**THE HARRISON COUNTY GEOGRAPHIC INFORMATION SYSTEMS (GIS)
COOPERATIVE DATA SHARING AGREEMENT FOR USE WITH
MUNICIPAL GOVERNMENTS OF HARRISON COUNTY, WEST VIRGINIA AND NOT-FOR-PROFIT ENTITIES**

The text of the agreement is included below. Please note, however, that it is presented here for information purposes only; it does not constitute an official contract. **Membership in the Data Sharing Cooperative requires submission of two original copies of this agreement,** which may be requested from the Harrison County GIS Coordinator.

If you have questions regarding this agreement or to obtain a copy of the agreement, please contact:

**Michael B. Pizzino, Jr.
Harrison County GIS Coordinator**

**301 West Main Street**

**Clarksburg, WV 26301
E-mail: mpizzino@harrisoncountywv.com
Phone: 304-624-8703
Fax: 304-626-1066**

 **THE HARRISON COUNTY GEOGRAPHIC INFORMATION SYSTEMS (GIS)
COOPERATIVE DATA SHARING AGREEMENT FOR USE WITH
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This Agreement is executed by and between the Harrison County Geographical Information Systems Office, responsible for planning and coordinating Geographic Information Systems (hereafter collectively referred to as the County), having an office at 301 West Main Street, Clarksburg, WV 26301, and:

(Agency)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having an office at (Address)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which is legally recognized as a local governmental agency or not-for-profit entity (hereafter referred to as the Member).

W I T N E S S E T H:

**WHEREAS**, the County established an initiative to create a framework and criteria for the development of a Countywide Harrison County Geographic Information Systems (GIS) Program; and,

**WHEREAS**, this initiative includes a structure to implement the GIS program and obtain broad representation among the County’s varied GIS user community. The GIS structure includes a GIS Coordinator charged with providing policy recommendations to the Harrison County Commission and establishing a framework for the easy dissemination of GIS Data between agencies at minimal cost and without delay. The GIS Coordinator recommended creating the Harrison County GIS Data Sharing Cooperative (hereinafter known as the Cooperative) as a mechanism to accomplish this data sharing; and

**WHEREAS**, the County wishes to encourage agencies of Harrison County and its political subdivisions and other non-profit corporations or other non-commercial entities to join and become Members of the Cooperative and participate in sharing of GIS Data. The County also wishes to encourage agencies of the Federal government, other states, and other sovereigns to join and become Members of the Cooperative and participate in sharing of GIS Data; and

**WHEREAS**, the Member wishes to join and participate in the Cooperative and share GIS data.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties do agree as follows:

I. GENERAL TERMS AND CONDITIONS

**A. Definitions**- For the purposes of this Agreement, the following terms are defined:

1. Clearinghouse - a worldwide web site hosted by Harrison County, which acts as a repository for spatial Metadata and other information that promote cooperation among users in the GIS community.
2. Cooperative - the group of governmental agencies and not-for-profit entities which have executed Data Sharing Agreements for the purpose of exchanging and improving access to GIS Data for Members.
3. Cooperative Custodian - a custodian designated by the GIS Coordinator for distribution, only within the Cooperative, of data for which the custodian may not otherwise be considered the primary custodian of such data.
4. GIS Coordinator - acts as a Representative of the County regarding GIS data.
5. Data – consists of the digital databases or data layers which contain references to locations on the earth’s surface.
6. Improved Data – includes any or all of the following: correction of errors; addition of missing features for feature categories already represented in the Data; improvement of positional accuracy; revision to improve the temporal quality of the Data; correction of descriptive attribute data for categories already represented in the Data; and any other action which improves the existing Data without creating new categories of data not previously present in the Data.
7. “Intermediary Custodian” – a Member, designated in writing by one or more Members, who agrees to act on behalf of such Member(s):

(i) as a Primary Custodian to collect and distribute Data owned by such Member(s) to other Members; and
(ii) as a Secondary Custodian to receive Data acquired from other Members who are Primary Custodians and redistribute it to Member(s) designating it as its Intermediary Custodian.

