

**INTERLOCAL AGREEMENT
NON-EXCLUSIVE LICENSE
COF Contract No. 2017-0085**

This Interlocal Agreement is entered into on this _____ day of _____, 2017, by and between **City of Franklin, Tennessee**, (“Franklin”), a governmental entity of the State of Tennessee, and the **City of Brentwood, Tennessee**, (“Brentwood”), a governmental entity of the State of Tennessee.

1. **Authority.** This Agreement is made and entered into pursuant to the authority granted by the parties under the *Interlocal Cooperation Act*, Tennessee Code Annotated Sections 12-9-101, et seq., and the parties agree that all approvals and filings required by the terms of said Act shall be achieved as soon as possible from and after the execution of this Agreement.

2. **Purpose of Agreement.** Franklin and Brentwood are currently subject to a mutual non-exclusive license for the sharing of geographic information systems (“GIS”). It is the intent of both parties to continue to provide a non-exclusive license agreement to each other to enable the parties, their employees, or contractors approved by Franklin or Brentwood (“Authorized Users”) to share GIS mapping information for the benefit of each party’s respective citizens.

3. **Separate Entity.** This Agreement does not create a separate entity, nor shall it be interpreted as creating a separate entity under any circumstances.

4. **Non-Exclusive License.** The individual parties grant the other party a non-exclusive license to use and reproduce the information, maps, reports and any other documentation, (“Licensed Material”) provided for pursuant to this agreement and subject to the restrictions contained herein. Each party agrees not to use the Licensed Material in its business capacity and shall not provide or reproduce the Licensed Material for resale, unless otherwise agreed upon in writing by the parties or otherwise required by applicable law. The parties acknowledge that information exchanged under this Agreement may be subject to the open records laws of the State of Tennessee. Neither party may restrict the availability of such information to the public, if such information is considered public record. To the extent that any such information is not public record, such information shall not be redistributed without the express consent of the party which provided the information.

5. **No Resale or Unauthorized Access.** Except as otherwise provided herein, neither Franklin, Brentwood nor Authorized User shall market, offer to sell, sell and/or otherwise resell the GIS data or any part of the GIS data to any third party or provide any commercial hosting service to access the GIS data. Authorized Users shall not permit or provide unauthorized users access to the GIS data using any authentication code, user name, password, or any other authentication method used by the parties to access the GIS data.

6. **File Transfer Protocol.** Each party will implement and maintain reasonable measures to ensure that only authorized users have access to the servers that contain the parties GIS data. Each party will take reasonable steps to prevent unwarranted intrusion into data managed or maintained by the parties including, but not limited to, reasonable steps to protect such party’s password files and access to the GIS data. Each party shall ensure that passwords are given only to those Authorized Users that have a direct need to access the GIS data and that passwords are not to be shared by multiple users.

7. **Term.** The term of this Agreement shall begin 1st July 2017 through 30th June 2047 when executed by both parties and shall end after thirty (30) years from such execution.

8. **Consideration.** The parties acknowledge that the exchange of information shall be adequate consideration and, as such, neither party is obligated to pay any fee to the other party for the exchange of information unless otherwise agreed upon in writing and signed by the parties. This section is not intended to limit a party’s legal remedies in collecting damages from breach of this Agreement.

9. **Warranty. EXCEPT AS OTHERWISE PROVIDED HEREIN, AND ONLY TO THE EXTENT PERMITTED BY LAW, THERE ARE NO AGREEMENTS, WARRANTIES OR**

REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORILY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE SERVICE(S), OR LICENSED MATERIAL PROVIDED FOR PURSUANT TO THIS AGREEMENT. THE PARTIES ALSO MAKE NO WARRANTY THAT THE LICENSED MATERIAL WILL BE ERROR FREE.

10. **Termination – Breach.** Should either party breach or violate any material terms of this Agreement, the non-breaching party shall have the right to immediately terminate this Agreement by providing the breaching party with written notice. Such termination shall not relieve the breaching party of any liability to the non-breaching party for damages sustained by virtue of any breach. Upon breach or default of any of the provisions set forth herein, the non-breaching party shall be entitled to any and all damages and other equitable relief permitted under the laws of the State of Tennessee.

11. **Termination – Notice.** Either party may terminate this Agreement at any time and for any reason upon thirty days' written notice to the other party.

12. **Notices.**

a. **Delivery.** Except as otherwise provided herein, any notice or other communication between the parties hereby regarding the matters contemplated by this Agreement shall be sent by United States mail (first class, airmail, or express mail), commercial courier, facsimile, hand delivery or electronic mail, in each case delivered to the addresses set forth below for the recipients.

i) Notices to Franklin shall be sent to:

Mr. Chris Robinson
City of Franklin GIS Management
109 3rd Ave S., Suite 125
Franklin, TN 37064

With a copy to:

Eric S. Stuckey
City Administrator
109 3rd Ave S.
Franklin, TN 37064

ii) Notices to Brentwood shall be sent to:

Scott Sumners, GIS Coordinator
5211 Maryland Way
P. O. Box 788
Brentwood, TN 37024-0788
scott.sumners@brentwoodtn.gov

Kirk Bednar, City Manager
5211 Maryland Way
P. O. Box 788
Brentwood, TN 37024-0788
kirk.bednar@brentwoodtn.gov

13. **Third Party Beneficiary Rights.**

The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties' signatory to this Agreement shall have any

legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

14. **Modification of Contract.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
15. **Independent Entities.** The relationship of the parties shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Agreement. The parties hereto shall not hold itself out in a manner contrary to the terms of this paragraph. To the extent permitted by Tennessee law, no party shall become liable for any representation, act or omission of any other party to this Agreement contrary to the terms of this paragraph. Each party shall maintain its own identity in providing services. Each party is separately responsible for establishing its own policies.
16. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties.
17. **Waiver.** No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
18. **Non-Binding Dispute Resolutions.** The parties agree that should any dispute arise regarding this Agreement or any of the services or goods provided for, then the parties may agree in writing to enter into non-binding mediation and only to the extent as provided for under Tennessee Law.
19. **Assignment – Consent Required.** Neither party may assign, sublicense or otherwise transfer its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall be in the complete discretion of the party receiving the notice.
20. **Assumption of Liability.** Each party shall be and remain liable for its actions as well as the actions of the respective party's employees, volunteers, agents, or officers. Nothing in this Agreement shall be construed to limit any party's governmental immunity.
21. **Entire Contract.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
22. **Force Majeure.** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
23. **Governing Law.** The validity, construction, and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed exclusively by the laws of the State of Tennessee.
24. **Venue.** Any action between the parties arising from this Agreement shall be maintained exclusively in a court of competent jurisdiction sitting in Williamson County, Tennessee.
25. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
26. **Conflicting Terms.** The parties agree that should the language in this Agreement conflict with any language included in any documentation whether provided for by either party or not, then the language or terms of this Agreement shall be controlling.
27. **Required Approvals.** To the extent required by law, each party shall be responsible for receiving all approvals from the 3 appropriate governing bodies prior to executing this Agreement as well as future required approvals in a diligent manner.

28. **Effective Date.** This Agreement shall not be binding upon the parties until it has been signed by the authorized representatives of Franklin and Brentwood.

City of Franklin, Tennessee:

City of Brentwood, Tennessee:

Dr. Ken Moore, City Mayor

Kirk Bednar, City Manager

Date _____

Date _____

Attest:

Eric S. Stuckey, City Administrator

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM AND LEGALITY:

Bethany A. Heuer, Staff Attorney

Roger A. Horner, City Attorney