

INTERGOVERNMENTAL AGREEMENT

FOR

ACCESS TO GIS DATA

BETWEEN

LIVINGSTON COUNTY

AND

TOWNSHIP OF HOWELL

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APPENDIX A

INTERGOVERNMENTAL AGREEMENT FOR ACCESS TO GIS DATA

THIS AGREEMENT is entered on _____, 200_, between Livingston County, Michigan, a body corporate and the Township of Howell. _____.

RECITALS

WHEREAS, Section 3(1)(d) of the State of Michigan's Enhanced Access to Public Records Act (MCL 15.443(1)(d); MSA 4.1803(3)(1)(d)) authorizes the County and Township to enter into an intergovernmental agreement which permits each of the parties to the agreement to have for their official use access to or output from the other's geographical information system; and

WHEREAS, the intergovernmental agreements authorized by the State of Michigan's Enhanced Access to Public Records Act must contain certain provisions mandated by the Act; and

WHEREAS, the County and the Township desire to enter into a intergovernmental agreement as authorized by Section 3(1)(d) of the State of Michigan Enhanced Access to Public Records Act to exchange access to and/or output from their geographical information system.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, **IT IS HEREBY AGREED**, as follows:

1. DEFINITIONS.

"Basemap" shall mean the Livingston County GIS Core Basemap, consisting of digital orthophotos, street, geopolitical, ownership and tax parcel, and hydrographic data elements with all associated data tables.

"County" refers to Livingston County, Michigan.

"County GIS Data Standards" shall mean a set of agreed upon criteria or rules for the collection, documentation, management, analysis, exchange, distribution, and display of GIS data. The following types of standards to be addressed are:

- a) GIS Database Design
- b) Hardware, Software and Interface
- c) Programming and Application Development
- d) Local Area Network and Wide Area Network
- e) Output standards for reports, maps and other media
- f) Systems Operation standards for security, archiving and maintenance
- g) Metadata Standards

“County GIS Layers” shall mean all works created by the County which are not derived from the County’s Basemap. Examples include Environmental, Engineering and Road Maintenance, Public Health, and Economic Development layers.

“Data” shall mean digital databases or data layers, which contain references to geographic locations.

“Derivative Products” shall mean all works created by the TOWNSHIP which are based upon or incorporate all or part of the Basemap, such as revision, modification, translation, abridgement, condensation, expansion, collection, compilation, or any other form in the Basemap may be recast, transformed, or, adopted in the form of digital Data.

“Enhanced Access to Public Records Act” shall mean State of Michigan Public Act No. 462 of the Public Acts of 1996, as amended. [MCL 15.441 et seq; MSA 4.1803(1) et seq]

“GIS Manager” shall refer to manager of the County’s GIS Management Department.

“Metadata” shall mean information that describes the characteristics of the Data, which must be in accordance with the GIS Data Standards developed by the County’s Geographic Information Systems Management Department.

“Parcel Identifier” shall mean the numbering scheme for identifying parcels in the Basemap.

“Third Party” shall mean a person or entity other than a party to this Agreement.

“Township” shall mean the Township of Howell, Michigan.

“Township’s Contact” shall mean the individual designated in Section 20 of this Agreement.

2. TERM OF AGREEMENT

2.1 This Agreement is effective from the date it is executed by the authorized representative of both parties. It will remain in effect until termination by either the County or the Township.

3. OFFICIAL COUNTY BASEMAP

3.1 The Basemap is the official basemap of the Livingston County Geographic Information Systems Management Department and shall be adopted by the Township as the official basemap of its GIS.

4. OWNERSHIP

4.1 This Agreement does not constitute a transfer of title or interest in the Basemap or any other County GIS Layer. Any portion of this Data that is modified or merged into another computer file or program by the Township, or is integrated with other programs or data to form derivative products, shall continue to be subject to the provisions of this Shared Access Agreement. The County retains ownership of the Basemap, County GIS Layers, and all such portions.

4.2 The County reserves the right to incorporate all Municipal GIS layers into the County's GIS database. The Township will retain ownership of any such incorporated data and the right to control any redistribution or use of the data.

5. DELIVERIES

5.1 The County agrees to provide the Basemap and County GIS Layers, in electronic media format as detailed in Appendix A of this Agreement, to the Township.

5.2 The Township agrees to provide its available municipal GIS layers, data, in electronic media format as detailed in Appendix A of this Agreement, to the County.

5.3 Each party in this Agreement will provide corrections and updates to the other as specified in Appendix A.

6. ACCESS TO ADDITIONAL PARCEL ATTRIBUTES

6.1 The County will provide ownership and tax parcel layer data containing a single unique parcel identifier for each parcel. If the Township requires additional parcel attribute data, such as property ownership or tax related information, the County will provide access to these data sets under the terms of this Agreement.

