

PIMA COUNTY

GIS DATA PRODUCTS

License Agreement

NOTICE TO USER: READ THIS CONTRACT CAREFULLY. BY OBTAINING OR USING ALL OR ANY PORTION OF THE DATA SUPPLIED YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE LIMITATIONS ON LICENSE TERM, TRANSFERABILITY, WARRANTY, AND LIABILITY. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE DATA AND ON WHOSE BEHALF IT IS USED. IF YOU DO NOT AGREE, DO NOT OBTAIN THIS DATA.

Pima County and others retain all data intellectual property. Pima County permits you to use the data only in accordance with the terms of this Agreement. Use of third party products in conjunction with the data may be subject to other terms and conditions typically found in a separate license agreement.

1.1 Grant of License.

Subject to the terms of the Agreement and these Standard Terms and Conditions, Pima County, the Licensor, will provide the designated data set(s), which the Licensee may use beginning on the "Effective Date", as set forth in Attachment A. Pima County hereby grants Licensee a non-exclusive right to utilize "Data" described in Attachment A, in whole or in part, and to incorporate the Data into other derivative works for the Licensee's organizational use. The license fee includes access to updates of included data as available, determined, designated, and provided by Pima County, for a one year period. No instruction, interpretation, manipulation or enhancement of the data shall be guaranteed to be provided by Pima County.

1.2 Terms and Conditions

In consideration of the mutual covenants and promises herein contained, the Licensee agrees as follows:

1. Attachments A and B are incorporated herein and made a part hereof for all purposes.
2. All right, title and interest in the Data, without limitation, shall remain with Pima County and original owners. Licensee does not obtain any ownership or intellectual property rights in the Data. Instead, Customer obtains a limited non-exclusive license to use the Data and output generated there from for the authorized purposes specified herein. Customer will at all times use due diligence to safeguard and protect all of the Data. Pima County reserves all rights not expressly granted to the Licensee.
3. Licensee may copy licensed data for internal use and backup purposes only and not for use by any other agency or entity. Licensed data may be used only on computer equipment owned or leased by the Licensee or when computer use is deemed for the primary benefit of the Licensee. Unauthorized transfer of the Data constitutes a breach of this license, enacting immediate and complete revocation of granted license. Licensee may not assign, sublicense or transfer all or any part of Licensee's rights or obligations under this Agreement without Pima County's written consent and any attempt to the contrary will be a material breach of this Agreement. Pima County may withhold such consent in its sole discretion. Transfer of this Agreement terminates any right to Licensee's continued possession or use of the Data and Licensee must promptly return any original media and destroy all remaining copies of the Data in Licensee's possession or under Licensee's control.
4. This Agreement and written amendments constitutes the entire and only agreement between the parties and all other prior negotiations, agreements, representations and understandings are superseded hereby.
5. This Agreement may not be changed, terminated, or amended without the prior written approval of Pima County. The Licensee shall be bound by the specifications set forth in the terms and conditions of this Agreement. No course of conduct, action, or inaction on Pima County's part shall be deemed to be a waiver of any of Pima County's rights under the Agreement. In event of termination, or default of Licensee obligations, Licensee forfeits any rights to utilize or retain

licensed Data and must delete said Data from all forms of storage. Hard media copies shall be returned to Pima County.

6. Licensee shall indemnify and hold harmless Pima County, its successors, assignees and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any use or application of the data.

7. In the event of a breach of any of the provisions of this Agreement by the Licensee or any employee, representative or agent of the Licensee, Pima County shall be entitled to preliminary and permanent injunctive relief to enforce the provisions hereof; but nothing shall preclude Pima County from pursuing any action or other remedy, including for damages, for any breach of this Agreement, all of which shall be cumulative. In the event that Pima County prevails in any such action, shall be entitled to recover from the Licensee all attorneys' fees incurred in connection therewith.

8. This Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of Arizona.

1.3 Payments and Pricing

Licensee agrees to pay to Pima County all fees in the amounts required prior to provision of data. All fees are nonrefundable.

