

Knoxville ♦ Knox County ♦ Knoxville Utilities Board  
Geographic Information Systems

Keith G. Stump  
Executive Director/ GIO

**MEMORANDUM OF UNDERSTANDING**

**Between**

**Knoxville, Knox County, KUB GIS (KGIS)**

**and**

**Knox County Emergency Communications District**

The purpose of this MOU is to define a specific Operational Partnership agreement between the Knoxville, Knox County, KUB GIS (KGIS) and Knox County Emergency Communications District.

The KGIS System and Database is a shared resource governed by the KGIS Policy Board, which has established policies and procedures regarding its operational maintenance, funding, data sharing and product licensing.

The scope of this MOU is to provide Knox County Emergency Communications District with an expanded level of access to KGIS's full range of operational databases and hosted services, including web-based applications, for use by Knox County Emergency Communications District to meet its operational duties.

The commitments and policies identified in this MOU shall be mutually agreed upon by the parties involved. This agreement can only be amended or modified upon mutual written agreement by all the parties.

The MOU shall remain in effect until it is terminated, for any reason, by either party with a sixty (60) day prior written notice, or immediately if one of the parties is found to be in violation of the agreement.

**POLICY BOARD**

**Madeline Rogero**, Mayor, City of Knoxville; **Gabriel Bolas**, President/CEO, KUB; **Glenn Jacobs**, Mayor, Knox County

## **A. Data Use Policies & Restrictions**

As an Operational Partner with KGIS, Knox County Emergency Communications District is committed to adhering to the policies and procedures established by KGIS and the KGIS Policy Board.

Knox County Emergency Communications District recognizes the complexity of the KGIS database in regards to data ownership and restrictions on use, and agrees to adhere with KGIS's established policies and procedures in regards to data sharing, replication, open records, distribution and licensing.

Knox County Emergency Communications District agrees to actively communicate and coordinate with KGIS regarding adherence to the operational practices of the KGIS organization.

Knox County Emergency Communications District agrees to be a signed party to the separate, attached **Appendix A: License Agreement** governing the use and restrictions of the KGIS data.

## **B. Data Sharing Commitment**

As a data sharing partner with KGIS, Knox County Emergency Communications District is committed to communicating with KGIS about its ongoing GIS database inventory and maintenance activities, and to being an active participant in the KGIS User community.

KGIS is committed to promoting Knox County Emergency Communications District's effective use of the KGIS system.

Knox County Emergency Communications District agrees to further mutually support KGIS by providing access to non-sensitive, but value-added GIS data created, hosted or maintained by Knox County Emergency Communications District.

To aid its other mutual support agreements, Knox County Emergency Communications District may be tasked with distributing portions of the KGIS database to other agencies, including the State of Tennessee. But in all such endeavors, and as the situation will reasonably allow, Knox County Emergency Communications District agrees to seek prior KGIS approval, and to coordinate with KGIS on the data sharing activities, ensuring that KGIS operational standards are adhered to, and that KGIS interests are protected by those other agencies.

## **C. Accessibility to the KGIS System, Data and Products**

As an operational partner with KGIS, Knox County Emergency Communications District shall be provided with access to the generally accessible, non-restricted portions of the KGIS system, including

- the centrally-managed GIS database
- commonly shared file folders on KGIS's communications network
- Internet and Intranet web sites and applications
- KGIS's custom desktop tools, scripts and workflows

Knox County Emergency Communications District shall also have access to certain restricted datasets to which it has been granted specific authority as governed by KGIS policies and procedures.

As resources will allow, KGIS shall coordinate with Knox County Emergency Communications District to create and maintain intranet and internet mapping web sites specifically designed for use by Knox County Emergency Communications District.

**Signatures:**

As the duly authorized officer for my corporate organization, I understand my rights and responsibilities as incorporated in this Memorandum of Understanding, and I will strive to meet the standards outlined in this agreement.

\_\_\_\_\_  
For the KGIS  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness for the KGIS  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Title

\_\_\_\_\_  
For Knox County Emergency Communications District  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness for Knox County Emergency Communications District  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Title

**Approvals as to Form:**

\_\_\_\_\_  
City of Knoxville  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Knox County  
\_\_\_\_\_  
Date

KUB

Date

**Appendix A**  
**License Agreement**

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("the Agreement") dated this \_\_\_\_ day of \_\_\_\_, 20\_\_, by and between the KNOXVILLE/KNOX COUNTY/KUB GEOGRAPHIC INFORMATION SYSTEM POLICY BOARD ("Licensor"), and Knox County Emergency Communications District ("Licensee"), duly organized and existing under the laws of the State of Tennessee;

### **WITNESSETH:**

**WHEREAS**, the Licensor, as the Project Management Agency of the Knoxville/Knox County/KUB Geographic Information System (hereafter KGIS), has implemented the system for the benefit of the participants and the citizens of Knoxville/Knox County, Tennessee, and the Knoxville Utilities Board.

**WHEREAS**, it is in the best interest of the community that information be shared to increase efficiency, public response, and service and to effectively plan for the future needs of the community;

**WHEREAS**, Licensor desire to license the KGIS, as hereinafter defined, to Licensee, and Licensee desires to accept and receive said license from the Licensor, subject to the terms and conditions of and for the purposes set forth in this License Agreement; and

**WHEREAS**, both Licensee and Licensor are authorized under the Constitution and laws of Tennessee to enter into this Agreement for the purposes set forth herein;

**NOW, THEREFORE**, in consideration of the premises hereinafter contained and intending to be legally bound thereto, the parties hereby agree as follows.

## **ARTICLE 1: DEFINITIONS**

The following terms will have meanings indicated below unless the context clearly requires otherwise:

"Agreement" means the License Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" means the date when the term of this agreement begins and Licensee's and Licensor's duties to perform their obligations hereunder commence.

"KGIS" means the geographic information system jointly developed by the City of Knoxville, Knox County, and the Knoxville Utilities Board which includes but is not limited to the computer equipment and peripheral devices, computer software, digital databases and supporting information, and telecommunications.

"License Term" means the Original Term or any Renewal Term provided for in the Agreement under Article 4.

"Licensee" means Knox County Emergency Communications District.

"Licensor" means (i) the Knoxville/Knox County/KUB GIS Policy Board; (ii) any surviving, resulting, or transferee association; and (iii) assignee(s) of Licensor to which rights under this agreement are assigned.

"KGIS Data" means that information contained in the planimetric, topographic, and property files as well as other graphic and non graphic information, including custom software applications, generally available to all KGIS users

"Licensee's primary use office" means that person or person's so designated by the licensee and approved by KGIS which will be the primary contact point with the KGIS.

## **ARTICLE 2: COVENANTS OF LICENSEE**

Licensee represents, covenants, and warrants, for the benefit of Licensor and its assignees, as follows:

- (a) Licensee will do or cause to be done all things necessary to preserve and keep in full force and effect its duties under this Agreement.
- (b) Licensee is authorized under the Tennessee Constitution and the Tennessee Code Annotated to enter into this Agreement and the Transactions contemplated hereby, and to perform all of its obligations hereunder.
- (c) Licensee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolutions of its governing body, and further represents, covenants, and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Licensee has complied with public procurement requirements, if any are necessary to render this Agreement enforceable.
- (d) The Licensee shall recognize and honor in perpetuity the licensing agreements, copyrights, and other proprietary claims for software, databases, collateral information, and products established or produced by Licensor or the vendors furnishing said items to the KGIS.

