



MEMORANDUM

June 22, 2011

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator *Eric*
Rocky Garzarek, Fire Chief

SUBJECT: Interlocal Agreement between the City of Brentwood and the City of Franklin for the purchase, installation, and maintenance of a weather warning siren, Contract #2011-0015.

Purpose

The purpose of this memorandum is to present the Board of Mayor and Aldermen (BOMA) with information to consider an agreement to expand the City of Franklin's existing siren coverage while minimizing the City's cost by participating in a joint venture procurement with the City of Brentwood.

Background

In 2003, the Board of Mayor and Aldermen approved the procurement and installation of a Tornado Siren Alerting System. This system is comprised of 15 sirens as outlined below.

#	Location	Type	Coverage	Capability
101	Franklin City Hall	Electronic	1200'	Siren/Voice
102	Jim Warren Park	Electronic	1200'	Siren/Voice
103	Robert Ring Park	Electronic	1200'	Siren/Voice
104	Fieldstone Farms	Electronic	1200'	Siren/Voice
105	Liberty Park	Electronic	1200'	Siren/Voice
106	Pinkerton Park	Electronic	1200'	Siren/Voice
107	The Factory	Electromechanical	5600'	Siren
108	Fire Station #3	Electromechanical	5600'	Siren
109	Centennial High School	Electromechanical	5600'	Siren
110	Liberty Pike	Electromechanical	5600'	Siren
111	S. Royal Oaks & Oak Meadow	Electromechanical	5600'	Siren
112	Fire Station #5	Electromechanical	5600'	Siren
113	WC Administrative Complex	Electromechanical	5600'	Siren
114	Del Rio Pike near the schools	Electromechanical	5600'	Siren
115	Fire Station #4	Electromechanical	5600'	Siren

In November of 2010, the Fire Department made a presentation at a BOMA work session that outlined plans for the expansion of the weather warning system and working collaboratively with Williamson County and the City of Brentwood. The Board appeared to be supportive of collaborative efforts to expand warning siren coverage. The new siren would be installed in the vicinity of Franklin Rd and Moore's Ln.



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MEMORANDUM

Financial Impact

The Fire Department General Fund budget for FY11 would need to absorb the cost not to exceed \$18,000, which represents an estimated 50% of the siren cost including installation. In accordance with the agreement, the City within which the siren is installed would assume all subsequent maintenance and operating cost. A budget amendment may be necessary to accommodate all or part of these costs.

Recommendation

It is recommended that the City approve an amount not to exceed \$18,000 to be paid out of the Fire Department's FY11 general fund budget and authorize the City Administrator and the Legal Department to execute an interlocal agreement with the City of Brentwood.

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF BRENTWOOD AND THE CITY OF
FRANKLIN FOR THE PURCHASE, INSTALLATION, AND MAINTENANCE OF A
WEATHER WARNING SIREN
COF Contract #2011-0015**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into by and between the CITY OF BRENTWOOD, TENNESSEE (“Brentwood”), a Tennessee municipal corporation, and the CITY OF FRANKLIN, TENNESSEE (“Franklin”), a Tennessee municipal corporation, to establish the terms and responsibilities of the parties in the purchase, installation, and maintenance of a weather warning siren.

RECITALS

WHEREAS, Brentwood and Franklin have the authority, pursuant to T.C.A. §12-9-104, to enter into interlocal agreements to provide services to their citizens; and

WHEREAS, Brentwood and Franklin have the authority, pursuant to T.C.A. §12-3-1009, to enter into cooperative purchasing agreements for the procurement of any supplies, services or construction; and