7. DISTRIBUTION OF THE GIS BASEMAP

7.1 The Basemap, or any other County GIS Layers, are to be solely retained by the Township. In no instance, except as provided for in Sections 7.2 and 7.4 of this Agreement, is this Data to be placed on the Internet, sold, leased, copied, loaned, or transferred, in whole or part to other public agencies, private individuals, private firms, or non-profit entities.

7.2 Following a request for Data under the Enhanced Access to Public Records Act, the Township may release the Basemap, County GIS Layers, or other Derivative Products in whole or in part to a third party. The Township agrees to notify the County's GIS Management Department prior to any release of this Data. In the event of any such release, the Township will collect from the third party all reasonable fees for the Data as detailed in Appendix "A" of this Agreement, and reimburse these fees to the County. Reasonable fees are those established in accordance with the Enhanced Access to Public Records Act, and are approved by each party's legislative body.

7.3 The Township agrees to attach a copy of the disclaimer, Section 15.4 of this Intergovernmental Agreement, with any release of the Basemap, Data, and County GIS Layers, or their derivative products under the Enhanced Access to Public Records Act.

7.4 The Township agrees to notify the County prior to the release of Data associated with the County's Basemap through the Michigan Freedom of Information Act, Michigan Public Act No. 442 of the Public Acts of 1976 [MCL 15.231 et seq; MSA 4.1801(1)].

7.5 Any release to third parties as authorized by this Agreement of the Basemap or County GIS Layers, in whole or in part shall be accompanied by a written notice of the County's ownership thereof and that they shall not be included in or subject to any patents or copyrights which the third party may obtain on products it produces therefrom.

7.6 Any release of the Basemap or County GIS Layers, in whole or in part, to third parties performing services and/or working on projects for the Township (e.g., Engineers, Consultants, Contractors, etc.) shall be restricted to the performance of such services or work on such Project and may not be used for any other purpose or project. The Township as a condition of releasing the Basemap or any County GIS Layers shall require the third party in either the contract for the services or project or in a separate Nondisclosure Agreement agree to restrict its use of such materials to the services to be performed on the project and not use it for any other purpose or pass it on to any other party without requiring similar restrictions.

8. DISTRIBUTION OF TOWNSHIP'S GIS DATA

8.1 All Municipal GIS Layers provided to the County through this Agreement, are to be solely retained by the County. In no instance, except as provided in Sections 8.2, 8.3, or 8.4 of this Agreement, is this Data to be placed on the internet, sold, leased, copied, loaned, or transferred, in whole or part to other public agencies, private individuals, private firms, or non-profit entities.

8.2 Following a request for Data under the Enhanced Access to Public Records Act, the County may release Municipal GIS Layers, or other Derivative Products in whole or in part to a third party. The County agrees to notify the Township's Contact prior to any release of this Data. In the event of such a release, the County will collect from the third party all reasonable fees for the Data as detailed in Appendix "A" of this Agreement, and reimburse these fees to the Township.

8.3 Municipal GIS Layers may be distributed without charge, or, at a reduced fee, as prescribed in Section 8.4 of this Agreement, if it is determined that the Data distribution will benefit the General Public. Examples may include, but are not limited to instances when:

- a) The information is critical to public health or safety;
- b) The information is required for non-profit research purposes such as academic or public interest research;
- c) The information is required to meet legal, programmatic or governmental objectives;
- d) The information explains the rights, entitlements and/or obligations of individuals;
- e) The cost of administering the fees would exceed the revenue to be collected;
- f) The reasonable fee established would have a serious detrimental impact on the financial position of particular groups or classes of users;
- g) The reasonable fee established would limit the number of users enough to compromise achieving program or other governmental objective.

8.4 If the County determines that a fee for a Municipal Layer should be waived or reduced, and the Data is solely within the geographic extent of the Township, the County must first obtain written authorization from the Township's Contact prior to releasing the Data at the waived or reduced fee.

8.5 If the County determines a fee for any Municipal Layer should be waived or reduced, and if the geographic extent of this Data includes multiple cities or Townships, the County may distribute this Data at the waived or reduced fee without prior approval of the Township. The County's GIS Manager shall authorize all such fee waivers or reductions and provide written notification to the Township's GIS Contact within thirty (30) days after the release of Municipal Layer Data at the waived or reduced fee.

8.6 The County agrees to attach a copy of the disclaimer, Section 15.4 of this Intergovernmental Agreement, with any release of Municipal Layer Data under the Enhanced Access to Public Records Act.

8.7 The County agrees to notify the Township prior to the release of data associated with the Township's Municipal Data Layers through the Michigan Freedom of Information Act.

