



City of Hamilton
Corporate Services Department
Information Technology Division

SUBJECT	City of Hamilton Data Dissemination Policy and Licence Agreement -
AUTHORITY	Information Technology Division, Corporate Services Department, City of Hamilton

LICENCE POLICY STATEMENT

This is a licence policy to define what the City of Hamilton charges for the dissemination of geographic data, specifically in digital form. The licence policy ensures that consistent and equitable service is provided to the public, and ensures that costs are kept to a minimum by basing fees on cost recovery. Recovery of costs will be based on dissemination costs only and will not include the cost of acquiring, developing or maintaining the original data. When dealing with standard hard copy maps created by the City of Hamilton, from geographic data, the Corporate Pricing Policy shall apply.

APPLICATION

This licence policy defines the type of data covered, the types of charges for the data by category of data client, and provides a schedule of costs for data items, materials and custom services. The licence policy is intended to be used by staff in fulfilling requests for data from internal and external clients.

1. Data Covered by Licence Policy

All geographic data which is stored on the City of Hamilton's various computer systems are covered by this policy. For the purposes of this document, "geographic data" can be defined as:

"...data or information derived from data that is stored within computer systems by latitude/longitude, or other similar spatial referencing system. This includes all descriptive, or attribute data which is "linked" or "related" to the spatial referencing system by codes, keys, or similar means."

2. Target Groups Subject to Licence Policy

For the purposes of interpreting and implementing this policy, the following categories of clients have been identified who are typical clients requesting geographic data and who would be covered by this policy:

Category "A" includes internal clients of the City of Hamilton, such as City of Hamilton departments, Police Services, Fire Department, etc.

Category A clients are exempt from fees for geographic data and are not required to enter into a licence agreement but have an understanding of the data dissemination and licence policy. When the data or custom mapping is required for a capital project, data handling fees, hard copy map/publication fees and material fees will be charged. All fees may be waived at the discretion of the Director of Information Technology (or delegate).

PRICE = DATA HANDLING FEES + MAP PLOTTING FEES + MATERIALS – SUBSIDY

Category "B" includes other municipalities, local school boards, local libraries, other local government agencies or associations, and provincial or federal government agencies involved in local programs, and local media representatives within the City of Hamilton, and includes community associations and consultants (working on behalf of the City of Hamilton, other municipalities, local school boards, local libraries, police services, other local government agencies or associations, and provincial or federal government agencies involved in local programs, and local media representatives within the City of Hamilton).

Category B clients are exempt from fees for geographic data but they are required to pay data handling fees, hard copy map/publication fees and material fees charged at full cost recovery. Category B clients working in partnership with any City of Hamilton department, are exempt from handling and material fees. Category B clients are eligible for full, or partial subsidy, for all fees at the discretion of the Director of Information Technology (or delegate). Category B clients are required to enter into a licence agreement for use of the data.

PRICE = DATA HANDLING FEES + MAP PLOTTING FEES + MATERIALS – SUBSIDY

Category "C" includes corporations, individuals, privately owned utilities (e.g. Bell, Hydro companies, Union Gas, Rogers TV, COGECO Cable, Mountain Cablevision, Southmount Cable), consultants, developers, and commercial ventures purchasing data for limited, ***non-commercial*** uses.

Category C clients must comply with the licence policy as defined herein, which includes full cost recovery for data handling fees, hard copy map/publication fees and material fees. These fees and charges shall in no case be less than full cost recovery. Category C clients are eligible for full or partial subsidy, for all fees at the discretion of the Director of Information Technology (or delegate). Category C clients are required to enter into a limited use licence agreement for use of the data.

PRICE = DATA HANDLING FEES + MAP PLOTTING FEES + MATERIALS – SUBSIDY

3. Staff Responsible for Implementation of Licence Policy

All City of Hamilton staff who are disseminating digital data will be responsible for the implementation of, and adherence to, this licence policy.

