

**Anderson County Board of Commissioners
Purchasing Committee Meeting Agenda
March 13, 2023
4:30 p.m.
Room 312 of the Courthouse**

Members: Tim Isbel (Committee Chair), Phil Yager, Catherine Denenberg, Tyler Mayes and Denise Palmer

A. Contracts Approved by Law Director

1. **LEAF, County Clerk, Contract #23-0082**- Five-year lease for printer. Contract has a one-time fee of \$95 and then cost is \$74.87 per month with unlimited copies.
2. **TDOT, Mayor, Contract #23-0083** – Five-year grant project to construct sidewalks and safety crossings on from Browder Circle to Midway Drive and from Norwood School to Bennett Road on Tri-County Blvd in Oliver Springs. Amount is \$991,600. The County matches 5% and 100% of the of an estimated \$167,000 construction cost.
3. **TDOT, Mayor, Contract #23-0084** – Five-year grant project to construct sidewalks and safety crossings on from Midway Drive to Gail Lane on Tri-County Blvd in Oliver Springs. Amount is \$889,244.55. The County matches 20%.
4. **East Tennessee Development District, Mayor, Contract #23-0085** – Two-year contract for local planning services. Cost is \$17,085 per year.

B. Contracts Pending Law Director Approval

1. **Vacasa Rental Management, Parks Department, Contract #23-0075** – Two-year contract to manage the rentals of the house at Anderson County Park. Fee is 22% of rental proceeds. Replaces contract that had a 35% fee.
2. **Clinton City Schools, Office of the Mayor, Contract #22-0059**- One-year contract renewal for the lease of the soccer field next to the jail for \$1/year.

C. Other Business

1. **Request to remove the Tourism Welcome Center from Surplus Status.** The following took place at the Tourism Council's March 1st meeting:

A motion was made by Katy Watt and seconded by Brent Galloway to submit a request to the County Commission Purchasing Committee to take the Welcome Center off of surplus due to

the action taken by County Commission at the December 19, 2022 meeting to not sell the building and in order to spend funds on eliminating the mold issue at the Welcome Center. Motion passed.

D. New Business

E. Old Business



Cost Per Copy LEASE AGREEMENT

1720A Crete Street, Moberly, MO 65270
Phone: 800-662-3759, Fax: 800-426-2626

This Cost Per Copy Lease Agreement ("Agreement") has been written in "Plain English." When we use the words Customer, you and your in this Agreement, we mean the Customer indicated below. When we use the words we, us, our and LEAF, we mean LEAF Capital Funding, LLC.

CUSTOMER INFORMATION	Customer Name: Anderson County Government		Application # 790676
	Billing Street Address/City/County/State/Zip: 100 N Main St, Rm 111, Clinton, Anderson, TN 37716-3616		Agreement #
	Equipment Location (if different from above):	Customer Phone #: 8665258020	Customer # 1294448
	State in which Customer was organized: State Organizational ID #: _____		

SUPPLIER INFORMATION	Supplier Name: VRS Inc	Supplier Phone #: 865-525-8020
	Street Address/City/State/Zip: 11164 Outlet Dr, Knoxville, TN 37932	

EQUIPMENT DESCRIPTION	Make/Model	Serial #	Monthly Copy Allowance*		Overage Rate Per Copy**	
			B&W	Color	B&W	Color
	Epson WorkForce Pro WF-M5799 MFP Copier System		unlimited	unlimited	unlimited	unlimited

TERM AND PAYMENT SCHEDULE
Initial Term: 60 Months
Monthly Minimum Payment: 60 months at \$75.87 (plus taxes)
*INCLUDED IN MONTHLY MINIMUM PAYMENT - NOT SUBJECT TO ADJUSTMENT FOR OVER OR UNDER USAGE.
** OVERAGE BILLING FREQUENCY (___ MONTHLY ___ QUARTERLY ___ SEMI ANNUAL ___ ANNUAL)

- 1) Total Advance Payment: = \$0.00
2) One-time Documentation Fee: = \$95.00
You agree to pay at the time you sign this Agreement:
Total of 1 + 2 = \$95.00 (plus taxes)
If more than one Monthly Minimum Payment is required in advance, the additional amount will be applied at the end of term.

We may collect from you on behalf of the Supplier a monthly Supply Freight Fee to cover Supplier's cost to ship supplies to you.

END OF TERM PURCHASE
Upon Lease expiration and at least 90 days prior notice to us, if you are not in default, you have the option to X Fair Market Value purchase not less than all the Equipment for the amount indicated at right, plus applicable taxes. The \$ 1.00 purchase option shall be at Fair Market Value unless another option is selected. 10% of Total Cash Price

ADMINISTRATION
We are acting as a finance lessor with respect to the Equipment and are entitled to the Monthly Minimum Payment without regard to the service and/or supplies to be provided by the Supplier. LEAF IS NOT RESPONSIBLE FOR PROVIDING SUPPLIES OR SERVICE. YOU AGREE TO LOOK SOLELY TO THE SUPPLIER FOR ANY SUPPLIES OR SERVICE.

TERMS AND CONDITIONS
BY SIGNING THIS AGREEMENT YOU ACKNOWLEDGE AND AGREE THAT: (i) YOU HAVE READ AND UNDERSTAND THE TERMS ON THE FRONT AND SECOND PAGE OF THIS AGREEMENT, (ii) THIS AGREEMENT IS A NET LEASE THAT YOU CANNOT TERMINATE OR CANCEL, YOU HAVE AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER THIS AGREEMENT, AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON, (iii) YOU WILL USE THE EQUIPMENT ONLY FOR BUSINESS PURPOSES AND WILL NOT TAKE THE EQUIPMENT OUT OF SERVICE AND HAVE A THIRD PARTY PAY (OR PROVIDE FUNDS TO PAY) THE AMOUNTS DUE HEREUNDER, AND (iv) THE PERSON SIGNING THIS AGREEMENT FOR YOU HAS THE AUTHORITY TO DO SO.

Customer Name: Anderson County Government

LEAF CAPITAL FUNDING, LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Tax ID No. _____

E-mail Address: _____

PERSONAL GUARANTY: The undersigned guarantees that the Customer will make all payments and perform all other obligations under the Agreement when due. The Undersigned agrees that this is a guaranty of payment and not of collection, and that LEAF can proceed directly against undersigned without first proceeding against the Customer, the Equipment or other collateral. The undersigned also waives all suretyship defenses and any notification if the Customer is in default and consents to any extensions or modifications granted to the Customer. In the event of a default, the undersigned will immediately pay any and all sums due in accordance with the default provisions of the Agreement. The Undersigned will pay to LEAF all expenses (including attorneys' fees) incurred by us in enforcing our rights against the undersigned or the Customer. If more than one person has signed this personal guaranty, each of the undersigned agrees that his/her liability is joint and several. The Undersigned authorizes us or any of our affiliates or assigns to obtain credit bureau reports and make credit inquiries regarding the undersigned's personal credit. THE UNDERSIGNED CONSENTS TO JURISDICTION IN THE STATE OR FEDERAL COURTS IN PENNSYLVANIA AND EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY.

X _____

X _____

Personal Guarantor (no title)

Personal Guarantor (no title)

Print Name: _____ Date: _____

Print Name: _____ Date: _____

Home Street Address/City/State/Zip: _____

Home Street Address/City/State/Zip: _____

Phone No.: _____

Phone No.: _____

E-mail Address: _____

E-mail Address: _____

1. AGREEMENT. You agree to lease the equipment and other property described on the front of this Agreement and any schedule attached hereto ("Equipment") on the terms and conditions of this Agreement. If you have entered into any purchase or supply contract ("Supply Contract") with any Supplier, you assign to us your rights under such Supply Contract, but none of your obligations (other than the obligation to pay for the Equipment if it is accepted by you as stated below and you timely deliver to us such documents and assurances as we request). If you have not entered into a Supply Contract, you authorize us to enter into a Supply Contract on your behalf. You will arrange for the delivery of the Equipment to you. Upon delivery and installation of the Equipment you agree to confirm to us in writing or by telephone verification your unconditional acceptance of the Equipment for purposes of this Agreement. You authorize us to fill in the Commencement Date, serial numbers and other information. The term of this Agreement shall commence on the date the Equipment is delivered to you unless otherwise mutually agreed upon between you and us ("Commencement Date"). The first Monthly Minimum Payment shall be due on the date we specify in the month following the Commencement Date (each, a "Payment Due Date"), as set forth in our invoice and the remaining Monthly Minimum Payments will be due on the same day of each subsequent month until paid in full. We may charge you a portion of one Monthly Minimum Payment for the period from the Commencement Date until the day that is one month prior to the first Payment Due Date ("Interim Rent"). Interim Rent shall be due and payable as invoiced. Overage Charges shall be invoiced on frequency specified in the Term and Payment Schedule and shall be due as specified in the invoice. You will make all payments required under this Agreement to us at such address as we may specify in writing. If any amount payable to us is not paid within three (3) days of when due, you agree to pay us a late charge equal to (a) the greater of \$10.00 or 10% of the amount which is late, or (b) if less, the maximum legal amount. You agree to pay us \$25.00 for each check by phone payment and \$35.00 for each returned check. Amounts which are not paid within 30 days of the date when due shall accrue interest at the lesser of 1.5% per month or the maximum legal rate from such 30th day until paid in full. You authorize us to adjust the Monthly Minimum Payment by not more than 15% if the actual Total Cash Price (which is all amounts we have paid in connection with the purchase, delivery and installation of the Equipment, including any trade-up and buyout amounts) differs from the estimated Total Cash Price. On an annual basis, the Monthly Minimum Payment and/or Overage Rate Per Copy may be increased by a maximum of 15% of the amount previously then in effect. In the event the United States tax laws change prior to, or during, the Initial Term, we have the right to increase the remaining Monthly Minimum Payments to achieve our originally anticipated economic return. If you are tax-exempt, you agree to furnish us with satisfactory evidence of your exemption.