## **ARTICLE 3: LICENSE OF KGIS; RIGHTS AND DUTIES OF LICENSOR AND LICENSEE**

**Section 3.01. License of KGIS.** Licensor hereby grants Licensee a non-exclusive license to utilize, for the limited purposes and on the conditions stated herein, KGIS data, for the Term of this Agreement. Licensee hereby accepts and receives said license for the purposes and on the terms and conditions herein contained.

**Section 3.02. Rights of Licensee.** Licensee's primary use office shall have the right to access KGIS Data as described in Exhibit 1. Licensor shall not be obligated to provide support, maintenance, problem-solving or any other services related to KGIS Data.

**Section 3.03. Limitations of Licensee.** Licensee may replicate KGIS data on its own computers, disks, tapes, or other media. Licensee shall adhere to and enforce all limitations and procedures of this agreement as may be extended to apply to such data, or as may be reasonably set forth by Licensor as conditions of such usage.

Licensee shall have the right to grant access to KGIS Data to its contractors for purposes which the licensee deems beneficial to the licensee provided that the Licensee agrees: 1) to require all contractors granted access to KGIS Data to sign a copy of the usage agreement contained in Exhibit 2, (2) to provide appropriate supervision of those contractors, (3) to cooperate with Licensor in

attempting to prevent unauthorized use, and (4) to remove access of any individuals of whom Licensee is aware is using KGIS Data improperly.

Licensee shall have the right to sell “hard copies” to individuals or businesses at a price set by Licensee to cover duplication costs. No digital data may be sold by the Licensee unless authorized by the Licensor in writing.

Licensee shall be fully responsible for any and all actions on its part, or on the part of any of its employees or contractors in the use or access to the KGIS regardless of whether Licensee had any knowledge of such activities.

**Section 3.04. Communications Facilities.** Licensor shall have the responsibility to install and maintain such communications facilities as may be reasonably necessary to permit Licensee to have access to the KGIS as contemplated by this Agreement. Licensee shall install those facilities from the KGIS communication network to a mutually agreeable access point in Licensee’s communication network. Licensee shall be responsible for installation and maintenance of any communications facilities from the point of connection to the Licensor’s GIS facilities. Licensee shall maintain its communications facilities in such a way that there can be no infiltration of the KGIS by any unauthorized means.

**Section 3.05. Third Party Interactions.** Licensee and Licensor agree that this Agreement shall facilitate and in no way impede interaction with other third party agreements each has with other local, state, and federal agencies.

**Section 3.056. Additional Users.** Nothing in this Agreement shall preclude Licensor from providing access to the KGIS to other licensees or participants.

**Section 3.07. Information Updates.** Licensee shall provide to KGIS, in a digital format compatible to that used by the Licensor, all of its graphic utility facilities information which exists within the area covered under this license agreement. This information must be delivered to KGIS in a timely fashion after its compilation. The Licensee shall also provide to KGIS updates to this information, in the same digital format, on an annual basis.

## **ARTICLE 4: LICENSE TERM**

**Section 4.01. Commencement of License Term.** The Term of this Agreement shall commence on the first calendar day of the month subsequent to the execution of this Agreement and shall continue until it is terminated as provided for in Section 4.02.

**Section 4.02. Termination of Agreement.** The Agreement will terminate upon the earliest of any of the following events:



- (a) Licensee may terminate this agreement at any time if sufficient funding is not obtained from the legislative body of the Licensee, provided sixty (60) days written notice has been provided to the Licensor;
- (b) Licensor may terminate this agreement at any time, and for any reason, provided sixty (60) days written notice has been provided to the Licensee;
- (c) Licensee may terminate this agreement at any time, and for any reason, provided sixty (60) days written notice has been provided to the Licensor;
- (d) A default by Licensee and Licensor's election to terminate this Agreement under Article 11.

## **ARTICLE 5: INSPECTIONS**

Licensor or its agents expressly reserve the right to enter into and upon the property of Licensee at all reasonable times for the purpose of inspecting any computer equipment, software, databases, and any other products and materials associated with or connected to the GIS. Further, the Licensor or its agents shall have the right to inspect at all reasonable times the integrity of any GIS software and databases utilized by Licensee.

## **ARTICLE 6: LICENSE FEES; EXPENSES**

**Section 6.01. General.** Upon execution of this Agreement, Licensee shall pay Licensor the amount of \$\_\_\_\_\_ as a license fee for the License Term. An annual renewal fee shall be assessed on each anniversary date of the agreement, the payment of which shall extend the agreement for one additional year. The annual renewal fee is subject to annual adjustment based upon policies established by KGIS.

**Section 6.02. Rental Payments to be Unconditional.** The obligations of Licensee to make payment of the license and other fees required under this Article 6, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Licensee and Licensor, any vendor, or any person or entity, Licensee shall make all payments of license and other fees when due and shall not withhold any payments pending final resolution of such dispute.

**Section 6.03. Payment for Products, Services, and Consumables.** Licensor shall invoice Licensee not more often than monthly for the actual costs incurred by Licensor for Licensee's use of consumable items, including, but not limited to, plotter supplies, paper, and magnetic tapes. Based on established fees for all system clients, Licensor shall invoice Licensee for any defined electronic products and services (e.g., standard or custom hard copy maps, copies of all or part of the database on specified media, application development, special research, and report preparation, etc.). Licensee shall pay said invoices within thirty (30) days from the date thereof.

## **ARTICLE 7: TITLE TO KGIS**

**Section 7.01. Title to Licensed Material.** During the term of this Agreement, title to all components of KGIS and any and all additions, repairs, replacements, or modifications shall remain with Licensor, subject to Licensee rights under this Agreement. In the event the termination of this agreement as set forth in Section 4.02 or default as set forth in Section 11.01, Licensee will forthwith execute a document canceling this Agreement and surrendering all rights which Licensee has hereunder.

## **ARTICLE 8: MAINTENANCE; TAXES**

**Section 8.01. Maintenance of KGIS.** Licensor and Licensee agree that, at all times during the License Term, Licensor will maintain, preserve, and keep the KGIS in good repair, working order, and conditions, and that Licensor will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals. This obligation to repair and maintain shall only extend to those facilities of KGIS from the CPU to the point of connection with Licensee's communications network as described in Section 3.04. Licensee shall maintain, preserve, and keep all facilities from the point of connection to the Licensee's GIS facility. License and other fees paid by Licensor shall not include support or maintenance of non-KGIS software, as may currently be in use at Licensee's facilities.

**Section 8.02. Taxes, Other Governmental Charges, and Utility Charges.** The parties to this Agreement contemplate that the KGIS will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use of the KGIS is found to be subject to taxation in any form (except for income taxes of Licensor), Licensee will pay during the License term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to its rights to use the KGIS.

## **ARTICLE 9: DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES, USE OF EQUIPMENT**

**Section 9.01. Disclaimer of Warranties.** LICENSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE OR USE OF THE KGIS, KGIS DATA, OR OTHER INFORMATION CONTAINED IN OR DERIVED FROM THE KGIS. In no event shall Licensor be liable for any incidental, indirect, special, or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning, or Licensee's use of any item or products or services provided for in this Agreement.