4. Legislated Policies Affecting this Licence Policy

- (1) Information contained within the geographic databases is subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.
- (2) Information which is available to the public as paper maps, plans, or reports is considered published and therefore excluded from the provision of the Municipal Freedom of Information and Protection of Privacy Act.
- (3) For any electronic databases prepared under the direction or control of the City of Hamilton, the copyright in the work belongs to the City of Hamilton; the City of Hamilton has the exclusive right to use the databases in any manner or to authorize others to copy it.
- (4) Responsibility to administer City of Hamilton copyright rests with Legal Services; it is advisable that each department consult with Legal in relation to City of Hamilton copyright issues.
- (5) In accordance with the foregoing, direct access to the databases is restricted to employees of the City of Hamilton.

LICENCE POLICY DESCRIPTION

1. Licence Policy Description

This section describes various administrative policies, which affect the dissemination of geographic data.

1. Provision of data is expensive and shall be undertaken only when (a) there is a clear responsibility to inform (publish), (b) there is a benefit to City of Hamilton to do so, or (c) clients are willing to pay for the data.
2. Objectives of full cost recovery are to (a) increase fairness, by ensuring the direct beneficiaries of the data bear the cost, and not the taxpayers of the City of Hamilton, and (b) reduce operating costs.
3. The full costs of providing data to satisfy proprietary interests of individuals or corporations shall not be borne (i.e. subsidised) by the taxpayers of the City of Hamilton.
4. The cost of making data available for purchase to the public or corporations shall reflect the full cost of collecting, compiling, preparing, producing and disseminating the data (the "marginal" cost of disseminating), but not the original cost of acquiring the data.
5. Fees and charges may be reduced or waived where appropriate (e.g. where health and safety issues are involved) by the Director of Information Technology (or delegate).
6. Full cost recovery shall be the baseline for establishing external client charges; partial or full subsidy can be justified under the following circumstances:
 - when data is provided to other municipalities, local school boards, police services, other local government agencies or associations, and provincial or federal government agencies involved in local programs, and local media representatives within the City of Hamilton;
 - when data is provided to an individual or corporation under contract to the City of Hamilton, other municipalities, local school boards, police services, other local government agencies or associations, and provincial or federal government agencies involved in local programs, and local media representatives within City of Hamilton.
7. Commercialisation of databases as the City of Hamilton works may be achieved through (a) donation, (b) assignments, (c) loan, and/or (d) licence.
8. Donation or assignment of electronic databases shall require approval of City Council; a loan or licence shall not require Council approval, provided the City of Hamilton's copyright and ownership in the data are protected in the loan or licensing agreement.
9. Data shall be provided as a "non-exclusive" licence (City of Hamilton retains the right to access and distribute its data through other licensees).
10. Complete pro-forma licensing agreements, shall be executed for each dissemination product as described in section 2., Data Licence Agreements, below.
11. Where City of Hamilton is not the original copyright owner of the data (e.g. the data has been licensed to the City of Hamilton, such as Teranet Inc. data), the terms and conditions of the licence shall apply to any "sub-licence".
12. Revenues received by a Department for geographic data and hardcopy mapping shall be placed in that Department's general revenue account. Revenues generated via hardcopy mapping at the Departmental level will be collected and shall remain with the Department producing the output.

13. Provision of "hard copy" products (e.g. whiteprints, paper maps, etc.) which have been derived from data or databases shall be at the discretion of Departments; there is an implied copyright on all products; however an effort should be made to place copyright statements on the original documents, as well as other disclaimers and acknowledgements.
14. The cost of making "hard copy" maps available for purchase to the public or corporations shall reflect the full cost of assembling, compiling, preparing, producing and reproducing the data (the "marginal" cost), but not the original cost of acquiring the data.

2. Data Licence Agreements

Data Licence Agreements are required each time data is provided to a client. The Data Licence Agreement shall reflect the policies described wherein. The Data Licence Agreement must be executed between the Licensee and the owner before data is provided or used. It is important to note that there may be different terms and conditions depending on the source of the data. Often there are provisions which must be "passed through" from the original owner to the Licensee.

When a client wishes to re-use the data provided under an existing licence agreement, for a new project, a new licence agreement shall be prepared and an administration fee charged to cover the time for staff to produce the new licence agreement.

One standard form of Data Licence shall be available, with customized conditions for use depending on the nature of the data provided. Where the City of Hamilton is not the sole-owner, a multi-party licence agreement will be used, naming all parties involved. A Data Licence Agreement shall be prepared and signed by all parties prior to delivery of the product. A sample of the Data Licence Agreement is attached as Schedule "A".

