

TRI-PARTY AGREEMENT

THIS AGREEMENT entered into this 9th day of August, 1985 between Knox County, Tennessee, "County", the City of Knoxville, "City", and Knoxville Utilities Board, "KUB", an agency of the City of Knoxville.

WITNESSETH:

WHEREAS, "County", "City", and "KUB" have studied the plausibility of developing and implementing a computerized mapping system, "CMS", for Knox County, Tennessee and

WHEREAS, the legislative bodies of the City and County and the management board of KUB have found a public need for a computerized mapping system, and

WHEREAS, it has been represented to the respective parties hereto that the approximate cost of financing same is approximately \$5,500,000.00, and

WHEREAS, the parties hereto, through their respective legislative body, and/or board, have expressed their intention to fund the cost of developing such a system on a proportional share basis, and

WHEREAS, it is anticipated that certain revenue may be generated to defray the cost of capitalization and implementation of the system, and said system may be used by other interested public and private firms and corporations including other utilities, and

WHEREAS, the governing bodies of the respective parties hereto have authorized the execution of an agreement to guarantee participation in a CMS upon the terms and conditions hereinafter provided, and

WHEREAS, it is contemplated by the parties that the means of financing same shall be by the issuance of general obligation bonds in the principal aggregate amount of \$5,500,000.00 by Knox County, Tennessee.

NOW THEREFORE, the parties hereto, in consideration of the mutual promises and benefits to be derived hereunder do covenant and agree as follows:

1. Financing. County agrees to authorize by appropriate resolution the issuance of general obligation bonds in the approximate amount of \$5,500,000.00 to fund the cost of capitalization of the computerized mapping system. Once CMS becomes operational principal and interest payments on the bond issue will be taken from CMS operating revenues under a formula hereinafter described as may be thereafter modified by the CMS Policy Board.

2. Arbitrage Provisions. Proceeds of the bond issue less issuance expense and accrued cost at the time of the sale of said bonds will be arbitrated to reduce the amount of interest due on the bond prior to revenue generation by CMS.

3. Pre-operational expenses. All pre-operational expenses of CMS which shall include principal and interest payments due on the bonds, adjusted by any arbitrage requirements, plus all operating expenses prior to such time as the system is operational and producing adequate usage data to formulate

charges will be borne equally by County, City and KUB, except to the extent that the policy board as hereinafter defined determines such expenses may be capitalized and paid from the proceeds of the bond issue. The policy board shall determine the time at which there is sufficient usage data in the CMS to formulate charges to users.

4. Guarantee of Participation. County, City and KUB bind themselves to the obligations of this agreement for the duration of the life of the bond issue and to pay all financial obligations herein provided subject to annual appropriations by KUB, City, and County. All parties agree to use the CMS as their primary source for geographic mapping and facilities management applications. City, County and KUB shall remain users of the CMS system for not less than the duration of the bond issue financing the implementation of the system.

5. Allocations of KUB Obligations. Notwithstanding anything herein to the contrary, the obligations of KUB hereunder, which are incurred for the benefit of the Electric Division of KUB, are payable solely from the revenues and property of the Electric Division of KUB; the obligations of KUB hereunder which are incurred for the benefit of the Water Division of KUB are payable solely from the revenues and property of the Water Division of KUB; and the obligations of KUB hereunder which are incurred for the benefit of the Gas Division of KUB are payable solely from the revenue and property of the Gas Division of KUB. KUB shall have the sole right and authority to allocate its obligations hereunder to either its Electric Division, Water Division or Gas Division based upon KUB's determination of the relative usage of CMS by such Divisions, provided that each of KUB's obligations hereunder shall be allocated to either its Electric Division, Water Division or Gas Division.

6. Policy Board. All parties agree to the creation of a policy board which shall have the power and responsibility to approve and review all matters of policy concerning the operation of CMS. The duration of the policy board shall be as long as the CMS remains in existence. Official action of the policy board shall be by majority vote of its members except in the event of dissolution or termination of the system during the term of the bond issue in which case unanimous actions shall be required. The policy board shall be composed of the Knox County Executive, the Mayor of Knoxville and the General Manager of the Knoxville Utilities Board. The County Executive will be the Chief Executive Officer of the CMS department. The policy board shall have the power and responsibility to approve the hiring of a CMS Operations Manager, who shall substantially meet the qualifications contained in the job description attached as Exhibit A hereto. The County Executive and the CMS Operations Manager shall have the responsibility for the daily department operations. The determining of the formula for calculating usage, the setting of the operation budget, the determination and setting of user fees, and all major policy matters involving usage, shall be the Board's responsibility. The Board shall resolve any and all disputes over operations between the parties hereto.