**Section 9.02. Use of the KGIS.** Licensee will not install, use, operate, or maintain the KGIS Data improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Licensee shall provide all permits and licenses, if any, necessary for the operation of the KGIS not provided by Licensor. In addition, Licensee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance, and operation of each component of the KGIS, and with respect to rules, copyrights, access privileges to the database and to sales of products and services established by Licensor) with all laws of the jurisdictions in which its operations involving any component of KGIS may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the components of the KGIS.

## **ARTICLE 10: ASSIGNMENT, TRANSFER, RELEASE AND INDEMNIFICATION**

**Section 10.01. Assignment by Licensor.** The rights of Licensor under this Agreement, including the right to receive payments from Licensee hereunder, are freely assignable by Licensor at any time subsequent to execution, without the necessity of obtaining the consent of Licensee; provided, however, that no such assignment(s) shall be effective as to Licensee unless and until Licensee shall have received notice of the assignment(s) disclosing the name and address of the assignee(s). Upon receipt of notice of assignment, Licensee agrees to reflect in a book entry the assignee designated in such notice of assignment, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, set off, or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Licensee may from time to time have against Licensor, or the assignee. Licensee agrees to execute all documents which may be reasonably requested by Licensor or its assignee to protect their interests in the KGIS and to rights under this Agreement.

**Section 10.02. Assignment by Licensee.** The rights of Licensee under this Agreement may not be sold, assigned, transferred, or encumbered by Licensee without the prior written consent of Licensor.

**Section 10.03. Release and Indemnification Covenants.** To the extent allowable under Tennessee Law, Licensee shall protect, hold harmless, and indemnify Licensor from and against any and all claims arising out of or as the result of entering into this Agreement. Licensee agrees to not withhold or abate any portion of the payments required pursuant to this Agreement by reason of any defects, malfunctions, breakdowns, or infirmities of the KGIS.

## **ARTICLE 11: EVENTS OF DEFAULT AND REMEDIES**

**Section 11.01. Events of Default Defined.** The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by Licensee to pay any license fee or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Licensee to observe and perform any covenant, condition, or agreement to be observed or performed, other than as referred to in Section 11.01 (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the Licensee by the Licensor.

If by reason of force majeure Licensee is unable in whole or in part to carry out its agreement herein contained, other than the obligations on the part of Licensee contained in Article 6 hereof, Licensee shall not be deemed in default during the continuance of such inability.

**Section 11.02. Remedies on Default.** Whenever any event of default referred to in Section 11.01 hereof shall have happened and be continuing, Licensor shall have the right as its sole option without any further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce its right as Licensor, including full access to facilities of Licensee for the purpose of de-installation of Licensor's equipment, data, documentation, and other items in which Licensor has retained ownership.

**Section 11.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Licensor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE 12: MISCELLANEOUS**

**Section 12.01. Notices.** All notices, certificates, or other communication hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties at their respective places of business. Mailed notices to the Licensor shall be sent to the Executive Director, Knoxville/Knox County/KUB GIS (KGIS), 606 Main Street, Suite 150, Knoxville, TN 37902. Mailed notices to the Licensee shall be sent to:\_\_\_\_\_.

**Section 12.02. Binding Effect.** Subject to the provisions of Section 9.02, this Agreement shall inure to the benefit of and shall be binding upon Licensor and Licensee and their respective successors and assigns.

**Section 12.03. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 12.04. Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written instrument signed by the Licensor and the Licensee; nor shall any such amendment that affects the rights of any assignee of Licensor be effective without such assignee's consent.

**Section 12.05. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.06. Applicable Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Tennessee.

**Section 12.07. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

**Section 12.08. Entire Agreement.** This Agreement constitutes the entire agreement between Licensor and Licensee regarding the KGIS. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding this Agreement. All terms and conditions of any purchase order or other document submitted by Licensee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Licensor and will not apply to this Agreement. Licensee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Licensor has executed this Agreement in its corporate name and attested by its duly authorized officers, and Licensee has caused this Agreement to be executed in its corporate name and attested by its duly authorized officers. All of the above occurred as of the date first above written.

KNOXVILLE/KNOX COUNTY/KUB GIS

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

LICENSEE  
Knox County  
Emergency Communications District

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **Exhibit 1**

### Description of Licensed KGIS Data

This license includes all unrestricted portions of the KGIS data, and includes coverage across the entire geographic extents of the KGIS database, including the following:

- Cadastral (Parcel Boundaries) and Ownership
- Planimetry
- Topography
- Digital Terrain Models
- Aerial Ortho-photography
- Addressing / Streets
- Jurisdictional Boundaries
- Political Districts
- Points of Interest
- City Wards
- Parks / Greenways
- Zoning
- LandUse
- Sector Plans

This license also includes other, restricted data layers, which shall be defined and authorized on a per-request basis in coordination with KGIS and its supporting agencies.

**Exhibit 2**

Supplementary Contractor's License Agreement



# DATA LICENSE AGREEMENT



License Number \_\_\_\_\_  
 Anniversary Date \_\_\_\_\_

User's Name \_\_\_\_\_ Contract \_\_\_\_\_  
 Company/Agency \_\_\_\_\_  
 Address \_\_\_\_\_ Zip \_\_\_\_\_  
 \_\_\_\_\_ Phone \_\_\_\_\_  
 \_\_\_\_\_ Fax # \_\_\_\_\_

PRODUCT DESCRIPTION:	EXHIBIT A (PART I)	PRODUCT FEE
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A copy of the data that is provided as part of the license		N/C
agreement between Knox County Emergency		
Communications District and KGIS (see part II)		

Sales Tax \_\_\_\_\_  
 TOTAL \_\_\_\_\_ N/C

**Internal OFFICE USE:**  
 Termination Date: \_\_\_\_\_ Prepared By: \_\_\_\_\_

*This data license agreement is subject to the terms and conditions on the reverse side hereof. In witness whereof, this license is executed on the date set forth under the parties named. The anniversary date of the license shall be the later of the dates set forth below.*

**KGIS / Knox County Emergency  
 Communications District**

**Licensed User:**

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_

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

Knoxville/Knox County/KUB Geographic Information System, 606 Main Street, Suite 150 Main Place, Knoxville, TN 37902

White: KGIS/KCECD File Copy  
 Canary: Finance Copy



**EXHIBIT A**  
**(Part II)**  
**Project Description and Further Restrictions on Use**

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Pink: User Copy

20Sep16

License # \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Project Description:** Company ( \_\_\_\_\_ ) has been subcontracted by Knox County Emergency Communications District (KCECD) to perform work and plans to make use of the KGIS data (which has been provided to the KCECD as part of its license agreement with KGIS). Further description as follows:

**Project Goals / Objectives:**

**Project Deliverables to the KCECD:**

**Geographic Coverage:**

**GIS Data Format and Requirements:**

**Further Restrictions on Use:** ( \_\_\_\_\_ ) understands that this is proprietary data, and that it is not to be released to others or used for purposes other than this particular project (in addition to the restrictions and license termination clauses that are outlined elsewhere in this agreement).

