STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION
LOCAL PROGRAMS DEVELOPMENT OFFICE
SUITE 600, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
(615) 741-5314

BUTCH ELEY
DEPUTY GOVERNOR &
COMMISSIONER OF TRANSPORTATION

BILL LEE
GOVERNOR

December 5, 2023

The Honorable James Maness
Mayor, City of Mt. Juliet
P. O. Box 256
Mt. Juliet, TN 37121

Re: Cedar Creek Greenway - Phase 2
City of Mt. Juliet, Wilson County
PIN:134713.00
Federal Project Number: TAP-M-9322(5)
State Project Number: 95LPLM-F3-154
Contract Number: 230461

Dear Mayor Maness:

I am attaching a contract providing for the development of the referenced project. Please review the contract and advise me if it requires further explanation. If you find the contract satisfactory, please execute it in accordance with all rules, regulations, and laws. Adobe Sign will then forward the document for the signature of the attorney for your agency. Once the contract is fully executed Adobe Sign will send you a link to the download the contract for your files.

If you have any questions or need any additional information, please contact Simchah Edwards at 615-741-0805 or simchah.edwards@tn.gov.

Sincerely,

Chasity M. Bell

Chasity M. Bell
Transportation Manager 1

Attachment

Contract Number: 230461

Project Identification Number: 134713.00

Federal Project Number: TAP-M-9322(5)

State Project Number: 95LPLM-F3-154

LOCAL AGENCY PROJECT AGREEMENT

BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF MT. JULIET

This Contract, by and between the State of Tennessee, Department of Transportation ("State") and the City of Mt. Juliet ("Agency"), is for the purpose of providing an understanding between the parties and their respective obligations related to the participation, management, undertaking, and completion of the project ("Project") described as:

2023 TAP Award: Cedar Creek Greenway - Phase 2

A. SCOPE OF PROJECT:

A.1. The Agency and the Department each shall be responsible for their respective obligations regarding the Project as required, described and detailed in this Agreement.

A.2. Incorporation of Additional Documents. Each of the following documents is included as a part of this Agreement by reference or attachment. In the event of a discrepancy or ambiguity regarding the Agency's duties, responsibilities and performance hereunder, these items shall govern in order of precedence below.

a. This Agreement document;

b. Exhibit A, attached hereto and incorporated herein;

c. The most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects ("Local Government Guidelines") (copy available from the Local Programs Development Office or the on the Department's website) to elaborate the processes, documents and approvals necessary to obtain funds under this Agreement, including all latest applicable Department procedures, guidelines, manuals, standards and directives as described herein;

d. The Agency's Project application.

A.3. Responsibility for Performance of Phases of Work and Funding Thereof.

The phases of work for the Project are Environmental Clearance (NEPA), Final Design, Right-of-Way (including utility coordination), and Construction. On any phases for which the Agency is responsible for performance of the work as listed below, and only after receiving a Notice to Proceed for any such phase, the Agency shall commence and complete such phase with all practical dispatch, in a sound, economical and efficient manner and in accordance with the provisions of this Agreement and all applicable laws.

For any phase of the Project assigned to the Agency, a full-time employee of the Agency shall be assigned to supervise the work performed and to be the responsible charge thereof. Said full-time

employee of the Agency shall be qualified to and shall ensure that the Project work will be performed in accordance with the terms of this Agreement and the latest applicable Department procedures, guidelines, manuals, standards and directives as described in the Department's Local Government Guidelines. The Agency hereby certifies that it is adequately staffed and suitably equipped to undertake and satisfactorily complete the work. If the Agency elects to use consultants for any phase of the work, the Agency must follow the TDOT Local Programs consultant procurement policy (copy available from the Local Programs Development Office or on the Department's website) and also must provide a full-time employee of the Agency to be in responsible charge.

Commencement of work by the Agency on any phase of the Project without first having received a Notice to Proceed from the Department for that phase shall be sufficient cause to render the Agency ineligible for reimbursement for any or all work performed on the Project.

Phases:	**Responsible for Work:**	**Funding Provided By:**
Environmental Clearance (NEPA):	Agency	Project
Final Design:	Agency	Project
Right-of-Way (including Utility Coordination):	Agency	Project
Construction:	Agency	Project

A.4. Environmental Clearance. The Department will review Agency's environmental documents and require the Agency to make any appropriate changes for approval as necessary, as described in the Local Government Guidelines.

The Agency shall be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and the Agency will reimburse the Department for any loss incurred in connection therewith, including but not limited to any loss of federal funding for the Project. The Agency is responsible for applying for and securing any applicable environmental permits as described in the Local Government Guidelines. In addition, the Agency acknowledges that it must complete the Environmental Clearance phase before it begins work toward Final Design and understands that a separate Notice to Proceed will be submitted for each phase. Any work on Final Design performed ahead of this Notice to Proceed will not be reimbursable.

