

EL PASO – TELLER COUNTY E-911 AUTHORITY

RESOLUTION NO. 2007-06

Authority Member _____ moved approval of the following resolution:

**A RESOLUTION ADOPTING A TEMPORARY
POLICY CONCERNING DISTRIBUTION OF
GEOSPATIAL DATA**

WHEREAS, the El Paso – Teller County E-911 Authority (“Authority”) is a separate governmental entity created pursuant to Section 29-1-203, C.R.S., by the Restated Intergovernmental Agreement (“Creation Agreement”), by and among certain governmental entities, to administer the operation of an emergency telephone service program and related services to the Contracting Parties, and

WHEREAS, the Authority is authorized pursuant to Sections VI. and V. of the Creation Agreement to adopt bylaws, rules, regulations and policies, and administer the operation of the emergency telephone system, and such powers shall be exercised in compliance with all relevant statutes of the State of Colorado and other laws applicable to the Authority; and

WHEREAS, the Authority has developed geospatial data and a Geographic Information System (GIS) for the purpose of furnishing its members and their public safety answering points with improved tools for mapping, emergency dispatch, emergency response and emergency management; and

WHEREAS, it has been recognized that the content, nature, and organization of the geospatial data and GIS is a significant value to the Authority and other public and private interests; and

WHEREAS, Colorado Revised Statutes 24-72-203(4) authorize the State of Colorado and its political subdivisions to obtain and enforce trademark or copyright protection for any public record; and

WHEREAS, Colorado Revised Statutes 24-72-205(4) authorize the State of Colorado and its political subdivisions to recover the actual incremental costs of providing public records together with a reasonable portion of the costs associated with building and maintaining the information system; and

WHEREAS, the Authority has in effect agreements with other local governments within El Paso and Teller Counties regarding the development, sharing and use of geospatial data and GIS; and

WHEREAS, El Paso County is currently reviewing and considering revisions to its Geospatial Data Distribution Policy; and

WHEREAS, the Authority wishes to adopt a temporary policy regarding the distribution of its geospatial data, which policy shall be reviewed following completion of El Paso County's policy;

NOW, THEREFORE, BE IT RESOLVED by the BOARD OF DIRECTORS of the El Paso – Teller County E-911 Authority as follows:

1. **Digital Photography.** Digital aerial photography data may be provided consistent with the 2004 Intergovernmental Agreement Establishing the Pikes Peak Geospatial Alliance. The Authority may provide data sets consistent with the most recent Memorandum of Understanding approved pursuant to the 2004 Intergovernmental Agreement. Any data provided by the Authority will be done so based on the form of licensing agreement required under the 2004 Intergovernmental Agreement. As required by the 2004 Intergovernmental Agreement, requests for data resulting in a charge greater than \$1,000 shall be forwarded to the Pikes Peak Geospatial Alliance Steering Committee Chairperson.

2. **Street Centerline and Address Data.** Street centerline and address data sets are available at the license rates provided on Exhibit A, and subject to the licensee signing the form of license agreement attached hereto as Exhibit B. Any member of the Authority may obtain one data set, per year, at no charge. Licenses of geospatial data sets are subject to the following general terms and conditions:

- a. The Authority licenses geospatial data sets to customers while retaining all ownership rights.
- b. Additional terms and usage conditions are contained in the license agreements.
- c. The Authority reserves the right to reject requests for geospatial data. Public access to geospatial data under the Colorado Open Records Act is provided through paper prints at the actual costs of production.
- d. Sensitive, classified, restricted, incomplete or draft version geospatial data sets are not available for distribution.
- e. The Authority reserve the right to refuse requests for geospatial data in the interest of protecting the security of critical infrastructure

including military installations and other homeland security designated sites.

- f. Geospatial data sets developed in partnership between the Authority and other organizations may be subject to additional terms and restrictions.

3. **Temporary Policy.** Upon El Paso County completing its review of its Geospatial Data Distribution Policy and Fee Schedules, the Authority System Manager and Legal Counsel shall review any revisions adopted by El Paso County, consider the Authority's temporary policy adopted hereby, and recommend to the Authority Board a permanent Authority policy regarding the distribution of geospatial data.