# **PRODUCT LICENSE AGREEMENT: TERMS AND CONDITIONS**

THIS AGREEMENT is a license and made and entered into by and between the Office of the Knoxville/Knox County/KUB GIS, a political subdivision of the State of Tennessee, having as its principal address for purposes of this agreement at Suite 150, 606 Main Street, Knoxville, Tennessee 37902 (hereinafter referred to as KGIS), and the client identified on the reverse (hereinafter referred to as "User").

WHEREAS, the City of Knoxville, Knox County and the Knoxville Utilities Board have jointly developed a Geographic Information System (hereinafter KGIS), which composed of hardware, operating systems, proprietary GIS software and databases (the copy of the database, or portions thereof, which are the subject of this Agreement, are more particularly described in Exhibit A, attached hereto and made a part hereof, and are referred to herein as the "Database"); and

WHEREAS, User wishes to acquire a copy of the Database, or portions thereof, for its own, but restricted, use as defined elsewhere in this Agreement; and

WHEREAS, the KGIS Policy Board is willing to make said copy or copies available to User, on the terms and conditions, and for the express purposes, herein stated and has delegated administrative authority for licensing such use to the KGIS Director;

NOW THEREFORE, for and in consideration of the mutual consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

## 1.0 Grant of License: License Term

1.1 KGIS grants User, subject to the provisions of this Agreement, a nontransferable, nonexclusive license to use the Database solely for internal use by User.

1.2 This Agreement does not constitute a sale of any title or interest in the Database. KGIS reserves all rights in the Database not expressly granted to User by this Agreement.

1.3 The Database will be prepared in a GIS data format that is based on the proprietary software licensed by KGIS and used in KGIS's Geographic Information System. User represents and warrants that User has the right to receive the Database in that format, and further covenants and agrees to indemnify and hold KGIS harmless from any liability incurred by KGIS for any breach of this representation and warranty by User.

1.4 User agrees that the development and provision of the Database by KGIS is a service, and stipulates the Database is not public record, and User further covenants and agrees that the delivery of the Database to User falls outside the Tennessee Public Records Law, and that none of the provisions thereof shall govern this License Agreement.

1.5 User agrees that the Database is further protected and controlled by the Tennessee State Code 10-7-504, on the Confidentiality of Certain Records, especially related to the Terrorism Prevention and Response Act of 2002.

1.6 The term of this License shall continue for one (1) year from the date of this Agreement, or until the completion of the project described in Exhibit A, whichever occurs first. The term may be extended for successive periods of not more than one (1) year each, upon execution of a written amendment to this Agreement and payment by User of the license fee provided for in paragraph 3.2.

## 2.0 Delivery

2.1 User is responsible for all shipping, insurance and related charges, and risk of loss or damage shall transfer from KGIS to User upon delivery by KGIS to User or to a common carrier for delivery to User.

2.2 KGIS shall in no event be liable for any damages or penalty for delay in delivery, or for failure to give notice of delay in delivery.

## 3.0 Payment by User

3.1 User shall pay an annual license fee for the use of the Database. The amount of the license fee shall be determined by KGIS, and may be reduced or waived in lieu of affirmative duties for accounting, reporting, database verification and maintenance. The initial license fee shall be paid prior to delivery of the Database to User.

3.2 All payment due hereunder shall be made in immediately available funds.

## 4.0 Restrictions on Use

4.1 User shall not disclose, publish, sell, assign, lease, sublicense, market or transfer the Database or any portion thereof. User shall not use the Database to operate a service bureau, nor shall the User engage in any processing of the Database for other persons or entities. User shall not use the Database in any manner or for any purpose not expressly authorized by this Agreement.

4.2 The Database may be used only with a single central processing unit at any one time.

4.3 User shall not alter, augment, or remove any copyright notice contained in or on the Database.

4.4 User is authorized to make a maximum of two (2) copies of the Database solely to the extent necessary for backup or archival purposes, provided no more than one (1) copy of the Database may be in use at any time.

4.5 User shall adhere to any further restrictions and requirements described in Exhibit A.

## 5.0 Data Quality

5.1 User acknowledges that the Database is complex and that it may contain some nonconformity's, defects, or errors. KGIS does not warrant that the Database will meet the User's needs or expectations, or that all nonconformity's can or will be corrected. User accepts the Database "as is."

## 6.0 Limitation of KGIS's Liability: Indemnity

6.1 KGIS shall not be liable under any circumstances for any lost profits, lost savings, or any other consequential damage which may arise from any use of the Database. KGIS shall bear no liability if the Database does not meet any particular purpose for which User may use the Database, nor shall KGIS be liable under any circumstances for the installation of the Database or for any results obtained from its use.

6.2 User shall indemnify and hold harmless KGIS against all losses, damages, claims, expenses or attorney's fees which may be sustained or asserted against KGIS arising from or connected with any breach by User of any provision of this Agreement.

## 7.0 User's Duties upon Expiration or Termination

7.1 Immediately upon expiration or termination of the License granted by this Agreement, User shall delete from its computers, workstations, and other storage devices all copies, including hardcopies, of all or any portions of the Database which are in its possession, custody, or control. User shall also deliver to KGIS all copies of all or any portions of the Database which are in its possession, custody or control, and notify KGIS of the existence and identity of any custodian of any copy of any portion of the Database not in User's possession, custody, or control, but obtained or derived directly or indirectly from User. User shall certify to KGIS, in writing, that it has complied with the provisions of this paragraph 7.1

## 8.0 Remedies upon Breach

8.1 In the event User breaches any of the terms, conditions, covenants, or agreements contained in this Agreement, the License granted by this Agreement shall immediately cease and KGIS shall thereupon have the right to any and all legal or equitable remedies, including but not limited to injunctive relief or the right to require an accounting by User of any profits which User may have realized by its use of the Database in violation of this Agreement. Any and all such profits realized by User by its use of the Database in violation of this Agreement shall be forthwith paid to KGIS.

## 9.0 Miscellaneous

9.1 This Agreement, and attached Exhibit A, constitutes the complete and exclusive agreement between KGIS and the User relating to its subject matter. This Agreement supersedes all prior and contemporaneous representations, correspondence, proposals, or agreements relating to its subject matter, whether oral or written.

9.2 This Agreement may be modified only by a written amendment signed by both KGIS and User, and may not be altered or supplemented by course of dealing or trade usage.

9.3 Neither this Agreement nor any of the rights granted by it may be assigned or transferred by User. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.

9.4 This Agreement shall be governed by the internal laws of the State of Tennessee.

9.5 The exclusive jurisdiction and venue for any lawsuit between the parties arising out of this Agreement shall be Knox County, Tennessee.

9.6 If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.

9.7 User shall be responsible for payment of all taxes, fees, assessments, or levies on the items covered by this Agreement or arising out of or imposed by reason of the transactions contemplated by this Agreement.

9.8 Paragraphs 4, 5, 6, 7, and 8 of this Agreement shall survive the expiration or termination of this Agreement.

9.9 Subject to the provisions of paragraph 9.3, this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of KGIS and User.

9.10 User agrees that KGIS has the right to modify or discontinue the Database at any time whatsoever, without prior written notice to User. In the event the Database is modified or discontinued, KGIS shall have no obligation to modify, replace, or make any refund with respect to any copy of the Database previously delivered to User.