A.5. Final Design. The Agency shall submit to the Department for review and comment all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written comments or recommendations as deemed appropriate by the Department, which the Agency then shall address in the plans. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a Notice to Proceed with the next assigned phase of the Project.

In the event that the Project involves the use of existing State highway right-of-way, the Department Regional Traffic Engineer for the region where the Project is located will review and comment on the plans. These plans shall be sufficient for the Department to assess the proposed Project and its impact on the State highway right-of-way.

A.6. Right-of-Way. The Agency shall, without cost to the Department, provide by deed or other appropriate conveyance document all land owned by the Agency or by any of its instrumentalities as may be required for Project right-of-way or easement purposes.

If federal and/or state funds are providing reimbursement for the Right-of-Way phase, any activities initiated for the appraisal or the acquisition of land prior receiving a Notice to Proceed from the Department will not be reimbursed. **Failure to follow applicable Federal and State law in this regard may be sufficient cause to render the Agency ineligible for reimbursement of any and all work performed on the Project.**

The Department will review the processes the Agency used for the acquisition of land and relocation assistance. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1984) and the regulations promulgated thereunder, the Department will certify that the acquisition phase was completed appropriately. The Agency understands and acknowledges that the Project cannot proceed to the Construction phase until this certification of the Right-of-Way phase has been provided. **The Agency further understands that if the processes used for acquisition are such that certification cannot be given, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended prior to the time of such withdrawal.**

It is the intent of the parties that the State of Tennessee will be the record owner of all State highway right-of-way. If the Project, or some portion of it, will require improvements to a State highway and the construction of such improvements will require the acquisition of right-of-way, then the Agency shall acquire such right-of-way in the name of State of Tennessee. If the Project, or some portion of it, includes acquisition of right-of-way along a local road or otherwise not requiring improvements to a State highway, then the Agency shall acquire such right-of-way in the name of Agency. If the Project requires improvements to a State highway and includes Agency acquisition of right-of-way at or near the intersection of a State highway and a local road, then the Agency shall acquire those tracts adjacent to the State highway in the name of State of Tennessee and shall acquire those tracts adjacent to the local road in the name of Agency. The Agency shall consult with the Department to confirm these areas.

The Department hereby authorizes the Agency to obtain by negotiated settlement such necessary right-of-way in the name of State of Tennessee to the extent provided in this Agreement, in the manner provided in the Department's Local Government Guidelines, and as shown on the Project plans. However, this Agreement shall not grant the Agency, through its attorneys, the right to represent the State in any legal matter, including but not limited to eminent domain proceedings, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106. Furthermore, the Agency shall be responsible for conducting at its own expense any and all necessary eminent domain proceedings for all tracts acquired in the name of Agency.

A.7. Utility Coordination. The Agency shall ensure that all utility relocation plans are submitted by the utilities and received by the Department Region Utilities Office for the region where the Project is located in accordance with the timeframes set forth in the most current version of the Department's Guidebook for Utility Relocation (copy available from Local Programs Development Office or on the Department's website). The Agency further agrees to complete all utility connections within the Project right-of-way and easements prior to the paving stage of the Construction phase.

The Agency shall be eligible for reimbursement of Project utility relocation costs only as provided in 23 CFR § 645.107. In the event that the Department has determined that the Project includes participating utility relocation costs, such costs shall be shown in Exhibit A.

The Agency shall coordinate all utility relocations in accordance with the most current version of the Department's Guidebook for Utility Relocation (copy available from Local Programs Development Office or on the Department's website).

If the Agency also owns any utility to be relocated as part of the Project, then the following additional conditions shall apply with regard to the Agency's coordination efforts for said locally owned utility:

a. The Agency shall submit to the Department a Local Agency Owned Utility Relocation Form ("Utility Relocation Form"), which shall include the estimate of cost for the utility relocation and shall indicate the Agency's selected method of performing the relocation work in accordance with 23 CFR § 645.115. The Agency and the Department agree that said Utility Relocation Form, once signed by an authorized signatory of the Agency and by an authorized signatory of the Agency-owned utility and approved by the Department, shall be incorporated into this Agreement as the next Exhibit. The Agency shall perform its utility relocation in accordance with said Utility Relocation Form.

   (1) Whenever the Agency elects to perform the relocation work by award of a contract, it shall submit the same to the Department for prior approval. The Department may not be required to reimburse the Agency for its obligation under any contract that has not received the advance written approval of the Department. Federal Highway Administration ("FHWA") Form FHWA-1273 shall be physically incorporated into the Agency's contract with its contractor.

   (2) The Agency agrees that any memoranda or other information concerning the estimated cost of the proposed relocation of its utility facilities will not directly or indirectly be released or disclosed to potential bidders except to the extent that may otherwise be required by law.