8.8 Any release to third parties as authorized by this Agreement of the Township's Municipal GIS Layers, in whole or in part shall be accompanied by a written notice of the Township's ownership thereof and that they shall not be included in or subject to any patents or copyrights which the third party may obtain on products it produces therefrom.

8.9 Any release of the Township's Municipal GIS Layers, in whole or in part, to third parties performing services and/or working on projects for the County (e.g., Engineers, Consultants, Contractors, etc.) shall be restricted to the performance of such services or work on such project and may not be used for any other purpose or project. The County as a condition of releasing the Township's Municipal GIS Layers, in whole or in part, shall require the third party in either the contract for the services or project or in a separate Nondisclosure Agreement agree to restrict its use of such materials to the services to be performed or the project and not use it for any other purpose or pass it on to any other party without requiring similar restrictions.

9. MODIFICATIONS TO THE GIS

9.1 The Township agrees to report all proposed changes, modifications, or corrections to the Basemap or County GIS Layers, to the County. All proposed changes should be reported within a reasonable period of time as specified in Appendix A. The Township agrees to designate a single representative who will coordinate the submission of all such change requests.

9.2 The County agrees to report all proposed changes, modifications, or corrections to Municipal GIS Layers to the Township's representatives, designated above, within a reasonable period of time as specified in Appendix A.

10. ADHERENCE TO STANDARDS

10.1 The County and the Township agrees to conform to the County's GIS Data Standards as may be amended from time to time.

11. ADHERENCE TO METADATA STANDARDS

11.1 The Township agrees to provide current metadata for Municipal GIS Layers incorporated into the County's GIS that conform to the County's GIS Data Standards. The

County agrees to provide current metadata for the Basemap and all County GIS Layers incorporated into either the Township's or the County's GIS that conform to the County's GIS Data Standards.

12. TERMINATION

12.1 This Agreement may be terminated, in whole or in part, in writing by the County for its convenience. The Township must be given: (1) not less than thirty (30) calendar days written notice or intent to terminate; and (2) an opportunity for consultation with the County prior to termination.

12.2 This Agreement may be terminated, in whole or in part, in writing by the Township for its convenience. The County must be given: (1) not less than thirty (30) calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the Township prior to termination.

12.3 Upon such termination, the Township must cease use of the County Basemap and all other County GIS Layers and return the same to the County. In addition, the County will cease use of all of Township 's Municipal GIS Layers and return the same to the Township.

12.4 All notices of termination will be sent certified mail, postage prepaid and return receipt requested.

13. ASSIGNMENT

13.1 This Agreement may not be assigned, transferred, or in any way disposed of by either party without first having attained written approval of the other.

14. GOVERNING LAW

This Agreement, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan.

15. LIABILITY

15.1 All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities of the Township will be the sole responsibility of the Township and not the responsibility of the County. All liability, loss, or damage as a result of claims, demands, costs, or judgements arising out of activities of the County will be the sole responsibility of the County and not the responsibility of the Township. Nothing herein will be construed as a waiver of any governmental immunity, as provided by statute or modified by court decisions, by either the County, its agencies, elected or appointed officers, employees or the Township, and its agencies, officers and employees.

15.2 In providing Data (or access to it), neither the County nor the Township assumes any obligation to assist each other in the use of the Data, or in the development, use, or maintenance of any applications applied to the Data.

15.3 The County assumes no responsibility for the accuracy of any subsequent copies of the Basemap or its derivative products made and distributed by the Township. The Township assumes no responsibility for the accuracy of any Municipal GIS Layer or its derivative products made and distributed by the County.

15.4 NEITHER THE COUNTY, NOR ITS OFFICERS OR EMPLOYEES MAKES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, FUNCTIONING, COMPLETENESS, OR USEFULNESS OF THE COUNTY BASEMAP OR OTHER COUNTY GIS LAYERS. NEITHER THE TOWNSHIP NOR ITS OFFICERS OR EMPLOYEES MAKES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, FUNCTIONING, COMPLETENESS, OR USEFULNESS OF THE TOWNSHIP'S MUNICIPAL GIS LAYERS.

16. NON-DISCRIMINATION

16.1 The County and the Township agree that each shall comply with all Federal and State of Michigan laws, rules, and regulations governing fair employment practices and equal employment opportunity. The County and the Township further agree that each it will require any contractor performing services under this Agreement to agree to the provisions of this Section.

16.2 As required by law, neither the County nor the Township shall discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly, related to employment because of disability that is unrelated to the individual's ability to perform the duties of a particular job or position, race, color, religion, national origin, age, sex, height, weight, or marital status.

