

EASEMENT AGREEMENT
COF Contract No. 2018-0258

THIS EASEMENT AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 2018, by and between **The City of Franklin, Tennessee** (the “City”) and **The State of Tennessee** (the “State”).

WHEREAS, the State is the owner of certain real property (“the Property”) in Williamson County, Tennessee, more particularly described on Attachment “A” attached to this Agreement and incorporated by reference; and

WHEREAS, the City has requested and the State has agreed to grant an easement to the City over a portion of the Property to allow the City to construct, maintain, and operate thereon a pathway for pedestrian or bicycle travel and/or a nature trail including all reasonable ancillary improvements (the “Trail”) as part of a trail system the City desires to install and operate in Franklin, Tennessee (the “Multi-Use Trail System”); and

WHEREAS, the City agrees to honor the intentions of the State stated herein.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the State hereby voluntarily grants and conveys to the City, its successors and assigns the right to use for the purposes contemplated by this Agreement the portion of the Property which is described in the document attached as Attachment “B” and incorporated into this Agreement (the “Easement Area”).

1. Purpose. It is the purpose of this Agreement to allow the City to utilize the Easement Area for the Trail. The City, at its discretion, shall design, construct and maintain the Trail and any associated structure in a manner that best preserves the open and natural condition of the Property. Fixtures, additions or structures placed in and upon or attached to the Property by the City shall become the property of the State in the event that this Agreement is terminated. It is the intention of the parties hereby expressed that this Agreement will not significantly interfere with the use of the Property by the State. The State intends that the City will confine the use of the Multi-Use Trail System to such activities as are consistent with the purpose of this Agreement.

Subject to the other terms of this Agreement, State hereby grants, transfers and conveys unto the City a temporary, non-exclusive easement over the Easement Area (the “Easement”) for the purpose of constructing, maintaining and operating the Trail. The State conveys the Easement as created by this Agreement to the City together with all privileges and appurtenances thereto, including, without limitation, as needed temporary access over other portions of the Property to access the Easement Area for construction and maintenance of the Trail and other improvements.

2. Rights of the City. To accomplish the purpose of this Agreement, the State agrees that the City shall be permitted to construct and maintain the Trail, including, at the discretion of the City, necessary trailheads, signage, benches, and other improvements consistent with the recreational and educational uses of the pathways and nature trails and other conservation values.

3. Covenants of the City. The City, by executing this Agreement, covenants and agrees, on behalf of itself, its successors and assigns, that the following shall be binding upon anyone who may exercise the right under this Agreement to manage or control the Multi-Use Trail System, subject to the limitations set forth herein:

a. It will make the Multi-Use Trail System available for use by all members of the general public without distinction or illegal discrimination on the grounds of race, color, national origin, handicap, age, or any other category protected under state or federal law.

b. It will adopt rules and regulations governing the use of the Multi-Use Trail System so as not to permit or suffer any use in violation of such rules and regulations. At a minimum, the rules and regulations will provide as follows:

- i. That the hours of public access of the Multi-Use Trail System shall be from sunrise to sunset.
- ii. That all persons utilizing the Multi-Use Trail System must remain on the pathways or nature trails.
- iii. That all pets of persons utilizing the pathway must be on a leash at all times.
- iv. Organized Events: Events require a Special Event Permit which may be obtained through the Franklin Parks Department. No entity shall sponsor, host or organize an event on the public trail without prior approval of the Special Event Permit. (Does not apply to classes hosted by the State during regular school hours.)
- v. That the following activities shall be strictly prohibited:
 1. consumption or possession of alcoholic beverages;
 2. horseback riding;
 3. unauthorized motor vehicles;
 4. collecting or disturbing plants, animals or other natural features;
 5. littering or dumping;
 6. possession of firearms, weapons or projected objects;
 7. playing of radios, musical instruments or other devices in a manner that might unreasonably disturb others;
 8. vending or other concessions without proper permits;
 9. advertising or posting of bills;
 10. trespassing on adjacent property of the State.

c. That it will be responsible for maintaining all greenway paths, trails and trailheads and for keeping the Multi-Use Trail System free of litter.

d. That it will be responsible for cleaning up all construction debris related to the Multi-Use Trail System.

e. That it will be responsible for insuring that the Multi-Use Trail System meets all requirements of applicable laws.

f. That it will be responsible for refuse collection and disposal on any refuse containers placed by the City on the Multi-Use Trail System or trailheads.

g. That it will be responsible for the enforcement of all Multi-Use Trail System rules and any policing of the Multi-Use Trail System.

h. That it will be responsible for providing notice to all users of the Multi-Use Trail System that they are not permitted to park vehicles on the Property and take such other reasonable actions upon request by the State to ensure that users of the Multi-Use Trail System are not parking vehicles on the Property.

i. In the event that in exercising its rights under this instrument, the City, its contractors, successors or assigns, damages the Property, the City shall be responsible for repairing such damage to at least the condition that existed prior to the damage.

Notwithstanding anything contained in this Section 3 to the contrary, in the event any such obligations of the City are the result of the State's negligence or intentional misconduct, the State shall reimburse the City for the third party, out of pocket cost thereof promptly upon receipt of a written request for reimbursement accompanied by copies of receipts marked "paid" for such costs.

4. Permissive Interference By the State. The State reserves the right, upon the written consent of the City, not to be unreasonably withheld, and at the State's sole cost and expense, to alter or relocate all or a portion of the Trail to accommodate future development plans as deemed reasonably necessary by the State. Furthermore, the State shall have the right to temporarily close access to the Trail if determined necessary by the State, in the State's sole discretion, provided that except in the event of an emergency no such temporary closure shall be effectuated with less than ten (10) days' written notice to the City.