The Intermediary Custodian shall have the duty to notify the GIS Coordinator of its designation to act on behalf of any Member upon designation by the Member. The Intermediary Custodian shall transmit to the GIS Coordinator a copy of the document, signed by the Member, establishing the relationship between the Member and the Intermediary Custodian.

1. Member - an entity that executes a Data Sharing Agreement to participate in the Cooperative.
2. Metadata - information supplied by a Member which describes the characteristics of the Data, which must be in accordance with the Standards for information developed after Member joins the Cooperative.
3. New Data - categories of information not previously present in the Data or Improved Data.
4. Primary Custodian - the Member that developed or owns the Data. Each collection of Data (database, file, layer, etc.) shall have a single Primary Custodian.
5. Secondary Custodian - a Member in possession of Data acquired from the Primary Custodian or from the Cooperative.
6. Standards - the criteria adopted and revised by the GIS Coordinator for GIS Data, Improved Data, Metadata, transfer of Data, and/or hardware, software or other items included in the development, dissemination, and use of GIS.
7. “The County” or “County agency” refers to Harrison County and means any county department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, or office or other governmental entity in Harrison County, West Virginia.
8. “Harrison County Geographical Information Systems Office” is a collaborative effort between multiple Harrison County Governmental Departments.

**B. Nature of the Agreement-** The parties expressly acknowledge and agree that this Agreement sets forth the terms and conditions governing the services to be delivered and performance of services to be rendered by the parties.

**C. Agreement Approval-**

1. Member shall cause this Agreement to be executed by the appropriate corporate officer, having the authority to sign on behalf of the Member and such Member shall execute, by signature.
2. The parties recognize that the Agreement is wholly executory and not fully executed and binding until and unless approved by the County.

**D. Term and Termination-**

1. This Agreement shall commence on the date the Agreement is fully executed by both parties and shall remain in effect until such time as the Agreement is terminated in accordance with the following provisions:

a. Voluntary termination shall take effect upon ninety (90) days’ written notice to the other party.

b. Termination for cause shall take effect after the GIS Coordinator issues a notice of violation to the Member in writing and such Member fails to cure the violations within thirty (30) days of such notice. Within ten (10) days of the termination date, the Member shall return all Data, Improved Data or New Data to the Primary Custodians and delete all copies of Data, Improved Data or New Data.

1. Member agrees not to sell, disclose, or make available any Data, Improved Data or New Data obtained through the Cooperative to anyone subsequent to termination of the Agreement unless required to do so by law. If a Member is required, by law, to release data, improved data or new data, Member agrees to notify the Primary Custodian of such disclosure.
2. If a Primary Custodian ceases to be a Member of the Cooperative, all Secondary Custodians of Data provided by such Primary Custodian shall continue to have the ability to use the Data in accordance with the terms and conditions of this Agreement.

**E. Consideration**- As a Member of the Cooperative, Member is entitled to receive and exchange GIS Data. In return, Member agrees to provide Data and Improved Data as specified in Part II, Section A of this Agreement.

**F. Disclaimer**- Neither the County nor Member assumes any risk, liability or responsibility for the accuracy of Data, Metadata, New Data or material facts submitted by Member to the GIS Clearinghouse.

**G. Liability Relating to Third Parties-**

1. County shall indemnify and hold the Members harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the County in any action for infringement of any copyright, trademark, trade secret or other third party proprietary right, arising out of, or resulting from County’s acts or omissions in relation to this agreement, provided that the County shall give all others (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Member’s sole expense, and (iii) all reasonable assistance in the defense of any such action at the expense of the Member. Upon request the County shall provide a “Certificate of Insurance” listing the Member as an additional insured for matters relating to this Agreement.
2. Member shall indemnify and hold the County harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the Member in any action for infringement of any copyright, trademark, trade secret or other third party proprietary right, arising out of, or resulting from Member’s acts or omissions in relation to this agreement, provided that the Member shall give all others (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at County’s sole expense, and (iii) all reasonable assistance in the defense of any such action at the expense of County. The Member shall provide a “Certificate of Insurance” listing the County as an addition insured for matters relating to this Agreement. Member’s limits of liability coverage shall be sufficient, as determined by the County, before any data and/or information will be release to said Member.
3. If principles of governmental or public law are involved, the County may participate in the defense of any action identified in this paragraph, but no costs or expense shall be incurred upon the account of County without County’s written consent.
4. If principles of governmental or public law are involved, the Member may participate in the defense of any action identified in this paragraph, but no costs or expense shall be incurred upon the account of Member without Member’s written consent.