   (3) Neither the Agency nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the utility relocation work to be performed under a contract to be awarded by the Agency. The Agency further agrees that no employee, officer, or agent of the Agency, nor of any affiliate or subsidiary thereof, shall participate in the selection or in the award or administration of a contract for the performance of any part of the utility relocation work if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ any of the above, has a substantial financial interest, such as five-percent (5%) or greater ownership interest, or other interest in the firm selected for award of a contract to perform the Utility's relocation work for this Project. Neither the Agency nor any affiliate, subsidiary, employee, officer, or agent thereof shall solicit or accept gratuities, favors, or anything of monetary value, except an unsolicited gift having nominal monetary value, from contractors or bidders.

   (4) The Agency agrees to provide engineering, erosion control, traffic control, clearing and grubbing of the proposed construction site, and all survey staking for the purpose of the utility relocation, and the estimated cost thereof shall be included in the estimate to be provided with the Utility Relocation Form.

   (5) After submission and approval of the Utility Relocation Form, the Agency must request in writing and receive the Department's written approval prior to any revision in the estimate of cost, schedule of work or plan, or method of performing the work. Failure to do so may result in the loss of any Department participation in the cost of relocation. The Department agrees to cooperate with the Agency to

resolve, if possible, any objections that Department may have to such requested changes.

b. The Agency shall be responsible for ensuring that all applicable conditions of the Department's Guidebook for Utility Relocation are met with regard to its utility relocation. This includes, but is not limited to, the Agency's responsibility to inspect the utility relocation work and perform in accordance with the procedures and forms required by Department Circular Letter 105-07.04, as may be amended from time to time.

c. To the extent that facilities are being located within State highway right-of-way, the Agency agrees to comply with the State's Rules and Regulations for Accommodating Utilities Within Highway Rights-of-Way and 23 CFR Subpart 645B. The Agency acknowledges possession of each.

d. The Agency agrees to comply with all current, applicable provisions of 23 CFR Subpart 645A, which are incorporated herein by reference. The Agency acknowledges possession of 23 CFR Subpart 645A.

e. The Agency agrees to comply with all current, applicable provisions of the Guidelines for Governmentwide Debarment and Suspension of 2 CFR §180.35 through §180.365 which are incorporated herein by reference. The Agency acknowledges possession of 2 CFR Part 180 and the requirements of Form FHWA-1273, Section X – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

f. The Agency shall acquire all utility rights-of-way outside of the available public highway right-of-way as may be needed to relocate its utility facilities, including any betterment, and the Agency further agrees that it has acquired or will acquire these rights-of-way at no cost to the Department. The Department may be liable to reimburse the Agency for the replacement of its previously owned private utility rights-of-way as may be provided in the Utility Relocation Form. The Agency shall cause to be transferred to the Department that portion of its previously owned private utility rights-of-way being vacated by the Utility and within the Project proposed right-of-way as needed for State highway purposes.

g. The Agency agrees to comply with all current, applicable provisions of the Buy America requirements established under 23 USC § 313 and 23 CFR § 635.410. In accordance with guidance provided by the Federal Highway Administration, the Agency agrees that all products used in its utility relocation work that are manufactured of steel or iron shall be manufactured in the United States. For the purposes of applying this Buy America requirement and determining whether a product is a steel or iron manufactured product, the job site includes any sites where precast concrete products that are incorporated into the utility relocation work are manufactured.

h. The Agency shall coordinate as needed with the Department Region Utilities Office for the region where the Project is located to ensure timely relocation of the Agency's utility facilities.

i. In the event that the Project also includes participating utility relocation costs for relocation of the Agency's locally owned utility, the following additional conditions shall apply:

(1) The Agency will perform the utility engineering work provided for in this Contract by its own forces and/or consultant engineering services approved by the Department, and the Agency will develop the utility engineering costs in accordance with the current provisions of 23 CFR § 645.117. The Utility may perform preliminary engineering to generate the schedule of calendar days, color coded relocation plans and estimate of cost as needed for submission of the Form. Costs incurred for preliminary engineering are eligible for reimbursement as long

as they were incurred after the Agency receives Notice to Proceed with the Right-of-Way phase. Any costs for consultant engineering shall also be eligible for reimbursement as long as they are incurred after the Agency receives Notice to Proceed with the Right-of-Way phase.

(2) The Department agrees that it will reimburse the Agency the pro-rata share for the inspection of utility facilities on private utility right-of-way when the utility relocation is completed in accordance with the approved relocation plans. The inspection of utility facilities on public highway right-of-way shall be performed at no cost to the Department.

(3) Invoices for utility relocation shall be submitted to the Department as provided in the Department's Guidebook for Utility Relocation.

(4) The Department shall reimburse the Agency for such direct and indirect costs as are eligible and allowable under the current provisions of 23 CFR Subpart 645A. The Department shall reimburse the Agency for the participating costs of relocating its utility facilities in accordance with the approved plan subject to the provisions of this Subsection A.7.i. and as otherwise provided in this Agreement.

(5) The Agency shall develop and record relocation costs in a manner consistent with the current provisions of 23 CFR §645.117 as of the effective date of this Contract and as approved by TDOT.

