

MEMORANDUM OF AGREEMENT FOR USE OF PROPERTY

THIS AGREEMENT is made and entered into this _____ day of _____, 2006, by and between **The Metropolitan Government of Nashville and Davidson County**, acting by and through its Board of Parks and Recreation ("Metro"), and **The State of Tennessee** (the "State"), Tennessee Department of Agriculture.

WHEREAS, Metro recognizes the increasing benefit of protecting open spaces within Davidson County; and

WHEREAS, greenways provide the general public with recreational opportunities in natural areas, preserve, and protect native plant and animal species and their habitat, and provide low-impact transportation routes for pedestrian and bicycle traffic; and

WHEREAS, Metro, by Ordinance No. 091-13, created a Greenways Commission to assist Metro in the development of a system of open space greenways; and

WHEREAS, the State ("the Grantor") is the holder of a certain real property ("the Property") in Davidson County, Tennessee, more particularly described in the document attached to this Agreement as Exhibit A and incorporated by reference; and

WHEREAS, the Property possesses natural, open space, water quality and recreational values (collectively, "conservation values") of great importance to the State and the people of Nashville and Davidson County; and

WHEREAS, the State intends that the conservation values of the Property be preserved and made more accessible for public enjoyment by the anticipated incorporation and maintenance of a portion (the "Easement Area") of the Property as part of the Metro greenways system; and

WHEREAS, the State further intends to convey to Metro the right to preserve and protect the conservation values of the Property; and

WHEREAS, Metro has the authority to accept this grant pursuant to Tennessee Code Annotated, Section 66-9-305(d), and Section 11.1002 of the Metropolitan Charter; and

WHEREAS, Metro agrees by accepting this grant to honor the intentions of the State stated herein, and to preserve and protect, in perpetuity, the conservation values of the Property for the benefit of the people of Tennessee and the public-at-large.

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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 Metro, its successors and assigns the right to use for the purposes contemplated by this Agreement the Easement Area, which is described in the document attached as Exhibit B and incorporated into this Agreement.

1. **Purpose.** It is the purpose of this grant to allow Metro to utilize the Easement Area for one or more of the following "improvements": a primary pathway for pedestrian or bicycle travel, nature trail, and/or natural area and including but not limited to associated trails, public sidewalks, observation areas, rest areas, educational areas and other areas linked to the primary pathway within the Easement Area. Metro, at its discretion, shall construct, install and maintain improvements within the Easement Area in a manner that best preserves the open and natural condition of the Property. Fixtures, additions, structures or other improvements placed in and upon or attached to the said premises by Metro 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 conservation values of the Property. The State intends that Metro will confine the use of the Easement Area to such activities as are consistent with the purpose of the Agreement.

2. **Rights of Metro.** To accomplish the purpose of this Agreement, the following rights are conveyed to Metro by this grant:

- a. To preserve and protect conservation values of the Property;
- b. To construct and maintain a primary pathway beginning at Whitfield Park and extending to Sevenmile Park and related pathways and any improvements (including but not limited to associated trails, public sidewalks, observation areas, rest areas, educational areas and other areas connected to the greenway) constructed by the Metro or the State within the Easement Area;
- c. To construct or install and maintain, at the discretion of Metro, necessary trailheads, signage, benches, and other improvements consistent with the recreation and education uses of the pathway

and other conservation values that constitute improvements in the Easement Area.

3. Metro Covenants. Metro, by accepting this grant, 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 Easement Area:

- a. It will make improvements that are designated for public access within the Easement Area available for use by all members of the general public without distinction or illegal discrimination on the grounds of race, color, national origin, handicap, or age.
- b. It will adopt rules and regulations governing the use of the improvements within the Easement Area 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 to the improvements designated for public access within the Easement Area shall be from sunrise to sunset.
 - ii. That all persons utilizing the Easement Area must remain within areas designated for public access such as primary pathways, associated trails, public sidewalks, observation areas, rest areas, educational areas and other improved areas.
 - iii. That all pets of persons must be on a leash at all times while utilizing areas designated for public access within the Easement Area such as primary pathways, associated trails, public sidewalks, observation areas, rest areas, educational areas and other improved areas. All pet waste must be immediately retrieved and properly disposed by the pet owner when it is deposited anywhere on the Property.
 - iv. That the following activities shall be strictly prohibited:

