

MEMORANDUM OF AGREEMENT

between

ORANGE COUNTY

and

TOWN OF EATONVILLE

for

GIS SERVICES

This Memorandum of Agreement is made and entered into as of the date of last execution below (the “**Effective Date**”), by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (the “**COUNTY**”), and the **TOWN OF EATONVILLE**, a municipal corporation existing under the laws of the State of Florida (the “**TOWN**”).

WITNESSETH

WHEREAS, COUNTY has authority pursuant to Section 125.01, Florida Statutes, to enter into agreements; and

WHEREAS, TOWN has the authority pursuant to Section 166.021, Florida Statutes, to enter into agreements; and

WHEREAS, TOWN has requested that **COUNTY** provide GIS services to **TOWN** for the development of the **TOWN's** Zoning Map and Future Land Use Map; and

WHEREAS, this Memorandum of Agreement evidences the intentions of the respective parties to create the Zoning Map and Future Land Use Map in the furtherance of the public interest; and

NOW, THEREFORE, in consideration of the above recitals, the mutual terms, conditions, and covenants hereinafter set forth, **COUNTY** and **TOWN** agree as follows:

**Section 1-SCOPE OF IN-KIND
PLANNING SERVICES**

- 1.1 **COUNTY** will furnish to **TOWN** GIS services for the development of the **TOWN's** Zoning Map and Future Land Use Map as stated in the attached Exhibit "A" (hereinafter referred to as "**Services**"). **TOWN** will not provide monetary compensation to **COUNTY** for the Services.
- 1.2 **TOWN ACKNOWLEDGES AND AGREES THAT THE SERVICES WILL BE PROVIDED ON AN 'AS IS' BASIS WITHOUT ANY WARRANTY OR ANY REPRESENTATION OF ACCURACY, TIMELINESS, OR COMPLETENESS. THE BURDEN OF DETERMINING ACCURACY, COMPLETENESS, TIMELINESS, MERCHANTABILITY AND FITNESS FOR OR THE APPROPRIATENESS FOR USE RESTS SOLELY ON THE TOWN. THE COUNTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE USE OF THE SERVICES OR GIS DATA. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE TOWN ACKNOWLEDGES AND ACCEPTS THE LIMITS OF THE SERVICES AND GIS DATA, INCLUDING THE FACT THAT THE GIS DATA IS DYNAMIC AND IS IN A CONSTANT STATE OF MAINTENANCE, CORRECTION, AND UPDATE. TOWN HEREBY RELEASES THE COUNTY FROM ALL LIABILITY ARISING FROM OR RELATING TO THE SERVICES, GIS DATA, OR LACK THEREOF, OR ANY DECISIONS MADE OR ACTIONS TAKEN IN RELIANCE UPON ANY OF THE SERVICES OR GIS DATA.**

Section 2- TERM

- 2.1 The term of this Agreement shall commence on the date hereof and terminate upon such time as **COUNTY** furnishes all Services to **TOWN** in accordance with this Agreement.

Section 3 - TERMINATION

- 3.1 This Agreement may be terminated for convenience by either party upon thirty (30) days written notice to the other party of an intent to terminate and the date on which such termination becomes effective.

Section 4- SOVEREIGN IMMUNITY

- 4.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency, political subdivision of the State of Florida or an agency of the State to be sued by third parties in any matter arising out of this Agreement or any other contract.

Section 5 - GENERAL PROVISIONS

- 5.1 Neither **TOWN** nor **COUNTY** intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 5.2 Whenever either party desires to give notice to the other related to termination, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. As for any other notice regarding services provided for under this Agreement, electronic communication is acceptable. For the present, the parties designate the following:

TOWN

With copy to:

COUNTY:
Orange County Administrator's Office
Orange County Administration Building
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801
Attention: County Administrator

DIVISION:

Commented [KAR1]: Please include contact information.

- 5.3 Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party.

- 5.4 The rendition of services, standards of performance, discipline of employees and other matters incidental to the performance of services and control of personnel shall remain with **COUNTY**. This Agreement does not make **COUNTY's** agents, employees or legal representatives the officers or employees of **TOWN** for any purpose whatsoever, and the employees and agents of **COUNTY** are in no way authorized to make any contract, agreement, warranty or representation on behalf of the **TOWN** or to create any obligation on behalf of the **TOWN**.
- 5.5 Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties, provided however, that this clause pertains only to the parties to this Agreement.
- 5.6 **COUNTY** and **TOWN** agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
- 5.7 Failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 5.8 In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless **COUNTY** or **TOWN** elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 5.9 The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete Agreement of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 5.10 If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 5 of this Agreement shall prevail and be given effect.
- 5.11 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the

state courts of Orange County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.

- 5.12 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board of County Commissioners and the Town Council.
- 5.13 This document incorporates and includes all prior negotiations, correspondence, conversations, and agreements applicable to the matters contained herein and the parties agree that there are no commitments, or agreements concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 5.14 The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the authorized signatories named below have executed this Memorandum of Agreement on behalf of the parties as of the Effective Date.

(Official Seal)

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____

Jerry L. Demings
Orange County Mayor

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

BY: _____
Deputy Clerk

Printed Name

TOWN OF EATONVILLE, FLORIDA

By: Town Council

By: _____

Angie Gardner
Mayor

Date: _____

ATTEST:

BY: _____
Veronica L. King
Town Clerk

Exhibit “A”

[Attached – 3 Pages]