(6) The Utility's invoice(s) shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by TDOT, on the basis of audits or monitoring conducted in accordance with the terms of this Contract, not to constitute allowable costs. The payment of an invoice shall not prejudice TDOT's right to object to or question any invoice or matter in relation thereto. Such payment by TDOT shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.

(7) The invoice(s) shall include a Buy America certification attesting that all products used in the utility relocation work that are manufactured of steel or iron comply with the Buy America requirements set forth in 23 USC § 313 and 23 CFR § 635.410 and as further described in Subsection A.7.g. of this Agreement.

(8) Any costs billed by the Utility that cannot be verified by the Department will not be reimbursed.

A.8. Railroad. In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

A.9. Construction. Any activities initiated for the Construction phase prior receiving a Notice to Proceed from the Department will not be reimbursed.

If during Construction, the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign and maintain the detour route in strict accordance with the Department's Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices (MUTCD).

The following conditions shall apply regarding the Construction phase:

a. Except as otherwise authorized in writing by the Department, the Agency shall not execute a contract with a contractor for the Construction Phase of the Project without the prior written approval of the Department. Failure to obtain such approval shall be sufficient cause to render the Agency ineligible for reimbursement for all work performed on the Project.

b. Form FHWA-1273 shall be physically incorporated into the Agency's contract with its contractor.

c. The Agency agrees to correct any damage or disturbance caused by its work within the State highway right-of-way, including but not limited to the replacement of any access control fence removed or damaged by the Agency, or its contractor or agent, during the Construction phase of the Project.

d. If the Project includes the use of or modification to State highway right-of-way, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.

e. Davis-Bacon prevailing wage guidelines shall apply to the Agency's contract with its contractor as detailed in Form FHWA-1273, and the provisions of the Copeland Anti-Kickback Act, 18 U.S.C. § 874 also shall apply to the Agency's contract with its contractor.

f. The Agency shall ensure that its contractor and any subcontractor(s) comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608.

g. The Agency agrees that the applicable provisions of 41 CFR 60-1.4 regarding equal opportunity shall apply to the Agency's contract with its contractor.

h. All contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Federal law provides that no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Therefore, in accordance with TDOT policy, as expressed in TDOT Standard Specifications §102.11 and as approved by the Federal Highway Administration, all prime contractors shall be licensed with the State of Tennessee, Department of Commerce and Insurance, Board for Licensing Contractors (BLC), upon award of the contract. A proposal submitted by a contractor that is otherwise prequalified and in good standing shall not be rejected as non-responsive solely because the contractor is not licensed by the BLC at the time of submitting the proposal. If otherwise responsive, the proposal will be considered for award for twenty-one (21) days after the proposals are opened. If the contractor does not have a license with the BLC on or before the end of the twenty-one (21) days after the proposals are opened, the contractor's proposal will be rejected as non-responsive, and the proposal of the next lowest responsible bidder may then be considered for award. If the next lowest responsible bidder does not have a license on or before the twenty-one (21) days after the proposals are opened, this contractor will also be considered non-responsive, and the subsequent bidder may then be considered. The Department reserves the right to reject all bids at any time.

A.10. Where the Agency is managing any phase of the project, the Department shall provide various activities necessary for Project development. The estimated costs for these activities are the funds shown as "TDES" in Exhibit A. TDES costs are not funds available to the Agency for expenditure or reimbursement.

B. TERM OF CONTRACT:

B.1. Term:

a. The initial term of this Agreement shall begin on **June 1, 2023** and shall terminate on **September 30, 2026** (3 years from start) ["Initial Term"]. The Agency must provide the Department with all the documents, certifications and clearances necessary to obtain the Notice to Proceed with the Construction phase prior to the expiration of the Initial Term. Failure to provide provide the Department with all the documents, certifications and clearances necessary to obtain the Notice to Proceed with the Construction phase prior to

the expiration of the Initial Term shall result in termination of this Agreement and the Project.

b. If the Agency provides the Department with all the documents, certifications and clearances necessary to obtain the Notice to Proceed with the Construction phase prior to the expiration of the Initial Term listed in Subsection B.1.a., then this agreement shall not terminate on the date listed in Subsection B.1.a., but instead shall automatically renew, continuing in full force and effect until **September 30, 2028** (5 years from start). Such renewal will be confirmed in writing by the Department.

c. Any other extension of the term of this Agreement beyond the renewal described in Subsection b. above must be effected through a fully executed contract amendment prior to expiration of the Agreement.

B.2. Expiration of this Agreement may be considered termination of the Project. The cost of any work performed after the expiration of the Agreement will not be reimbursed by the Department. The Department shall have no obligation to the Agency for fulfillment of the Scope outside the term.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Agreement exceed the total Department share specified in Exhibit A ("Maximum Liability").

C.2. Compensation Firm. The Maximum Liability is not subject to escalation for any reason unless amended. The amounts allotted for each phase of the Project in Exhibit A are estimates only and may fluctuate without amendment to this Agreement so long as it does not result in an increase in the Maximum Liability.