2. NO WARRANTIES. We are leasing the Equipment to you "AS-IS". YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND YOU HAVE SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON YOUR OWN JUDGMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT. NEITHER SUPPLIER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY WAY. We transfer to you for the term of this Agreement any warranties of the manufacturer or Supplier in a Supply Contract.

3. EQUIPMENT USE AND RETURN. You will keep and use the Equipment at the Equipment Location shown on the first page of this Agreement. You may not move the Equipment without our prior written consent. At your own cost and expense, you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions and replacements will become part of the Equipment and our property at no cost or expense to us. We may inspect the Equipment at any reasonable time. Unless you notify us in writing at least 90 days (but not more than 150 days) prior to the expiration of the Agreement, or any renewal term, of your intention to return the Equipment to us or to exercise the purchase option indicated above, this Agreement will automatically renew on a month-to-month basis at the same Monthly Minimum Payment amount until you either exercise the purchase option or provide us with the required notice and return the Equipment to us. If you exercise a purchase option we will convey all of our right, title and interest in such Equipment to you on an AS-IS WHERE IS basis without representation or warranty. If you elect to return the Equipment to us, it must be returned to the location that we designate by the last day of the term, or such applicable renewal term. Your obligation to pay rent will continue until the Equipment is returned to our designated return location. You are responsible for all expenses incurred in returning the Equipment to us and agree to pay us a Restocking Fee equal to one additional Lease payment if the Equipment is returned for any reason. **PRIOR TO THE RETURN OF ANY ITEM OF EQUIPMENT, YOU SHALL CAUSE THE REMOVAL OF ALL INFORMATION STORED IN THE MEMORY OF SUCH EQUIPMENT AND IF YOU FAIL TO DO SO, WE MAY CHARGE YOU A FEE FOR SUCH REMOVAL WHICH MAY BE HIGHER THAN WHAT YOU WOULD PAY IF YOU COMPLIED WITH SUCH OBLIGATION, AND WHICH MAY RESULT IN A PROFIT TO US.**

4. TAXES AND FEES. You will pay, when due, all taxes, fines and penalties relating to the purchase, use, leasing and/or ownership of the Equipment under this Lease. The Minimum Monthly Payments shown above do not include any applicable taxes. We will include any applicable taxes and fees in our invoice to you. You agree to pay the tax and fees in addition to your Minimum Monthly Payments. If we pay any taxes (including personal property taxes), fees or penalties on your behalf, you will pay us on demand the amount we have paid on your behalf plus an administrative fee. You agree to pay us upon invoice a documentation fee equal to the amount specified on page one of this Agreement, or if not so specified, the greater of either \$250.00 or 0.5% of the total of Equipment invoices to cover our expense in processing this Agreement. If we require a site inspection to verify the condition and/or existence of the Equipment, or you request administrative services (e.g., tax research), you agree to reimburse our costs as invoiced.

5. RISK OF LOSS AND INSURANCE. From the time the Equipment is ordered until it is returned in the required condition or purchased by you ("Risk Period"), you are responsible for all risk of loss or damage to the Equipment. During the Risk Period, you will procure and maintain at your expense, property insurance for the full replacement value of the Equipment, and public liability insurance in an amount acceptable to us, covering any personal injury, death or third-party property damage arising out of or relating to the use or operation of the Equipment. You will provide us evidence of such insurance when requested, naming us as loss payee and as an additional insured. If you fail to maintain insurance

satisfactory to us or fail to timely provide proof of such insurance, we have the option, but not the obligation, to secure insurance from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we secure insurance on the Equipment, we will not name you as an insured party, your interests may not be fully protected, and you will reimburse us the premium which may be higher than the premium you would pay if you obtained insurance, and which may result in a profit to us through an investment in reinsurance. If you are current in all of your obligations under the Agreement at the time of loss, any insurance proceeds received will be applied, at our option, to repair or replace the Equipment, or to pay us the amount specified in Section 7(a) below.

6. TITLE; RECORDING. We are the owner of the Equipment and hold title to the Equipment (excluding items of Equipment which are licensed software and products). You will keep the Equipment free of all liens and encumbrances. You agree that this transaction is a true lease. However, as a precaution in case this transaction is deemed to be a lease intended for security, you grant us a first priority security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). You will deliver to us such signed documents as we may request to protect our interest in the Equipment. You irrevocably authorize us to file UCC financing statements and other documents we deem necessary to confirm our interest in the Equipment and agree to reimburse us for the cost of such filings and lien searches.

7. DEFAULT. If you or any guarantor: (i) do not pay the Monthly Minimum Payment or any other amount payable to us within ten (10) days of its due date, (ii) breach any of the terms or conditions of this Agreement, any guaranty or license relating to the Equipment, (iii) breach any terms of any other agreement with us or any affiliate of ours, (iv) cease to exist, transfer all or substantially all of your assets, or undergo a change of control, then you will be in default of this Agreement and any other agreement you may have entered into with us or any of our affiliates. If you default, we may in our sole discretion require you to do any one or combination of the following: (a) immediately pay all amounts then due, plus the balance of the remaining Monthly Minimum Payments, Interim Rent and residual value of the Equipment, as determined by us; (b) promptly return all of the Equipment; (c) allow us to peaceably repossess the Equipment; or (d) use any and all remedies available to us under the Uniform Commercial Code or any other applicable law. You agree to pay the cost of repossession and our reasonable attorney's fees and costs associated with any action we may take in the event of your default including but not limited to costs associated with collections efforts, calls, and notices. We may apply any security deposits to your obligations under this Agreement. Upon termination, if you are not in default, any security deposit will be refunded without interest. If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law, 10 days' notice shall be reasonable notice. You remain responsible for any amounts that are due after we have applied such net proceeds.

8. FINANCE LEASE STATUS. You agree that if Article 2A of the Uniform Commercial Code applies to this Agreement, this Agreement will be considered a "finance lease" as that term is defined therein. You agree that you have received and approved a copy of the Supply Contract or that we have informed you of the identity of the Supplier, that you may have rights under the Supply Contract, and that you may contact the Supplier for a description of those rights. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A CUSTOMER BY ARTICLE 2A.**

9. ASSIGNMENT. YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS AGREEMENT. We may, without notifying you, sell, assign, or transfer this Agreement and our rights to the Equipment. You agree that the new owner will have the same rights and benefits that we have now under this Agreement but not our obligations. The rights of the new owner will not be subject to any claim, defense or set-off that you may have against us.

10. INDEMNIFICATION. You are responsible for any losses, damages, penalties, claims, suits and actions ("Claims"), whether based on a theory of strict liability or otherwise caused by or related to (a) the manufacture, installation, ownership, use, lease, possession, or delivery of the Equipment, (b) any defects in the Equipment, or (c) the failure to remove information stored in the memory of the Equipment. You agree to reimburse us for and if we request, to defend us against, any Claims.

11. CREDIT INFORMATION. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRIES THAT WE DETERMINE ARE NECESSARY. YOU ACKNOWLEDGE THAT WITHOUT FURTHER NOTICE WE MAY USE OR REQUEST ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION SO LONG AS YOUR OBLIGATIONS TO US ARE OUTSTANDING.

12. CHOICE OF LAW: THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED ACCORDING TO THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA. YOU CONSENT TO JURISDICTION IN THE STATE OR FEDERAL COURTS OF PENNSYLVANIA. YOU EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.

13. MISCELLANEOUS. You agree that the terms and conditions contained in this Agreement make up the entire agreement between you and us regarding the lease of the Equipment. This Agreement is not binding on us until we sign it. Any change in any of the terms and conditions of this Agreement must be in writing and signed by us. You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Agreement. If we delay or fail to enforce any of our rights under this Agreement, we will still be entitled to enforce those rights at a later time. All of our rights and indemnities will survive the termination of this Agreement. It is the express intent of the parties not to violate any applicable usury laws, and any excess interest or payment will be applied to payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Agreement, we have the right, but not the obligation, to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one Customer has signed this Agreement, each of you agree that your liability is joint and several. A photocopy, printed electronic image or facsimile of this Agreement and/or any related document that includes copies of the signatures of the parties hereto shall be legally admissible under the "best evidence" or other similar rule of evidence and shall be treated as an original document and proof of the agreement between the parties. The USA PATRIOT Act requires us to obtain, verify, and record information that identifies you thus we ask for your name, address and other information or documents that substantiate your identity.



SCHEDULE A TO
COST PER COPY LEASE AGREEMENT
(EQUIPMENT DESCRIPTION)

Lease Application No.: 790676

unlimited copies
included in monthly fee

Make/Model	Serial #	Monthly Copy Allowance		Overage Rate Per Copy*	
		B&W	Color	B&W	Color
Epson WorkForce Pro WF-M5799 MFP Copier System					

* Overage billing frequency [___ Monthly, ___ Quarterly, ___ Semi Annually, ___ Annually].

