



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

January 28, 2021

To: Ron Colter, Metro Finance

**Re: TDOT Parks License Resolution
Planning Commission Mandatory Referral #2021M-003AG-001
Council District #14 – Kevin Rhoten, Council Member**

On behalf of the Metropolitan Planning Commission, the following item, referred to the Commission as required by the Metro Charter, has been recommended for *approval* to the Metropolitan Council:

A request for a resolution approving an intergovernmental license agreement between The Metropolitan Government of Nashville and Davidson County, by and through the Department of Parks and Recreation, and the State of Tennessee, acting by and through its Commissioner of Transportation, to construct and maintain a multi-use pedestrian greenway in Davidson County, Tennessee. (Proposal No. 2021M-003AG-001)

Conditions that apply to this approval: None.

The relevant Metro agencies (Metro Parks, Metro Public Works, Metro Water Services, Metro Emergency Communications, the Nashville Electric Service, Metro Finance – Public Property and the Metro Historical Commission) have reviewed the proposal and concur in the recommendation for approval. This request must be approved by the Metro Council to become effective. A sketch showing the location of the request is attached to this letter.

This recommendation for approval is given as set forth in the Metropolitan Planning Commission Rules and Procedures. If you have any questions about this matter, please contact Sharon O’Conner at Sharon.oconner@nashville.gov or [615-862-7208](tel:615-862-7208).

Sincerely,

A handwritten signature in black ink that reads 'Robert Leeman'.

Robert Leeman, AICP
Deputy Director
Metro Planning Department

cc: Metro Clerk, Elizabeth Waites

This Instrument prepared by:
State of Tennessee
Department of Transportation
Region 3
6601 Centennial Blvd.
Nashville, TN 37243
(Local Government)

Project No. 19041-3269-94
BR-STP-24(20)
Tract Nos. Multiple
Davidson County
Request No. 6742

LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of this the _____ day of _____, 2020 by and between THE STATE OF TENNESSEE, acting by and through its Commissioner of Transportation, (hereinafter referred to as "State") and the **METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, PARKS AND RECREATION** (hereinafter referred to as "Licensee").

WHEREAS, Licensee desires to use a portion of the Licensed Premises to install, maintain and operate a pedestrian walking trail being more specifically described in Exhibit A and depicted in Exhibit B, both attached to and made a part of this License (hereinafter the "Licensed Premises"); and

WHEREAS, the State is willing to permit said use of the Licensed Premises subject to certain conditions.

NOW, THEREFORE, in consideration of the execution of this License Agreement, it is mutually agreed between the parties hereto as follows:

1. **LICENSE** – Licensee is hereby granted permission to use the Licensed Premises to install, maintain and operate a pedestrian walking trail (hereinafter referred to as the "Improvements").
2. **USE OF LICENSED PREMISES** - Licensee shall be permitted to use the Licensed Premises for the operation of the Improvements. Licensee shall not be permitted to use the Licensed Premises for any other purpose except by prior written permission of the State. Licensee's use of the Licensed Premises is subject to any easements of record and to the right of any utility owner to operate and maintain any existing utility facilities within the Licensed Premises.
3. **FEE** – Licensee shall pay \$0 per year to the State for the use of the Licensed Premises.
4. **TERM** – The License is a ten (10) year, renewable license which shall begin on _____, 2020, and shall end on _____, 2030.
5. **ACCESS** – The State shall provide Licensee access to the Licensed Premises at all times for the uses authorized herein.
6. **MAINTENANCE** – The costs of any maintenance and operation of the Improvements shall be at the sole expense of Licensee;