16.3 Breach of this section shall be a material breach of this Agreement.

17. RELATIONSHIP OF PARTIES

17.1 The relationship of the Township to the County is and will continue to be that of an independent contractor. No liability or benefits, such as workers' disability compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship accrues to either party or either party's agent, subcontractor or employee as a result of this Agreement. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent,

employee, or subcontractor. Regarding liability for benefits as described in this paragraph, the County agrees to hold the Township harmless from any claims, and any related costs or expense; and the Township agrees to hold the County harmless from any claims, and any related cost or expense.

18. COMPLIANCE WITH LAWS

18.1 The Parties to this Agreement shall comply with and shall require its employees to comply with all applicable laws and regulations. The Township is not required to comply with any municipal ordinances other than its own.

18.2 Breach of this Article shall be a material breach of this Agreement.

19. AMENDMENTS

19.1 No amendment to this Agreement is effective unless it references this Agreement, is written, is signed and acknowledged by duly authorized representatives of both parties.

20. NOTICES

20.1 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Agreement must be given in writing, signed by an authorized representative, and either personally delivered or mailed by first-class mail and addressed as follows:

If to the Township:

If to the **County**:

Livingston County GIS Management Department
Dawn Siegel, GIS Manager
304 East Grand River, Suite 101
Howell, Michigan 48843

Phone (517) 548-3230
Fax (517) 540-0214

Email: gis@co.livingston.mi.us

20.2 All notices are deemed given on the day of personal delivery or if mailed on the first business day following the day of mailing. Either party to this Agreement may change its address for the receipt of notices at any time by giving notice to the other as provided.

20.3 Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested.

21. WAIVERS

21.1 No failure or delay on the part of either the County or the Township in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

22. SEVERABILITY OF PROVISIONS

22.1 If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State of Michigan or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement. Where the deletion of the invalid or unenforceable clause or provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the clause or provision was rendered invalid or unenforceable.

23. MERGER CLAUSE

23.1 This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this

document. Neither party has made any representations except those expressly set forth in this Agreement.

24. NONEXCLUSIVE AGREEMENT

24.1 The County or the Township may contract with other parties providing the same or similar exchange of materials and services so long as each Party's obligations to one another contained in this Agreement will not be affected in any manner.

25. ENHANCED ACCESS REQUIREMENTS

25.1 The Township shall provide access to its Municipal GIS Layers Data, listed in Appendix "A" of this Agreement, to the County at no cost to the County. The County shall provide access to its Basemap and County GIS Layers, listed in Appendix "A" of this Agreement, to the Township at no cost to the Township. The consideration for this Agreement is the mutual benefit both parties will accrue from the sharing of data.

25.2 The public purpose for which GIS Data is exchanged between the County and the Township is to facilitate the sharing of data for the development of geographic information systems throughout Southeast Michigan.

25.3 If the County receives a request from a third party for the any Municipal GIS Layer, the County shall collect from the third party a fee as prescribed in the Enhanced Access to Public Records Act unless the fee is waived or reduced in accordance with Section 8 of this Agreement and convey to the Township that portion of any fee collected that is directly attributable to the operating expenses of the Township in furnishing the Municipal GIS Layers to a third party and which allows the Township to recover its operating expenses over time. (Enhanced Access to Public Records Act)

25.4 If the Township receives a request from a third party for the Basemap or any other GIS Layer, the Township shall collect from the third party a fee as prescribed in the Enhanced Access to Public Records Act and convey to the County that portion of any fee collected that is directly attributable to the operating expenses of the County in furnishing the Basemap or other GIS Layers to a third party and which allows the County to recover its operating expenses over time. (Enhanced Access to Public Records Act).

25.5 A complete inventory of all Data shared through this Agreement with reasonable fees established by each party's governing body is provided in Appendix "A" of this Agreement.

26. AUTHORIZATION AND CAPABILITY

26.1 The County warrants to the Township and the Township warrants to the County that it has taken all actions necessary for the authorization, execution, delivery and performance of this Agreement, and that each is ready to perform its obligations. The County further warrants that the person signing this Agreement is authorized to do so on behalf of the County and is empowered to bind the County to this Agreement. The Township further warrants that the person signing this Agreement is authorized to do so on behalf of the Township and is empowered to bind the Township to this Agreement.

26.2 This Agreement is effective only upon review and approval by the Livingston County Board of Commissioners.

26.3 This Agreement is effective only upon review and approval by the Township's Board of Trustees.

27. SIGNATURE

TOWNSHIP:

LIVINGSTON COUNTY:

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM JANUARY 9, 2004
WITH BLANKS TO BE FILLED IN
COHL, STOKER, TOSKEY & McGLINCHEY,
P.C.

By: _____
Robert D. Townsend