Customer: Anderson County Government

LEAF CAPITAL FUNDING, LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



LEAF AUTOPAY PROGRAM
(AUTHORIZATION TO DEBIT AND CREDIT ACCOUNT BY ACH)

Customer Name: Anderson County Government

Application Number: 790676

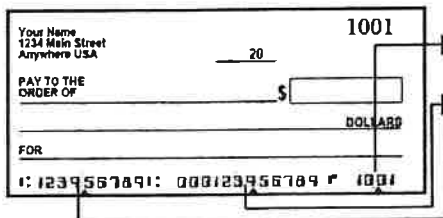
In connection with the above referenced contract(s) ("Contract"), Customer(s) hereby authorize(s), **LEAF Capital Funding, LLC AND/OR ITS AGENTS, SUCCESSORS AND ASSIGNS** (collectively, "Company"), to initiate ACH credit and/or debit entries, and if necessary, adjust any credit and/or debit entries made in error to the account described below ("Account") at the financial institution named below ("Bank"). The authorization provided herein (this "Authorization") is intended to encompass all amounts due and to become due under the above Contract, including current and past due periodic payments, miscellaneous charges, taxes and late charges. In addition, Customer potentially will enter into future transactions with Company. **Customer hereby acknowledges and agrees that this Authorization shall constitute a continuing Authorization to withdraw amounts for this Agreement as well as all future transaction(s) with the Company.** This Authorization shall not be limited or deemed waived, nor shall Company assume any liability, if for any reason Company delays debiting the Account for amounts due under the Contract. **FOR ADMINISTRATIVE PURPOSES, ALL DEBIT AND CREDIT ENTRIES SHALL APPEAR ON THE ACCOUNT AS BEING INITIATED BY "LEASE SERVICES."**

 Recurring Authorization: Initial to the left to authorize a RECURRING ACH authorization.

 One-time Payment: Initial to the left to authorize a ONE-TIME debit of the below account of \$95.00 plus taxes.

BANK NAME: _____	ABA/ROUTING NUMBER: _____
BRANCH: _____	ACCOUNT NAME: _____
CITY: _____	_____
STATE: _____ ZIP: _____	ACCOUNT NUMBER: _____

(ATTACH A VOIDED CHECK ON THE ABOVE ACCOUNT)



→ The check number is on the top and bottom right of the check - we do not need the check number.

→ **Account Number** is the middle group of 12 numbers on the bottom of your check.

→ **Routing Number** is the group of 9 numbers on the bottom left of your check.

Customer certifies that all information set forth above is true and correct. Customer agrees to give Company not less than twenty (20) days advance written notification of any termination or change in this Authorization, which shall remain in full force and effect until Company has received such written notification from Customer.

Signature: X _____	Customer Billing Contact Information
Print Name: _____	(if different from information on left):
Title: _____	Name: _____
Date: _____	Title: _____
Phone Number: _____	Phone Number: _____
E-mail Address: _____	E-mail Address: _____

THE PERSON SIGNING ABOVE AFFIRMS THAT HE/SHE IS A DULY AUTHORIZED CORPORATE OFFICER OR OFFICIAL, PARTNER OR PROPRIETOR OF THE ABOVE NAMED CUSTOMER.



DELIVERY AND ACCEPTANCE CERTIFICATE

Date of Equipment Delivery: _____

Application No.: 790676

Anderson County Government ("Customer") hereby certifies that all of the equipment, software and other property (collectively, "Equipment") referred to in that certain Agreement related to the above referenced application number (the "Agreement") by and between Customer and **LEAF Capital Funding, LLC** ("LEAF") has been delivered to and been received by Customer at the location(s) set forth in the Agreement, that all installation or other work necessary prior to the use thereof has been completed, that the Equipment has been examined by the Customer and is in good operating order and condition and is in all respects satisfactory to Customer, and that the Equipment is accepted by the Customer for all purposes under the Agreement. Customer represents and warrants that the Date of Equipment Delivery set forth above and the Billing Address and the Equipment Location set forth in the Agreement are correct. By its execution and delivery of this Acceptance Certificate, Customer hereby reaffirms all of the representations, warranties and covenants contained in the Agreement as of the date hereof, and further represents and warrants to LEAF that no Event of Default, and no event or condition which with notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing as of the date hereof. Customer further certifies to LEAF that Customer has selected the Equipment (and to the extent applicable, the vendor of the Equipment) and has received and approved the purchase order, purchase agreement or supply contract under which the Equipment will be acquired for all purposes of the Agreement.

ACCORDINGLY, CUSTOMER AUTHORIZES LEAF TO PURCHASE THE EQUIPMENT FROM THE APPLICABLE SUPPLIER(S).

DO NOT SIGN THIS DELIVERY AND ACCEPTANCE CERTIFICATE UNTIL YOU HAVE RECEIVED ALL OF THE EQUIPMENT.

CUSTOMER: Anderson County Government

By: _____

Print Name: _____

Title: _____

E-Mail Address: _____

Date: _____

THE ABOVE SIGNATORY AFFIRMS THAT HE/SHE IS A DULY AUTHORIZED CORPORATE OFFICER OR OFFICIAL, MEMBER, PARTNER OR PROPRIETOR OF THE ABOVE NAMED CUSTOMER.



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

February 13, 2023

The Honorable Theresa Frank
Mayor, Anderson County
100 Main Street, Room 208
Clinton, TN 37716

Re: SR-62/SR-61(E. Tri-County Blvd) From Browder Circle to Midway Drive and Norwood School
to Bennett Road
Anderson County
PIN:133574.00
Federal Project Number: N/A
State Project Number: 01LPLM-S0-063
Contract Number: 220288

Dear Mayor Frank:

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 Erin Rakus at 615-532-1191 or erin.rakus@tn.gov.

Sincerely,

A handwritten signature in cursive script that reads "Chasity M. Bell".

Chasity Bell
Transportation Manager 1

Attachment

Agreement Number: 220288
 Project Identification Number: 133574.00
 Federal Project Number: N/A
 State Project Number: 01LPLM-S3-063
 State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20__ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and ANDERSON COUNTY (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

SR-62/SR-61(East Tri-County Blvd), From Browder Circle to Midway Drive and Norwood School to Bennett Road

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

- a)
- | | Responsible Party | Funding Provided by Agency or Project. |
|-----------------------------|--------------------------|---|
| Environmental Clearance by: | AGENCY | PROJECT |
| Preliminary Engineering by: | AGENCY | PROJECT |

Right-of-Way by:	AGENCY	PROJECT
Utility Coordination by:	AGENCY	PROJECT
Construction by:	AGENCY	PROJECT

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) This Agreement shall be effective from the period beginning on the fully executed date, and ending five (5) years from the fully executed date. The Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by three (3) years from the fully executed date. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by the aforesaid date, then the Department may terminate this Agreement. If the Agency does not complete the herein described phases of the Project within the time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. The Agency hereby acknowledges and affirms that the Department shall have no obligation for Agency services or expenditures that were not completed within this specified contract period.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.
- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. 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. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, 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 at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it 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 control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, 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.

B.7 Detours

- a) If 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 Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) 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.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency 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, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) 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 the Federal Highway Administration (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.

- b) 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.
- c) 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 therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) 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.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) 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:

- 1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
- 2) **Litigation:**
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;
- 3) **Approval by Department:**
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 having been advised by the Department that same are approved;
- 4) **Conflict of Interests:**
There has been any violation of the conflict of interest provisions contained herein in D.16; or
- 5) **Default:**
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department.

Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) 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 therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and 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.
- b) 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 State and/or the Department as a result of said breach.

D.3 State Law:

- a) 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 to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of 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.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of 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.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties 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.

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

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

- a) **DBE Policy:**
It is the policy of the Department that 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.
- b) **DBE Obligation:**
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, all recipients and 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 Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, 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.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

- a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 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.
- 5) 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.

D.13 Equal Employment Opportunity:

- a) 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.
- b) The Agency shall insert the foregoing 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.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no 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.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:
 - 1) "No 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."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) 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.18 Restrictions on Lobbying (applies to federal aid projects):

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 Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of

any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, 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 grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," 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 sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) 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 Federal Highway Administration 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.
- b) 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.

D.21 Annual Report and Audit:

- a) In the event that an 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.
- b) 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.
- c) 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.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of 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 service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, 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.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (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.
- c) 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.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it 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) The Agency further certifies by its signature hereunder that it 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) The Agency hereby 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.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) 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, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) 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.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
 - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

ANDERSON COUNTY

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

Signature:

Email: tfrank@andersontn.org

Signature:

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

**APPROVED AS TO
FORM AND LEGALITY**

**APPROVED AS TO
FORM AND LEGALITY**

Signature: *Day Yeager by permission*
Email: jyeager@aclawdirector.com *RSC*

Signature:

Email: TDOT.Legal.Attorneys@tn.gov

Signature:

Email: Daniel.Pallme@tn.gov

EXHIBIT "A"

AGREEMENT #: 220288**PROJECT IDENTIFICATION #:** 133574.00**FEDERAL PROJECT #:** N/A**STATE PROJECT #:** 01LPLM-S0-063

PROJECT DESCRIPTION: SR-62/SR-61(East Tri-County Blvd), From Browder Circle to Midway Drive and Norwood School to Bennett Road-To implement safety crossings that meet ADA requirements. 5' Sidewalks, curb and gutter to mitigate drainage issues, crosswalk striping, and visual traffic controls. The total sidewalk distance on both sides is about 3,200ft. 1,300 ft. on the north side and 1,900 on south side.

