

GENERAL TERMS AND CONDITIONS

The following terms and conditions shall be applicable to all Digital Data of the AIRPORT that are licensed to LICENSEE and shall govern the use and distribution by the LICENSEE of all Digital Data or works derived there from. Use of the Digital Data by LICENSEE indicates LICENSEE'S acceptance of these terms and conditions.

1. **Digital Data.** AIRPORT owns Digital Data for use in virtual modeling, geospatial databases, and computer-aided plans, which includes representations of information, data communication, drawings, designs, models, maps, and imageries of AIRPORT property and facilities created or stored in a digital form. ALL DIGITAL DATA PROVIDED UNDER THIS AGREEMENT IS CONFIDENTIAL INFORMATION AS PROVIDED UNDER SECTION 3 BELOW.

AIRPORT geospatial infrastructure data and models are currently being maintained in NAD83 CA State Plane Zone III. AIRPORT elevations are based on a mean derived NAVD88 using PACS/SACS and adjusted NGVD29 leveled benchmarks.

AIRPORT will deliver Digital Data to the LICENSEE [by electronic file transfer / by e-mail /by regular mail].

2. **License.**

2.1. **Grant of License.** AIRPORT grants LICENSEE a revocable, non-exclusive, and non-transferable limited license to use Digital Data for the sole purpose of LICENSEE's performance of services for the AIRPORT as specified under the Contract for the above-stated Reason of Request.

2.2. **Restrictions on Use.** LICENSEE shall have the right to load and use the Digital Data on its own computer equipment for its normal business activity in performance of its services under the Contract for the above-stated Reason of Request (subject to limitations defined by this License Agreement) and for no other purpose. The Digital Data may be copied in whole or in part only onto the LICENSEE'S own computer equipment only with prior written approval of the AIRPORT.

2.3. **Individual Personnel.** LICENSEE shall limit the persons with access to the Digital Data to only those individual principals and employees of the LICENSEE whose job duties require such access and information. LICENSEE shall take affirmative steps to assure that only the following individuals will have access to the Digital Data:

2.4. Subcontractors. LICENSEE shall limit the subcontractors with access to the Digital Data to only those entities performing services under the Contract and requiring access to the Digital Data to perform such services. In providing such access, LICENSEE shall require each subcontractor to execute a non-disclosure agreement in conformance with this Agreement. The following subcontractors and their individual principals and employees will have access to the Digital Data:

<u>Name of Subcontractor</u>	<u>Individuals</u>
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3. Nondisclosure.

3.1. Confidential Information. All Digital Data provided under this License Agreement and any Derivative of the Digital Data is considered to be Confidential Information pursuant to San Francisco Administrative Code Chapter 12M and may be Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2. "Derivative" means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the AIRPORT.

3.2. Use of Confidential Information. LICENSEE agrees to accept the AIRPORT'S Confidential Information solely for use in connection with LICENSEE'S duties in performing services for the AIRPORT. LICENSEE shall not disclose, publish, or disseminate Confidential Information to anyone other than certain individuals on a need-to-know basis. LICENSEE shall inform individuals having access to the AIRPORT'S Confidential Information of the confidential nature of this information and the restrictions on its use, dissemination, duplication and disclosure, and shall assume the responsibility that such employees, agents and contractors will preserve the confidentiality of such information as to third parties. **[Insert if highly sensitive information: Each employee, agent, and contractor of LICENSEE identified as having a "need-to-know" in connection with the LICENSE, for review or evaluation of the Confidential Information shall be required to execute a Non-Disclosure Agreement under the same terms as stated in this Section 8. LICENSEE shall provide the AIRPORT with a copy of the executed Non-Disclosure Agreements**

and a master list of the employees, agents, and contractors and their respective duties in connection with the services involving Confidential Information].

3.3. Protection of Confidential Information. LICENSEE shall handle and safeguard Confidential Information in a manner that affords sufficient protection to prevent the unauthorized disclosure of or inadvertent access to such information. The AIRPORT has placed special confidence and trust in LICENSEE and LICENSEE is obligated to protect Confidential Information from unauthorized disclosure, in accordance with the terms of this License Agreement and the laws, regulations, and directives applicable to the specific categories of information to which LICENSEE is granted access. LICENSEE understands that the AIRPORT or other governmental entities may conduct inspections, at any time or place, for the purpose of ensuring compliance with the condition for access, dissemination, handling and safeguarding information under this License Agreement. LICENSEE shall promptly report to the AIRPORT any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation LICENSEE has knowledge of, whether or not LICENSEE has direct involvement in such circumstances. The reporting individual's anonymity will be kept to the extent possible when reporting security violations.

3.4. Compliance with Court Order or Public Disclosure Laws. In the event that disclosure of Confidential Information is mandated by a court order or express governmental directive, LICENSEE shall immediately notify the AIRPORT and shall take all reasonable steps to enable the AIRPORT to seek a protective order or take other appropriate action. LICENSEE will also, at no cost or expense to the AIRPORT, cooperate in the AIRPORT's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If, in the absence of a protective order, LICENSEE is required as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only the part of the Confidential Information required by law to be disclosed (in which case, where possible prior to such disclosure, LICENSEE will advise and consult with the AIRPORT and its counsel as to such disclosure). Nothing in this License Agreement shall require LICENSEE to take any action, or to refuse to release information where to do so would violate applicable law.

