



HISTORIC  
FRANKLIN  
TENNESSEE


ITEM #17  
WRKS  
03/25/14

## MEMORANDUM

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March 17, 2014

**TO:** Board of Mayor and Aldermen

**FROM:** Eric Stuckey, City Administrator   
Russ Truell, Assistant City Administrator

**SUBJECT:** Memorandum of Understanding with Williamson County - Hotel Tax Audit

### Purpose

The purpose of this memorandum is to provide a framework and cost-sharing opportunity with Williamson County and the City of Brentwood to engage in a hotel tax audit.

### Background

The cities of Franklin and Brentwood, and Williamson County, wish to conduct an audit on the collection and reporting of hotel tax within their jurisdictions. An agreement between the parties has been reached for cost-sharing to minimize the financial impact of engaging an outside accounting firm to conduct the audit.

The City of Franklin staff believes that is important to conduct periodic audits on the self-reporting of hotel tax by our hospitality community, and that it is advantageous to do so in conjunction with our fellow local governments. The last hotel audit, which also was a joint effort between Franklin and Brentwood and Williamson County, was conducted in 2007.

### Financial Implications

There is no anticipated change in budgeted revenue or expense. The cost of the audit to the City is expected to be no more than \$5,000 in this fiscal year, with an equal and offsetting amount of additional revenue collected from potential underreporting of hotel tax.

### Recommendation

Approval of the Memorandum of Understanding is recommended.

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**MEMORANDUM OF UNDERSTANDING BETWEEN  
WILLIAMSON COUNTY, TENNESSEE,  
THE CITY OF BRENTWOOD AND THE CITY OF FRANKLIN**

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**THIS MEMORANDUM OF UNDERSTANDING**, (“MOU”), is made and entered into pursuant to *Tennessee law*, by and between **WILLIAMSON COUNTY, TENNESSEE**, (hereinafter “County”), the **CITY OF BRENTWOOD**, (hereinafter “Brentwood”), and the **CITY OF FRANKLIN**, (hereinafter “Franklin”), concerning certain financial and responsibilities for a hotel/motel tax audit.

**WHEREAS**, the parties have the express authority, upon approval of their governing bodies, to enter into a memorandum of understanding for the joint cooperation in contracting and paying for a hotel/motel tax audit; and

**WHEREAS**, the County’s hotel/motel tax is collected within the jurisdictions of Brentwood and Franklin; and

**WHEREAS**, Brentwood and Franklin have assessed a hotel/motel tax within their respective jurisdictions in addition to the County’s tax; and

**WHEREAS**, the County intends to execute an agreement with Allen, McGee and Associates to conduct the hotel/motel audit at a fee not to exceed \$1,500.00 per hotel/motel; and

**WHEREAS**, Brentwood and Franklin have agreed to reimburse the County ½ the cost of the audit conducted on the hotels and motels located within their jurisdictions:

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **PURPOSE.** The purpose of this MOU is to define certain financial responsibilities of the parties concerning contracting for audit services concerning the hotel/motel tax collected within Williamson County.
2. **CONTRACT FOR SOFTWARE AND SERVICES.** County will execute a contract with Allen, McGee and Associates for the provision of audit services concerning the assessment and collection of hotel/motel taxes in Williamson County. County will be the sole party to the audit contract and shall be responsible for ensuring the contract terms are fulfilled.
3. **COMPENSATION.** County will pay a fee not to exceed \$1,500.00 per hotel or motel that is audited by Allen McGee and Associates.
4. **REIMBURSEMENT.**
  - a. Reimbursements. Brentwood and Franklin shall reimburse the County the following amounts within 30 days from receipt of the audit report submitted by Allen, McGee and Associates and provided to Franklin and Brentwood in lawful money of the United States of America:
    1. Franklin shall reimburse the County ½ the audit fee not to exceed \$750.00 for each hotel/motel located within the jurisdiction of Franklin;
    2. Brentwood shall reimburse the County ½ the audit fee not to exceed \$750.00 for each hotel/motel located within the jurisdiction of Brentwood;
  - b. Each party shall be responsible for obtaining approval from their respective legislative bodies to fund the annual reimbursement amounts.
5. **TERM.** The Term of this MOU shall extend from the date this has been signed by all parties and shall continue until June 30, 2015 unless otherwise agreed by the parties. The parties may agree in writing to extend the agreement for 3 additional one year terms. In no event shall the term of the Agreement extend beyond 5 years
6. **TERMINATION.**
  - a. **Convenience.** The parties can agree to terminate this MOU upon written agreement of the parties. No further obligations or liabilities shall be imposed upon the withdrawing party after termination for convenience.
  - b. **Breach.** Should any party fail to fulfill in a timely and proper manner a material obligation under this MOU or if any party should violate a material term of this Agreement, the non-breaching party shall provide the breaching

party with notice of the breach. The breaching party will then have seven calendar days from the receipt of the notice to cure the breach. Termination shall become effective immediately if the breach is not cured within the seven day period. Upon breach or default of any of the provisions set forth herein, the non-breaching party shall be entitled to any and all damages and other equitable relief permitted under the laws of the State of Tennessee.