TYPE OF WORK: Bicycles and Pedestrian Facility

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	MMAG	0	95	5	\$59,000.00
PE-DESIGN	MMAG	0	95	5	\$48,000.00
RIGHT-OF-WAY	MMAG	0	95	5	\$60,000.00
CONSTRUCTION	MMAG	0	95	5	\$716,600.00
CEI	MMAG	0	95	5	\$99,000.00
TDOT ES	MMAG	0	95	5	\$9,000.00
CONSTRUCTION	LOCAL	0	0	100	\$167,000.00

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.

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. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

LEGISLATIVE AUTHORITY: N/A

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.



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

February 13, 2023

The Honorable Theresa Frank
Mayor, Anderson County
100 Main Street, Room 208
Clinton, TN 37716

Re: SR-62/SR-61(East Tri-County Blvd), From Midway Drive to Gail Lane
Anderson County
PIN:133589.00
Federal Project Number: TAP-M-62(58)
State Project Number: 01LPLM-F3-064
Contract Number: 220291

Dear Mayor Frank:

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 Erin Rakus at 615-532-1191 or erin.rakus@tn.gov.

Sincerely,

A handwritten signature in cursive script that reads "Chasity M. Bell".

Chasity Bell
Transportation Manager 1

Attachment

Agreement Number: 220291

Project Identification Number: 133589.00

Federal Project Number: TAP-M-62(58)

State Project Number: 01LPLM-F3-064

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20__ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and ANDERSON COUNTY (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"SR-62/SR-61(East Tri-County Blvd), From Midway Drive to Gail Lane"

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	AGENCY	AGENCY
Preliminary Engineering by:	AGENCY	AGENCY
Right-of-Way by:	AGENCY	AGENCY

Utility Coordination by:	AGENCY	AGENCY
Construction by:	AGENCY	PROJECT

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) This Agreement shall be effective from the period beginning on the fully executed date, and ending five (5) years from the fully executed date. The Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by three (3) years from the fully executed date. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by the aforesaid date, then the Department may terminate this Agreement. If the Agency does not complete the herein described phases of the Project within the time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. The Agency hereby acknowledges and affirms that the Department shall have no obligation for Agency services or expenditures that were not completed within this specified contract period.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.

- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.
- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. 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. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, 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 at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it 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 control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, 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.

B.7 Detours

- a) If 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 Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) 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.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency 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, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) 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 the Federal Highway Administration (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.

- b) 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.
- c) 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 therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) 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.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) 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:

- 1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
- 2) **Litigation:**
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;
- 3) **Approval by Department:**
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 having been advised by the Department that same are approved;
- 4) **Conflict of Interests:**
There has been any violation of the conflict of interest provisions contained herein in D.16; or
- 5) **Default:**
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department.

Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) 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 therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and 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.
- b) 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 State and/or the Department as a result of said breach.

D.3 State Law:

- a) 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 to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of 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.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of 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.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties 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.

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

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

- a) **DBE Policy:**
It is the policy of the Department that 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.
- b) **DBE Obligation:**
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, all recipients and 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 Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, 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.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

- a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 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.
- 5) 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.

D.13 Equal Employment Opportunity:

- a) 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.
- b) The Agency shall insert the foregoing 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.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no 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.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:
 - 1) "No 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."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) 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.18 Restrictions on Lobbying (applies to federal aid projects):

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 Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of

any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, 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 grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," 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 sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) 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 Federal Highway Administration 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.
- b) 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.

D.21 Annual Report and Audit:

- a) In the event that an 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.
- b) 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.
- c) 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.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of 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 service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, 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.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (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.
- c) 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.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it 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) The Agency further certifies by its signature hereunder that it 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) The Agency hereby 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.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) 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, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) 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.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
 - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

ANDERSON COUNTY

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

Signature:

Email: tfrank@andersontn.org

Signature:

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

**APPROVED AS TO
FORM AND LEGALITY**

**APPROVED AS TO
FORM AND LEGALITY**

Signature:

Email: jyeager@aclawdirector.com

Signature:

Email: TDOT.Legal.Attorneys@tn.gov

Signature:

Email: Daniel.Pallme@tn.gov

EXHIBIT "A"

AGREEMENT #: 220291**PROJECT IDENTIFICATION #:** 133589.00**FEDERAL PROJECT #:** TAP-M-62(58)**STATE PROJECT #:** 01LPLM-F3-064

PROJECT DESCRIPTION: SR-62/SR-61(East Tri-County Blvd), From Midway Drive to Gail Lane; To improve pedestrian safety along a portion of State Highway 62 in Anderson County. The project is upgrading safety and meeting ADA requirements. The project will include 5' Sidewalks, curb and gutter to mitigate drainage issues, crosswalk striping, and visual traffic controls. The intent of this project is to provide sidewalks on both sides of the state highway in the study area and to upgrade three existing crosswalks, including associated traffic control devices, to enhance pedestrian safety.

TYPE OF WORK: Bicycles and Pedestrian Facility

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
CONSTRUCTION	TAP	80		20	\$800,320.50
TDOT ES	TAP	80		20	\$8,892.45
CEI	TAP	80		20	\$80,032.05

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.

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. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

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

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.



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

February 13, 2023

The Honorable Theresa Frank
Mayor, Anderson County
100 Main Street, Room 208
Clinton, TN 37716

Re: SR-62/SR-61(East Tri-County Blvd), From Midway Drive to Gail Lane
Anderson County
PIN:133589.00
Federal Project Number: TAP-M-62(58)
State Project Number: 01LPLM-F3-064
Contract Number: 220291

Dear Mayor Frank:

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 Erin Rakus at 615-532-1191 or erin.rakus@tn.gov.

Sincerely,

A handwritten signature in cursive script that reads "Chasity M. Bell".

Chasity Bell
Transportation Manager 1

Attachment

Agreement Number: 220291
Project Identification Number: 133589.00
Federal Project Number: TAP-M-62(58)
State Project Number: 01LPLM-F3-064
State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20__ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and ANDERSON COUNTY (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"SR-62/SR-61(East Tri-County Blvd), From Midway Drive to Gail Lane"

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

- a)
- | | Responsible Party | Funding Provided by
Agency or Project. |
|-----------------------------|--------------------------|---|
| Environmental Clearance by: | AGENCY | AGENCY |
| Preliminary Engineering by: | AGENCY | AGENCY |
| Right-of-Way by: | AGENCY | AGENCY |

Utility Coordination by:	AGENCY	AGENCY
Construction by:	AGENCY	PROJECT

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) This Agreement shall be effective from the period beginning on the fully executed date, and ending five (5) years from the fully executed date. The Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by three (3) years from the fully executed date. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by the aforesaid date, then the Department may terminate this Agreement. If the Agency does not complete the herein described phases of the Project within the time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. The Agency hereby acknowledges and affirms that the Department shall have no obligation for Agency services or expenditures that were not completed within this specified contract period.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.

- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.
- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. 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. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, 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 at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it 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 control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, 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.

B.7 Detours

- a) If 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 Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) 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.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency 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, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) 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 the Federal Highway Administration (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.

- b) 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.
- c) 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 therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) 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.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) 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



February 23, 2023

Honorable Terry Frank, Mayor
Anderson County
100 North Main Street, Suite 208
Clinton, TN 37716-3617

Dear Mayor Frank,

The East Tennessee Development District (ETDD) has been pleased to provide local planning services at the same annual fee for the past eight years. Due to the increase in the cost of living and inflation, our costs have increased to the point that we cannot maintain our services at the current annual fee. The Executive Committee of ETDD has reviewed our situation, reviewed some other annual fee structures, and have adopted a new annual fee schedule based on population. If the community has zoning an additional \$750 will be added, and a 10% increase on the fee for your current population. This rate will be set for the next two years and there will be a two-year contract for our services at that rate.

Therefore, the next contract period will be for FY 2024 – FY2025 and will begin on July 1, 2023, and continue through June 30, 2025. For budgetary purposes, the FY 2024 annual planning contract amount will be \$17,085 for Anderson County and the FY 2025 annual planning contract amount will be \$17,085 for Anderson County. Please find attached the contract that needs to be signed and sent back to the attention of Christie Burt, cburt@etdd.org or mail ETDD, P.O. Box 249, Alcoa, TN 37701-0249. An invoice for the first installment of the total annual contract amount will be mailed to you on July 1, 2023.

Thank you for the opportunity to serve your community in this regard. Please do not hesitate to contact me at ryakubic@etdd.org or (865) 273-6003x116 should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Yakubic', is written over a horizontal line.

Richard Yakubic
Executive Director

Enclosures

A Contract Between the

EAST TENNESSEE DEVELOPMENT DISTRICT

AND

ANDERSON COUNTY, TENNESSEE

PROVIDING FOR LOCAL PLANNING ADVISORY SERVICES

This **CONTRACT**, entered into as of the first day of July, 2023 by the East Tennessee Development District, an agency composed of member governments in mid-east Tennessee, and Anderson County, Tennessee.