**H. Force Majeure**- Neither party will be liable for losses, defaults, or damages under these Agreements which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of these Agreements, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

**I. Subcontracting-**

1. If County or Member hires a contractor to develop GIS data, contractor will be required to comply with the agreement and any Standards in providing Metadata.
2. All provisions contained in the Agreement shall be binding upon any contractor hired by the County or Member to develop GIS data.
3. Member shall give the County immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made, against Member by any contractor or subcontractor which may result in litigation related in any way to this Agreement or which may affect the performance of duties under this Agreement.

**J. Assignment-**

1. The County agrees not to assign this Agreement without prior notice and the written consent of the Member.
2. Member may not assign this Agreement without the prior written consent of the County.
3. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties hereto to the same extent as if each such successor or assign were named a party hereto.

**K. Entire Agreement**- These documents constitute the entire Agreement between the parties. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement shall not be changed, modified or altered in any manner except by written instrument executed by authorized representatives of both parties.

**L. Applicable Law**- This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

**M. Member’s Status**- The legal status of Member, its agents, officers and employees is that of an independent contractor. In no manner shall it or they be deemed employees of Harrison County, and, therefore, are not entitled to any of the benefits associated with such employment.

**N. Notices**- All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the County, addressed to the County at its address set forth herein, and (ii) if to Member, addressed to Member at its address set forth herein. The parties may specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement.

**O. Conflict of Interest**- If during the term of the Agreement Member becomes aware of an actual or potential relationship which may be considered a conflict of interest, Member shall notify the County in writing immediately.

**P. Severability**- Should any provision of the Agreement be declared or found to be illegal, unenforceable, ineffective or void, then each party shall be relieved of any obligation arising from such provision; the balance of the Agreement, if capable of performance, shall remain in full force and effect.

**II. SPECIFIC TERMS AND CONDITIONS**

**A. Member’s Responsibilities**- Member warrants and represents the following:

1. **Population of GIS Clearinghouse** - Member agrees to populate the GIS Clearinghouse with Metadata in accordance with the Standards and other information regarding Member Representative, projects, training opportunities and other events of interest to the GIS community for the easy dissemination and use of its Data to Members as well as others. Information supplied by a Member which describes the characteristics of the Data created prior to Member’s participation in the Cooperative is not required to meet such Standards.
2. **Maintenance and Improvement of Data-**

a. Member agrees that a significant benefit of the Cooperative is the potential for improvement of Data for all Members. Accordingly, Member agrees to provide Primary Custodians with any improved Data which may be produced during the Member’s use of the Data, including work done by third parties such as consultants or contractors that may perform on behalf of the Member. Improved Data shall belong to the Primary Custodian of the original Data unless a separate agreement has been reached with the original Primary Custodian and notice thereof sent to the GIS Coordinator.

b. Member shall provide Improved Data to the Primary Custodian in accordance with the Standards. Such Standards shall include references to or copies of relevant supporting information sources that the Primary Custodian would need to verify the improvements and incorporate them into the Data. Improved Data are to be provided to Primary Custodians in a timely manner but not less than annually. The Primary Custodian shall determine whether to incorporate the improvements into the Data.