9.11 Any notice required to be made pursuant to this Agreement shall be delivered by first class certified mail, postage prepaid, return receipt requested, and addressed as follows:

To KGIS:  
Attention: Director, Knoxville/Knox County/KUB GIS  
Suite 150  
606 Main Street  
Knoxville, Tennessee 37902

Knoxville ♦ Knox County ♦ Knoxville Utilities Board  
Geographic Information Systems

Keith G. Stump  
Executive Director/ GIO

**MEMORANDUM OF UNDERSTANDING**

**Between  
Knoxville, Knox County, KUB GIS (KGIS)  
and  
Knox County Schools**

The purpose of this MOU is to define a specific Operational Partnership agreement between the Knoxville, Knox County, KUB GIS (KGIS) and Knox County Schools.

The KGIS System and Database is a shared resource governed by the KGIS Policy Board, which has established policies and procedures regarding its operational maintenance, funding, data sharing and product licensing.

The scope of this MOU is to provide Knox County Schools with an expanded level of access to KGIS's full range of operational databases and hosted services, including web-based applications, for use by Knox County Schools to meet its operational duties.

The commitments and policies identified in this MOU shall be mutually agreed upon by the parties involved. This agreement can only be amended or modified upon mutual written agreement by all the parties.

The MOU shall remain in effect until it is terminated, for any reason, by either party with a sixty (60) day prior written notice, or immediately if one of the parties is found to be in violation of the agreement.

**POLICY BOARD**

**Madeline Rogero**, Mayor, City of Knoxville; **Gabriel Bolas**, President/CEO, KUB; **Glenn Jacobs**, Mayor, Knox County

## **A. Data Use Policies & Restrictions**

As an Operational Partner with KGIS, Knox County Schools is committed to adhering to the policies and procedures established by KGIS and the KGIS Policy Board.

Knox County Schools recognizes the complexity of the KGIS database in regards to data ownership and restrictions on use, and agrees to adhere with KGIS's established policies and procedures in regards to data sharing, replication, open records, distribution and licensing.

Knox County Schools agrees to actively communicate and coordinate with KGIS regarding adherence to the operational practices of the KGIS organization.

Knox County Schools agrees to be a signed party to the separate, attached **Appendix A: License Agreement** governing the use and restrictions of the KGIS data.

## **B. Data Sharing Commitment**

As a data sharing partner with KGIS, Knox County Schools is committed to communicating with KGIS about its ongoing GIS database inventory and maintenance activities, and to being an active participant in the KGIS User community.

KGIS is committed to promoting Knox County Schools's effective use of the KGIS system.

Knox County Schools agrees to further mutually support KGIS by providing access to non-sensitive, but value-added GIS data created, hosted or maintained by Knox County Schools.

To aid its other mutual support agreements, Knox County Schools may be tasked with distributing portions of the KGIS database to other agencies, including the State of Tennessee. But in all such endeavors, and as the situation will reasonably allow, Knox County Schools agrees to seek prior KGIS approval, and to coordinate with KGIS on the data sharing activities, ensuring that KGIS operational standards are adhered to, and that KGIS interests are protected by those other agencies.

## **C. Accessibility to the KGIS System, Data and Products**

As an operational partner with KGIS, Knox County Schools shall be provided with access to the generally accessible, non-restricted portions of the KGIS system, including

- the centrally-managed GIS database
- commonly shared file folders on KGIS's communications network
- Internet and Intranet web sites and applications
- KGIS's custom desktop tools, scripts and workflows

Knox County Schools shall also have access to certain restricted datasets to which it has been granted specific authority as governed by KGIS policies and procedures.

As resources will allow, KGIS shall coordinate with Knox County Schools to create and maintain intranet and internet mapping web sites specifically designed for use by Knox County Schools.

**Signatures:**

As the duly authorized officer for my corporate organization, I understand my rights and responsibilities as incorporated in this Memorandum of Understanding, and I will strive to meet the standards outlined in this agreement.

\_\_\_\_\_  
For the KGIS \_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness for the KGIS \_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
For Knox County Schools \_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness for Knox County Schools \_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**Approvals as to Form:**

\_\_\_\_\_  
City of Knoxville \_\_\_\_\_  
Date

\_\_\_\_\_  
Knox County \_\_\_\_\_  
Date

\_\_\_\_\_  
KUB \_\_\_\_\_  
Date

**Appendix A**  
**License Agreement**

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("the Agreement") dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the KNOXVILLE/KNOX COUNTY/KUB GEOGRAPHIC INFORMATION SYSTEM POLICY BOARD ("Licensor"), and Knox County Schools ("Licensee"), duly organized and existing under the laws of the State of Tennessee;

### **WITNESSETH:**

**WHEREAS**, the Licensor, as the Project Management Agency of the Knoxville/Knox County/KUB Geographic Information System (hereafter KGIS), has implemented the system for the benefit of the participants and the citizens of Knoxville/Knox County, Tennessee, and the Knoxville Utilities Board.

**WHEREAS**, it is in the best interest of the community that information be shared to increase efficiency, public response, and service and to effectively plan for the future needs of the community;

**WHEREAS**, Licensor desire to license the KGIS, as hereinafter defined, to Licensee, and Licensee desires to accept and receive said license from the Licensor, subject to the terms and conditions of and for the purposes set forth in this License Agreement; and

**WHEREAS**, both Licensee and Licensor are authorized under the Constitution and laws of Tennessee to enter into this Agreement for the purposes set forth herein;

**NOW, THEREFORE**, in consideration of the premises hereinafter contained and intending to be legally bound thereto, the parties hereby agree as follows.



## **ARTICLE 1: DEFINITIONS**

The following terms will have meanings indicated below unless the context clearly requires otherwise:

"Agreement" means the License Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" means the date when the term of this agreement begins and Licensee's and Licensor's duties to perform their obligations hereunder commence.

"KGIS" means the geographic information system jointly developed by the City of Knoxville, Knox County, and the Knoxville Utilities Board which includes but is not limited to the computer equipment and peripheral devices, computer software, digital databases and supporting information, and telecommunications.

"License Term" means the Original Term or any Renewal Term provided for in the Agreement under Article 4.

"Licensee" means Knox County Schools.

"Licensor" means (i) the Knoxville/Knox County/KUB GIS Policy Board; (ii) any surviving, resulting, or transferee association; and (iii) assignee(s) of Licensor to which rights under this agreement are assigned.

"KGIS Data" means that information contained in the planimetric, topographic, and property files as well as other graphic and non graphic information, including custom software applications, generally available to all KGIS users

"Licensee's primary use office" means that person or person's so designated by the licensee and approved by KGIS which will be the primary contact point with the KGIS.

## **ARTICLE 2: COVENANTS OF LICENSEE**

Licensee represents, covenants, and warrants, for the benefit of Licensor and its assignees, as follows:

- (a) Licensee will do or cause to be done all things necessary to preserve and keep in full force and effect its duties under this Agreement.
- (b) Licensee is authorized under the Tennessee Constitution and the Tennessee Code Annotated to enter into this Agreement and the Transactions contemplated hereby, and to perform all of its obligations hereunder.
- (c) Licensee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolutions of its governing body, and further represents, covenants, and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Licensee has complied with public procurement requirements, if any are necessary to render this Agreement enforceable.
- (d) The Licensee shall recognize and honor in perpetuity the licensing agreements, copyrights, and other proprietary claims for software, databases, collateral information, and products established or produced by Licensor or the vendors furnishing said items to the KGIS.