I. FINDINGS & DECLARATIONS

A. Tennessee Code Annotated, §13-14-101 and the following sections establish a delineation of regions deemed viable to the economic development of the state, and allow for the creation of development districts for these regions, encompassing one (1) or more counties or parts of counties, so they are conducive to efficient planning and orderly economic development of the state.

B. Tennessee Code Annotated, §13-14-101 to 13-14-114 established the East Tennessee Development District (ETDD), a public body on behalf of the counties of Anderson, Blount, Campbell, Claiborne, Cocke, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, and Union and all incorporated municipalities and metropolitan governments located within these counties.

C. ETDD is empowered, among other duties, “to receive and expend funds from any sources for staffing, for research, planning, coordination, economic development, demonstration projects and other activities deemed necessary to promote the efficient, harmonious and economic development of the region.”

D. Anderson County, Tennessee, requests ETDD to provide planning advisory services, and agrees to appropriate the necessary funds for these services.

II. CONTRACT

In consideration of these findings and declarations and other valuable considerations, the parties agree as follows:

- A. During the twenty-four (24) month period beginning July 1, 2023, and ending June 30, 2025, ETDD agrees to furnish the services of professionally trained planning advisors who will confer with the local planning commission, board of zoning appeals and other local officials with respect to all phases of the comprehensive planning program. Planning recommendations are advisory only; local communities and their appropriate representatives have the sole authority to enact and enforce ordinances and other regulatory tools. A work program derived from the elements listed below will be developed jointly between ETDD and contracting community within 30 days of the signing of the planning contract by both parties. Other activities may be included depending on the scope and nature of the desired services and ETDD capacity. All activities must be agreed upon mutually by the community and ETDD. Planning services may include but are not limited to the following activities:
1. Attendance at planning commission and/or boards of zoning appeals meetings; assistance in the preparation or review of the long-range work program of the planning commission; preparation of comprehensive plans, Public Chapter 1101 Growth Management Plans and amendments, and other planning studies and documents.
 2. Preparation of land use controls for adoption, implementation, and enforcement by local community officials, including but not limited to zoning ordinances, subdivision regulations, flood plain management regulations, or other land use controls; review of development proposals; advice and assistance to administrators of zoning, subdivision regulations, and other land use controls.
 3. Access to the resources of a regional office including drafting, mapping, and geographic information systems support; planning related research.
 4. Specialty training for planning commissions, boards of zoning appeal and local administrators; assistance in providing information on planning activities and interpreting planning programs and activities to the public through meetings and conferences, news releases and presentations before various groups.
 5. Advice and assistance on all matters relating to state, federal, and regional programs that affect planning and implementation for the locality.
- B. Payment for services provided by ETDD to Anderson County, Tennessee, will be based on the agreed-upon activities requested in Section II.A. For the purpose of providing funds necessary to carry out the provisions of this contract, **IT IS AGREED** that the chief legislative body will pay to ETDD the sum of \$17,085.00 annually, payable in total upon the effective date of this contract, or in bi-annual installments of \$8,542.50, due and



Vacation Rental Services Agreement – Tennessee

PART I: SUMMARY OF SERVICE

This Vacation Rental Services Agreement ("**Agreement**") is by and between Vacasa Tennessee LLC ("**Vacasa**"), a Tennessee limited liability company, and Anderson County Park ("**Owner**") to provide vacation rental services for the property located at 2191 Park Lane, Andersonville, TN 37705 (the "**Home**").

Owner and Vacasa agree as follows:

A. VACASA SERVICES. Owner authorizes Vacasa to provide the following services:

1. Reservations and Payments. Vacasa will process reservations and process and collect payments from guests for vacation rental stays at the Home.

2. Marketing. Vacasa will create marketing materials for the Home, which may include electronic and printed materials, descriptions, photographs, virtual tours, or other materials, and will promote the Home on Vacasa.com. To maximize exposure of the Home, Vacasa may determine appropriate third-party marketing channels (each a "**Channel**" and collectively, the "**Channels**") and market the Home on such Channels.

3. Price Management. Vacasa will determine rental rates based on property and market characteristics and demand.

4. Cleaning Services. Vacasa will set and collect a cleaning fee from guests. Vacasa shall furnish housekeeping services; basic light bulbs; and at the beginning of each rental stay, guest supplies including bath tissue, soap, paper towels, dishwashing detergent, and garbage bags.

5. Lodging and Sales Taxes. Unless otherwise specified in writing or required by law, Vacasa (or, if applicable, a Channel) will collect applicable taxes from guests, file sales and lodging tax returns, and make all sales and lodging tax payments on Owner's behalf.

6. Guest Relations. Vacasa will take actions it deems appropriate to manage guest relations, including communicating with guests, managing guest check-in and check-out, addressing guest issues that arise during or after a rental stay, and managing guest reviews.

7. Maintenance and Repairs. Owner authorizes Vacasa to perform or arrange on Owner's behalf and at Owner's expense ordinary maintenance, repairs, and services for the Home. Unless specifically authorized by Owner or an Emergency Repair, the expense to be incurred for a single item of repair or alteration shall not exceed \$100.00. Any third-party contractor who performs work at the Home will be engaged on behalf of Owner. Vacasa does not guarantee any repair work or services completed by third-party contractors.

8. Statements. Each month, Vacasa will send Owner an account statement, or will make an account statement available through an

owner portal. Owner agrees to carefully review all account statements upon receipt, and to notify Vacasa of any presumed errors in or questions about a statement by the last day of the month in which the statement is sent.

B. OWNER RIGHTS AND OBLIGATIONS.

1. Owner Use. Owner has the right to use the Home so long as Owner reserves the dates of use in advance with Vacasa on Vacasa's owner portal. Owner may not schedule an Owner stay for any period for which an Existing Reservation is in place. Owner stays are subject to Vacasa's standard check-in and checkout times for the Home. Unless the parties agree otherwise in writing or Owner specifies otherwise in the owner portal, Vacasa shall clean the Home after each Owner stay and charge to Owner the then-current cleaning fee for the Home as shown on the owner portal.

2. Utilities and Services. Owner shall furnish at Owner's expense all appropriate utilities for the Home, including but not limited to gas, electric, sewer, water, cable, internet, trash removal, and pest or termite control as needed. Owner is advised to lock or disable any pay-per-use services, such as long-distance telephone service or pay-per-view cable television, to prevent guests from incurring charges.

3. Furnishings. Owner shall furnish the Home with suitable equipment, appliances, furniture, and furnishings necessary for rental occupancy. Vacasa will provide Owner with a list of all required items. If Owner fails to provide any required items for the Home, Vacasa may purchase any missing items at Owner's expense.

4. Sale of Home. To ensure that reservations are honored and that guest stays are not interrupted, Owner shall notify Vacasa prior to listing the Home for sale or as soon as reasonably practicable after the listing. All showings of the Home must be coordinated in advance through Vacasa and to the extent reasonable must be scheduled during periods when the Home is not occupied by a rental guest. If Owner sells the Home, Owner agrees to sell the Home subject to the terms of this Agreement and subject to all Existing Reservations in place on the date of closing that have check-in dates prior to the Effective Termination Date.

5. Liability Insurance. Owner shall either (a) participate in Vacasa's Accommodations Protection Program, or (b) submit a completed opt-out form electing not to participate in the Accommodations Protection Program. Terms and conditions of this program are set out in the Insurance Addendum.

C. MANAGEMENT FEE; PAYMENT OF RENTAL PROCEEDS.

1. Management Fee. Vacasa's Management Fee shall be 22% of the Rental Proceeds ("Management Fee").

2. Payment of Rental Proceeds. Vacasa shall pay Owner all Rental Proceeds as defined herein, less the Management Fee and any expenses incurred on Owner's behalf pursuant to this Agreement ("Owner Payment"). Vacasa shall mail, or initiate payment by direct deposit of, the Owner Payment by the 10th of each month (or, if the 10th falls on a weekend or holiday, the following business day) for rentals with a checkout date during the previous month.

D. EXCLUSIVITY. Owner shall not rent the Home to others or contract with any third party for rental services or marketing during the Term without Vacasa's express written permission. Any Owner advertisement of the Home as a rental shall direct prospective renters to Vacasa.

E. TERM; TERMINATION.

1. Term. This Agreement shall become effective as of the Effective Date and shall continue in effect until June 30, 2025, for an initial term after the Effective Date (the "Initial Term").

The "Effective Date" of this Agreement shall be the date of the latest signature or electronic acceptance of the terms of this Agreement.

2. Termination. Notwithstanding the provisions of Section E (1) above, either party may terminate this Agreement by giving the other party at least 90 days advance written notice of termination. The "Effective Termination Date" shall be the later of (1) the termination date specified in the notice of termination or (2) the date that is 90 days after the notice of termination was delivered.

ADDITIONAL TERMS AND CONDITIONS FOLLOW AFTER SIGNATURE BLOCK

OWNER (Check Box if LLC/Corp or Trust) ☐

Signature: _____

Print Name: _____

Title (if signing on behalf of an entity): _____

Email: _____

Mailing Address: _____

Phone Number: _____

Date: _____

ADDITIONAL OWNER (IF APPLICABLE)

Signature: _____

Print Name: _____

Email: _____

VACASA TENNESSEE LLC

Signature: _____

Print Name: _____

Title: _____


Date: _____

payable on the first day of July 2023 and the first day of January 2024, the first day of July 2024 and the first day of January 2025. The contracting community hereby authorizes ETDD to apply on the community's behalf for any eligible funds from State sources to supplement the planning contract amount and to use such grant funds to cover the cost of providing planning services to the community.

