

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A SOFTWARE SUBLICENSE AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT) TO ACCEPT A NON-EXCLUSIVE, NON-TRANSFERABLE, ROYALTY FREE SOFTWARE SUBLICENSE FOR THE USE OF SOFTWARE PROGRAMS FOR ACTIVE INTELLIGENT TRANSPORTATION SYSTEM MANAGEMENT.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Transportation to enter into a software sublicense agreement with the Tennessee Department of Transportation (TDOT) to accept a non-exclusive, non-transferable, royalty free software sublicense for the use of software programs for Active Intelligent Transportation System management.

ADOPTED: \_\_\_\_\_, 2016

/mem

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: November 11, 2015

Preparer: Kevin Comstock

Department: Transportation

Brief Description of Purpose for Resolution/Ordinance: \_\_\_\_\_ Res./Ord. # \_\_\_\_\_ Council District # \_\_\_\_\_

A resolution authorizing the Administrator of the Department of Transportation to enter into a Software Sublicense Agreement with the Tennessee Department of Transportation (TDOT) to accept a nonexclusive, nontransferable, royalty free software sublicense for the use of software programs for Active Intelligent Transportation System management throughout the City.

Name of Vendor/Contractor/Grant, etc. TDOT  
Total project cost \$ -  
Total City of Chattanooga Portion \$ -  
City Amount Funded \$ -  
New City Funding Required \$ -  
City's Match Percentage % 0%

New Contract/Project? (Yes or No) No  
Funds Budgeted? (YES or NO) N/A  
Provide Fund \_\_\_\_\_  
Provide Cost Center \_\_\_\_\_  
Proposed Funding Source if not budgeted \_\_\_\_\_  
Grant Period (if applicable) \_\_\_\_\_

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)

Agency Grant Number \_\_\_\_\_

CFDA Number if known \_\_\_\_\_

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: 

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: October, 2011

## **SOFTWARE SUBLICENSE AGREEMENT**

This is a Software Sublicense Agreement, effective on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, between TENNESSEE DEPARTMENT OF TRANSPORTATION, with offices at James K. Polk Bldg, Suite 700, 505 Deaderick Street, Nashville, TN 37243 (hereinafter referred to as “TDOT”), and Chattanooga Department of Transportation, with offices at the Development Resource Center, 1250 Market Street, Suite 3030, Chattanooga, TN 37402 (hereinafter referred to as “CDOT”). TDOT agrees to grant to CDOT, and CDOT agrees to accept from TDOT, a nonexclusive, nontransferable, royalty free software sublicense in accordance with this Agreement during the term specified in Article 6.

### **WHEREAS:**

The Southwest Research Institute (“SwRI”) has obtained and currently has licenses from the State of Florida and the State of Texas for the use of computer software programs whose purposes are operation of traffic management centers, and SwRI has the right to sublicense the same under licenses obtained from Florida and Texas who own such computer programs; and

TDOT has obtained and currently has a contract and software sublicense agreement from SwRI, dated January 13, 2015, for the use of these computer software programs (the “SwRI/TDOT Sublicense Agreement”), which are attached hereto and incorporated herein by reference; and

Under paragraph 2.2 of the SwRI/TDOT Sublicense Agreement, TDOT has the authority, with SwRI’s written approval, to sublicense the use of these computer software programs to other governmental entities within the Geographic Limits, as defined below; and

TDOT and CDOT wish to enter into this sublicense agreement authorizing CDOT and/or any of its designated contractors to use copies of those computer programs for the benefit of CDOT.

### **NOW, IT IS HEREBY AGREED:**

#### **1.0 DEFINITIONS**

- 1.1 Florida and Texas who are listed in the table of Exhibit A of the SwRI/TDOT Sublicense Agreement, mean the original issuers of licenses for individual or collective software programs to SwRI.
- 1.2 “SwRI” means the Southwest Research Institute, a nonprofit corporation organized under the laws of Texas, with offices at Culebra Road, San Antonio, Texas 78238-5166.
- 1.3 “Software” means the actual transportation management center computer programs, source code, and software modules under license to SwRI and sublicense to TDOT at the time of this Agreement.
- 1.4 “Documentation” means the user manuals and other materials, including issues lists in printed or electronic form, which facilitate the use of the Software by the CDOT.