4. **Implementation.** The Authority's System Manager and legal counsel are directed to take all actions necessary or appropriate to carry out the intent of this resolution.

5. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

6. **Effective Date.** This Resolution shall take effect and be enforced immediately upon its approval by the Authority Board.

ADOPTED this _____ day of February, 2007.

EL PASO – TELLER COUNTY E-911
AUTHORITY

By _____
Tim Sullivan, President

Attest:

David Felice, Secretary

EXHIBIT A

GEOSPATIAL DATA FEE SCHEDULE

Description:	The official mapping of the El Paso – Teller County E911 Authority, including street centerline and address locations, excluding digital orthophotography.
Custodians:	The El Paso – Teller County E911 Authority System Manager.
Delivery Unit:	4000 ft. by 4000 ft. tile
Minimum Delivery:	1 tile
General License:	\$250 – 1 st tile \$200 – 2 to 4 tiles \$150 – 5 to 9 tiles \$125 – 10+ tiles
Government Rate:	1 copy per Authority Member, per year at no charge. All others 50% of general license rate.
Usage is subject to the terms and conditions contained in the geospatial data license agreement. The license agreement must be completed and returned to El Paso – Teller County E911 Authority System Manager before data will be provided.	

EXHIBIT B

GIS DATA LICENSE AGREEMENT

GIS DATA LICENSE AGREEMENT

WHEREAS, this GIS Data License Agreement (“License Agreement”) is made and entered into by and between the El Paso-Teller County E911 Authority (“Licensor”) and _____, the individual, organization or entity to whom the GIS Data is licensed (“Licensee.”)

WHEREAS, the Licensor represents that the geographic information system data (“GIS Data”) defined below are public government data that have commercial value and were developed with significant expenditures of public funds by the Licensor; and

WHEREAS, the purpose of this License Agreement is to make public government data accessible to the public and to protect the public’s interest in recovering the significant expenditures of public funds used to develop the commercially valuable GIS Data.

NOW, THEREFORE, in consideration of the mutual terms and conditions stated in this License Agreement, the Licensor and Licensee agree as follows:

I. Definitions

1.1 “GIS Data” means the geographic information system data, including street centerline and address location, that were developed by the Licensor, and which are subject to and governed by this License Agreement. The specific tiles of data licensed to Licensee under this License Agreement are listed following the signatures of the Parties.

1.2 “Licensee” means any party to this License Agreement other than the Licensor unless otherwise indicated by the context of this License Agreement.

1.3 “Licensee Product” means data products independently developed by Licensee which incorporate portions or all of the GIS Data into Licensee’s own data structure.

II. Use of GIS Data

2.1 Authorized Uses. Licensee is granted a perpetual, nonexclusive right to have and use the GIS Data, provided Licensee is complying with the terms and conditions of this License Agreement. Licensee may use the GIS Data in the form provided by the Licensor for Licensee’s own internal business or organizational purposes and for no other purpose, except upon prior written consent of the Licensor. Licensee may modify the GIS Data or merge the GIS Data into other data bases for Licensee’s

own use. Licensee may incorporate the GIS Data into the Licensee's own Licensee Products and may market, disclose or otherwise distribute such Licensee Products provided the GIS Data are not duplicated or disclosed in the form provided to Licensee by the Licensor. Licensee may have and use the GIS Data on a corporate-wide basis and may use the GIS Data on an unlimited number of Licensee sites, provided the central processing units on which the GIS Data are maintained support only equipment operated by Licensee and the GIS Data are used only for the conduct of the Licensee's own internal business purposes. Licensee may make a reasonable number of copies, including backup copies, for Licensee's own internal business purposes. Subject to the foregoing, Licensee's use of the GIS Data is limited to the following purpose: The GIS Data will be used internally by Licensee and its authorized users or subcontractors to identify geographic elements missing from Licensee database; the GIS Data may be reproduced, reformatted, and copied on Licensee's or its authorized subcontractor's network systems and free-standing central processing units.