C.3. Payment Methodology. The Agency shall be reimbursed for actual, reasonable, and necessary costs for eligible and appropriate Project expenditures, as detailed in the Department's Local Government Guidelines, with Federal and/or State funds made available and anticipated to become available to the Agency based upon Exhibit A, not to exceed the Maximum Liability established in Exhibit A. Upon progress toward the completion of the Project as described in Section A, the Agency shall submit invoices prior to any reimbursement of allowable costs, as detailed in Section C.5. below.

C.4. Travel Compensation. The Agency shall not be compensated or reimbursed for travel, meals, or lodging expenses for Agency employees. Reimbursement for travel, meals, or lodging for Agency consultants or contractors shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the funding for said reimbursement as shown in Exhibit A.

C.5. Invoice Requirements. The Agency shall invoice the Department at least quarterly, but no more often than monthly, with all necessary supporting documentation, and submit such invoice by email to:

LPD.Invoices@tn.gov

a. Each invoice shall be submitted on the Local Programs Development Office standard invoice form (copy available from the Local Programs Development Office or on the Department's website).

b. The Agency understands and agrees to all of the following.

(1) An invoice under this Agreement shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Agreement and shall be subject to all provisions of this Agreement relating to allowable reimbursements.

(2) An invoice under this Agreement shall not include any reimbursement request for future expenditures.

(3) An invoice under this Agreement shall initiate the timeframe for reimbursement only when the Department is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Disbursement Reconciliation and Close Out. The Agency shall submit any final invoice within one hundred twenty (120) days of the Agreement end date, in form and substance acceptable to the Department. The Project should then be closed out no later than one year after Department's receipt and acceptance of the final invoice.

a. If total disbursements by the Department pursuant to this Agreement exceed the amounts permitted by Section C, payment terms and conditions of this Agreement, the Agency shall refund the difference to the Department. The Agency shall submit the refund with the final invoice.

b. The Department shall not be responsible for the payment of any invoice submitted to the Department after the final invoice. The Department will not deem any Agency costs submitted for reimbursement after the final invoice to be allowable and reimbursable by the Department, and such invoices will NOT be paid.

c. The Agency must close out its accounting records at the end of the Term in such a way that reimbursable expenditures and revenue collections are NOT carried forward.

C.7. Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any reimbursement, invoice, or related matter. A payment by the Department shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost. In no event shall any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default by the Agency, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

a. The Agency has made misrepresentation of a material nature in its application for the Project, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

b. There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement, or payments to the Project;

c. The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without first having been advised by the Department that same are approved;

d. There has been any violation of the conflict of interest provisions described in Paragraph D.6.; or

e. The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.8. Non-allowable Costs. Any amounts payable to the Agency shall be subject to reduction for amounts included in any invoice or payment that are determined by the Department, on the basis of audits or monitoring conducted in accordance with the terms of this Agreement, to constitute unallowable costs.

Only those Project costs incurred after the issuance of the Notice to Proceed for the respective phase, as detailed in this Agreement and in the Department's Local Government Guidelines, are eligible for reimbursement. For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

The Agency agrees to pay all costs of any part of this Project which are not eligible for federal and/or state funding. These funds shall be provided upon written request either by check or via deposit into the Agency's Local Government Investment Pool account established under Tenn. Code Ann. 9-4-701 et seq.

C.9. Department's Right to Set Off. The Department reserves the right to set off or deduct from amounts that are or shall become due and payable to the Agency under this Agreement or under any other agreement between the Agency and the Department under which the Agency has a right to receive payment from the Department.

C.10. Prerequisite Documentation. The Agency shall not invoice the Department under this Agreement until the Agency has completed, signed, and returned to the Department the provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Agency's Federal Employer Identification Number referenced in the Agency's Edison registration information.

C.11. Reimbursements to Reflect Match/Share. Reimbursements to Agency shall reflect the percentage of Agency Match/Share detailed in Exhibit A. Reimbursements are subject to the other provisions of this Agreement, including but not limited to the Maximum Liability and Exhibit A, and also are subject to the applicable Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP).

C.12. Agency Deposit. In the event the Agency elects to utilize a TDOT Local Programs On-Call Consultant for any phase of project delivery, the Agency shall be required to deposit its share of the estimated cost per phase as noted in Exhibit A. This deposit may be made either by check delivered to the Local Programs Development Office or via deposit into the Agency's Local Government Investment Pool account established under Tenn. Code Ann. 9-4-701 et seq.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The Department is not bound by this Agreement until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations.

D.2. Modification and Amendment. This Agreement may be modified only by a written amendment signed by all parties and approved by the officials who approved the Agreement and, depending upon the specifics of the Agreement as amended, any additional officials required by Tennessee laws and regulations. Should the Agency desire to request an amendment, the Agency shall make the request in writing to the Department no later than thirty (30) days before the requested effective date of the amendment.

D.3. Termination for Convenience. The Department may terminate this Agreement without cause for any reason. A termination for convenience shall not be a breach of this Agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any work that has not been performed. The final decision as to the amount for which the Department is liable shall be determined by the Department. The Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the Department's exercise of its right to terminate for convenience.