- 1.5 “Licensed Software” means any combination of the Software and Documentation covered by the SwRI/TDOT sublicense Agreement, and any of the license agreements listed in Exhibit A and furnished by TDOT to CDOT.
- 1.6 “Modifications” mean any modifications, improvements, enhancements, or changes to the Licensed Software and any and all computer programs in any code form and associated documentation, derived from or based upon the Licensed Software, developed, or otherwise acquired by CDOT, TDOT, or their employees, contractors, or agents.
- 1.7 “Geographic Limits” means the established geopolitical boundaries associated with State of Tennessee.
- 2.0 SUBLICENSE
- 2.1 Sublicense Grant. In consideration of the premises put forth, and subject to all other conditions herein, TDOT hereby grants to CDOT a nontransferable and nonexclusive license to use and modify the Licensed Software and its changes, modifications, or enhancements for its internal purposes, with no right to sublicense, sell, lease, assign, or transfer the Licensed Software.
- 2.2 Sublicense. This Sublicense, granted by TDOT in 2.1 herein, shall be only for use in the Geographic Limits.
- 2.3 Title in Licensed Software and Modifications. Title and all proprietary rights in the Licensed Software, including changes, modifications, or enhancements made by or for CDOT, shall at all times remain the property of Florida and Texas.
- 2.4 No Support by Florida and Texas. CDOT recognizes and agrees that Florida and Texas will not provide any support or maintenance.
- 2.5 CDOT-Owned Modules. CDOT will own all computer software programs that are created and/or developed for CDOT, but are not changes, modifications, or enhancements of the Licensed Software, even though they are incorporated into a system that includes the Licensed Software.
- 3.0 CERTAIN TDOT OBLIGATIONS
- 3.1 Compliance. TDOT agrees to comply fully with all of its obligations under this Agreement.
- 4.0 CERTAIN CDOT OBLIGATIONS
- 4.1 CDOT agrees to reproduce, and have reproduced on, all permitted copies of Licensed Software existing copyright and other proprietary notices.

- 4.2 CDOT agrees to require its employees, contractors, and agents to comply with the terms and conditions of this Sublicense prior to permitting any access to use the Licensed Software by the individual and shall take all steps necessary to remedy any violation, including, but not limited to, immediately terminating the individual's access to and use of the Licensed Software.
- 4.3 CDOT agrees it will not authorize, permit, or allow the use or disclosure of the Licensed Software by its employees, contractors, or agents except as expressly authorized under this Sublicense.
- 4.4 CDOT agrees that it retains no rights in the Licensed Software or its changes, modifications, or enhancements and other Licensed Software-related materials except for the limited rights specifically granted under this Sublicense.
- 4.5 CDOT agrees to inform TDOT of any changes, modifications, or enhancements to be made to the Licensed Software by CDOT and/or any of its designated contractors.
- 4.6 CDOT agrees to provide TDOT source code for all changes, modifications, or enhancements and documentation updates made to the Licensed Software by CDOT and/or any of its designated contractors.
- 4.7 CDOT agrees it will make no changes to the Licensed Software without corresponding changes also being made to applicable Documentation.
- 4.8 CDOT agrees to provide a report to TDOT due not later than January 7, April 7, July 7, and October 7 of each year this license is in effect, detailing the use of the Licensed Software. The report will include a description of modifications made to the Licensed Software, specific name of end user, site location(s), and specific programs licensed.
- 4.9 CDOT agrees the Licensed Software contains highly confidential information. CDOT agrees to take all reasonable precautions to protect the Licensed Software and preserve its confidential, proprietary and trade secret status in perpetuity to the extent that CDOT is authorized to maintain such information and the Licensed Software as confidential under the Tennessee Public Records Act, as codified in Tennessee Code Annotated, Title 10, Chapter 7. CDOT agrees it is responsible for the supervision, management, and control of its use of the Licensed Software.
- 4.10 CDOT agrees to notify TDOT promptly and provide reasonable assistance, but not including legal representation or attorney's fees, to TDOT, SwRI, Florida and Texas without charge in prosecution of any trade secret, copyright, trademark, or service mark infringements that come to the attention of CDOT.
- 4.11 CDOT agrees that if at any time it becomes aware of unauthorized use, copying, or disclosure of the Licensed Software, it shall immediately notify TDOT and fully cooperate with TDOT, SwRI, Florida and Texas to protect the proprietary rights of Florida and Texas. CDOT shall agree that a breach or threatened breach of its obligation to protect the Licensed Software may cause immediate and irreparable harm, entitling TDOT, SwRI, Florida and Texas to seek immediate termination

of the Sublicense. CDOT's compliance with this paragraph shall not be construed in any way as a waiver of the rights of TDOT, SwRI, Florida and Texas to recover damages or obtain other relief against CDOT for harm to the proprietary rights of Florida and Texas or for breach of contractual rights.

4.12 CDOT agrees to accept the Limitation of Liability and Disclaimer of Warranty provisions included in this Sublicense for the benefit of TDOT, SwRI, Florida and Texas.

4.13 CDOT agrees that Florida and Texas may make Modifications to the Licensed Software without notice to CDOT. Florida and Texas shall not be required to provide any Modifications of the Licensed Software. If any copy of a Modification of the Licensed Software is received by CDOT, CDOT agrees that all the terms and conditions of their agreement with TDOT apply to the Modification.