2.2 No Updates Licensed. This License Agreement is for the one-time provision of GIS Data by Licensor to Licensee. No updates, modifications, corrections or other revisions of the GIS Data are included in this License Agreement and Licensor has no obligation to provide the same.

2.3 Unauthorized Uses. Licensee shall not use the GIS Data on behalf of any other individual, organization, corporation, government entity, or any other third party, and shall not duplicate, sell, redistribute or disclose the GIS Data to any third parties. Licensee acknowledges and understands the Licensor is permitted by § 24-72-203(4), C.R.S., to enforce trademark and copyright protections over any public records produced by it, and pursuant to § 24-72-205, C.R.S., to recover the costs associated with providing such information to the public.

2.4 GIS Data Security. Licensee agrees to take all necessary and reasonable steps to ensure the GIS Data are not disclosed, duplicated or made accessible in whole or in part for the use of others. Licensee agrees it will not knowingly or negligently allow its employees, agents or independent contractors to copy, sell, disclose or otherwise make the GIS Data available to others. Licensee agrees to immediately notify the Licensor by telephone and in writing if Licensee becomes aware of any unauthorized duplication, sale or other disclosure. Licensee further agrees to prevent unauthorized disclosure by taking appropriate security measures including, but not limited to, providing physical security for copies of the GIS Data and taking all steps Licensee takes to protect information, data or other tangible and intangible property of its own that Licensee regards as proprietary, confidential or nonpublic.

2.5 Reservation of Rights. The Licensor shall retain all rights, title and interest in the GIS Data, including the right to license to other Licensees the GIS Data covered by this License Agreement.

2.6 License Fee. In exchange for the use of the GIS Data under this License Agreement, Licensee shall pay Licensor, prior to the delivery of the GIS Data to Licensee, \$_____.

III. License Agreement Term and Termination

3.1 Indefinite Term. The term of this License Agreement shall commence upon execution of this License Agreement by both parties and shall be indefinite, unless terminated according to paragraph 3.2 of this License Agreement. If this License Agreement is terminated by the Licensor, all rights to the GIS Data granted to Licensee under this License Agreement revert to the Licensor.

3.2 Termination. This License Agreement may be terminated by the Licensor at any time upon written notice to Licensee if Licensee fails to comply with the terms and conditions of this License Agreement. Unless terminated, this License Agreement shall remain in effect as long as Licensee uses the GIS Data and complies with the terms and conditions of this License Agreement. When Licensee no longer has the right to use the GIS Data, Licensee either must destroy the GIS Data and provide written certification of the destruction, or return the GIS Data to the Licensor. The Licensor may terminate this License Agreement if Licensee has dissolved, liquidated or permanently terminated its operations.

IV. Limited Warranty and Disclaimers

4.1 Limited Warranty. The GIS Data provided by the Licensor are made available to Licensee subject to the following limitations and restrictions:

(a) Licensor provides the GIS Data without any warranty or representation as to its accurateness or fitness for any use, including Licensee's intended use. Licensee is responsible for the installation and use of the GIS Data and the results or consequences obtained from Licensee's installation or use of the GIS Data.

(b) The Licensor does not warrant that the GIS Data are error free. The GIS Data were developed for the Licensor's own internal business purposes and the Licensor does not represent that the GIS Data can be used for Licensee's intended use or for navigational, tracking or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. Licensor encourages Licensee to confirm the accuracy of the GIS Data and its appropriateness for Licensee's intended use, prior to Licensee's use of the GIS Data. Licensee is responsible for any inaccuracies or errors contained in the GIS Data, or its inappropriateness for Licensee's intended use.

(c) The Licensor disclaims any other warranties, express or implied, respecting this License Agreement or the GIS Data.

(d) Licensor is under no obligation to update the GIS Data; Licensee acknowledges that the GIS Data may currently be or in the future become out-of-date.

