

## **IMPORTANT**

### **READ CAREFULLY BEFORE USING THE ELKHART COUNTY GEOGRAPHIC INFORMATION SYSTEMS DATA**

**ELKHART COUNTY, INDIANA IS WILLING TO PROVIDE YOU ACCESS TO ITS GEOGRAPHIC INFORMATION SYSTEMS (GIS) DATA ON A LIMITED BASIS ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS DATA USAGE AGREEMENT. PLEASE READ THE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE ELKHART COUNTY GEOGRAPHIC INFORMATION SYSTEMS DATA. BY MAKING USE OF THE PROVIDED DATA, YOU ARE INDICATING YOUR ACCEPTANCE OF THE ELKHART COUNTY LIMITED DATA USAGE AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS AS STATED, THEN ELKHART COUNTY IS UNWILLING TO ALLOW ACCESS TO THE GEOGRAPHIC INFORMATION SYSTEM AND USAGE OF THE DATA. IN SUCH A CASE, ALL ACCESS MUST CEASE AND ALL DATA PRODUCTS MUST BE RETURNED TO ELKHART COUNTY IMMEDIATELY.**

#### **ELKHART COUNTY, INDIANA LIMITED DATA USAGE AGREEMENT**

This is a limited data usage and access agreement, and not an agreement for sale, between the end user and Elkhart County, Indiana, located at 117 N. Second Street, Goshen, Indiana 46526. This Limited Data Usage Agreement gives end user certain limited rights to use the GIS data and data products. All rights not specifically granted in this data usage agreement are reserved to Elkhart County.

Elkhart County reserves exclusive data ownership and the right to grant usage and access rights to the Elkhart County GIS data and data products. Elkhart County hereby grants to end user a personal, nonexclusive, nontransferable license to use the data and data products based on the terms and conditions of this Agreement. End user agrees to use reasonable efforts to protect the data and data products from unauthorized use, reproduction, distribution, or publication.

### **Proprietary Rights and Copyright**

End user acknowledges that the GIS data and data products contain proprietary and confidential property of Elkhart County. The data and data products are owned by Elkhart County and are protected by United States copyright laws and applicable international copyright treaties and/or conventions.

### **Permitted Uses**

- End user may install the data onto permanent storage device(s) and reproduce a corresponding number of copies of the data for end user's own internal use.
- End user may modify the data provided by Elkhart County and/or merge other data sets with the data and thereby produce derivative data. Derivative data will continue to be subject to the terms and conditions of this Agreement.
- End user may merge the data with other software, programs, functions, and/or digital materials and thereby create derivative works. Derivative works shall continue to be subject to the terms and conditions of this Agreement.
- Derivative data and derivative works shall provide the following copyright attribution notice acknowledging Elkhart County's proprietary rights in the data: "Portions of this material include intellectual property of Elkhart County, Indiana and are used herein by permission. Information shown on any map or other data provided is not warranted for accuracy or merchantability by Elkhart County."
- End user may sell, market, rent, lease, sublicense, lend, assign, time-share distribute or transfer derivative data and derivative works.

## **Uses Expressly Not Permitted**

- **End user shall not** sell, market, rent, lease, sublicense, lend, assign, time-share, distribute or transfer, in whole or in part, the GIS data, data products, any updates, or end user's rights under this Agreement.
- **End user shall not** reverse engineer, decompile, or disassemble the Elkhart County data or data products in an attempt to duplicate the proprietary and copyright-protected Elkhart County data model(s) and/or export format(s).
- **End user shall not** remove or obscure any Elkhart County copyright, proprietary, or trademark notices.

## **Term**

The limited data usage rights granted by this Agreement shall commence upon end user's receipt of the data and data products and shall continue until such time that:

- (1) End user has completed the contractual obligations for which the data and data products were provided to the end user;
- (2) Elkhart County terminates this Agreement; or
- (3) End user terminates this Agreement.

Upon termination of this Agreement, end user shall then return to Elkhart County all copies of the data and data products. The parties hereby agree that all provisions that operate to protect the rights of Elkhart County shall remain in force should breach occur.

## **No Warranty**

GIS maps do not constitute a survey nor an engineering drawing. GIS data and data products are not warranted and end user expressly acknowledges that the data contain some nonconformities, defects, or errors. Elkhart County does not warrant that the data will meet end user's needs or expectations, that the use of the data will be uninterrupted, or that all nonconformities, defects, or errors can or will be corrected. Elkhart County is not inviting reliance on this data; reliance is at the end user's risk; and end user should always verify actual data. **The data and data products are provided "as is," without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.**

## **Exclusive Remedy and Limitation of Liability**

Elkhart County's entire liability and end user's exclusive remedy shall be to terminate this Agreement upon end user returning the data and data products to Elkhart County.

In no event shall Elkhart County be liable for costs of procurement of substitute goods or services, lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any direct, indirect, actual, special, incidental, punitive, exemplary, consequential or other damages arising out of this Agreement or use of the GIS data and data products, however caused, on any theory of liability, and whether or not Elkhart County has been advised of the possibility of such damage. These limitations shall apply notwithstanding any failure of essential purpose of any exclusive remedy.

## **No Implied Waivers**

No failure or delay by Elkhart County in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Elkhart County.

## **Export Regulation**

End user acknowledges that this Agreement and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders relating to the

export of data thereto. End user agrees to comply with all laws, regulations, and orders of the United States in regard to any export of technical data. End user agrees not to disclose or re-export any technical data received under this Agreement in or to any countries for which the United States Government requires an export license or other supporting documentation at the time of export or transfer, unless end user has obtained prior written authorization from Elkhart County and the US. Office of Export Control.

**Severability**

If any provision(s) of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Governing Law**

This Agreement, entered into in Elkhart County, shall be construed and enforced in accordance with and be governed by the laws of the United States of America and the State of Indiana without reference to conflict of law principles. The parties hereby consent to the personal jurisdiction exclusively of the courts of Elkhart County and waive their rights to change venue.

**Entire Agreement**

The parties agree that this constitutes the sole and entire agreement of the parties as to the matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto.

**Signature**

The undersigned agrees to the above listed terms of use for the Elkhart County GIS data and data products identified on Exhibit A and warrants that he/she is duly authorized to execute this Agreement on behalf of the organization identified.

**By:** \_\_\_\_\_ **Email:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Company:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_

***For Elkhart County Use Only:***

The undersigned representative for Elkhart County hereby acknowledges witnessing the signature of the above-referenced individual and receipt of the license fee shown on Exhibit A in exchange for the identified GIS data and data products.

\_\_\_\_\_  
Elkhart County Representative

Date: \_\_\_\_\_

**EXHIBIT A**  
**GIS DATA AND DATA PRODCUTS**

**DESCRIPTION**

**FORMAT**

**LICENSE FEE**