## **ARTICLE 3: LICENSE OF KGIS; RIGHTS AND DUTIES OF LICENSOR AND LICENSEE**

**Section 3.01. License of KGIS.** Licensor hereby grants Licensee a non-exclusive license to utilize, for the limited purposes and on the conditions stated herein, KGIS data, for the Term of this Agreement. Licensee hereby accepts and receives said license for the purposes and on the terms and conditions herein contained.

**Section 3.02. Rights of Licensee.** Licensee's primary use office shall have the right to access KGIS Data as described in Exhibit 1. Licensor shall not be obligated to provide support, maintenance, problem-solving or any other services related to KGIS Data.

**Section 3.03. Limitations of Licensee.** Licensee may replicate KGIS data on its own computers, disks, tapes, or other media. Licensee shall adhere to and enforce all limitations and procedures of this agreement as may be extended to apply to such data, or as may be reasonably set forth by Licensor as conditions of such usage.

Licensee shall have the right to grant access to KGIS Data to its contractors for purposes which the licensee deems beneficial to the licensee provided that the Licensee agrees: 1) to require all contractors granted access to KGIS Data to sign a copy of the usage agreement contained in Exhibit 2, (2) to provide appropriate supervision of those contractors, (3) to cooperate with Licensor in

attempting to prevent unauthorized use, and (4) to remove access of any individuals of whom Licensee is aware is using KGIS Data improperly.

Licensee shall have the right to sell “hard copies” to individuals or businesses at a price set by Licensee to cover duplication costs. No digital data may be sold by the Licensee unless authorized by the Licensor in writing.

Licensee shall be fully responsible for any and all actions on its part, or on the part of any of its employees or contractors in the use or access to the KGIS regardless of whether Licensee had any knowledge of such activities.

**Section 3.04. Communications Facilities.** Licensor shall have the responsibility to install and maintain such communications facilities as may be reasonably necessary to permit Licensee to have access to the KGIS as contemplated by this Agreement. Licensee shall install those facilities from the KGIS communication network to a mutually agreeable access point in Licensee’s communication network. Licensee shall be responsible for installation and maintenance of any communications facilities from the point of connection to the Licensor’s GIS facilities. Licensee shall maintain its communications facilities in such a way that there can be no infiltration of the KGIS by any unauthorized means.

**Section 3.05. Third Party Interactions.** Licensee and Licensor agree that this Agreement shall facilitate and in no way impede interaction with other third party agreements each has with other local, state, and federal agencies.

**Section 3.056. Additional Users.** Nothing in this Agreement shall preclude Licensor from providing access to the KGIS to other licensees or participants.

**Section 3.07. Information Updates.** Licensee shall provide to KGIS, in a digital format compatible to that used by the Licensor, all of its graphic utility facilities information which exists within the area covered under this license agreement. This information must be delivered to KGIS in a timely fashion after its compilation. The Licensee shall also provide to KGIS updates to this information, in the same digital format, on an annual basis.

## **ARTICLE 4: LICENSE TERM**

**Section 4.01. Commencement of License Term.** The Term of this Agreement shall commence on the first calendar day of the month subsequent to the execution of this Agreement and shall continue until it is terminated as provided for in Section 4.02.

**Section 4.02. Termination of Agreement.** The Agreement will terminate upon the earliest of any of the following events:

- (a) Licensee may terminate this agreement at any time if sufficient funding is not obtained from the legislative body of the Licensee, provided sixty (60) days written notice has been provided to the Licensor;
- (b) Licensor may terminate this agreement at any time, and for any reason, provided sixty (60) days written notice has been provided to the Licensee;
- (c) Licensee may terminate this agreement at any time, and for any reason, provided sixty (60) days written notice has been provided to the Licensor;
- (d) A default by Licensee and Licensor's election to terminate this Agreement under Article 11.

## **ARTICLE 5: INSPECTIONS**

Licensor or its agents expressly reserve the right to enter into and upon the property of Licensee at all reasonable times for the purpose of inspecting any computer equipment, software, databases, and any other products and materials associated with or connected to the GIS. Further, the Licensor or its agents shall have the right to inspect at all reasonable times the integrity of any GIS software and databases utilized by Licensee.

## **ARTICLE 6: LICENSE FEES; EXPENSES**

**Section 6.01. General.** Upon execution of this Agreement, Licensee shall pay Licensor the amount of \$\_\_\_\_\_ as a license fee for the License Term. An annual renewal fee shall be assessed on each anniversary date of the agreement, the payment of which shall extend the agreement for one additional year. The annual renewal fee is subject to annual adjustment based upon policies established by KGIS.

**Section 6.02. Rental Payments to be Unconditional.** The obligations of Licensee to make payment of the license and other fees required under this Article 6, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Licensee and Licensor, any vendor, or any person or entity, Licensee shall make all payments of license and other fees when due and shall not withhold any payments pending final resolution of such dispute.

**Section 6.03. Payment for Products, Services, and Consumables.** Licensor shall invoice Licensee not more often than monthly for the actual costs incurred by Licensor for Licensee's use of consumable items, including, but not limited to, plotter supplies, paper, and magnetic tapes. Based on established fees for all system clients, Licensor shall invoice Licensee for any defined electronic products and services (e.g., standard or custom hard copy maps, copies of all or part of the database on specified media, application development, special research, and report preparation, etc.). Licensee shall pay said invoices within thirty (30) days from the date thereof.

## **ARTICLE 7: TITLE TO KGIS**

**Section 7.01. Title to Licensed Material.** During the term of this Agreement, title to all components of KGIS and any and all additions, repairs, replacements, or modifications shall remain with Licensor, subject to Licensee rights under this Agreement. In the event the termination of this agreement as set forth in Section 4.02 or default as set forth in Section 11.01, Licensee will forthwith execute a document canceling this Agreement and surrendering all rights which Licensee has hereunder.

## **ARTICLE 8: MAINTENANCE; TAXES**

**Section 8.01. Maintenance of KGIS.** Licensor and Licensee agree that, at all times during the License Term, Licensor will maintain, preserve, and keep the KGIS in good repair, working order, and conditions, and that Licensor will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals. This obligation to repair and maintain shall only extend to those facilities of KGIS from the CPU to the point of connection with Licensee's communications network as described in Section 3.04. Licensee shall maintain, preserve, and keep all facilities from the point of connection to the Licensee's GIS facility. License and other fees paid by Licensor shall not include support or maintenance of non-KGIS software, as may currently be in use at Licensee's facilities.

**Section 8.02. Taxes, Other Governmental Charges, and Utility Charges.** The parties to this Agreement contemplate that the KGIS will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use of the KGIS is found to be subject to taxation in any form (except for income taxes of Licensor), Licensee will pay during the License term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to its rights to use the KGIS.

## **ARTICLE 9: DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES, USE OF EQUIPMENT**

**Section 9.01. Disclaimer of Warranties.** LICENSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE OR USE OF THE KGIS, KGIS DATA, OR OTHER INFORMATION CONTAINED IN OR DERIVED

FROM THE KGIS. In no event shall Licensor be liable for any incidental, indirect, special, or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning, or Licensee's use of any item or products or services provided for in this Agreement.