3. Schedule of Costs

The costs of the data dissemination as defined in the above licence policy shall be implemented with the Director of Information Technology (or delegate) authority to establish, revise and waive fees as appropriate. The current schedule of fees is attached as Schedule "B".



City of Hamilton
Corporate Services Department
Information Technology

Schedule "A"

Data Licence Agreement

THIS AGREEMENT dated the **day** day of **month**, year.

BETWEEN:

Company Name ("Licensee")

AND

City of Hamilton

WHEREAS City of Hamilton is the owner of digital files containing geographic information covering the City of Hamilton (hereinafter the "Database");

AND WHEREAS City of Hamilton has agreed to grant a restricted, non-transferable, non-exclusive licence to **Company Name** subject to the terms and conditions of this Licence Agreement;

NOW THEREFORE City of Hamilton and the Licensee covenant and agree as follows:

1. Grant of Licence

City of Hamilton hereby grants to the Licensee a restricted, non-transferable, non-exclusive licence to use electronic files of the City of Hamilton's Geographic Database as itemized in Addendum 'A' (hereinafter called the "Licensed Database") royalty-free for the sole purpose of fulfilling its responsibilities and obligations under **Project Name**. This licence shall commence on execution of this Licence Agreement by all parties and expire on completion of the Project, subject to early termination.

2. Fee Payable

The Licensee shall pay to the City of Hamilton a fee of **\$0.00** for the granting of the licence hereunder. The Licensee shall pay the fee to the City of Hamilton within thirty (30) days of receiving an invoice therefore.

3. Restricted Use

The Licensee is authorized to use the Licensed Database solely for its own internal operation and for the sole purpose of fulfilling its responsibilities and obligations under **Project Name**. The Licensee acknowledges that the Licensed Database is protected by copyright and that the only right, which the Licensee obtains, to the Licensed Database is the right of use in accordance with the terms of this Licence Agreement. Where the Database or portion thereof, is used in combination with other data to produce derived works for distribution to individuals, associations and corporations, it must be provided in a non-digital format. Any third party requiring access to the Licensed Database for the purpose of producing such derived works must execute an agreement, in a form acceptable to the City Solicitor, with the City of Hamilton prior to being given access to the Licensed Database.

The Licensee may engage contractors to perform work on the Licensed Database. The Licensee shall ensure that contractors do not copy the Licensed Database or use the Licensed Database for any purpose other than providing services for the Licensee with respect to the Licensee's responsibilities and obligations under **Project Name**, or in any manner in which the Licensee is prohibited under this Licence Agreement.

4. No transfer

The Licensee shall not sub-licence, assign, or otherwise transfer any of the rights, duties, or obligations hereunder without the express written approval of the City, which approval may be unreasonably withheld. Any attempt by the Licensee to sub-licence, assign or transfer any of the rights, duties or obligations hereunder are void, unless same is conducted in accordance with this section. The Licensed Database and any works derived therefrom shall not be sold or distributed to third parties in any manner by the Licensee.

5. No warranty

City of Hamilton (including its officials, officers, directors, employees, representatives, affiliates, volunteers, and agents) shall not be obliged to update the files or the Licensed Database or to make any changes thereto at the request of the Licensee. Further, City of Hamilton (its officials, officers, directors, employees and agents) make no representation or warranty of any kind, express or implied, with respect to the information provided pursuant to this Licence Agreement ("Information"). The Information will be made available to the Licensee on an "as is, where is" basis, without any representations or warranties, express or implied, of accuracy, completeness, currency, usefulness, merchantability, or fitness for any purpose, or those arising by law or usage of trade or course of dealing. The entire risk as to the use, dissemination and/or reliance upon the Information is assumed by the Licensee. Licensee acknowledges and agrees that the City of Hamilton (including its officials, officers, directors, employees and agents) shall not have any liability to any party whatsoever for any claims, actions, loss, damage, including without limitation, loss of revenue or profit or savings, loss of or damage, or any indirect or incidental, special or consequential damages arising from or relating in any way to the use and/or reliance upon information contained herein, including without limitation, for infringement of any party's proprietary rights.