D.4. Termination for Cause. If the Agency fails to properly perform its obligations under this Agreement, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate this Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the Department's right to terminate this Agreement for cause, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency, including but not limited to repayment of any reimbursement funds previously paid to the Agency under this Agreement.

The Agency understands and agrees that if FHWA determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.

If the Project herein described lies on the State highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.5. Subcontracting. The Agency shall not assign this Agreement or enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Agreement pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Title VI, Civil Rights Act of 1964," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Agency shall remain responsible for all work performed.

D.6. Conflicts of Interest. The Agency warrants that no part of the total Agreement amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.

The Agency further warrants that no member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.7. Lobbying. The Agency certifies, to the best of its knowledge and belief, that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,'' in accordance with its instructions.

c. The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:

The Department:

Contact: Neil Hansen
Title: Transportation Manager 1
Address: 505 Deaderick Street, STE. 600
Nashville, TN 37243
Email: neil.hansen@tn.gov
Telephone # 615-741-4850

The Agency:

Contact: Matthew White
Title: Deputy Director of Public Works
Email: mwhite@mtjuliet-tn.gov
Telephone # 615-754-2552

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

D.9. Subject to Funds Availability. This Agreement is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate this Agreement upon written notice to the Agency. The Department's right to terminate this Agreement due to lack of funds is not a breach of this Agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.10. Nondiscrimination. The Agency hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Agency shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.11. Title VI, Civil Rights Act of 1964. During the performance of this contract, the Agency, for itself, its assignees, and successors in interest (hereinafter referred to as the "Agency") agrees as follows:

a. Compliance with Regulations: The Agency shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21 through Appendix C, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The Agency, with regard to the work performed by itself during the contract, shall not discriminate on the grounds of race, color, religion, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Agency shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the Agency for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the Agency of the Agency's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.

d. Information and Reports: The Agency shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or other parties participating in the funding of this agreement to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Agency is in the exclusive possession of another who fails or refuses to furnish this information, the Agency shall so certify to the Department and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the Agency's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it may determine to be appropriate, including, but not necessarily limited to:

(1) withholding of payments to the Agency under this Agreement until the Agency complies, and/or

(2) cancellation, termination, or suspension of this Agreement in whole or in part.

f. Incorporation of Provisions: The Agency shall include the provisions of subparagraphs a. through f. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Agency shall take such action with respect to any subcontract or procurement as the Department or other parties participating in the funding of this agreement may direct as a means of enforcing such provisions including sanctions for non-compliance; Provided that in the event the Agency becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such directions, the Agency may request the Department to enter into such litigation to protect the interests of the Department, and, in addition and as appropriate, the Agency may request the United States to enter into such litigation to protect the interests of the United States.

D.12. Licensure. The Agency, its employees, and any approved contractor or subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses. See also the requirements of Subsection A.9.i. regarding contractor licensure.

D.13. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Agreement. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, FHWA, Inspectors General, the Comptroller General of the United States, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The aforesaid requirements to make records available to the Department, the Comptroller of the Treasury, FHWA, Inspectors General, the Comptroller General of the United States, or their duly appointed representatives shall be a continuing obligation of the Agency and shall survive a termination of this Grant Contract.

D.14. Monitoring. The Agency's activities conducted and records maintained pursuant to this Agreement shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.

D.15. Progress Reports. The Agency shall submit brief, periodic, progress reports to the Department as requested.

D.16. Audit Report. The Agency shall be audited in accordance with Tenn. Code Ann. § 4-3-301, Tenn. Code Ann. § 6-56-105, or other applicable law. In the event that the Agency expends $500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.

All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

D.17. Procurement. If other terms of this Agreement allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, procurements by the Agency shall be competitive where practicable. For any procurement for which reimbursement is paid under this Agreement, the Agency shall document the competitive procurement method. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification for the decision and for the use of a non-competitive procurement. If federal funds are funding the Project, the Agency shall comply with 2 C.F.R. §§ 200.318—200.326 when procuring property and services under a federal award.

The Agency shall obtain prior approval from the Department before purchasing any equipment under this Grant Contract.

The Agency may elect to utilize a Department Local Programs On-Call consultant for the provision of engineering and design related services or right-of-way acquisition services, such consultants having been procured by the Department in accordance with applicable law and policy pursuant to authority found in Tenn. Cod Ann. §§ 12-3-102, 12-4-107 and 54-5-109.

D.18. Strict Performance. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

D.19. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Agreement. The parties acknowledge that they are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the

manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

D.20. Limitation of Department's Liability. The Department shall have no liability except as specifically provided in this Agreement.

D.21. Liability for Third Party Claims and Damages. The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq., and all applicable laws.