c. Lack of Funding. Should any party fail, after exercising good faith effort, to obtain the funding to fulfill the party's obligations contained herein, then the party shall have the right to terminate this MOU immediately upon providing written notice to the other parties. The terminating party shall remain responsible and shall pay all costs accumulated prior to the termination of this MOU to all other parties. Termination for lack of funding shall not be deemed termination for breach.

d. Effect of Termination. This MOU shall continue in effect with respect to all parties that have not withdrawn unless the number of active parties is reduced so that only one party remains.

7. **INSURANCE.** Each party shall be responsible for obtaining and maintaining its own liability and property insurance against losses or liability related to this Agreement.

8. **NO THIRD PARTY BENEFICIARIES.** There are no third party beneficiaries to this Agreement. No person or entity other than a party to this MOU shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.

9. **AUTHORITY TO ENTER INTO AGREEMENT.** This MOU is made and entered into pursuant to the authority granted by the parties under the *Interlocal Cooperation Act*, T.C.A. 12-9-101, et. seq., and the parties agree that all approvals and filings required by the terms of said Act shall be achieved as soon as possible from and after the execution of this Agreement.

10. **NOTICE.** The individuals identified in this section, with appropriate input from public safety staff, shall develop and approve joint policies and procedures for: (1) responding to requests for notifications that include areas both within a municipality and outside that municipality, and (2) requests for backup services when the notification system used by one of the parties hereto is unavailable or fails to operate as needed. Notice of the need for backup services under this MOU will be in person, by telephone, or by such other means as may be reasonably used to apprise the backup party of the initiating party's need for services under the circumstances. All other notices under this Agreement, with the exception of equipment testing, shall be given in writing, addressed to the following persons:

**To: Williamson County**  
Attn: Office of Public Safety Director  
1320 West Main St., Suite B-25  
Franklin, TN 37064

**To: City of Brentwood**  
Attn: City Manager  
5211 Maryland Way/P. O. Box 788  
Brentwood, TN 37024

**To: City of Franklin**  
Attn: City Administrator  
103 3<sup>rd</sup> Avenue South  
Franklin, TN 37064

Written notices shall be deemed received three days after the same are deposited in the United States Mail, postage prepaid, addressed as provided above.

11. **MISCELLANEOUS.**

a. Relationship. In consideration of the mutual covenants provided herein, the parties agree that nothing contained herein is intended to be or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting an agency relationship in any manner whatsoever. The individual parties are and shall remain independent entities with respect to this Agreement.

b. Binding. This MOU shall be binding upon the parties and shall take effect from and after its ratification and signing by all parties after obtaining appropriate approval pursuant to the requirements of applicable law.

c. Dispute Resolution. The parties may agree to participate in non-binding mediation in an attempt to resolve any disputes. Notwithstanding the foregoing statement, any claims, disputes or other matters in question between the parties to this MOU arising out of or relating to this MOU or breach thereof shall be subject to and decided by a court of law.

d. Severability. The parties agree that if any part, term, or provision of this MOU is determined to be illegal or in conflict with any law of the State of Tennessee by any court with jurisdiction, the validity of the remaining portions

or provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular part, term, or provision held to be invalid.

e. Specific Performance. The parties recognize that the rights afforded to each under this MOU are unique and, accordingly, the individual agencies shall, in addition to such other remedies as may be available to them in equity, have the right to enforce their respective rights hereunder by an action for injunctive relief and/or specific performance to the extent permitted by law.

f. Cooperation. The parties agree to cooperate fully in order to successfully execute the terms and conditions of this MOU including obtaining all regulatory and governmental approvals required by this MOU recognizing that the intent of each party to the other is to serve the individual interests of each party while respecting the conditions and obligations of this Agreement.

g. Assignment. The rights and obligations of this MOU are not assignable.

h. Law/Venue. This MOU shall be exclusively governed by the laws of the State of Tennessee. In the event that any section and/or term of this Agreement, or any exhibits hereto, becomes subject to litigation, the venue for such action will be exclusively maintained in a court of competent jurisdiction sitting in Williamson County, Tennessee.

i. Entire Agreement. This MOU represents the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter hereof. This MOU may be amended only by written instrument signed by all parties.

**IN WITNESS WHEREOF**, each party has caused this MOU to be executed by an authorized person effective as of the date and year written below.

**Williamson County, Tennessee:**

**City of Brentwood:**

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

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

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

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

Approved as to form and legality:

Approved as to form and legality:

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
City Attorney

**City of Franklin**

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

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

Approved as to form and legality:

\_\_\_\_\_  
City Attorney