7. **TRAFFIC CONTROL** - At no time will work authorized by this License Agreement interfere with the normal flow of traffic on roadways adjoining the Licensed Premises. Licensee is responsible for providing traffic control for this work zone in accordance with the requirements of the current *Manual on Uniform Traffic Control Devices*. If proper traffic control is not in place, TDOT may order Licensee to stop work until proper traffic control is put in place.
8. **FIRE HAZARD** - The Property shall not be used for the manufacture or storage of flammable material or for any other purpose deemed by the STATE or the Federal Highway Administration to be a potential fire hazard or other hazard to the highway. The determination as to whether a use constitutes such a hazard shall be in the sole discretion of the STATE or the Federal highway Administration. The operation and maintenance of said property will be subject to regulation by the STATE to protect against fire or other hazard which could impair the use, safety or appearance of the highway. LICENSEE shall provide access, at all times, for firefighters and accompanying equipment.
9. **DAMAGE TO STATE PROPERTY** - Licensee shall be liable for any damage to state property resulting from Licensee's use of the Licensed Premises and/or installation and operation of the Improvements, including but not limited to, the roadway, shoulders, guardrail, drainage, landscaping, signs and controlled-access fences. All repair or replacement of such damage shall be made in accordance with the current TDOT Standard Specifications for Road and Bridge Construction, TDOT Standard Drawings and any other applicable design and/or construction standards or guidelines.
10. **LIABILITY** - Licensee shall assume all liability for claims arising out of conduct on the part of the Licensee for which it would be liable under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, et seq., up to the limits for which it can be held liable for such conduct under that act, arising from its use of the Licensed Premises. In addition, Licensee shall require that any contractor of Licensee that performs any work on the Licensed Premises, including any installation, maintenance, or operation of the Improvements, shall indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character arising from the contractor's acts or omissions in the prosecution of the work.
11. **INSURANCE** - The Licensee, its successors and assigns, agrees to maintain adequate public liability insurance, which may include self-insurance, and will provide satisfactory evidence of such insurance to the State. Further, the liability limits of this insurance must not be less than the exposure and limits of the Licensee's liability under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, et seq. The insurance policy shall include a provision for the insurance company to notify the State in writing of any cancellation or changes of the policy at least 30 days in advance of the cancellation or change. In addition, Licensee shall require that any contractor of Licensee that performs any work on the Licensed Premises, including any installation, maintenance, or operation of the Improvements, shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than \$1 million dollars per occurrence and \$300,000 per claimant, naming the State of Tennessee as an additional insured.
12. **PERMITS** - Licensee is responsible for obtaining and paying the costs of all permits, licenses or other approvals by any regulatory body having jurisdiction over the uses authorized herein. Prior to commencing the work authorized herein, Licensee shall notify Tennessee One Call regarding any excavation(s) and shall ensure that the provisions of TCA 65-31-101 et seq. are met.

13. **COMPLIANCE** – All work on the Licensed Premises shall be performed in compliance with current TDOT Landscape Design Guidelines and TDOT Standard Drawings in addition to applicable federal, state and local laws and regulations. Should Licensee fail or neglect to comply with any term or condition of this License Agreement or to comply with written notice and demand, this License shall be subject to termination. In the event of such termination, Licensee shall immediately remove any and all of its Improvements from the Licensed Premises and surrender all rights and privileges under this License Agreement; otherwise, on written notification by the State, the Improvements will be removed and said Licensed Premises restored to its former condition in a timely manner at the expense of the Licensee.
14. **TITLE VI ASSURANCES** – The Licensee for itself, its successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License Agreement for a purpose for which the State or a State program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations shall be amended.
15. **AMERICANS WITH DISABILITIES ACT ASSURANCES** – The Licensee for itself, its successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License Agreement for a purpose for which the State or a State program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 28, Code of Federal Regulations, Parts 35 and 36, Nondiscrimination on the Basis of Disability in State and Local Government Services and Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, and as said regulations shall be amended. The Licensee further agrees that if any pedestrian facilities are constructed, maintained, or operated on the property described in this License, the Licensee shall construct, maintain, and operate such facilities in compliance with the Architectural and Transportation Barriers Compliance Board’s “Accessibility Guidelines for Pedestrian Facilities in Public Rights-of-Way” (proposed 36 CFR Part 1190; published in the Federal Register, July 26, 2011).
16. **REVERSION** – In the event that the Licensed Premises is needed for a transportation project, Licensee shall remove any and all of its Improvements from the Licensed Premises and surrender all rights and privileges under this License Agreement within 60 days of receiving written notice from the State. In the event that the Licensed Premises is needed for a highway maintenance project, the use of the Licensed Premises will cease temporarily until the maintenance project is completed. In the event that a utility owner needs to maintain a permitted utility facility, the Licensee’s use of the Licensed Premises may cease or be impaired until the utility maintenance activity is completed.
17. **ADJACENT PROPERTY** – Licensee states and affirms that the Improvements constructed and maintained on the Licensed Premises are not relevant to any adjacent property’s activities, features, or attributes that qualify the adjacent property for protection under Section 4(f) of the Department of Transportation Act of 1966 (Pub. L. 89—670, 80 Stat. 931) now codified at 23 U.S.C. § 138, 49 U.S.C. § 303, and 23 CFR Part 774 (hereinafter referred to as “Section 4(f)").

Therefore, neither the act of reversion nor termination of this Agreement, nor any transportation related activities occurring on the Licensed Premises (including, but not limited to, maintenance activities, construction activities, etc.), would result in a substantial impairment to the activities, features, or attributes that may qualify Licensee's adjacent or nearby property for protection under Section 4(f).

- 18. **NO PERMANENT OWNERSHIP** – Licensee does not currently possess, nor through this Agreement acquire, permanent ownership or control over the Licensed Premises.
- 19. **TERMINATION** – The State may terminate this License at will with 60 days written notice to Licensee.
- 20. **ASSIGNMENT** – The license shall not be transferred, conveyed or assigned to another party without prior written approval from the State.