The fee amount is based upon the data sets designated in Attachment A. Pima County retains the right to set pricing, at any time, at its own discretion and according to its own criteria. Pricing of previously licensed data is subject to change upon end of any license period

1.4 Obtaining Data

Pima County will provide access to data by Licensee according to methods defined by Pima County. These methods may include but are not limited to providing Licensee with FTP or comparable file transfer access. Delivery mechanism may include data not included in this license. Access or delivery of other data does not constitute license to use other data. In any case, burden to obtain data and any available updates rests upon Licensee. Pima County makes no guarantee of distribution through any particular medium such as CD, DVD, or other. Use of certain media for distribution may require a surcharge, in addition to specified data set charges.

Availability or accessibility of data is not guaranteed as addressed in Attachment B.

1.4 Disclaimer and Use Restriction

Licensee is hereby made aware of disclaimer material and is required to adhere to included use restriction terms as described in Attachment B.

1.5 Commercial Use

This agreement is set forth with the understanding of commercial use by Licensee. Non-Commercial users may not be subject to this entire agreement and may receive alternate pricing options, including use of data at no charge. For purposes of this agreement commercial use is defined according to Attachment C.

This License Agreement is subject to the terms and conditions stated above. In witness whereof, this license is executed on the date set forth under the parties named. Persons whose signatures appear as, or for Licensee, represent that they are authorized to do so and represent and warrant that this Licensing Agreement is a legal, valid and binding obligation as to Licensee and is enforceable in accordance with its terms.

Pima County
Authorized Signature
Name
Title
Date

Licensee
Authorized Signature
Name
Title
Date
Organization
Address
Phone
Email Address

Attachment A

Description (Data Set Names):	Fee	Delivery Method

Effective Date:	End Date of Data Update Period:


Attachment B

Pima County Geographic Information Systems Disclaimer and Use Restrictions

Ownership of Products

All information, web pages, data (including digital data), maps, programs, software, studies, reports, patents, copyrights and plans obtained by and prepared for and by the Pima County Geographic Information Systems (hereafter "**Products**") shall remain the property of Pima County. It is expressly understood that Pima County (hereafter "**County**") has exclusive control of all information developed for this work. Any for-value use of Products shall be retained by the County and negotiated for use by the Pima County Geographic Information Systems. Requestor agrees that any misappropriation or misuse of the Products will cause serious damage to the County and that, because money damages may not constitute sufficient compensation, any misappropriation or misuse shall justify and allow the County to apply to any court having jurisdiction for an injunction or other proper relief and, if relief is granted, the County shall be entitled to the reasonable expenses of the action including attorney's fees.

Limitation of Use

County Products are provided only for use in a computerized records keeping system or for study maps to depict approximate locations. Any other use is not authorized by County. Products shall not be copied, reproduced or used in any form by any party other than User or an agent of User. Digital data shall not be used by any party for any commercial purpose without completing a [Verified Statement of Commercial Purpose Public Data Request](#)  and payment of fees. In addition to other remedies, a violation of this limitation of use may result in the assessment of penalties in accordance with [A.R.S. 39-121.03](#).

Products are for illustration purposes only and are not suitable for site-specific decision making. Products have not been prepared for and are not suitable for engineering, or surveying purposes. Generally, Products do not represent on-the-ground surveys and rather represent the approximate relative location of boundaries and features. Use of Products as an engineering tool is expressly forbidden. Products should not be used for making financial or any other commitments. The County provides these Products with the understanding that they are not guaranteed to be accurate, correct or complete and conclusions drawn from the Products are the responsibility of the User. While every effort has been made to ensure the accuracy, correctness and timeliness of materials presented anywhere within the Products, the County assumes no responsibility for errors or omissions, even if the County is advised of the possibility of such damage.

Project information is for planning purposes only. The listing of any project by the owner agency does not constitute an official commitment by that agency to build the project in

the time period shown, or at all. The information for any project is subject to change as the project development process proceeds over time.

Assumption of Risk

User understands and acknowledges that Products are subject to constant change and accuracy cannot be guaranteed. The County gathers information from different sources and agencies. ALL PRODUCTS ARE PROVIDED AS IS, WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. County does not warrant that the functions contained in the Products will meet the requirements of User or that the operation of Products will be uninterrupted or error free, or that defects will be corrected. The entire risk as to the quality, performance and usefulness of the Products rests with User.