5. Reserved Rights. The State reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their interest in the Property, including the right to engage in or permit or invite others to engage in all uses of the Property within the Easement Area that are not expressly prohibited herein and are not inconsistent with the purpose this Agreement. Notwithstanding the forgoing to the contrary, the State shall have the right to block access to parking lots or other improvements on the Property from the Trail and, if requested by the State, the parties shall enter into an amendment to this Agreement modifying the Easement Area so that no portion of the Easement Area abuts parking, driveways or other improvements on the Property. Nothing herein shall prevent the redevelopment of, or the making of any changes, alterations, or additions to the Property by State; provided no portion of the Easement Area shall

be altered, relocated, removed or closed except in accordance with the terms of this Agreement. In the event that the State determines, in its sole discretion, that the Trail is inconsistent with the State's ability to use the Property to serve the best interests of the State, then the State shall the right to terminate this Agreement upon not less than ninety (90) days' written notice to the City.

6. No Liens. If a mechanics' lien, materialmen's lien or other lien shall at any time be filed against or attach to the Property as a result of the City's failure, or alleged failure, to pay for work, services, materials or labor supplied to or on behalf of the City, then the City shall immediately cause the same to be discharged of record or bonded to the satisfaction of the State.

7. No Waiver. No forbearance by either party to exercise its rights under this Agreement in the event of any breach of any terms of this Agreement shall be deemed or construed to be a waiver of such term, or of any subsequent breach of the same, or any other term of this Agreement, or of any rights under this Agreement. No delay or omission by either party in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

8. Reserved.

9. Acts Beyond the State's Control. Nothing contained in this Agreement shall be construed to entitle the City to bring any action against the State for any injury to or change in the Property resulting from causes beyond the State's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the State under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

10. Amendment. If circumstances arise under which an amendment to or modification of this Agreement is appropriate, the State, or the then current owner of the Property, and the City may amend this Agreement in writing by jointly executing such amendment. To be effective, any amendment of this Agreement also must be approved by all necessary State officials.

11. Extinguishment. If circumstances arise in the future that render the purpose of the Agreement impossible to accomplish, the Agreement may be terminated by mutual agreement of the parties.

12. Assignment. The Agreement is not transferable by the City. In the event that the City contracts with a third party to perform any of its obligations under this Agreement, the City shall include in the contract a clause which requires the third party to maintain adequate public liability insurance with monetary limits of not less than the State's liability under the Claims Commission statute, T.C.A. Section 9-8-307, as it may be from time to time amended and/or construed by the Claims Commission and the courts and name the State as an additional insured thereunder. Furthermore, in the event that a third party performs any of the obligations of the City under this Agreement, the contract between the City and the third party shall contain a clause requiring the third party to indemnify and hold the State harmless from any and all claims, costs, damages and judgments arising out of the installation, occupation, use, maintenance and operation of the easements granted in this Agreement, and to assume any and all responsibility and liability

therefore, including, but not limited to, costs and expenses incurred by State in defense of any action, and to discharge any judgment that may be rendered therein.

13. Liability. The City shall maintain, at a minimum, adequate public liability insurance with monetary limits of not less than the State's liability under the Claims Commission statute, T.C.A. Section 9-8-307, as it may be from time to time amended and/or construed by the Claims Commission and the courts. Additionally, the City shall maintain all other insurance coverages that would be maintained by a reasonably prudent owner/operator of a pedestrian or bicycle travel and/or a nature trail similar to the Trail. The City acknowledges and agrees that the State has no control over the operation of the Trail other than as set forth in this Agreement and that the State has no responsibility to construct, install or maintain the Trail. Accordingly, the City agrees that the State shall have no responsibility for any claims or damages arising out of or resulting from the Trail or use of the Trail by third parties.

14. General Provisions.

a. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Tennessee.

b. Liberal Construction. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of the Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto; all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the paragraph of this Agreement entitled "Amendment."

e. Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in duration with the Property.

[This space left intentionally blank]

Executed this ____ day of _____, 2018.
STATE OF TENNESSEE

By: _____
Robert E. Oglesby, Commissioner
Department of General Services

APPROVED

Herbert H. Slatery III, Attorney General

Bill Haslam, Governor

State of Tennessee
County of Davidson

Personally appeared before me, the undersigned Notary Public for Davidson County, Robert E. Oglesby, Commissioner of the Department of General Services for the State of Tennessee, with whom I am personally acquainted, and who, upon oath, acknowledged that he, authorized to do so, executed the foregoing instrument for the purposes contained therein on behalf of the State of Tennessee.

This ____ day of _____, 2018.

Notary Public
My Commission Expires: _____

[signatures continued on following page]

Executed this ____ day of _____, 2018.

The City of Franklin, Tennessee:

BY: _____
Eric S. Stuckey
City Administrator

State of Tennessee
County of Williamson

Personally appeared before me, the undersigned, a Notary Public of said State and County, **ERIC S. STUCKEY**, with whom I am personally acquainted and who acknowledges that he executed the within instrument for the purposes therein contained, and who further acknowledges that he is the City Administrator of the City of Franklin, Tennessee, being authorized by the City of Franklin, Tennessee, to execute this instrument on behalf of the City of Franklin, Tennessee.

WITNESS my hand and seal this ____ day of _____, 2018.

NOTARY PUBLIC
My Commission Expires: _____



Franklin, TN
PBR0273

- INTERMEDIATE LOOP (2900 L.F.)
- PAVED WALKING PATH
- CONNECTING PATH
- TRAIL HEAD



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