- C. Either party may terminate this contract by giving written notice to the other party specifying the date of termination, at least ninety (90) days before the termination date. Upon termination of the contract, the obligation of ETDD to conduct and carry on the program agreed to under this Contract shall cease, the financial obligation of the chief legislative body as described in this Contract above likewise ceases. If prepayment has been made by the chief legislative body, ETDD will determine, by prorating, the amount to be refunded.
- D. This contract is for a period of twenty-four (24) months. A new twenty-four (24) month contract and fee schedule will be presented for FY 2026-27. Local governments are under no obligation to continue ETDD planning services beyond the dates specified in this contract.
- E. In all matters relating to the performance of this contract, the ETDD Executive Director acts for ETDD, and the Mayor acts for Anderson County, Tennessee.

The parties execute this contract through their duly authorized representatives.


For the East Tennessee Development District:

By: 
 Richard Yakubic
 Executive Director
 East Tennessee Development District

For Anderson County, Tennessee:

By: _____
 Honorable Terry Frank
 Mayor, Anderson County

APPROVED AS TO LEGAL FORM


 N. Jay Yeager
 Anderson County Law Director



Vacation Rental Services Agreement – Tennessee

PART I: SUMMARY OF SERVICE

This Vacation Rental Services Agreement ("**Agreement**") is by and between Vacasa Tennessee LLC ("**Vacasa**"), a Tennessee limited liability company, and Anderson County Park ("**Owner**") to provide vacation rental services for the property located at 2191 Park Lane, Andersonville, TN 37705 (the "**Home**").

Owner and Vacasa agree as follows:

A. VACASA SERVICES. Owner authorizes Vacasa to provide the following services:

1. Reservations and Payments. Vacasa will process reservations and process and collect payments from guests for vacation rental stays at the Home.

2. Marketing. Vacasa will create marketing materials for the Home, which may include electronic and printed materials, descriptions, photographs, virtual tours, or other materials, and will promote the Home on Vacasa.com. To maximize exposure of the Home, Vacasa may determine appropriate third-party marketing channels (each a "**Channel**") and collectively, the "**Channels**") and market the Home on such Channels.

3. Price Management. Vacasa will determine rental rates based on property and market characteristics and demand.

4. Cleaning Services. Vacasa will set and collect a cleaning fee from guests. Vacasa shall furnish housekeeping services; basic light bulbs; and at the beginning of each rental stay, guest supplies including bath tissue, soap, paper towels, dishwashing detergent, and garbage bags.

5. Lodging and Sales Taxes. Unless otherwise specified in writing or required by law, Vacasa (or, if applicable, a Channel) will collect applicable taxes from guests, file sales and lodging tax returns, and make all sales and lodging tax payments on Owner's behalf.

6. Guest Relations. Vacasa will take actions it deems appropriate to manage guest relations, including communicating with guests, managing guest check-in and check-out, addressing guest issues that arise during or after a rental stay, and managing guest reviews.

7. Maintenance and Repairs. Owner authorizes Vacasa to perform or arrange on Owner's behalf and at Owner's expense ordinary maintenance, repairs, and services for the Home. Unless specifically authorized by Owner or an Emergency Repair, the expense to be incurred for a single item of repair or alteration shall not exceed \$100.00. Any third-party contractor who performs work at the Home will be engaged on behalf of Owner. Vacasa does not guarantee any repair work or services completed by third-party contractors.

8. Statements. Each month, Vacasa will send Owner an account statement, or will make an account statement available through an

owner portal. Owner agrees to carefully review all account statements upon receipt, and to notify Vacasa of any presumed errors in or questions about a statement by the last day of the month in which the statement is sent.

B. OWNER RIGHTS AND OBLIGATIONS.

1. Owner Use. Owner has the right to use the Home so long as Owner reserves the dates of use in advance with Vacasa on Vacasa's owner portal. Owner may not schedule an Owner stay for any period for which an Existing Reservation is in place. Owner stays are subject to Vacasa's standard check-in and checkout times for the Home. Unless the parties agree otherwise in writing or Owner specifies otherwise in the owner portal, Vacasa shall clean the Home after each Owner stay and charge to Owner the then-current cleaning fee for the Home as shown on the owner portal.

2. Utilities and Services. Owner shall furnish at Owner's expense all appropriate utilities for the Home, including but not limited to gas, electric, sewer, water, cable, internet, trash removal, and pest or termite control as needed. Owner is advised to lock or disable any pay-per-use services, such as long-distance telephone service or pay-per-view cable television, to prevent guests from incurring charges.

3. Furnishings. Owner shall furnish the Home with suitable equipment, appliances, furniture, and furnishings necessary for rental occupancy. Vacasa will provide Owner with a list of all required items. If Owner fails to provide any required items for the Home, Vacasa may purchase any missing items at Owner's expense.

4. Sale of Home. To ensure that reservations are honored and that guest stays are not interrupted, Owner shall notify Vacasa prior to listing the Home for sale or as soon as reasonably practicable after the listing. All showings of the Home must be coordinated in advance through Vacasa and to the extent reasonable must be scheduled during periods when the Home is not occupied by a rental guest. If Owner sells the Home, Owner agrees to sell the Home subject to the terms of this Agreement and subject to all Existing Reservations in place on the date of closing that have check-in dates prior to the Effective Termination Date.

5. Liability Insurance. Owner shall either (a) participate in Vacasa's Accommodations Protection Program, or (b) submit a completed opt-out form electing not to participate in the Accommodations Protection Program. Terms and conditions of this program are set out in the Insurance Addendum.

PART II: GENERAL TERMS AND CONDITIONS

A. OWNER REPRESENTATIONS AND ADDITIONAL RIGHTS AND OBLIGATIONS.

1. Multiple Owners. If there are multiple owners, the term "Owner" shall apply collectively and individually to each owner, and the obligations of each owner under this Agreement are joint and several.

2. Representations and Warranties. The following representations and warranties are continuing. In the event that any of these representations or warranties is no longer true or correct, Owner will immediately notify Vacasa in writing.

a. Authority; No Conflict; Condition of Home and Legality of Vacation Rental Use. Owner represents and warrants that: (1) Owner is the lawful owner of the Home; (2) Owner has full authority to enter into this Agreement, and if Owner is a legal entity, that the person signing on the entity's behalf is fully authorized to bind the entity; (3) Owner's execution of this Agreement does not conflict with any contractual or legal obligation of Owner to a third party; (4) the physical condition of the Home, including any special features or amenities, is suitable and safe for use as a vacation rental and in compliance with applicable local building, health, and other codes or regulatory requirements; and (5) use of the Home as a vacation rental is not prohibited by any applicable law, regulation, deed restriction, or homeowners' association bylaw or rule.

b. Sanctions Compliance. Owner represents and warrants that Owner is not (i) listed in any sanctions-related list of designated persons maintained by the United Nations Security Council, the United States (including the U.S. Department of the Treasury's Office of Foreign Assets or the U.S. Department of State), the European Union, any Member State of the European Union, the United Kingdom, or Canada, (ii) operating, organized, or resident in Cuba, Iran, North Korea, Syria, or the Crimea region of Ukraine (each a "Target Country"), or (iii) owned or controlled by, or acting for or on behalf of, any such person or persons, or the government of a Target Country or the Government of Venezuela.

3. Rights and Obligations of Ownership. Nothing in this Agreement changes Owner's title to, or general rights and obligations of ownership in, the Home. Except as expressly provided in this Agreement, Owner is and shall at all times remain fully responsible for all physical, legal, and financial matters pertaining to the Home whether it is rented or not, including responsibility for: the cost of all repairs, maintenance, and replacement of any and all furnishings, fixtures and equipment necessary to maintain the Home in a suitable condition for rental occupancy; financial matters associated with ownership of the Home; and ensuring that the Home is in compliance with applicable law, and regulation, deed restriction, or homeowners' association bylaw or rule.

4. Guest Privacy. To ensure guest privacy, Owner shall not enter the Home or any immediately adjacent land or associated structures, or to permit any other person to do so, without (1) reserving an Owner stay with Vacasa covering the period of access or (2) checking with Vacasa prior to entry. Owner shall not place any camera in the interior of the Home or in any portion of the property except in an exterior area that is visible from off the

premises, such as a front porch. Owner is not entitled to any guest-identifying information that may be provided to or accessible by Vacasa, including without limitation full guest names, contact details, or payment information. As between Owner and Vacasa, Vacasa shall have the sole and exclusive right to such guest information.

5. Change of Address. To ensure Vacasa is able to reach Owner if necessary and make timely Owner Payments, Owner shall notify Vacasa via the owner portal of any change in Owner's mailing address, telephone number, email address, or direct deposit information. Vacasa shall not be liable for its failure to contact Owner or make Owner Payments when required under this Agreement if Owner has not updated Owner's contact information.

6. Compliance with Law; Licenses and Permits. Owner agrees to abide by all applicable laws, regulations, deed restrictions, association rules, and licensing and permitting requirements applicable to use the Home as a vacation rental. Owner is responsible for obtaining and maintaining any applicable license or permit for the use of the Home as a vacation rental and for payment of all associated fees. Where permitted by law, Vacasa may, but is not required to, act on Owner's behalf to obtain or renew a license or permit for the Home. Whether or not Vacasa assists Owner in obtaining or renewing a license or permit, Owner remains ultimately responsible for ensuring that all applicable licenses or permits for the Home remain in force. Vacasa will not be responsible for any alleged damages that result from failure to obtain, or the lapse or expiration of, any license or permit for the Home.