TO THE LICENSEE:

Metro Government
P.O. Box 196340
Nashville, TN 37219-6340

TO THE STATE:

State of Tennessee
Department of Transportation
Suite 700, James K. Polk Bldg.
505 Deaderick Street
Nashville, TN 37243-0337

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed the day and year first above written.

LICENSEE:

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, PARKS AND RECREATION

BY: _____ DATE: _____
John Cooper, Mayor

APPROVED AS TO FORM AND LEGALITY:

Macy Amos

Attorney for Licensee

DATE: 2/8/2021

STATE OF TENNESSEE

BY: _____ DATE: _____
Clay Bright, Commissioner
Tennessee Department of Transportation

APPROVED AS TO FORM AND LEGALITY:

John Reinbold, General Counsel
Tennessee Department of Transportation

DATE: _____

EXHIBIT "A"

STONE'S RIVER BRIDGE AND RIGHT OF WAY
SR #24 / US #70 DONELSON, DAVIDSON COUNTY
Project No. BR-STP-1(5), BR-STP-24(20), Bridge originally built 1928-1929
(Partial Plans for Proj. No. 80-H, 1928/29)

Beginning at a point occupied by a concrete marker located 161.42 ft. left of roadway centerline station 106+73.89 (Proj. No. BR-STP-24(20)); THENCE, North 00 degrees 10 minutes 09 seconds West, 348.00 ft; THENCE, North 62 degrees 54 minutes 28 seconds East, 42.00 ft; THENCE, North 03 degrees 31 minutes 06 seconds West, 227.670 ft; THENCE, North 05 degrees 04 minutes 32 seconds West, 194.491 ft; THENCE, North 04 degrees 21 minutes 48 seconds West, 205.970 ft.; THENCE, North 75 degrees 25 minutes 48 seconds East, 15.897 ft; THENCE, North 85 degrees 28 minutes 37 seconds East, 30.251 ft; THENCE, with a curve to the right, having a Radius of 29.932 ft, a Chord of 47.675 and a Delta of 91.2600; THENCE, South 00 degrees 55 minutes 50 seconds West, 85.151 ft; THENCE, South 03 degrees 27 minutes 53 seconds East, 452.426 ft; THENCE, North 86 degrees 32 minutes 07 seconds East, 47.143 ft; THENCE, North 51 degrees 33 minutes 32 seconds East, 26.255 ft; THENCE, North 83 degrees 18 minutes 15 seconds East, 46.881 ft; THENCE, South 56 degrees 18 minutes 46 seconds East, 20.796 ft; THENCE, North 82 degrees 09 minutes 39 seconds East 49.702 ft; THENCE, South 07 degrees 50 minutes 21 seconds East, 47.055 ft; THENCE, South 82 degrees 09 minutes 39 seconds West, 40.648 ft; THENCE, North 48 degrees 00 minutes 17 seconds West, 53.564 ft; THENCE, South 83 degrees 47 minutes 23 seconds West, 15.751 ft; THENCE, South 03 degrees 06 minutes 20 seconds East, 18.255 ft; THENCE, South 86 degrees 34 minutes 40 seconds West, 85.343 ft; THENCE, South 03 degrees 36 minutes 21 seconds East, 2.518 ft; THENCE, South 86 degrees 32 minutes 07 seconds West, 5.901 ft; THENCE, South 03 degrees 27 minutes 53 seconds East, 52.079 ft; THENCE, South 02 degrees 50 minutes 40 seconds West, 349.394 ft; THENCE, South 83 degrees 08 minutes 04 seconds West, 81.124, enclosing an area of 1.815 acres/79047 square feet. Included in the above described area but expressly excluded in this License Agreement description:

Beginning at a point in the Southwest corner of the old SR24 bridge, (the expansion joint), approximately 50 feet left of roadway station 110+30.00 (+-), (Ref. TDOT Proj. No. BR-STP-24(20)), across the Stone's River; THENCE, South 18 degrees 46 minutes 11.29 seconds, 33.062 ft; THENCE, South 71 degrees 31 minutes 38.95 seconds West, 531.093 ft; THENCE, North 14 degrees 57 minutes 09.82 seconds West, 33.1296 ft; THENCE, North 71 degrees 31 minutes 41 seconds East, 528.89 ft enclosing an area of 0.402 acres/17524 square feet, including all structures encompassed from abutment to abutment, and ground area directly below said structure as shown on TDOT plans sheet 12-Proj. No. 80-H, (1928/9), and including wing walls and support structures for wing walls at either end of abutments.

This instrument and the property description above were prepared from the plans of the captioned project by:

Tennessee Department of Transportation
6601 Centennial Blvd.
Nashville, TN 37243-0360

License Agreement
Request No. 6742

EXHIBIT "B"