**Section 9.02. Use of the KGIS.** Licensee will not install, use, operate, or maintain the KGIS Data improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Licensee shall provide all permits and licenses, if any, necessary for the operation of the KGIS not provided by Licensor. In addition, Licensee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance, and operation of each component of the KGIS, and with respect to rules, copyrights, access privileges to the database and to sales of products and services established by Licensor) with all laws of the jurisdictions in which its operations involving any component of KGIS may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the components of the KGIS.

## **ARTICLE 10: ASSIGNMENT, TRANSFER, RELEASE AND INDEMNIFICATION**

**Section 10.01. Assignment by Licensor.** The rights of Licensor under this Agreement, including the right to receive payments from Licensee hereunder, are freely assignable by Licensor at any time subsequent to execution, without the necessity of obtaining the consent of Licensee; provided, however, that no such assignment(s) shall be effective as to Licensee unless and until Licensee shall have received notice of the assignment(s) disclosing the name and address of the assignee(s). Upon receipt of notice of assignment, Licensee agrees to reflect in a book entry the assignee designated in such notice of assignment, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, set off, or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Licensee may from time to time have against Licensor, or the assignee. Licensee agrees to execute all documents which may be reasonably requested by Licensor or its assignee to protect their interests in the KGIS and to rights under this Agreement.

**Section 10.02. Assignment by Licensee.** The rights of Licensee under this Agreement may not be sold, assigned, transferred, or encumbered by Licensee without the prior written consent of Licensor.

**Section 10.03. Release and Indemnification Covenants.** To the extent allowable under Tennessee Law, Licensee shall protect, hold harmless, and indemnify Licensor from and against any and all claims arising out of or as the result of entering into this Agreement. Licensee agrees to not withhold or abate any portion of the payments required pursuant to this Agreement by reason of any defects, malfunctions, breakdowns, or infirmities of the KGIS.

## **ARTICLE 11: EVENTS OF DEFAULT AND REMEDIES**

**Section 11.01. Events of Default Defined.** The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by Licensee to pay any license fee or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Licensee to observe and perform any covenant, condition, or agreement to be observed or performed, other than as referred to in Section 11.01 (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the Licensee by the Licensor.

If by reason of force majeure Licensee is unable in whole or in part to carry out its agreement herein contained, other than the obligations on the part of Licensee contained in Article 6 hereof, Licensee shall not be deemed in default during the continuance of such inability.

**Section 11.02. Remedies on Default.** Whenever any event of default referred to in Section 11.01 hereof shall have happened and be continuing, Licensor shall have the right as its sole option without any further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce its right as Licensor, including full access to facilities of Licensee for the purpose of de-installation of Licensor's equipment, data, documentation, and other items in which Licensor has retained ownership.

**Section 11.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Licensor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE 12: MISCELLANEOUS**

**Section 12.01. Notices.** All notices, certificates, or other communication hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties at their respective places of business. Mailed notices to the Licensor shall be sent to the Executive Director, Knoxville/Knox County/KUB GIS (KGIS), 606 Main Street, Suite 150, Knoxville, TN 37902. Mailed notices to the Licensee shall be sent to:\_\_\_\_\_.

**Section 12.02. Binding Effect.** Subject to the provisions of Section 9.02, this Agreement shall inure to the benefit of and shall be binding upon Licensor and Licensee and their respective successors and assigns.

**Section 12.03. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 12.04. Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written instrument signed by the Licensor and the Licensee; nor shall any such amendment that affects the rights of any assignee of Licensor be effective without such assignee's consent.

**Section 12.05. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.06. Applicable Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Tennessee.

**Section 12.07. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

**Section 12.08. Entire Agreement.** This Agreement constitutes the entire agreement between Licensor and Licensee regarding the KGIS. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding this Agreement. All terms and conditions of any purchase order or other document submitted by Licensee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Licensor and will not apply to this Agreement. Licensee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



IN WITNESS WHEREOF, Licensor has executed this Agreement in its corporate name and attested by its duly authorized officers, and Licensee has caused this Agreement to be executed in its corporate name and attested by its duly authorized officers. All of the above occurred as of the date first above written.

KNOXVILLE/KNOX COUNTY/KUB GIS

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

LICENSEE  
Knox County Schools

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **Exhibit 1**

### Description of Licensed KGIS Data

This license includes all unrestricted portions of the KGIS data, and includes coverage across the entire geographic extents of the KGIS database, including the following:

- Cadastral (Parcel Boundaries) and Ownership
- Planimetry
- Topography
- Digital Terrain Models
- Aerial Ortho-photography
- Addressing / Streets
- Jurisdictional Boundaries
- Political Districts
- Points of Interest
- City Wards
- Parks / Greenways
- Zoning
- LandUse
- Sector Plans

This license also includes other, restricted data layers, which shall be defined and authorized on a per-request basis in coordination with KGIS and its supporting agencies.

**Exhibit 2**

Supplementary Contractor's License Agreement

# DATA LICENSE AGREEMENT



License Number \_\_\_\_\_  
 Anniversary Date \_\_\_\_\_

User's Name \_\_\_\_\_ Contract \_\_\_\_\_  
 Company/Agency \_\_\_\_\_  
 Address \_\_\_\_\_ Zip \_\_\_\_\_  
 \_\_\_\_\_ Phone \_\_\_\_\_  
 \_\_\_\_\_ Fax # \_\_\_\_\_

PRODUCT DESCRIPTION:	EXHIBIT A (PART I)	PRODUCT FEE
----------------------	--------------------	-------------

A copy of the data that is provided as part of the license	N/C
agreement between Knox County Schools and	
KGIS (see part II)	

Sales Tax \_\_\_\_\_  
 TOTAL \_\_\_\_\_ N/C

<b>Internal OFFICE USE:</b> Termination Date: _____	Prepared By: _____
--	--------------------

*This data license agreement is subject to the terms and conditions on the reverse side hereof. In witness whereof, this license is executed on the date set forth under the parties named. The anniversary date of the license shall be the later of the dates set forth below.*

**KGIS / Knox County Schools**

**Licensed User:**

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_

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

Knoxville/Knox County/KUB Geographic Information System, 606 Main Street, Suite 150 Main Place, Knoxville, TN 37902

White: KGIS/Schools File Copy  
 Canary: Finance Copy  
 Pink: User Copy

20Sep16



**EXHIBIT A**  
**(Part II)**  
**Project Description and Further Restrictions on Use**

---

License # \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Project Description:** Company ( \_\_\_\_\_ ) has been subcontracted by Knox County Schools to perform work and plans to make use of the KGIS data (which has been provided to the Knox County Schools as part of its license agreement with KGIS). Further description as follows:

**Project Goals / Objectives:**

**Project Deliverables to the Knox County Schools:**

**Geographic Coverage:**

**GIS Data Format and Requirements:**

**Further Restrictions on Use:** ( \_\_\_\_\_ ) understands that this is proprietary data, and that it is not to be released to others or used for purposes other than this particular project (in addition to the restrictions and license termination clauses that are outlined elsewhere in this agreement).

# **PRODUCT LICENSE AGREEMENT: TERMS AND CONDITIONS**

THIS AGREEMENT is a license and made and entered into by and between the Office of the Knoxville/Knox County/KUB GIS, a political subdivision of the State of Tennessee, having as its principal address for purposes of this agreement at Suite 150, 606 Main Street, Knoxville, Tennessee 37902 (hereinafter referred to as KGIS), and the client identified on the reverse (hereinafter referred to as "User").