7. Existing Reservations.

a. Obligation to Honor Existing Reservations. Owner acknowledges that guest satisfaction is a priority for Vacasa, and that the inability to honor reservations is a significant source of guest dissatisfaction, poor reviews, and demands for compensation. Accordingly, Owner agrees to honor all Existing Reservations with a checkout date prior to the Effective Termination Date. "Existing Reservations" are reservations for which Vacasa has received a monetary deposit.

b. Liability for Failure to Honor Existing Reservations. If Owner fails or refuses to honor one or more Existing Reservations for any reason, Vacasa shall attempt to move the reservation to a comparable property. If Vacasa is able to move the reservation to a comparable property, then Owner agrees to be responsible for any actual costs incurred by Vacasa to move the guests (such as, by way of example only, higher rent that is not passed on to the guests). If Vacasa is not able to move the reservation to a comparable property, then Owner agrees to pay Vacasa (1) Vacasa's lost Management Fee on that reservation, plus (2) any actual costs incurred by Vacasa in connection with cancellation of the reservation.

c. Circumstances Outside Owner's Control. Owner will not be responsible for payment of the damages prescribed in this section for failure to honor Existing Reservations where such failure is due to factors outside the Owner's reasonable control, such as flooding, fire, or the occurrence of a natural disaster or a mandatory evacuation order. If Owner makes an insurance or other third-party compensation claim that leads to recovery of

lost rental income on displaced reservations, Owner shall notify Vacasa of such recovery in writing, and Owner will pay or cause to be paid to Vacasa an amount equal to the Management Fee that Vacasa would have received on the lost rental income payment.

B. VACASA RIGHTS AND OBLIGATIONS.

1. Guest Fees and Services. In addition to a cleaning fee, Vacasa may charge guests and retain additional fixed or variable fees, such as a booking fee, pet fee, hot tub fee, late check out fee, fees for specific services such as concierge service, or other fees. Vacasa may further collect applicable fees such as resort fees or parking fees from guests on behalf of third parties and remit such fees directly to the third parties.

2. Channel Marketing. A Channel may act as merchant of record for certain transactions reserved through the Channel. Owner acknowledges that certain Channels may charge guest fees that will be retained by the Channel (and that will not be shared with Vacasa or Owner). Owner further acknowledges that the presentation of the Home, including but not limited to the breakdown of the total cost of stay as displayed to the end user during checkout, may vary among Channels; and that due to limitations on the ability to present specific line items on some Channels the amount reflected as "rent" on a Channel might include fees, taxes, or other amounts that are not "Rental Proceeds" as defined in this agreement.

3. Guest Refunds. Vacasa may issue full or partial refunds to guests to address guest dissatisfaction where reasonable to do so.

4. Optional Start Date for Services. If the start date for services under this Agreement is later than the Effective Date, Vacasa will perform the services listed in this Agreement beginning on the date the Home goes live on vacasa.com, or on such other date as Vacasa and Owner may agree in writing (provided that Vacasa may prepare to perform such services beginning on the Effective Date).

5. Out-Of-Order Status. Vacasa may place the Home in "out-of-order" status at any time, for any cause that Vacasa in its sole discretion believes could materially affect the quality or safety of a guest's stay. In no event will Vacasa be liable for any losses to Owner related to the Home being placed in "out-of-order" status.

6. Emergency Repair. A repair is an "Emergency Repair" if Vacasa in its sole discretion deems the repair to be necessary either to (1) protect the Home or its contents from damage or destruction or (2) return the Home to rentable condition during or in advance of a guest stay. To the extent reasonable under the circumstances, Vacasa will attempt to contact Owner prior to incurring expenses for an Emergency Repair.

7. Reserve Balance. Vacasa will withhold amounts from Rental Proceeds payable to Owner as necessary to maintain a reserve balance that will be used by Vacasa for payment of maintenance and repair expenses for the Home incurred by Vacasa on Owner's behalf (the "Reserve Balance"). The default amount of the Reserve Balance is \$500, but Owner may adjust this amount upward or downward.

C. DEFINITION OF RENTAL PROCEEDS. For purposes of this Agreement, "Rental Proceeds" means:

1. Rental Proceeds for Vacasa Bookings. For reservations booked on the vacasa.com website or by phone through Vacasa reservation agents, the "Rental Proceeds" for each reservation shall be the total rent paid for the period during which the Home was occupied pursuant to the reservation.

2. Rental Proceeds for Channel Bookings. For reservations booked through a Channel, the "Rental Proceeds" for each reservation shall be the total rent paid for the period during which the Home was occupied pursuant to the reservation, less fees, charges, or commissions imposed by the Channel, if any.

3. Rental Proceeds Limited to Rent. For purposes of clarity, Rental Proceeds do not include lodging, sales, or other applicable taxes, cleaning fees, other guest or third-party fees, or any other fixed or variable charges, fees or amounts other than rent, except as the parties may agree in writing.

D. BANK ACCOUNTS. Vacasa may, in its sole discretion and consistent with applicable law, hold funds on Owner's behalf (including but not limited to maintenance funds, rental deposits and proceeds, and funds held for the purpose of paying Owner obligations as provided in this Agreement) in the same account as funds held on behalf of other owners of properties managed by Vacasa. Interest, if any, earned on such funds held by Vacasa shall be retained by and exclusively belong to Vacasa.

E. CHANGE IN LAW. If any state, county, city or other government or association statute, rule, or regulation prohibits the use of the Home as a vacation rental as contemplated by this Agreement or makes such use economically prohibitive, then Vacasa may terminate this Agreement immediately and neither party shall be obligated to honor Existing Reservations.

F. INDEMNIFICATION. Owner shall indemnify, defend, and hold harmless Vacasa, its parent, affiliates, successors and assigns, and each of their respective officers, directors, employees, owners, and agents (each a "Vacasa Party" and collectively, the "Vacasa Parties") for, from, and against any and all claims, suits, demands, actions or other proceedings, and any and all losses, liabilities, damages, costs or expenses of any kind (specifically including, without limitation, reasonable legal and accounting fees) (collectively "Claims"), arising from or relating to property damage or injury to persons (including death) by reason of any cause whatsoever either (1) occurring in or about the Home or (2) resulting from actions taken under the express or implied direction of Owner. Notwithstanding the foregoing obligation, Owner is not required to indemnify, defend, or hold harmless any Vacasa Party with respect to any Claims solely and directly caused by the Vacasa Party's gross negligence, intentional misconduct, or fraud.

G. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO CASE SHALL ANY VACASA PARTY BE LIABLE TO OWNER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS), OR FOR ANY OTHER DAMAGES THAT ARE NOT DIRECT ECONOMIC DAMAGES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY, EMOTIONAL DISTRESS OR DAMAGE TO PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND

EVEN IF ANY VACASA PARTY HAS BEEN ADVISED OF OR OTHERWISE HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE VACASA PARTIES' LIABILITY TO OWNER FOR BREACH OF CONTRACT OR NEGLIGENCE, SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL MANAGEMENT FEE RECEIVED BY VACASA UNDER THIS AGREEMENT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

H. MISCELLANEOUS.

1. Governing Law. This Agreement will be construed in accordance with and governed by the substantive law of the state of Tennessee, without regard to Tennessee's conflict of law rules.

2. Dispute Resolution. The parties agree to resolve any dispute arising out of or relating in any way to this Agreement as follows:

a. Mediation. If the dispute is not settled by negotiation, the parties agree first to try to settle the dispute by mediation within 30 days of either party providing written notice of the dispute, such mediation to be administered by the American Arbitration Association ("AAA") under its Commercial Mediation procedures. In the event the parties are unable to agree on a mediator, AAA shall appoint a mediator.

b. Arbitration. If mediation is unsuccessful, the dispute will be resolved by binding arbitration rather than in court, such arbitration to be conducted by the AAA under its Commercial Arbitration Rules before a single, independent arbitrator. Payment of filing, administration and arbitrator fees will be governed by the AAA's rules. To begin an arbitration, a party must send a letter to the other party requesting arbitration and describing the claim. If Vacasa requests arbitration, it will send the letter to Owner's most recent address in Vacasa's records. If Owner requests arbitration, it will send the letter to Vacasa's registered agent in the state in which the Home is located.

c. Place of Mediation or Arbitration. The mediation or arbitration shall take place in the county in which the Home is located, or in such other location as Vacasa and Owner may mutually agree.

d. Exceptions to Mediation and Arbitration Requirement. As the only exception to the agreement to submit all disputes to mediation and binding arbitration as provided herein, Vacasa and Owner both retain the right to pursue: (1) in small claims court in the county in which the Home is located any claim that is within that court's jurisdiction, and the parties consent to the personal jurisdiction and venue of such court; and (2) a suit in any court with jurisdiction to enjoin (whether by temporary, preliminary, or permanent injunctive relief) infringement or other misuse of intellectual property rights.

e. Class Action and Jury Trial Waiver. THE PARTIES AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL.

3. Assignment. Either party may assign this Agreement or any of its rights or delegate any of its duties or other interests in this Agreement at any time without the other party's consent.