## 5.0 LIMITATION OF LIABILITY and DISCLAIMER OF WARRANTY

5.1 TDOT DISCLAIMS ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SOFTWARE.

5.2 CDOT ACKNOWLEDGES AND AGREES THAT SwRI, FLORIDA AND TEXAS DISCLAIM ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF FLORIDA AND TEXAS FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE LICENSED SOFTWARE.

## 6.0 TERM AND TERMINATION

6.1 This Sublicense shall enter into force on the Commencement Date and shall continue as long as TDOT's sublicense from SwRI is in force.

6.2 If the sublicense from SwRI to TDOT is terminated, or under termination, TDOT shall notify CDOT within ten business days.

6.3 In the event that the sublicense from SwRI to TDOT is terminated as specified in 6.2, then CDOT, if not in breach of any terms and conditions with this Sublicense, may elect, with SwRI approval, to continue with this Sublicense directly with SwRI under the same terms and conditions as were agreed between TDOT and SwRI, as long as those terms are not more burdensome than the terms of the latest agreement between SwRI and TDOT.

- 6.4 If either party fails to perform any other term, covenant, or condition of this Sublicense, and has not performed such term, covenant, or condition within sixty (60) days after a notice of default has been received, the non-defaulting party shall have the right to forthwith terminate this Sublicense by means of a written notice to the other party.
- 6.5 CDOT agrees to immediately return or certify destruction of the Licensed Software Documentation, including any copies, information, or notes relating thereto except to the extent retention is necessary to keep the Traffic Management Centers (“TMCs”) installed with Intelligent Transportation Systems (“ITS”) Software operational for up to one (1) year or until CDOT receives a sublicense from SwRI directly upon any sublicense termination under Article 6 of this Agreement.

## 7.0 REMEDIES

- 7.1 The rights of CDOT and TDOT, pursuant to Article 6 hereof, are without prejudice to any other rights or remedies that CDOT and TDOT may have. CDOT’s and TDOT’s pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by CDOT or TDOT of any other remedy.

## 8.0 NOTICES

Service of all notices under this Sublicense by either party to the other shall be sufficient only if posted by certified or registered post, return receipt requested, or personally delivered and receipted. Either party may change its address for service of all notices by written notice to the other.

### AS TO TDOT:

Contracts: Mr. Joe Kirk  
Director, Information Technology Division  
Tennessee Department of Transportation  
505 Deaderick St.  
Nashville, TN 37243

Technical: Brian Cox  
Application Architect  
Tennessee Department of Transportation  
505 Deaderick St.  
Nashville, TN 37243

AS TO CDOT:

Contracts: Mr. Blythe Bailey  
Administrator  
Chattanooga Department of Transportation  
1250 Market Street Suite 3030  
Chattanooga, TN 37402

Technical: Kevin Comstock  
Transportation: Traffic Signal Systems Engineer  
Chattanooga Department of Transportation  
1250 Market Street Suite 3030  
Chattanooga, TN 37402

Application/  
Software/IT: Ken Kitchens  
Applications Development Manager  
City of Chattanooga  
Information Technology Department  
100 East 11<sup>th</sup> Street Suite 301  
Chattanooga, TN 37402

9.0 UNFORESEEN EVENTS

Neither party shall be responsible for any delay or failure to perform due to causes beyond reasonable control of the party, including, but not limited to, strikes, lockouts, or other labor disputes, riots, civil disturbances, actions, or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather (including hurricanes), fire, Acts of God or the public enemy, nuclear disasters, or default of a common carrier.

10.0 SEVERABILITY

In the event that any one or more of the provisions of this Sublicense shall for any reason be held unenforceable in any respect under the United States patent and copyright laws that are in effect, such unenforceability shall not affect any other provision, and this Sublicense shall then be construed as if such unenforceable provision or provisions had never been contained herein.



11.0 ENTIRE SUBLICENSE AGREEMENT

This Sublicense Agreement and its attachments constitute the entire agreement governing the sublicense of Licensed Software from TDOT to CDOT. TDOT acknowledges that it has not been induced to enter into this Sublicense by representations or statements, oral or written, not expressly contained herein. This Sublicense may be modified only in writing signed by duly authorized representatives of each party.

12.0 GENERAL CONDITIONS

- 12.1 Applicable Law. This Sublicense shall be construed in accordance with and governed by the laws of the State of Tennessee.
- 12.2 The headings and subheadings in this Sublicense are for convenience only and do not form a part of this Sublicense.
- 12.3 The failure of either party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce any such provisions.

**EXECUTED BY BOTH PARTIES AS PROVIDED BELOW:**

STATE OF TENNESSEE

CITY OF CHATTANOOGA

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

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

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

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

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

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

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

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