(e) THE GIS DATA, AND ASSOCIATED MANUALS, REFERENCE MATERIALS AND TECHNICAL DOCUMENTATION (IF ANY), ARE PROVIDED "AS IS" WITHOUT ANY SUPPORT WHATSOEVER AND WITHOUT WARRANTY AS TO THEIR PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE GIS DATA IS ASSUMED BY LICENSEE.

(f) THE LICENSOR SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES OR ANY THIRD PARTY CLAIMS WHICH MAY RESULT FROM THE USE OF THE GIS DATA, EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

4.2 Sole Remedies. Licensee's sole and exclusive remedy for breach of these limited warranties shall be to return the GIS Data to the Licensor within sixty (60) days of receipt. The Licensor shall, at its own discretion, retain the returned GIS Data and refund the fee for the license, or replace or repair the GIS Data and return the GIS Data to Licensee.

4.3 Liability. Subject to the warranty disclaimers in paragraph 4.1 of this License Agreement, each party agrees that it will be responsible for its own acts and omissions under this License Agreement and the results thereof to the extent authorized by law and shall not be responsible for the acts or omissions of the other party under this License Agreement and the results thereof. The Licensor's liability for claims based on alleged or actual inaccuracies in the GIS Data arising from the use of the GIS Data is governed by Colorado Law. Nothing in this License Agreement shall be construed as a waiver on the part of the Licensor of any immunities or limits on liability provided by the Colorado Governmental Immunity Act, or other applicable state or federal law. To the full extent allowed by law, Licensee shall indemnify and hold harmless Licensor from any claims and damages, including costs and attorneys fees, resulting from the use of the GIS Data or Licensee Products provided under this License Agreement.

V. General Terms and Conditions

5.1 Invalidity and Severability. If any term or provision of this License Agreement or the application of this License Agreement or its provisions to any person or circumstance shall to any extent be declared or found invalid or unenforceable, the remainder of this License Agreement shall not be affected by that invalidity or unenforceability. Each term and provision of this License Agreement shall be valid and enforced as written to the extent permitted by applicable law.

5.2 Amendment. The terms and provisions of this License Agreement may be changed or modified only by mutual agreement of the Licensor and Licensee. Such amendment, changes or modifications shall be effective only on the execution of written amendment(s) signed by the authorized representatives of the Licensor and Licensee.

5.3 Governing Law. This License Agreement shall be governed by and interpreted pursuant to the laws of the State of Colorado, excluding its choice of laws rules, and applicable federal law.

5.4 Waiver. No waiver of any breach or violation of this License Agreement shall constitute a waiver of any subsequent breach or violation, whether of the same or any other covenant, term or condition. Subsequent performance of any of the terms, covenants or conditions of this License Agreement shall not constitute a waiver of any preceding breach or violation, regardless of the other party's knowledge of the preceding breach or violation at the time of subsequent performance. The delay or omission of any party's exercise of any right arising from any default shall not affect or impair the party's rights regarding the same or future default.

5.5 Assignment. Licensee shall not assign, sublet or transfer this License Agreement in whole or in part, without the prior written consent of the Licensor. Any attempt to assign, sublet or transfer this License Agreement without prior written consent shall be void and of no force and effect.

5.6 Correspondence. Correspondence regarding this License Agreement or the GIS Data shall be directed to the Licensor and Licensee at the addresses following the signatories to this License Agreement.

5.7 Survival of Provisions. All obligations and warranties in this License Agreement that by their sense and context are intended or reasonably construed to survive the Licensor's and Licensee's performance of this License Agreement, shall so survive the completion of performance and termination or cancellation of this License Agreement.

5.8 Authority. The person or persons executing this License Agreement on

behalf of Licensee represent that they are duly authorized to execute this License Agreement on behalf of Licensee and warrant that this License Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

LICENSOR:

LICENSEE:

**EL PASO-TELLER COUNTY
E911 AUTHORITY**

By: _____
Title: System Manager
Address: 2350 Airport Road
Colorado Springs, CO 80906
Phone: 719-785-1900

By: _____
Title: _____
Address: _____
Phone: _____

GIS Data Tiles Subject to this License Agreement are within the following area or areas:

1. _____
2. _____
3. _____
4. _____