In the event that the Department is sued for damages arising from acts, omissions, or negligence by the Agency or its employees, the Agency shall cooperate in the Department's defense. TDOT shall give the Agency written notice of any such claim or suit, and the Agency shall have full right and obligation to conduct the Agency's own defense thereof. Nothing contained herein shall be deemed to accord to the Agency, through its attorney(s), the right to represent the Department in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

D.22. Force Majeure. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.23. State and Federal Compliance. The Agency shall comply with all applicable state and federal laws and regulations in the performance of this Agreement. If federal funds are funding the Project, the requirements of 2 CFR Part 200 shall apply.

D.24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement.

The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.

The Agency, being a political subdivision of the State of Tennessee, is governed by the provisions of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq., and all other applicable laws.

D.25. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Agreement supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.

D.26. Severability. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

D.27. Headings. Section headings are for reference purposes only and shall not be construed as part of this Agreement.

D.28. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Agreement. The Agency certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Agreement, the special terms and conditions shall be subordinate to the Agreement's other terms and conditions.

E.2. Debarment and Suspension. **By signing and submitting this Agreement, the Agency is providing the certification set forth in this Paragraph.**

a. Instructions for Certification – Primary Covered Transactions:

(1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

(3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

(5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

(6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From

Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

(8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;

(2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and

(4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

E.3. Department Debarment and Suspension. In accordance with the Tennessee Department of Transportation rules governing Contractor Debarment and Suspension, Chapter 1680-05-01, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subcontractor.

E.4. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Agency by the Department or acquired by the Agency on behalf of the Department that is regarded as confidential

under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Agency to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Agency due to intentional or negligent actions or inactions of agents of the Department or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Agency shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Agreement.

E.5. Federal Funding Accountability and Transparency Act (FFATA). This Agreement requires the Agency to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Agency is responsible for providing all requested information to the Department for FFATA reporting purposes upon request.

The Agency will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Agreement. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/.

The Agency's failure to comply with the above requirements is a material breach of this Agreement for which the Department may terminate this Agreement for cause. The Department will not be obligated to pay any outstanding invoice received from the Agency unless and until the Agency is in full compliance with the above requirements.

E.6. Disclosure of Personally Identifiable Information. The Agency shall report to the Department any instances of unauthorized disclosure of personally identifiable information related to this Agreement that come to the attention of the Agency. Any such report shall be made by the Agency within twenty-four (24) hours after the instance has come to the attention of the Agency. The Agency, at the sole discretion of the Department, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Agency shall bear the cost of notification to individuals having personally identifiable information involved in a potential disclosure event, including individual letters or public notice. The remedies set forth in this section are not exclusive and are in addition to any claims or remedies available to the Department under this Agreement or otherwise available at law.

E.7. State and/or Federal Funding. Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost (23 CFR 1.9(a)). If FHWA and/or the Department determines that any amount claimed is not eligible, Federal and/or State participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for Federal and/or State participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, Federal and/or State funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

If the Agency fails to comply with Federal statutes, regulations or the terms and conditions this Agreement, the Department may impose additional conditions as described in 2 CFR § 200.207 Specific conditions. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take one or more of the following actions, as appropriate in the circumstances:

a. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department.

b. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

c. Wholly or partly suspend or terminate the Agreement.

d. Withhold further Federal awards for the project or program.

e. Take other remedies that may be legally available.

E.8. Federal Awarding Agency. Federal funds provided hereunder are provided by the FHWA, unless otherwise indicated. FHWA awarding official contact information is set out below:

Federal Highway Administration
Tennessee Division Office
404 BNA Drive
Building 200, Suite 508
Nashville, TN 37217
Phone: (615) 781-5770
Fax: (615) 781-5773

E.9. No Retainage Allowed. The Agency may not withhold retainage on progress payments from the prime contractor, the prime contractor may not withhold retainage from its subcontractors, and no subcontractor may withhold retainage from any of its subcontractors.

E.10. Inspection. The Agency shall permit, and shall require its Contractor, subcontractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the FHWA to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project. The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subcontractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

E.11. No Third-Party Beneficiary Rights. No provision in this Agreement is intended to or shall be construed to create any rights with respect to the subject matter of this Agreement in any third party.

E.12. Participation in Real Property Acquisition. The State and/or Federal reimbursement for the acquisition of real property is outlined in Exhibit A, attached and incorporated herein to this Agreement.

Pursuant to 23 U.S.C. § 156, the Agency shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal (other than for utility use and occupancy or for a transportation project eligible for assistance under this title) of real property acquired in the name of Agency with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account). Pursuant to 23 CFR §710.403, property disposal actions and right-of-way use agreements, including leasing actions, are subject to 23 CFR part 771. The Agency shall not use or allow the use of any such real property for any use other than that originally described in this Agreement without the prior written approval of the Department and FHWA. The Federal share of net income from the use or disposal of real property interests obtained with Title 23 funds shall be used by the Agency for activities eligible for funding under Title 23.