1. **Data Sharing**- Where the Member is a Primary Custodian, such Member agrees to make Data available to the Cooperative. Such Member agrees to provide Data within a reasonable time to the Cooperative at an amount not to exceed the cost of media and delivery, unless specifically authorized to charge otherwise by Federal or State statute. In the event another Member requests Data which requires additional work such as programming, analysis, or conversion by the Primary Custodian, the Primary Custodian may, at its option, undertake the work and charge a fee limited to the actual cost of fulfilling the request, including personnel expense, unless otherwise specifically authorized to charge otherwise by Federal or State statute.
2. **Requests for Data-** Member agrees to forward any requests for Data to the Primary Custodian, unless disclosure of Member’s records containing such data is otherwise required by law; and, in such latter case, Member agrees to notify the Primary Custodian of such disclosure.
3. **Release of Data, New Data, or Improved Data, Privacy/Confidentiality -**

a. Unless required by law, under no circumstances shall a Member release Data, New Data, or Improved Data in whole or in part for which it is not the Primary Custodian to a non-member of the Cooperative.

b. Unless otherwise restricted by law, there are no restrictions on the release of Data, New Data, or Improved Data in whole or in part by a Member of the Cooperative who is the Primary Custodian of such data.

c. Information exchanged or received from the Cooperative by a Member shall not be used for any commercial activity, marketing or advertising when the purpose of such activity is for profit-making or other commercial purpose.
4. **Member’s Agents or Consultants**- Member shall ensure in writing that any Data transferred to or prepared by Member’s agent or consultant will be in the custody and control of Member and shall not alter the rights and obligations of Member as a Primary or Secondary Custodian of the Data. Member agrees to adhere to the criteria adopted by the Coordinating Body regarding release of Data to an agent or consultant.
5. **New Data-**

a. Member acknowledges and agrees that New Data shall belong to the Member which produced it and that such Member shall be deemed the Primary Custodian of the New Data. Member may transfer Primary Custodian designation of the New Data to another Member upon mutual agreement and notice to the Coordinating Body. In the event that a dispute exists over ownership of New Data, the Coordinating Body shall be responsible for designating the Primary Custodian.

b. Members are encouraged to enhance, extend, or supplement the Data to meet their needs. Member, upon creating New Data, agrees to consult with all Primary Custodians upon whose Data the New Data may be based to notify them of the creation of the New Data.
6. **Standards-** Except for information supplied by a Member which describes the characteristics of the Data created prior to the Member joining the Cooperative or Standards adopted by other states and federal agency Members, Member agrees to adhere to all Standards adopted by the GIS Coordinator as soon as practicable. The GIS Coordinator shall notify Member of all Standards adopted and revised by the GIS Coordinator for GIS Data, Improved Data, Metadata, transfer of Data, and/or hardware, software, or other items included in the development, dissemination, and use of GIS. While other states and federal agencies are not required to adopt Harrison County, West Virginia’s Standards, they are encouraged to consider them for their adoption, where appropriate.
7. **Member Representative-** Member agrees to designate a single representative who will act as the authorized liaison to other Members of the Cooperative for purposes of data sharing, notification of Improved Data, Clearinghouse information, and other communication as required by the Cooperative. Each Member representative shall be listed with name, Member business address, telephone and facsimile numbers, and e-mail address at the Clearinghouse.
8. **Member Status-** Member acknowledges that its participation in the Cooperative is contingent upon having and maintaining its status as a valid governmental Member, non-profit corporation or other non-commercial entity. If at any time Member’s status has changed or is subject to change, Member shall immediately notify the Cooperative in writing of such change or potential change.

**B. County’s Additional Responsibilities-**

1. **Standards-** The County, through the GIS Coordinator, shall notify Member of all Standards adopted and revised by the GIS Coordinator for GIS Data, Improved Data, Metadata, transfer of Data, and/or hardware, software, or other items included in the development, dissemination, and use of GIS.
2. **Disputes-** When disputes arise among Members of the Cooperative, the County, through the GIS Coordinator, shall mediate such disputes.

# I have the authority to legally obligate The County to the terms of this agreement.

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Name (Please Print) Title

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Signature Date

# I have the authority to legally obligate The Member to the terms of this agreement.

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Signature Date