WHEREAS, the City of Knoxville, Knox County and the Knoxville Utilities Board have jointly developed a Geographic Information System (hereinafter KGIS), which composed of hardware, operating systems, proprietary GIS software and databases (the copy of the database, or portions thereof, which are the subject of this Agreement, are more particularly described in Exhibit A, attached hereto and made a part hereof, and are referred to herein as the "Database"); and

WHEREAS, User wishes to acquire a copy of the Database, or portions thereof, for its own, but restricted, use as defined elsewhere in this Agreement; and

WHEREAS, the KGIS Policy Board is willing to make said copy or copies available to User, on the terms and conditions, and for the express purposes, herein stated and has delegated administrative authority for licensing such use to the KGIS Director;

NOW THEREFORE, for and in consideration of the mutual consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

## 1.0 Grant of License: License Term

1.1 KGIS grants User, subject to the provisions of this Agreement, a nontransferable, nonexclusive license to use the Database solely for internal use by User.

1.2 This Agreement does not constitute a sale of any title or interest in the Database. KGIS reserves all rights in the Database not expressly granted to User by this Agreement.

1.3 The Database will be prepared in a GIS data format that is based on the proprietary software licensed by KGIS and used in KGIS's Geographic Information System. User represents and warrants that User has the right to receive the Database in that format, and further covenants and agrees to indemnify and hold KGIS harmless from any liability incurred by KGIS for any breach of this representation and warranty by User.

1.4 User agrees that the development and provision of the Database by KGIS is a service, and stipulates the Database is not public record, and User further covenants and agrees that the delivery of the Database to User falls outside the Tennessee Public Records Law, and that none of the provisions thereof shall govern this License Agreement.

1.5 User agrees that the Database is further protected and controlled by the Tennessee State Code 10-7-504, on the Confidentiality of Certain Records, especially related to the Terrorism Prevention and Response Act of 2002.

1.6 The term of this License shall continue for one (1) year from the date of this Agreement, or until the completion of the project described in Exhibit A, whichever occurs first. The term may be extended for successive periods of not more than one (1) year each, upon execution of a written amendment to this Agreement and payment by User of the license fee provided for in paragraph 3.2.

## 2.0 Delivery

2.1 User is responsible for all shipping, insurance and related charges, and risk of loss or damage shall transfer from KGIS to User upon delivery by KGIS to User or to a common carrier for delivery to User.

2.2 KGIS shall in no event be liable for any damages or penalty for delay in delivery, or for failure to give notice of delay in delivery.

## 3.0 Payment by User

3.1 User shall pay an annual license fee for the use of the Database. The amount of the license fee shall be determined by KGIS, and may be reduced or waived in lieu of affirmative duties for accounting, reporting, database verification and maintenance. The initial license fee shall be paid prior to delivery of the Database to User.

3.2 All payment due hereunder shall be made in immediately available funds.

## 4.0 Restrictions on Use

4.1 User shall not disclose, publish, sell, assign, lease, sublicense, market or transfer the Database or any portion thereof. User shall not use the Database to operate a service bureau, nor shall the User engage in any processing of the Database for other persons or entities. User shall not use the Database in any manner or for any purpose not expressly authorized by this Agreement.

4.2 The Database may be used only with a single central processing unit at any one time.

4.3 User shall not alter, augment, or remove any copyright notice contained in or on the Database.

4.4 User is authorized to make a maximum of two (2) copies of the Database solely to the extent necessary for backup or archival purposes, provided no more than one (1) copy of the Database may be in use at any time.

4.5 User shall adhere to any further restrictions and requirements described in Exhibit A.

## 5.0 Data Quality

5.1 User acknowledges that the Database is complex and that it may contain some nonconformity's, defects, or errors. KGIS does not warrant that the Database will meet the User's needs or expectations, or that all nonconformity's can or will be corrected. User accepts the Database "as is."

## 6.0 Limitation of KGIS's Liability: Indemnity

6.1 KGIS shall not be liable under any circumstances for any lost profits, lost savings, or any other consequential damage which may arise from any use of the Database. KGIS shall bear no liability if the Database does not meet any particular purpose for which User may use the Database, nor shall KGIS be liable under any circumstances for the installation of the Database or for any results obtained from its use.

6.2 User shall indemnify and hold harmless KGIS against all losses, damages, claims, expenses or attorney's fees which may be sustained or asserted against KGIS arising from or connected with any breach by User of any provision of this Agreement.

## 7.0 User's Duties upon Expiration or Termination

7.1 Immediately upon expiration or termination of the License granted by this Agreement, User shall delete from its computers, workstations, and other storage devices all copies, including hardcopies, of all or any portions of the Database which are in its possession, custody, or control. User shall also deliver to KGIS all copies of all or any portions of the Database which are in its possession, custody or control, and notify KGIS of the existence and identity of any custodian of any copy of any portion of the Database not in User's possession, custody, or control, but obtained or derived directly or indirectly from User. User shall certify to KGIS, in writing, that it has complied with the provisions of this paragraph 7.1

## 8.0 Remedies upon Breach

8.1 In the event User breaches any of the terms, conditions, covenants, or agreements contained in this Agreement, the License granted by this Agreement shall immediately cease and KGIS shall thereupon have the right to any and all legal or equitable remedies, including but not limited to injunctive relief or the right to require an accounting by User of any profits which User may have realized by its use of the Database in violation of this Agreement. Any and all such profits realized by User by its use of the Database in violation of this Agreement shall be forthwith paid to KGIS.

## 9.0 Miscellaneous

9.1 This Agreement, and attached Exhibit A, constitutes the complete and exclusive agreement between KGIS and the User relating to its subject matter. This Agreement supersedes all prior and contemporaneous representations, correspondence, proposals, or agreements relating to its subject matter, whether oral or written.

9.2 This Agreement may be modified only by a written amendment signed by both KGIS and User, and may not be altered or supplemented by course of dealing or trade usage.

9.3 Neither this Agreement nor any of the rights granted by it may be assigned or transferred by User. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.

9.4 This Agreement shall be governed by the internal laws of the State of Tennessee.

9.5 The exclusive jurisdiction and venue for any lawsuit between the parties arising out of this Agreement shall be Knox County, Tennessee.

9.6 If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.

9.7 User shall be responsible for payment of all taxes, fees, assessments, or levies on the items covered by this Agreement or arising out of or imposed by reason of the transactions contemplated by this Agreement.

9.8 Paragraphs 4, 5, 6, 7, and 8 of this Agreement shall survive the expiration or termination of this Agreement.

9.9 Subject to the provisions of paragraph 9.3, this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of KGIS and User.

9.10 User agrees that KGIS has the right to modify or discontinue the Database at any time whatsoever, without prior written notice to User. In the event the Database is modified or discontinued, KGIS shall have no obligation to modify, replace, or make any refund with respect to any copy of the Database previously delivered to User.

9.11 Any notice required to be made pursuant to this Agreement shall be delivered by first class certified mail, postage prepaid, return receipt requested, and addressed as follows:

To KGIS:  
Attention: Director, Knoxville/Knox County/KUB GIS  
Suite 150  
606 Main Street  
Knoxville, Tennessee 37902