4. Signatures. A signature delivered by facsimile or electronic means, a digital signature, or an electronic manifestation of assent (such as clicking a box to agree) shall have the same force and effect as an original signature. This Agreement may be executed in one or more counterparts or in different formats, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement.

5. Headings and Footers for Convenience Only; Interpretation. Headings, captions, and the content of headers and footers in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. In interpreting this Agreement or any part of it, no rule of construction shall apply to the disadvantage of any party on the basis that the party prepared this Agreement or any part of it.

6. Severability. If any portion of this Agreement is held invalid in any jurisdiction: (1) such holding shall not affect the validity of that portion in any other jurisdiction; (2) the validity of the remaining portions shall not be affected; and (3) to the greatest extent reasonable and possible, the intent of the parties hereto with respect to their rights and obligations under this Agreement (including with reference to the parts deemed invalid) will be given full effect.

7. Waiver. Any failure by Vacasa to enforce any provision of these terms shall not be construed as a waiver of future enforcement of that provision or of any of Vacasa's rights and privileges under this Agreement.

8. Amendments. This Agreement may be amended as follows:

a. Amendment by Mutual Assent. This Agreement may be amended at any time upon the mutual assent of the parties. Any amendment by mutual assent must be in writing (including by electronic mail), must be signed or assented to by a Vacasa representative at the regional director level (or equivalent) or higher, and must identify the provisions of this Agreement that are to be amended.

b. Amendment by Notice and Acceptance. Vacasa may send Owner a proposed amendment to this Agreement, or a proposed fully restated agreement. Vacasa will send any proposed amendment or restated agreement by mail or electronic mail to Owner's last known address provided to Vacasa in the owner portal, or will make the proposed amendment or restated agreement available for Owner's review in the owner portal. Any proposed amendment will be deemed accepted and will be incorporated into this Agreement, and any restated agreement will replace this Agreement, effective on the 31st day after Vacasa transmits the proposed amendment or restated agreement to Owner, unless Owner notifies Vacasa in writing before the date the amendment or restated agreement becomes effective that Owner objects, in which event the proposed amendment or restated agreement shall not become effective. An objection to parts of a proposed amendment or restated agreement will be treated as an objection to the entirety of the proposed amendment or restated agreement.

9. Intellectual Property. All photographs, text, and other marketing materials Vacasa creates pursuant to this Agreement (and all copyrights and other intellectual property rights therein) are and shall at all times remain the sole and exclusive property of Vacasa. If Owner holds the copyright or other intellectual property right in any marketing materials for the Home, Owner grants

Vacasa a limited license for the term of this Agreement to use such materials for the purpose of performing the vacation rental services hereunder.

10. Force Majeure; Effect.

a. Definition of Force Majeure. "Force Majeure" is any event or condition beyond the control of the parties, including but not limited to acts of God; natural disasters such as earthquakes, fires, floods, volcanic eruptions, and storms; civil or military disturbances, riots, acts of terrorism, and acts of war (whether declared or not); sabotage; epidemic; accident; voluntary or involuntary compliance with any regulation, law, order or declaration of any government or civil or military authority, including a declaration of emergency or an evacuation, quarantine, or stay at home order; strike, lock-out, or other labor dispute; interruption, loss or malfunction of utility, transportation, internet or telephone communication service; and inability to obtain labor, material, equipment or transportation.

b. Effect of Force Majeure. Each party shall be excused from a failure to perform any of its obligations under this Agreement, and shall not be liable to the other party for any costs or damages due to delay in performance or failure to perform, to the extent that the performance is prevented or made economically prohibitive by Force Majeure. Excuse from

performance and liability shall continue so long as the Force Majeure continues. The party whose performance is affected by Force Majeure shall promptly notify the other party of the failure, shall advise the other party of the anticipated duration of the Force Majeure and any actions being taken to minimize its effect, and where possible shall take reasonable efforts to remove the event or condition constituting Force Majeure.

11. Survival of Terms. Part II sections A(7) (Existing Reservations), F (Indemnification), G (Limitation of Liability), H(1) (Governing Law) and H(2) (Dispute Resolution), and all other terms that by their nature should logically survive termination of this Agreement, shall continue in force and effect after termination.

12. Entire Agreement. This Agreement, including any contemporaneously executed addenda, constitutes the entire agreement of the parties hereto and supersedes all prior and contemporaneous communications, understandings, agreements, representations, and warranties, whether oral or written, relating to the subject matter hereof.

INSURANCE ADDENDUM

Vacasa shall enroll Owner in its Accommodations Protection Program (the "**Program**") unless Owner opts out as provided in Section 3 ("Opting Out") of this Insurance Addendum.

1. Program Coverage. The Program covers Owner and Vacasa for liability arising from bodily injury or property damage suffered by a guest or a guest's invitees at the Home, up to \$1 million per occurrence. The Program also covers guest-caused damage to the Home, up to \$1 million per occurrence, or to its contents, up to \$25,000 per occurrence; and covers bed bug remediation, including lost revenue reimbursement, of up to \$15,000 per occurrence for up to two occurrences per year. The Program coverage applies only to covered incidents that occur during the rental period for each rental stay at the Home that is booked through Vacasa. The Program does not cover stays at Home by Owner, Owner family members, or any other Owner licensees or invitees, or for any damage or injury that occurs outside the rental period for a Vacasa-booked stay at the Home. The Program is administered by a third-party insurer ("**Insurer**") and does not replace homeowners' insurance coverage. Program coverage is subject to the Insurer's policy terms and Program rules in effect at the time of any occurrence. A complete set of current Program rules, including coverage limitations and exclusions, is available from Vacasa upon request.

2. Program Cost. Vacasa will deduct a per-night charge (the "**Program Charge**") from the Rental Proceeds payable to Owner for each completed rental stay at the Home that is booked through Vacasa. If the Home has two or fewer bedrooms, the Program

Charge will be \$7.00 per night. If the Home has three or more bedrooms, the Program Charge will be \$8.54 per night. For any reservation that is for more than 30 nights (where permitted), the Program Charge will be capped at 30 nights for that reservation. Vacasa may adjust the Program Charge provided that Vacasa will use commercially reasonable efforts to notify Owner of any increase in the Program Charge at least 30 days in advance of the date such increase will take effect.

3. Opting Out. Owner may opt out of the Program at any time by submitting to Vacasa a completed opt-out request on a form provided by Vacasa for that purpose. An opt-out request will become effective on the date Vacasa actually receives the completed opt-out form and will apply to each rental stay at the Home with a check-in date on or after the date the opt-out becomes effective. Processing an opt-out request does not constitute agreement by Vacasa that Owner's policies offer adequate protection to Owner in the event of a loss.

4. Termination of Program. In the event that either Vacasa or Insurer terminates its participation in the Program, Vacasa shall notify Owner of the date of termination as soon as reasonably practicable. To avoid any lapse in coverage, Owner agrees to obtain (or maintain) a commercial general liability policy or other policy that (a) expressly covers the use of the home as a vacation rental, (b) provides at least \$1 million in liability coverage, and (c) if requested by Vacasa, covers the property manager as an insured. Owner will obtain the required coverage no later than the date of termination and to provide proof of such insurance to Vacasa.



Contract Renewal

Anderson County Courthouse
Purchasing Department
100 North Main Street, Room 214
Clinton, Tennessee 37716-3617

Phone - (865) 457-6218
Fax - (865) 264-6252
Email - purchasing@andersoncountyttn.gov
Web - www.andersoncountyttn.gov

March 6, 2023

❖ ***The Governments of Anderson County and the City of Clinton, TN desire to exercise the option to renew the following contract:***

- **Contract Title:** Soccer Field Lease
- **Contract Number:** 22-0059
- **Original Term:** April 14, 2022 to April 13, 2023 with four one-year renewal options
- **Renewing for Period:** April 14, 2023 to April 13, 2024

CITY OF CLINTON

Please sign as evidence of your review and approval to renew the contract as specified above

Authorized Signature (SIGN IN BLUE INK) Date

Name and Title

ANDERSON COUNTY ELECTED OFFICIAL/DEPARTMENT HEAD

Authorized Signature (SIGN IN BLUE INK) Date

Name and Title

ANDERSON COUNTY FINANCE DIRECTOR

ANDERSON COUNTY LAW DIRECTOR (Approved as to Legal Form)

Robert Holbrook, Finance Director Date

N. Jay Yeager, Law Director Date

(SIGN IN BLUE INK)

Revised 11/15/2021 (ROC)

Katherine Ajmeri

From: Stephanie Wells <stephanie@adventureanderson.com>
Sent: Thursday, March 2, 2023 12:12 PM
To: Katherine Ajmeri
Subject: Surplus

Katherine,

At the Tourism Council meeting yesterday, the board approved the following motion. Therefore, I am requesting that the welcome center surplus status be added to the March purchasing committee agenda.

A motion was made by Katy Watt and seconded by Brent Galloway to submit a request to the County Commission Purchasing Committee to take the Welcome Center off of surplus due to the action taken by County Commission at the December 19, 2022 meeting to not sell the building and in order to spend funds on eliminating the mold issue at the Welcome Center. Motion passed.

Thank you,

Stephanie Wells, CTP | Director
Adventure Anderson County

115 Welcome Lane | Clinton, TN 37716

865-457-4547 | 865-457-4545 fax

www.AdventureAnderson.com

[@AdventureAndersonCounty](https://www.instagram.com/AdventureAndersonCounty)