E.13. Work Products. The Department shall have ownership, right, title, and interest, including ownership of copyright, in all deliverables described in or developed from Section A. above (the “Work Products”), including but not limited to, documents, methodologies, models, templates, drawings,

designs, and plans created, designed, developed, derived, documented, installed, or delivered under this Agreement subject to the terms and conditions of this Section and full and final payment for each "Work Product." The Department and FHWA shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

E.14. Agency Signatory. The Agency hereby certifies that the individual executing this Agreement on behalf of the Agency possesses the necessary signatory authority to legally bind the Agency.

E.15. Investment of Public Funds. The facility on or structure for which this Project is being developed shall remain open to the public and to vehicular, bicycle and pedestrian traffic, as applicable, for a sufficient time after completion of the Project and close-out by FHWA to recoup the public investment therein, for at least the minimum length of time as shown below:

State/Federal Investment		Facility to Remain Open
$1.00 - $200,000	=	At least 5 Years
>$200,000 - $500,000	=	At least 10 Years
>$500,000 - $1,000,000	=	At least 20 Years

Projects over $1,000,000 must remain open to public and to vehicular, bicycle and pedestrian traffic as applicable, for a minimum of 25 years after completion of the Project and close-out by FHWA and will be subject to individual review by the Department.

If this Project involves construction other than linear highway construction, the terms of this paragraph shall apply to the extent that the Project shall remain open to the public for the amount of time shown.

E.16. Americans with Disabilities Act of 1990 (ADA). The Agency shall comply with all the requirements as imposed by the ADA, the regulations of the federal government issued thereunder, and the Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way published July 26, 2011 ("PROWAG 2011").

E.17. Maintenance. The Agency shall have the sole responsibility at its own expense of maintaining the entire Project. The State shall have no maintenance obligation for the Project.

The Agency shall comply with all federal, state, and local laws, ordinances, and regulations applicable to its ongoing use and maintenance of the completed Project.

E.18. Disadvantaged Business Enterprise (DBE) Policy and Obligation. Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, the Agency and its contractors shall take all necessary and reasonable steps, in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of agreements entered into pursuant to this Agreement.

E.19. General Compliance with Law. The Agency shall observe and comply with those federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding

fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement. The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the Department as a result of said breach.

Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law; provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency so that the Agency may proceed as soon as possible with the Project.

E.20. Equal Employment Opportunity. In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Agency shall insert the above provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

E.21. Certification Regarding Third Party Contracts. The Agency certifies by its signature hereunder that:

a. Agency has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

b. Agency has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.

c. Agency will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.

d. Agency agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

E.22. Completion of Project and Repayment of Funds. If the Agency elects not to complete the Project, then the Agency shall notify the Department in writing within thirty (30) days after having made such determination and, at the discretion of the Department, the Agency may be required upon written notice to repay to the Department some or all of the funds paid to the Agency pursuant to this Agreement and to reimburse the Department for TDES costs incurred as a result of this Agreement. The Department shall have the sole determination over the amount of funds owed by the Agency. If the Department determines that any funds are owed by the Agency, the Agency shall pay said funds within one hundred eighty (180) days of receipt of written notice from the Department.

IN WITNESS WHEREOF,

CITY OF MT. JULIET:

- **Signature:** _____ **DATE**

  Email: jmaness@mtjuliet-tn.gov

APPROVED AS TO FORM AND LEGALITY:

- **Signature:** _____ **DATE**

  Email: gmarchetti@tpmblaw.com

TENNESSEE DEPARTMENT OF TRANSPORTATION:

- **Signature:** _____ **DATE**

  Email: TDOT.COMMISSIONER'S.Office@tn.gov

APPROVED AS TO FORM AND LEGALITY:

- **Signature:** _____ **DATE**

  Email: TDOT.Legal.Attorneys@tn.gov

- **Signature:** _____ **DATE**

  Email: Daniel.Pallme@tn.gov

EXHIBIT "A"

AGREEMENT #: 230461
PROJECT IDENTIFICATION #: 134713.00
FEDERAL PROJECT #: TAP-M-9322(5)
STATE PROJECT #: 95LPLM-F3-154

PROJECT DESCRIPTION: 2023 TAP Award: Cedar Creek Greenway - Phase 2: The Cedar Creek Greenway project is a proposed 10-foot-wide greenway trail that will extend the existing Cedar Creek Greenway corridor northward from Charlie Daniels Park to connect to Lebanon Road (SR-24) and the Mt. Juliet Little League Park.

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: Bicycles and Pedestrian Facility

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	LOCAL	0	0	100	$125,000.00
PE-DESIGN	LOCAL	0	0	100	$140,000.00
RIGHT-OF-WAY	LOCAL	0	0	100	$255,000.00
CONSTRUCTION	TAP-S	80	0	20	$1,129,988.00
CONSTRUCTION	CEI	80	0	20	$126,965.00
CONSTRUCTION	TDOTES	80	0	20	$12,697.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

LEGISLATIVE AUTHORITY: : FAST Act § 1109; 23 U.S.C. 133(h).

TDOT ENGINEERING SERVICES (TDOT ES): In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.