6. Indemnity

Licensee shall indemnify, defend and hold City of Hamilton (including its officials, officers, directors, employees, representatives, affiliates, volunteers and agents) [collectively referred to as the "Indemnitees"] harmless against any and all claims, demands, costs, penalties, fines, fees, damages (including indirect, special or consequential damages) or causes of action, including, without limitation, proprietary or personal injury (including death) that arise from, either directly or indirectly, or relate to, the use, dissemination and/or reliance upon any of the Information, including, without limitation, any act or omission of the Licensee (including its officers, directors, partners, employees, contractors and agents), in connection with this Licence Agreement, as well as any patent, trademark or copyright infringement.

The rights to indemnity contained herein shall survive the early termination or expiry of this Licence Agreement.

7. Default

If the Licensee fails to comply with any of the terms or conditions of this Licence Agreement, City of Hamilton may terminate this Licence Agreement and all rights of the Licensee created hereunder.

8. Effects of termination

Upon the termination of this Licence Agreement for whatever cause, all rights and privileges granted to the Licensee hereunder will immediately terminate and the Licensee shall immediately return to the City of Hamilton, or destroy, the Licensed Database and all related copies and materials. City of Hamilton reserves the right to require proof from the Licensee of the destruction of the Licensed Database and related copies and materials.

9. Governing Law

This Licence Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

10. Enurement

Subject to s.4, this Licence Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns.

11. Notices

Any notice, instruction or other communication required or permitted to be given to any party pursuant to this Licence Agreement must be in writing and will be deemed to have been sufficiently given if delivered personally or sent by pre-paid registered mail or by facsimile to the corresponding address show below:

If to the Licensee:

Company Name
Street Address
City, Province
Postal Code

If to City of Hamilton:

City of Hamilton, Information Technology
P.O. Box 586, STN LCD1
Hamilton, Ontario L8N 3K7
Phone # - (905) 546-2424 ext. 4267
Fax # - (905) 546-2333

or to such other address as any party may from time to time notify the others in accordance with this section.

Any such communication will be deemed to have been received and delivered on the date of delivering, if delivered, or on the fifth business day after mailing thereof, if sent by pre-paid registered mail, or on the date of transmission, if sent by facsimile.

IN WITNESS WHEREOF the parties have duly executed this Licence Agreement as of the date first written above.

Company Name

(signature)

Name: _____

Title: _____

Date: _____

City of Hamilton

(signature)

Name: _____

Title: _____

Date: _____

Prepared by: **Employee Initials, Department**

Addendum 'A'

Licensed Database, transferred to licensee in electronic format, in file(s) as named hereafter;

For the purposes of this contract you have been determined as a **Category A, B or C (Choose one only)** client.

Enter a description of data provided here:

Need details as to what is provided, in what format, and geographic extent

(e.g. File name, File type (DWG, shapefile, etc), feature names, feature type , "area bounded by...", etc.).

Data...



City of Hamilton
Corporate Services Department
Information Technology

Schedule "B"

Data Dissemination Fees

Digital GIS Data Handling Fees

All digital data requesters shall be charged a handling fee of \$75.00 per hour, (minimum 1 hour charge) to cover the cost of staff time spent in discussions with the requester, and time spent in the preparation and delivery of the data. The hourly rate will be further accumulated to the initial costs when the client requests modifications or updates for an existing project.

Data is available in the following formats:

Standard Formats - Intergraph's GeoMedia *.MDB warehouse

Export formats – Excel, *.CSV, *.DGN or Shapefiles

Note: Fees may be waived in full or partially at the discretion of the Director of Information Technology (or delegate).

Hard Copy Map Plotting Fees

All hard copy map requesters shall be charged a plotting fee of \$75.00 per hour, (minimum 1 hour charge) to cover the cost of staff time spent in discussions with the requester, and time spent in the preparation and delivery of the map. The hourly rate will be further accumulated to the initial costs when the client requests modifications or updates for an existing map.

Fees will also include the cost of the paper per linear foot:

Standard Bond 24lb paper	\$2.00 per linear foot
Photo Quality Bond	\$7.50 per linear foot

Note: a minimum paper cost of \$10.00 per plot will apply. Plots are printed on a 42" plotter.

All pricing is subject to applicable taxes.