7. Minimum Usage Fee; Allocation of Adjusted Operational Expenses. A. The City, County, and KUB shall each be obligated and shall pay for its system usage as defined in Paragraph 8 by paying the user fee as set by the policy board, provided, however, that each such party shall in no event pay less than

\$100,000.00 annually (the “minimum usage fee”) to guarantee the successful operation of the CMS system. The method of payment of the minimum usage fee shall be determined by the policy board. Any increase or decrease in the minimum usage fee shall be by unanimous consent of the policy board.

The minimum usage fee payable by each party shall be credited against the charges for such party’s actual system usage.

B. The City, County, and KUB shall be responsible for CMS Adjusted Operational Expense as hereinafter defined after CMS becomes operational. The adjusted operational expense shall be calculated as follows:

One-third share of the Principal and Interest Payments on the “Start-up” Bond Issue.¹

Operating Costs as defined in Paragraph 9.

Less CMS User Revenues (including minimum usage fees).

Less Revenue from Map Sales and other related products.

Equals Adjusted Operating Expenses.²

8. System Usage Defined. System usage will be determined by the accumulated amount of one or more of the following components as determined by the policy board.

- A. Elapsed CPU time.
- B. Log-in (Connect) Time.
- C. Number of Volumes Mounted.
- D. Number of Pages Printed.
- E. Number of Direct Input/Output Request.
- F. Largest Process Virtual Size.
- G. Largest Process Working Set
- H. Number of Page Faults.

9. Operating Costs. Operating Costs of the CMS system shall include:

- A. Rental or lease of space for CMS Department.⁴
- B. Equipment and software maintenance.
- C. Data Base Maintenance.
- D. Operations Personnel Cost.
- E. Small Equipment Replacement.⁵

¹Added March 12, 1990.

² Deleted “Any deficit in adjusted operating expense or surplus in revenue shall be paid by or to the three parties, as the case may be, according to their respective system usages. Deficits or surpluses from the close of the fiscal year shall be paid by the second quarter of the following fiscal year” Sept 11, 2014

⁴ Deleted “Amortized principal and interest payments due on bonds.” March 12, 1990.

⁵ Replaced "Sinking Fund for Basic" with "Small". Deleted (\$164,200.00 per year if the Equipment Reserve Fund balance is less than \$1.37 million)" Delted “F. Periodic partial aerial photography” Sept 11, 2014

Basic equipment is defined as that hardware and software necessary for basic operation to all system users. Special equipment is defined as that relating to individual use which shall be paid by that individual user. Questions of what constitutes basic equipment and software shall be determined by the policy board.⁸

Until the CMS becomes operational as determined by the Policy Board and through the first fiscal year it becomes operational, the adjusted operating costs shall be paid equally by City, County, and KUB. By April 15th of each year the CMS Department shall calculate the hourly fees for system usage by the City, County, and KUB, and all other users for the next fiscal year. In addition, the CMS Department, by April 15th, will notify the parties hereto as to the actual and projected shortfalls or surpluses for the then current fiscal year for inclusion in the following year's budget.

10. Duties of CMS Department.

- A. Daily operation of the CMS in a manner consistent with standard data processing procedures.
- B. Aid system users in resolving technical problems which may arise.
- C. Introduce and encourage new users and applications of Computerized Mapping System.
- D. Plan capital expenditures necessary to assure the mapping system remains current and responsive to the needs of the users.
- E. Assist in the proper function of the CMS user committee as hereinafter set forth.
- F. Perform all tasks and duties as directed by the CMS Policy Board.

11. CMS User Committee. The County, City and KUB shall appoint the initial user committee composed of representatives from the users of the CMS system. The duration of the Committee shall be as long as the CMS system remains in existence. The committee shall have no less than three nor more than five members of which the CMS Operations Manager shall serve as chairperson. The purpose of the Committee is to facilitate the communication of feedback concerning problems, needs and suggestions of CMS users. The User Committee is empowered to adopt its own rules of operation and procedure to the extent they are not inconsistent with the purposes of this agreement and the mandates of the Policy Board.

12. Term of Agreement. This Agreement shall remain in full force and effect from the date of its execution until dissolution of the CMS system.

13. Distribution of Assets and Revenues upon Dissolution. In the event the CMS system is dissolved at some date after becoming operational, the accumulated assets and revenues generated shall be distributed to City, County, and KUB based upon the average percentage of use for the immediate preceding three years or if said system has been operational for less than a three year period from the date the CMS began operations.

⁸ Amended September 12, 1990.

14. Modification of Agreement. The terms and conditions of this agreement shall not be modified unless: (a) reduced to writing and (b) approved by unanimous vote of the policy board during the term of the bond issue or by majority vote of the board after the term of the bond issue.

This agreement is executed at Knoxville, Tennessee (as authorized by Resolution of the governing bodies of the respective parties, copies of which are attached to this agreement as collective Exhibit B) in three counterparts, each of which shall serve as the original agreement.