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1. consumption or possession of alcoholic beverages;
 2. horseback riding, except mounted patrols with proper animal waste controls;
 3. unauthorized motor vehicles;
 4. collecting or distributing plants, animals or other natural features;
 5. littering or dumping;
 6. possession of firearms, weapons or harmful projected objects;
 7. playing of radios, musical instruments or other devices in a manner that might disturb others;
 8. vending or other concessions with out proper permits;
 9. advertising or posting of bills;
 10. trespassing on adjacent property of the "Grantor" that is specifically declared off limits to the public.
- c. That it will be responsible for keeping the Easement Area free of litter deposited by any means.
- d. That it will maintain its improvements and equipment within the Easement Area, including without limitation current and future greenway paths and their surface materials, related trails, public sidewalks, trailheads, bridges, benches, trash cans, signage and agricultural cross fences installed by the state, that separate improved portions of Easement Area from unimproved portions of the Easement Area.
- e. That it will be responsible for maintaining parking for and access to the improvements within the Easement Area at Whitfield Park.
- f. That it will be responsible for removing all construction debris and restoring any damages or land disturbances related to Metro improvements or maintenance of the Easement Area.
- g. That it will support, cooperate with and facilitate to the extent possible, the State's maintenance, management and use of all unimproved or improved areas within the Easement Area such as cattle grazing areas, mowed

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areas, conservation practices, utilities or other public infrastructure.

- h. That it will be responsible for regular litter or refuse collection and disposal from all refuse containers placed by Metro on the Greenway trail or trailheads.
- i. That it will be responsible for the enforcement of all Greenway rules and any policing of the Easement Area.
- j. That it will attempt to facilitate future greenway easement agreements with other landowners to allow Metro or other appropriate parties to install native plants and water quality, stormwater and infiltration practices (including but not limited to forested riparian buffers, bank stabilization, in-stream habitat restoration, bioretention, reforestation, etc.), including along the entire length of future segments of the Sevenmile Creek Greenway in coordination with on-going restoration and public outreach efforts.
- k. That it will attempt to facilitate future greenway easement agreements with other landowners to allow Metro or other appropriate parties to install native plants, interesting and creative water quality and conservation educational displays along the entire length of the Sevenmile Creek Greenway in coordination with the State and other partners.
- l. That it will attempt to facilitate future greenway easement agreements with other landowners to support and promote efforts along the entire length of the future Sevenmile Creek Greenway that achieve the restoration of impaired waters in Sevenmile Creek and that avoid any practices in the construction or management of the future Sevenmile Creek Greenway that contradicts these efforts.

4. No Interference By the State. The State agrees not to interfere with the rights granted by this Agreement

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 that are not expressly prohibited herein and are not inconsistent

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with the purpose this Agreement. Further, the State reserves the right to maintain the subject Property consistent with the purposes herein set forth and will maintain it in accordance with applicable laws and State land use policies until improvements to the Easement Area are made by Metro or the State. The State reserves the right to approve all construction proposals offered by Metro, prior to their implementation, that involve the pathway or additions or improvements in the Easement Area. The State reserves the right to design, develop and install all educational features, conservation, stormwater/infiltration and agricultural practices in the Easement Area. The State reserves the right to review and approve educational messages proposed by Metro at the design stage related to conservation, stormwater management, agriculture, forestry, wildlife, water quality, urban planning and environmental science in general.

6. Duration. Regardless of any language in this document to the contrary, the State shall have the right to terminate this easement beginning ten years after the date of this easement. The State shall give one year's written notice of its decision to terminate this agreement.

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. Waiver of Certain Defenses. The State hereby waives any defense of laches, estoppel, or prescription.

9. Acts Beyond Grantor's Control. Nothing contained in this Agreement shall be construed to entitle Metro 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

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Property, and Metro are free to jointly amend this Agreement without prior notice to any other party; provided that any amendment shall be in writing; shall be consistent with the purpose of the Agreement; shall not affect its perpetual duration; and shall have the unanimous consent of the Metro Greenways Commission. 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 transferable only with the State's written consent, which shall not be unreasonably withheld. Without limiting the effect of the preceding sentence, Metro may assign its rights and obligations under this Agreement to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended, and the applicable regulations promulgated thereunder and authorized to acquire and hold conservation easements. As a condition of such transfer, Metro shall require that the conservation purposes, which this grant is intended to advance, continue to be carried out.

13. Reserved.

14. General Provisions.

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

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of the Agreement and the policy and purpose of Tenn. Code Ann. §§ 66-9-301 to 309. 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.

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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 perpetuity with the Property.

TO HAVE AND TO HOLD said rights unto Metro, its successors, and assigns, forever.

IN WITNESS WHEREOF, we have caused this instrument to be executed as of this _____ day of _____, 2006.

STATE OF TENNESSEE:

METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

Commissioner of Finance and
Administration

Director of Parks and Recreation

Acknowledged:

Approved:

Approved:

Director of Division of Public Property

Approved:

Attorney General

Metropolitan Attorney

Approved:

Governor