WHEREAS, Brentwood and Franklin have determined it to be in the best interest of the parties’ respective citizens to enter into this Interlocal Agreement for the purchase, installation, and maintenance of a weather warning siren.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- I. **Purpose of Agreement.** Brentwood and Franklin are mutually determined to purchase a mechanical weather warning siren (“Siren”) to be installed within the city limits of Brentwood to be operated by both Brentwood and Franklin, and maintained by Brentwood.
- II. **Authority.** This Agreement is made and entered into pursuant to the authority granted by the parties under the *Interlocal Cooperation Act, Tennessee Code Annotated*, Sections 12-9-101, et seq., and under *Tennessee Code Annotated*, Section 12-3-1009, ~~the~~ and the parties agree that all approvals and filings required by the terms of said statutes shall be achieved as soon as possible from and after the execution of this Agreement.
- III. **Siren Installation.** Upon approval and execution of this Agreement by both parties, the parties agree to the following:
 - A. The Siren shall be installed on a site (the “Site”) to be selected by Brentwood, provided that the location of the Site must be within 300 feet of the corporate limits of Franklin and will be subject to the written approval of Franklin’s Fire Chief prior to installation of the Siren. The Site shall be maintained by Brentwood.
 - B. The Siren shall be installed in accordance with Brentwood’s applicable laws and regulations.
- IV. **Term.** The initial term of this Agreement will begin on the effective date, as set forth in Section XXVII herein and will end twenty-five (25) years from its effective date. At the end of the initial term or any term thereafter, either party may terminate this Agreement, provided that at least six months prior written notice has been given to the other party. If neither party elects to terminate

this Agreement at the end of a term, the Agreement will be extended under the same terms and conditions for additional terms of five years each. Alternatively, Brentwood and Franklin may enter into a new agreement at any time to supersede this Agreement. Notwithstanding the foregoing, this Agreement will be automatically terminated if:

- A. Brentwood is unable to locate a Site for the Siren within six (6) months of the effective date of this Agreement.
- B. Brentwood requests written approval of the Site from Franklin's Fire Chief, pursuant to Section III herein, and such approval is not provided within thirty (30) days of Brentwood's request.
- C. Brentwood fails to install the Siren within six (6) months after Franklin's approval of the Site.
- D. The Siren is destroyed, dismantled or becomes inoperable and is not replaced within six (6) months thereafter.

V. Brentwood's Rights and Responsibilities.

- A. Brentwood shall purchase the Siren from Communications Group, Inc. (d/b/a "CommTech") and arrange the installation.
- B. Brentwood shall ensure that the Site is adequate for the installation of the Siren, and that appropriate easements have been acquired, if necessary.
- C. Brentwood shall be responsible for primary activation and testing of the Siren.
- D. Brentwood shall be responsible for all future maintenance and upkeep of the Siren, including any necessary repairs and replacements of the Siren's components.
- E. Brentwood agrees that it shall remain solely responsible for obtaining and maintaining sufficient property insurance coverage for the Siren.
- F. Brentwood shall have primary responsibility for activation of the Siren in accordance with Brentwood policies and procedures.

VI. Franklin's Rights and Responsibilities.

- A. Franklin shall contribute one-half of the cost of the Siren, up to \$18,000.00, to be used by Brentwood for the purchase and installation of the Siren. In the event maintenance and upkeep costs paid by Brentwood pursuant to Section V herein exceed \$1,000.00 in any 12-month period, Franklin shall reimburse Brentwood for half of such costs. Amounts to be paid by Franklin shall be transferred to Brentwood upon Brentwood's written request for payment. Payments shall be made by check, wire transfer or such other manner as may be agreed upon by the parties. In the event the purchase or installation cost is to be increased, then Franklin shall contribute additional funds to match Brentwood's contribution, provided that Franklin's total contribution shall not exceed the amount set forth in this section.
- B. Franklin shall have the capability and discretion to activate the Siren, in accordance with Franklin policies and procedures, in the event Brentwood does not do so.

VII. Termination - Breach. Should either party fail to fulfill in a timely and proper manner its obligations under this Agreement or if either 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 fourteen (14) calendar days from the receipt of the notice to cure the breach. Should the breaching party fail to cure the breach, the non-breaching party may terminate this Agreement. Such termination shall not relieve the breaching party of any damages

sustained by the non-breaching party. Termination of this Agreement by the non-breaching party for any breach by the breaching party shall be in addition to any other remedies available for such breach. Nothing herein shall be construed as prohibiting the non-breaching party from pursuing any other available remedy, including without limitation, injunctive relief and/or money charges. Should Franklin breach this Agreement, then Franklin agrees to pay the full amount of its contribution as specified in Section VI of this Agreement. Brentwood reserves the right to halt any installation or access to the Siren should Franklin fail to pay the full amount at time of termination as provided for in this Section VII. Should Brentwood breach this Agreement by failing to purchase, install or maintain the Siren, then, in addition to any other rights Franklin may have, Franklin may recover its contribution from Brentwood, less the amount reasonably attributable to Brentwood for its one-half of the expenditures to date.