3.5. Remedies. LICENSEE acknowledges and agrees that violation of this nondisclosure provision shall constitute a material breach of this License Agreement and may be grounds for termination of the Contract for fault. Violation of this nondisclosure provision may be grounds for denying further access to any AIRPORT Confidential Information. Violation of this nondisclosure provision may also result in administrative debarment and/or civil or criminal action. The AIRPORT shall be entitled to specific performance and injunctive and other equitable relief, in addition to any other remedies or money damages available at law or in equity.

3.6. Independent Knowledge. This nondisclosure provision imposes no obligation upon LICENSEE with respect to information that: (a) was in LICENSEE's possession before receipt from the AIRPORT; or (b) is or becomes a matter of public knowledge through no fault of LICENSEE; or (c) is received by LICENSEE from a third party without a duty of confidentiality; or (d) is

disclosed by LICENSEE with the AIRPORT's prior written approval; or (e) is developed by LICENSEE without reference to Confidential Information.

4. **Ownership and Title.** AIRPORT owns all Digital Data provided under this License Agreement. LICENSEE shall have no right, title, or interest in any Digital Data, except as provided under this Agreement. This Agreement shall be binding upon LICENSEE and its officers, directors, employees, governing board, parent corporations, subsidiaries, affiliates, successors and assigns. In addition, all Digital Data shall remain the exclusive property of AIRPORT, and LICENSEE shall have no rights, by license or otherwise, to have access to or use the Digital Data except as expressly provided under this Agreement. No patent, copyright, trademark, trade secret, service mark or other legally protected proprietary right is licensed, granted, or otherwise conveyed by this Agreement with respect to the Digital Data.
5. **Disclaimer of Liability and Warranties.** AIRPORT makes no express or implied warranties or conditions, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. **Digital Data "As Is":** LICENSEE understands and agrees that the Digital Data may contain errors and/or omissions and agrees to take the data "as is." LICENSEE accepts the Digital Data subject to all risks of such errors and/or omissions, or arising from the use or inability to use this Digital Data.
6. **Limitation of Remedies and Liabilities.** In no event shall AIRPORT or its employees or officers be liable, regardless whether any claim is based on contract or tort, for any direct, indirect, incidental, special or consequential damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the License granted under this Agreement. LICENSEE agrees to hold harmless the AIRPORT, the CITY and its officials (elected or appointed), officers, employees, servants and agents from any and all liability, claims, losses, damages, injuries, costs and attorney fees arising out of use of the Digital Data that is subject to this Agreement.
7. **AIRPORT Intellectual Property.** Under AIRPORT Resolution No. 01-0118, adopted on April 18, 2001, AIRPORT affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the AIRPORT (including subcontractors and subtenants) may not use the AIRPORT intellectual property, or any intellectual property confusingly similar to the AIRPORT intellectual property, without the AIRPORT Director's prior consent.
8. **Proprietary Markings and Security Warnings.** LICENSEE agrees not to remove or destroy any proprietary markings, proprietary legends, or security warnings placed upon or contained within the Digital Data or any related materials or documentation.
9. **Termination.** If the LICENSEE fails to adhere to any of its obligations under this License Agreement, AIRPORT may revoke the license and terminate this License Agreement immediately. In such event, LICENSEE shall within five calendar days of the revocation or

termination certify that all Digital Data in LICENSEE'S possession or distributed by LICENSEE have been deleted or destroyed completely and removed from any data storage system.

Upon completion, termination, or expiration of the Contract, this License Agreement shall simultaneously and immediately terminate. Within five calendar days of such termination, LICENSEE shall certify that all electronic copies of the Digital Data in LICENSEE'S possession or control, including but not limited to that Digital Data shared with individuals or subcontractors as provided in Section 2 above, has been deleted completely and removed from any data storage system.

10. **Assignment:** This License Agreement, the license granted hereunder, and the Digital Data may not be assigned or transferred to third parties without the prior written consent of the AIRPORT, which the AIRPORT may withhold at the AIRPORT'S sole discretion.

11. **Agreement Limitation:**

10.1. LICENSEE acknowledges and agrees that this Agreement contains the entire and only understanding between them relating to the license granted to LICENSEE for the Digital Data, and that any representation, promise or condition not contained in this License Agreement shall not be binding on either party. This Agreement may be modified only in writing signed by an authorized representative of the LICENSEE and the authorized AIRPORT representative.

10.2. If any provision of this Agreement is determined by a court to be invalid under any applicable statute or rule of law, such provision is, to that extent, deemed omitted and this Agreement shall remain otherwise in effect.

10.3. This Agreement shall be governed by the laws of the State of California.

12. **Approval:** If any portion of this pre-printed Agreement is deleted, or additional provisions are added under Section 12 or otherwise, the Agreement shall be of no force or effect unless and until it is approved as to form and legality and signed on its face by the authorized AIRPORT representative.

LICENSEE

Authorized Signature

Printed Name

Title

Company Name

City Vendor Number

Address

City, State, ZIP

Telephone Number