of any rights, title or interest in any GIS Data by the City. The City reserves all rights to the GIS Data not expressly granted to Licensee by this Agreement.
   c. Licensee expressly acknowledges that the City is the sole owner of all intellectual property rights and all proprietary interest in the GIS Data and in any modification, derived work, or work-in-progress relating to such data. This includes, but is not limited to, all written materials, copyrights, patent applications, patents and trade secrets.
   d. This Agreement conveys no right, title or interest in any logos, trade names, trademarks, service marks or emblems of City to Licensee. Licensee shall not have the right to use, refer to, or incorporate in marketing or other materials any logos, names, trade names, trademarks, service marks or emblems of City unless it enters into a separate agreement with City.
   e. Notwithstanding the above prohibition, any authorized use of information derived or supplemented by use of the GIS Data provided in press releases, reports, or publications shall acknowledge the City as the source of said GIS Data.
   f. GIS Data will be provided in the format listed in the GIS Data price schedule, which may be modified from time to time.

4. **Permitted Uses.**
   a. Licensee shall only install the GIS Data on any computer(s) within Licensee's organization.
   b. Licensee has the authority to duplicate the GIS Data only for the limited purposes of back-up and/or recovery. Licensee shall be solely responsible for protecting from loss or damage all GIS Data and other such items including, but not limited to, any materials, data, applications, tapes, hardware and software programs. The replacement of any lost, damaged or destroyed GIS Data and other such items shall be at Licensee's sole expense.
   c. 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 data scale is 1" = 200' and the City boundary data set is 1" = 2000', then the data sets should be used at a scale of 1"= 2000' or smaller.

5. **Prohibited Uses.**
   a. Licensee shall not disclose, publish, sell, assign, lease, sublicense, market, distribute, lend, offer or transfer any portion of the GIS Data to any 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 strictly prohibited. Licensee shall not engage in any processing of the GIS Data for other persons or entities.
   b. Licensee shall not use the GIS data in any manner or for any purpose not expressly authorized by this Agreement.
   c. Licensee shall not alter, augment or remove any copyright notice contained in or on the GIS Data.
   d. Licensee shall not duplicate, in whole or in part, the GIS Data or the GIS Data derived products for the purposes of resale or otherwise.

6. **Provision of Information to the City.** Licensee agrees to provide to the City the following information, without cost:
   a. Any GPS information that Licensee may acquire regarding section corners, quarters, or sixteenths located within Licensee's boundaries.
   b. Updated information regarding Licensee's boundaries and infrastructure.
   c. Any additional digital GIS Data information for areas within the City's boundaries.

7. **Acknowledgements and Data Quality.**
   a. Licensee acknowledges that the GIS Data is complex and that it may contain nonconformities, defects or errors. Licensee agrees to accept the GIS Data "as is". GIS Data is dynamic, and data elements are periodically updated to represent the best available information. Therefore, work derived from outdated GIS Data could be incomplete and contain errors. For this reason, City recommends the use of updated information. Licensee is solely responsible for obtaining updated data, at Licensee's sole expense.
   b. GIS Data is complete only in the sense that it consists of the best information available at the time of this Agreement. GIS Data is not the result of comprehensive site specific field surveys.

c. 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.

8. **No Warranties.** The GIS Data has been developed solely for the internal use by the City. Licensee expressly agrees that Licensee's use of the GIS Data is at Licensee's sole risk and undertaking. Licensee understands and acknowledges that the GIS Data is subject to change. The City makes no warranties or guarantees, either express or implied, as to the completeness, accuracy or correctness of the GIS Data. The City does not accept any liability arising from any incomplete, inaccurate or incorrect information contained within the GIS Data. The City makes no warranties of merchantability or fitness for a particular purpose, whether express or implied.

9. **Liability.** The parties agree that the City shall not be liable for any direct, indirect, incidental, consequential, punitive, exemplary, or special damages, whether foreseeable or unforeseeable, arising out of the use of the GIS Data or the inability to use the GIS Data. Further, the City shall not be liable under any circumstances for any lost profits, lost savings, or any other damages that may arise from any use of the GIS Data. The City shall bear no liability if the GIS Data does not meet any particular purpose for which Licensee may desire to use the GIS Data or if the GIS Data fails to meet any of Licensee's needs or expectations. The City shall not be liable under any circumstances for either the instillation of the GIS Data or for any results obtained from its use. The City shall not be liable for any claims for damages to third parties, for damages related to work interruptions, delays, errors, or omissions or for damages related to attorney's fees.

10. **Indemnification.** Licensee shall indemnify and hold harmless the City against all loss, damages, claims, expenses or attorney's fees that may be sustained or asserted against the City arising from or connected with any and all claims of any kind arising from this Agreement.