VIII. Compliance with Laws, Codes and Ordinances. The Parties agree to comply with all applicable federal, state and local laws and regulations.

IX. Notices.

A. Notices to Brentwood shall be sent to the following persons or their successors:

City of Brentwood
Attention: Michael W. Walker, City Manager
Address: 5211 Maryland Way/P. O. Box 788
Brentwood, Tennessee 37024

B. Notices to Franklin shall be sent to:

City of Franklin
Attention: Eric S. Stuckey, City Administrator
Address: 109 3rd Avenue South
Franklin, Tennessee 37064

X. Modification of Agreement. This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

XI. Waiver. No waiver by either party of any default shall operate as a waiver of any other default, or the same default on a future occasion. No delay or omission by either party in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.

XII. Specific Performance. The parties recognize that the rights afforded to each under this Agreement are unique and, accordingly, Brentwood and/or Franklin 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.

XIII. Cost Savings. The parties agree that any cost savings relating to the purchase and installation of the Siren shall be divided equally between the parties.

XIV. Employment Discrimination. The parties shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any

individual due to race, creed, color, national origin, age, or sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

- XV. Indemnification and Hold Harmless.** Each party to this Agreement assumes liability for its own acts and omissions, and for those of the party's agents and employees. Neither party to the Agreement shall indemnify, defend or hold harmless in any fashion the other party from any claims arising from any act or failure to act, regardless of any language in any attachment, form or other document purported to provide indemnification of one party to another. Neither party shall be held liable for any action of the other party in the furtherance of this Agreement unless otherwise specified under Tennessee law.
- XVI. Taxes.** It is acknowledged by the parties that both Brentwood and Franklin are governmental entities exempt from taxation.
- XVII. No Warranties.** Both parties state that they offer no warranties of any kind, express or implied including, but not limited to, the provision of any services.
- XVIII. Maintenance of Records.** The parties agree to maintain documentation for all charges relating to the purchase and installation of the Siren. The books, records and documents of the parties insofar as they relate to work performed or monies received under this Agreement shall be maintained for the period required by the Tennessee Open Records Act. The records shall be maintained in accordance with generally accepted accounting principles.
- XIX. Partnership/Joint Venture:** Nothing herein shall in any way be construed or intended to create a partnership between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this Section XIX.
- XX. Assignment - Consent Required.** The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this Agreement nor any of the rights and obligations of either party hereunder shall be assigned or transferred in whole or in part without the prior written consent of the other party. Any such assignment or transfer shall not release either party from its obligation hereunder.
- XXI. Entire Agreement.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
- XXII. Force Majeure.** With the exception of providing its fair share of the contribution to construct the Facility, no party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
- XXIII. Governing Law.** The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.

XXIV. Venue. Any action between the parties arising from this Agreement shall be maintained in the courts of Williamson County, Tennessee. This Agreement is governed by the laws of the State of Tennessee with venue lying in Williamson County, Tennessee.

XXV. Severability. Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

XXVI. Headings. The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provisions of this Agreement.

XXVII. Effective Date. This Agreement shall not be binding upon the parties until it has been properly approved by the legislative bodies of the respective parties, and executed in two counterparts by the authorized representatives of both parties. Each counterpart shall be deemed an original of this Agreement. This Agreement shall be effective as of the date it is executed on behalf of Brentwood or Franklin, whichever date falls later.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates recorded below.

CITY OF BRENTWOOD:

CITY OF FRANKLIN:

Paul L. Webb, Mayor

Dr. Ken Moore, Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

Deborah Hedgepath, City Recorder

Eric S. Stuckey, City Administrator

Approved as to form and legality

Approved as to form and legality

Roger A. Horner, City Attorney

Kristen L. Corn, Staff Attorney