Products may have a number of errors which may include but are not limited to the following types of errors:

- Spatial errors - The areas depicted by these Products are approximate, and are not necessarily accurate to surveying or engineering standards. X/Y coordinates may be in error by several hundred feet or more.
- Geometry errors - Displayed geometry may not be correct and may not correspond to legal descriptions or recordings.
- Registration errors - Geographic Information System (hereafter "GIS") data layers may not overlay each other correctly.
- Attribute errors - Database information may be incorrect.
- Currency errors - GIS data layers, databases and documents may not be the most current available or may not depict the specified time. All data is subject to constant change. Data input lags real-world changes by varying periods of time.
- Completeness errors - Data may be missing or data may be included that does not belong.
- Projection distortion - All map projections introduce distortion by representing the irregular shape of the earth's surface on flat maps. This affects feature shapes, angles, map distances and areas. We choose projections which minimize these distortions when viewing most County maps.
- Calculation errors - Results of calculations may not be exact due to rounding, precision of stored values or algorithm differences.
- Representation errors - Maps or other displays may not properly represent the data. For instance, a white line on a white background would appear as if it wasn't there. Color coded ("themed") map layers colors and categories may not match the current range of data values. Data may be displayed at an inappropriate scale. For example, **selecting map features on MapGuide maps changes the color of the displayed map features.** (Clear selected map features to ensure colors match the legend.)

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND/OR ANY OTHER TYPE WHETHER EXPRESSED OR IMPLIED. In no event

shall the County become liable to Users of these Products or any other party, for any loss or direct, indirect, special, incidental or consequential damages, including but not limited to time, money or goodwill, arising from the use or modification of the Products.

Availability

Availability of County Internet services and Products is not guaranteed. Applications, servers, and network connections may be unavailable at any time for maintenance or unscheduled outages. Outages may be of long duration. Do not create dependencies on these services for critical needs.

Indemnify; Defend; Hold Harmless

User releases County and their officers, agents, consultants, contractors and employees from any and all claims, actions or causes of action for damages including, but not limited to, any costs of recovering, reprogramming or reproducing and programs or data stored in or used with the Products, damage to property, damages for personal injury or for any lost profits, lost savings or other special, incidental or consequential damages arising out of the use of or inability to use the Products. User shall indemnify and hold harmless County, its officers, agents, consultants, contractors and employees from any and all liability claims or damages to any person or property arising from or connected with the use of the Products.

Maintenance of Products

To assist the County in the maintenance of the Products, Users should provide the County information concerning errors or discrepancies found in using the Products. If there is an E-mail contact address on affected web page(s), then use it. Otherwise contact:

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Department
Geographic Information Systems
201 N. Stone Ave., 9th Floor
Tucson, Arizona 85701-1207

Phone: 520-740-6670
Fax: 520-791-6588
E-mail:
GISwebmaster@pima.gov

Logotype and Acknowledgement

When logotypes are provided with Products, they shall be clearly displayed on all copies or reproductions of the Products or parts of the Products. The Pima County Geographic Information Systems logotype on the Products shall not be removed or obscured. These logotypes should not be added to derivative products you develop.

Please use a text citation acknowledging Pima County as the source when County Products are used in the preparation of reports, papers, publications, maps, or other products.

Attachment C

Definition of Commercial Purpose

Pima County Administrative Procedure

Pima County Administrative Procedure 4-4, **Cost Recovery for Release of Public Data**, dated 9/23/1997 and revised 7/1/2003, includes these definitions, which include the definition of commercial purpose.

II. DEFINITIONS

- A. **Commercial Purpose**: The use of a public record for the purpose of:
1. sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale, or
 2. obtaining of names and addresses from such public records for the purpose of solicitation, or
 3. monetary gain from the direct or indirect use of the public record.

Commercial purpose does not include use of public records as evidence or research in a judicial or quasi-judicial action in Arizona, or the publication of all or a portion of a public record in a newspaper for its news value.

- B. **Officer**: Any person elected or appointed to hold any elective or appointive County office and any chief administrative officer, head, director, superintendent or chairman of any County office.
- C. **Person**: Includes corporations, associations, societies, organizations and individuals.
- D. **Other Matters**: Includes any written records kept by an officer in the course of official business whether or not the records are required by law or are otherwise considered to be public records.
- E. **Public Record**: All books, papers, maps, photos and documentary materials produced or kept by a public official in pursuance of a duty or to document the activities of a public body.

Arizona Revised Statutes

[39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition](#)

A. When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being

Attachment C continued

furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:

1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body.

B. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the governor requesting that the governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.

C. A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

D. For the purposes of this section, "commercial purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.