11. **Breach and Remedies.**
    a. In the event that Licensee breaches any of the terms, conditions or covenants of this Agreement, the license granted herein shall immediately cease and the City shall have the right to immediately pursue any and all legal or equitable remedies available to it, including, but not limited to, injunctive relief.
    b. Licensee acknowledges that the use or disclosure of the GIS Data in violation of this Agreement may cause irreparable harm to the City.
    c. The term of this License is perpetual and does not expire.
    d. Without limiting any other remedies available in law or in equity, in the event Licensee breaches its obligations under this Agreement, the City shall have

the right to immediately terminate this Agreement by furnishing Licensee written notice of the breach and notice that the Agreement is terminated. Upon termination of this Agreement, Licensee shall immediately return to the City all copies of Licensee's GIS Data, and Licensee shall delete any and all portions of the GIS Data from Licensee's computers, workstations, and other storage copies.

12. **Payment by Licensee.** In exchange for the GIS Data and in accordance with the terms and conditions of this Agreement, Licensee shall pay a one-time fee described in the GIS Data price schedule, which is attached hereto and incorporated by reference as if fully set forth herein. Any further request for additional, replacement or lost GIS Data will require the execution of a new Agreement under the payment terms then in effect. Said fees are based upon the recovery of the actual development cost of creating or providing the GIS Data and upon the recovery of a reasonable portion of the costs associated with building and maintaining the GIS Data. Such fees may include the cost to the City of time, equipment, and personnel in the creation, purchase, development, production or update of the geographic information system.

13. **Delivery.**
    a. The City shall make Licensee's copy of the GIS Data available to the Licensee within fifteen (15) business days following the effective date of this Agreement. Delivery is contingent upon advance payment of the fees or payment of the fees contemporaneously with the delivery.
    b. City shall in no event be liable for any damages or penalty due to any delivery delay or for failure to give notice of a delivery delay.
    c. City shall be excused from performance hereunder during the time and to the extent that it is prevented from performing delivery by reason of events outside of the City's control, including, but not limited to, acts of God, fire, reduction or failure of power source, failure of the system's environment, and inclement weather.

14. **Independent Contractor.** This Agreement shall not establish a partnership or joint venture between the parties.

15. **Addresses-Notices.** Except for legal process, which may be served as by law provided, all notices required or desired to be given with respect to this Agreement shall be in writing and shall be deemed to have been given when hand delivered or five (5) days after deposited, postage prepaid, with the United States Postal Service (or its official successor), certified, return receipt requested, properly addresses as follows:

To City:
City of Conyers
1174 Scott Street, S.E.
Conyers, Georgia 30012
Attention: Director of Planning and Inspection Services
City Manager

To Licensee:

_____
_____
_____
_____

Such addresses may be changed from time to time by either party by written notice to the other.

16. **Waiver of Rights.** No failure or delay by City to exercise any right or power given it or to insist upon strict compliance by Licensee with any obligation imposed on it, and no custom or practice of either party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by City or any right it has herein to demand strict compliance with the terms hereof by Licensee.

17. **Entire Agreement.** This Agreement contains the sole and entire agreement of City and Licensee and no prior or contemporaneous oral or written representation or agreement between the parties and affecting the subject matter hereof shall have legal effect. No representative, agent or employee of City has or shall have any authority to waive any provision of this Agreement unless such waiver is expressly made in writing and signed by an authorized representative of City.

18. **Severability.** If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during its term, the intention of the parties hereto is that the remaining parts of this Agreement shall not be affected thereby.

19. **Captions.** The captions used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

20. **Non-Assignability.** Neither this Agreement nor the rights granted by it shall be assigned or transferred by the Licensee under any circumstances. This restriction on assignments and 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.

21. **Choice of Law.** All provisions of this Agreement are in all respects (including, but not limited to, all matters of interpretation, construction, enforcement, performance and the consequences of breach) to be governed and controlled by the internal laws of the State of Georgia, as amended and now in effect. In the event of any dispute between the parties arising out of or in connection with this Agreement, the parties agree that the proper forum for any cause of action shall be in the Superior Court of Rockdale County, Georgia.

22. **Multiple Originals.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and be admissible into evidence or used for any purpose without the production of the other counterparts.

23. **Approvals.** Except as specifically set forth herein, whenever the consent of a party hereto is necessary pursuant hereto, the parties hereto mutually agree that such consent shall not be unreasonably withheld, delayed or denied by the person from whom such consent is sought.

24. **Interpretation of Agreement.** The parties to this Agreement agree that this Agreement was negotiated fairly between them at arm's length and that the final terms of this Agreement are the product of the parties' negotiations. Each party warrants and represents that it has had the right to seek and receive legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The parties agree that this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a party or parties on the grounds that the party or parties drafted or was more responsible for drafting the provision(s).

{SIGNATURES CONTINUED ON FOLLOWING PAGE}

IN WITNESS WHEREOF, City and Licensee have caused this Agreement to be executed under seal by their respective duty authorized representatives as of the date first above written.

CITY OF CONYERS, GEORGIA

By:_____
Randal S. Mills, Mayor

[SEAL]

Attest:_____
City Clerk

Approved as to form:

_____
City Attorney

_____,
Licensee

By:_____
Its:_____

Attest:_____
Its:_____