

**MEMORANDUM OF AGREEMENT:
CANYON LISTINGS COMMERCIAL PROPERTY DATA**

This MEMORANDUM OF AGREEMENT: COMMERCIAL PROPERTY LISTING DATA (“Agreement”) is made this ____ day of _____, 2022 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho whose address is 33 E. Broadway Avenue, Meridian, Idaho (“City”), and Canyon Data, Inc., a general business corporation organized under the laws of the state of Idaho whose address is 2976 E. State Street, Suite 120 PMB 2081, Eagle, Idaho (“Licensor”) (City and Licensor may hereinafter be collectively referred to as “Parties”).

WHEREAS, Licensor has compiled a comprehensive dataset of available commercial real estate for sale or lease in the Boise Metropolitan Statistical Area (“MSA”), with a user interface including a map with links to each property that show the property address, photograph, square footage, lease rate or sale price, and broker information;

WHEREAS, such data is advantageous to Meridian businesses, businesses considering locating or investing in Meridian, and members of the public;

WHEREAS, Licensor is willing to partner with City to make such dataset available on the City’s Economic Development website for use and access as set forth herein;

NOW, THEREFORE, subject to the limitations of this Agreement, in order to meet the objectives described above, and for good and valuable consideration, the Parties agree as follows:

- I. **LICENSE.** Licensor grants to City, and City accepts from Licensor, a non-exclusive, revocable, royalty-free, non-sublicensable and non-transferable license, under Licensor’s copyrights, for the term of this agreement, to integrate, as a feature of City’s website, Licensor’s compiled database listing commercial properties for sale or lease in the Boise MSA, in the form of a user interface including, as available, a map of Meridian with active links to information about each property, including, as available, address, photograph, square footage, lease rate or sale price, and broker information (“Canyon Listings”), and which constitutes the minimum information available to all users of the City’s website without having to subscribe or pay for this information.
 - A. **Title.** Subject only to the license granted by this Agreement, Licensor shall retain all right, title and interest, including all patent rights, copyrights and trademarks, in and to the Canyon Listings and all derivative works.
 - B. **Restrictions.** The following restrictions shall apply to the license granted to City by this agreement, and shall survive termination of this Agreement. Except with notice to and written consent of Licensor:
 - 1. City shall not provide, give, lease, lend, use for timesharing, service bureau or hosting purposes or otherwise use or allow persons or entities not a party to this Agreement to use the Canyon Listings;
 - 2. City shall not, decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Canyon Listings by any means whatsoever;

3. City shall not remove any product identification, copyright, trademark or other notices; and
4. City shall not use the Canyon Listings for any purpose other than that described in this Agreement.
5. Canyon Listings shall not use any information obtained from users of Canyon Listings through the City Website for use as a mailing or telephone list.

C. **Purpose.** City shall display and make available the Canyon Listings on City's website for public access and use for educational and informational purposes.

D. **Consideration.** Licensor has agreed to provide the license as set forth in this Agreement in exchange for promotional consideration, with no monetary charge to City. City shall acknowledge on its website that the Canyon Listings is a product provided by Licensor.

E. **Data transfer.** Licensor shall transfer the Canyon Listings to City in a format suitable for upload to the City's website. City shall provide Licensor the name, e-mail address, and telephone number of specific City personnel ("City Contact") who shall serve as the liaison between City and Liaison for all day-to-day matters, including data transfer and technical issues. Licensor shall provide City the name, e-mail address, and telephone number of specific Licensor personnel ("Licensor Contact") who shall serve as the liaison between Licensor and City for all day-to-day matters. The means, method, frequency, and scheduling of data transfer shall be determined and arranged by the City Contact and Licensor Contact. Either party may change its designated Contact person by notifying the other within two (2) business days in the manner provided in this section.

II. **TERM.** This Agreement shall commence on the Effective Date, and shall expire one (1) year from the Effective Date. This Agreement shall automatically be renewed from year to year thereafter unless earlier terminated by any Party as provided herein, if City removes the Canyon Listings from City's website, or until terminated as provided herein.

III. **GENERAL PROVISIONS.**

A. **Data integrity.** Subject to the limitations of this Agreement, it is acknowledged by the Parties that Licensor does, and shall, make every reasonable attempt to ensure that the data in the Canyon Listings is comprehensive, accurate, and up-to-date at all times. Licensor does, and shall, adhere to industry standards in creating and maintaining the listings set forth in Canyon Listings.

B. **Limitation of liability.** Notwithstanding anything in this agreement to the contrary, neither party shall be liable or obligated, and each shall hold the other harmless, with respect to any subject matter of this agreement or under contract, negligence, strict liability or any other legal or equitable theory for the following:

1. Any special, punitive, incidental or consequential damages (including, without limitation, for any lost profits, cost of procurement of substitute goods, technology, services or rights);
2. Interruption of use or loss or corruption of data;
3. Failure of website to display content; or
4. Any matter beyond its reasonable control.

This provision shall survive termination of this Agreement.

- C. **No warranty.** The Canyon Listings are provided by Licensor “as-is” and with all faults accepted, with no warranties, express or implied, of any kind. Licensor makes no other representation or warranty of any kind whether express or implied with respect to the Canyon Listings. Licensor does not warrant that the Canyon Listings are error-free or that operation of the Canyon Listings will be secure or uninterrupted. To the full extent permitted by law, the duration of statutorily required warranties, if any, shall be limited to the shortest permissible duration. Moreover, in no event will warranties provided by law, if any, apply unless they are required to apply by statute.
- D. **Termination.** Either party may terminate this Agreement for convenience or for cause. Termination shall be effective thirty (30) days following mailing of written notice to the other party. Upon termination, City shall immediately cease all use of the Canyon Listings and so certify to Licensor. Termination is not an exclusive remedy; all other remedies will be available whether or not this Agreement is terminated.
- E. **Promotion.** City hereby conveys to Licensor permission to use City’s name for promotional purposes. Upon Licensor’s request, City Contact may provide Licensor with a written testimonial for promotional use. , Licensor shall give City the opportunity to review, and approve use of the City Logo and all promotional materials in advance of their publication, broadcast or dissemination.
- F. **Non-Discrimination.** Throughout the course and scope of this Agreement, Licensor shall not discriminate against any person as to race, creed, religion, sex, age, national origin, sexual orientation, familial status, or any physical, mental, or sensory handicap.
- G. **Cumulative remedies.** The remedies under this Agreement shall be cumulative and not alternative. The election of one remedy for a breach shall not preclude pursuit of other remedies unless as expressly provided in this Agreement.
- H. **Governing law.** This Agreement shall be governed in all respects by the substantive laws of the State of Idaho, United States of America. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of and venue of district, state, and/or federal courts located in the state of Idaho, and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.
- I. **Day-to-day communications.** Communication between Licensor Contact and City Contact regarding day-to-day matters (e.g., data transfer, technical issues) shall occur via e-mail or telephone.
- J. **Notices.** All other notices required or permitted by this Agreement shall be in writing and deemed to have been effectively given and received three (3) business days after the date of mailing by U.S. mail, postage prepaid. Notices shall be addressed as follows:
- | | |
|----------------------|-----------------------|
| If to Licensor: | If to City: |
| Canyon Data, Inc. | City Clerk |
| 2976 E. State Street | City of Meridian |
| Suite 120 PMB 2081 | 33 E. Broadway Avenue |

Either party may change its address for the purpose of this provision by giving written notice of such change in the manner herein provided.

- K. **Assignment.** Neither party shall assign or otherwise transfer any of its rights, obligations or licenses under this Agreement without the prior written consent of the other party. The provisions of this Agreement shall apply to and bind the successors and permitted assigns of the parties.
- L. **Independent contractor.** The relationship created by this Agreement is one of independent contractors, and not partners or joint venturers. Unless otherwise agreed in writing, no employees, consultants, contractors or agents of one party are employees, consultants, contractors or agents of the other party, nor do they have any authority to bind the other party by contract or otherwise to any obligation, except as expressly set forth herein. Neither party will represent to the contrary, either expressly, implicitly or otherwise. Specifically, without limitation, Licensor understands, acknowledges, and agrees:
1. Licensor is free from actual and potential control by City in the provision of services under this Agreement.
 2. Licensor is engaged in an independently established trade, occupation, profession, or business.
 3. Licensor has the authority to hire subordinates.
 4. Neither Licensor nor City shall be liable to the other for a termination of the business relationship described under this Agreement.
- Neither party nor its employees, agents, contractors, officials, officers, servants, guests, and/or invitees shall be considered agents of the other party in any manner or for any purpose whatsoever.
- M. **Not exclusive.** Nothing in this Agreement shall prevent City from entering into agreements with other parties for the same or similar services provided by Licensor, as described herein. Nothing in this Agreement shall prevent Licensor from issuing the same or similar license, as described herein, to other parties.
- N. **Third party beneficiaries.** The Parties acknowledge and agree that there are no third-party beneficiaries of this Agreement.
- O. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and shall continue in full force and effect.
- P. **No waiver.** The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any rights, and the obligations of the party with respect to such future performance shall continue in full force and effect.
- Q. **Entire agreement.** This Agreement and any and all exhibits hereto contain the complete, final, and exclusive agreement of the parties and supersedes any and all prior agreements, understandings, negotiations, discussions, statements, promises, or inducements made by

either party, or agents of either party, whether oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written amendment or addendum signed by both parties hereto. No modification or rescission of this Agreement shall be binding unless executed in writing by both City and Licensor in the manner set forth herein.

R. **Presumptions/review.** In construing the terms of this Agreement, no presumption shall operate in either party's favor as a result of that party's counsel's role in drafting the terms or provisions hereof. Further, it is agreed that Licensor has had a full and fair opportunity to review the terms herein and to consult with legal counsel before signing. Accordingly, because Licensor has had ample review opportunities and because Licensor is and was free to elect not to accept these terms, Licensor acknowledges that this is not a contract of adhesion.

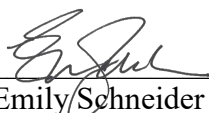
S. **Attorney fees.** The prevailing party in any legal action brought by one party against the other and arising out of this Agreement will be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and attorney fees.

T. **Compliance with law.** Throughout the course of this Agreement, each Party shall comply with all applicable federal, state, and local laws.

U. **Authority.** Each party represents that all corporate action necessary for the authorization, acceptance and delivery of this Agreement by such party and the performance of its obligations hereunder has been taken.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

LICENSOR:

By: 
Emily Schneider
Chief Operating Officer, Canyon Data, Inc.

CITY OF MERIDIAN:

By: _____
Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk