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

Project No.: ID-IR-440-4(50)206
19014-3114-44
Tract: Multiple
Davidson County
Request No. 6162

EXHIBIT
1

LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of this the _____day of _____, 2019 by and between THE STATE OF TENNESSEE, acting by and through its Commissioner of Transportation, (hereinafter referred to as "State") and the METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE (hereinafter referred to as "Licensee").

WHEREAS, Licensee desires to use a portion of the right-of-way along Interstate-440 adjacent to the northbound ramp onto northeast bound West End Avenue in Davidson County, being more specifically described in Exhibit A, attached to and made a part of this License (the "Licensed Premises"), to construct and maintain a multi-use pedestrian greenway in Davidson County, Tennessee; and

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

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

1. **LICENSE** – Licensee is hereby granted permission to use the Licensed Premises to construct and maintain a multi-use pedestrian greenway along Interstate-440 adjacent to the northbound ramp onto northeast bound West End Avenue in Davidson County (hereinafter referred to as the "Improvements"), contingent on any plans for improvements to the site being submitted to the Tennessee Department of Transportation for approval prior to installation.

2. **USE OF LICENSED PREMISES** - Licensee shall be permitted to use the Licensed Premises for the construction and maintenance of the Improvements. Licensee shall not be permitted to use the Licensed Premises for any other purpose except by prior written permission of the State. It is understood and acknowledged by both parties to this Agreement that the primary purpose of the Licensed Premises is for and relating to transportation. The use of the Licensed Premises for the construction and maintenance of the improvements described herein does not constitute permanent ownership of the Licensed Premises by the Licensee, and the uses of the Improvements on the Licensed Premises are temporary, secondary, and incidental.

3. **FEE** – Licensee shall pay $0 per year to the State for the use of the Licensed Premises.

4. **TERM** – The License is a 10-year, renewable license which shall begin on _____, 2019 and shall end on _____, 2029.

5. **ACCESS** – The State shall provide Licensee access to the Licensed Premises at all times for the uses authorized herein.

6. **MAINTENANCE** – The costs of any maintenance and operation of the Improvements shall be at the sole expense of Licensee.

7. **TRAFFIC CONTROL** - At no time will work authorized by this License Agreement interfere with the normal flow of traffic on roadways adjoining the Licensed Premises. Licensee is responsible for providing traffic control for this work zone in accordance with the requirements of the current *Manual on Uniform Traffic Control Devices*. If proper traffic control is not in place, TDOT may order Licensee to stop work until proper traffic control is put in place.

8. **FIRE HAZARD** - The Property shall not be used for the manufacture or storage of flammable material or for any other purpose deemed by the STATE or the Federal Highway Administration to be a potential fire hazard or other hazard to the highway. The determination as to whether or not a use constitutes such a hazard shall be in the sole discretion of the STATE or the Federal highway Administration. The operation and maintenance of said property will be subject to regulation by the STATE to protect against fire or other hazard which could impair the use, safety or appearance of the highway. LICENSEE shall provide access, at all times, for firefighters and accompanying equipment.

9. **DAMAGE TO STATE PROPERTY** - Licensee shall be liable for any damage to state property resulting from Licensee's use of the Licensed Premises and/or installation and operation of the Improvements, including but not limited to, the roadway, shoulders, guardrail, drainage, landscaping, signs and controlled-access fences. All repair or replacement of such damage shall be made in accordance with the current TDOT Standard Specifications for Road and Bridge Construction, TDOT Standard Drawings and any other applicable design and/or construction standards or guidelines.

10. **LIABILITY** - Licensee shall assume all liability for claims arising out of conduct on the part of the Licensee for which it would be liable under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, et seq., up to the limits for which it can be held liable for such conduct under that act, arising from its use of the Licensed Premises. In addition, Licensee shall require that any contractor of Licensee that performs any work on the Licensed Premises, including any installation, maintenance, or operation of the Improvements, shall indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character arising from the contractor's acts or omissions in the prosecution of the work.

11. **INSURANCE** - The Licensee, its successors and assigns, agrees to maintain adequate public liability insurance, which may include self-insurance, and will provide satisfactory evidence of such insurance to the State. Further, the liability limits of this insurance must not be less than the exposure and limits of the Licensee's liability under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, et seq. The insurance policy shall include a provision for the insurance company to notify the State in writing of any cancellation or changes of the policy at least 30 days in advance of the cancellation or change. In addition, Licensee shall require that any contractor of Licensee that performs any work on the Licensed Premises, including any installation, maintenance, or operation of the Improvements, shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than $1 million dollars per occurrence and $300,000 per claimant, naming the State of Tennessee as an additional insured.

12. **PERMIT** – Licensee is responsible for obtaining and paying the costs of all permits, licenses or other approvals by any regulatory body having jurisdiction over the uses authorized herein.

13. **COMPLIANCE** – Should Licensee fail or neglect to comply with any term or condition of this License Agreement or to comply with written notice and demand, this License shall be subject to termination. In the event of such termination, Licensee shall

immediately remove any and all of its Improvements from the licensed Premises and surrender all rights and privileges under this License Agreement.

14. **TITLE VI ASSURANCES** – The Licensee for itself, its successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License Agreement for a purpose for which the State or a State program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations shall be amended.

15. **AMERICANS WITH DISABILITIES ACT ASSURANCES** – The Licensee for itself, its successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License Agreement for a purpose for which the State or a State program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 28, Code of Federal Regulations, Parts 35 and 36, Nondiscrimination on the Basis of Disability in State and Local Government Services and Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, and as said regulations shall be amended. The Licensee further agrees that if any pedestrian facilities are constructed, maintained, or operated on the property described in this License, the Licensee shall construct, maintain, and operate such facilities in compliance with the Architectural and Transportation Barriers Compliance Board's "Accessibility Guidelines for Pedestrian Facilities in Public Rights-of-Way" (proposed 36 CFR Part 1190; published in the Federal Register, July 26, 2011).

16. **REVERSION** – In the event that the Licensed Premises is needed for a transportation project, Licensee shall remove any and all of its Improvements from the Licensed Premises and surrender all rights and privileges under this License Agreement within 60 days of receiving written notice from the State. In the event that the Licensed Premises is needed for a maintenance project, the use of the Licensed Premises will cease temporarily until the maintenance project is completed.

17. **ADJACENT PROPERTY** – Licensee states and affirms that the Improvements constructed and maintained on the Licensed Premises are not relevant to any adjacent property's activities, features, or attributes that qualify the adjacent property for protection under Section 4(f) of the Department of Transportation Act of 1966 (Pub. L. 89—670, 80 Stat. 931) now codified at 23 U.S.C. § 138, 49 U.S.C. § 303, and 23 CFR Part 774 (hereinafter referred to as "Section 4(f)"). Therefore, neither the act of reversion nor termination of this Agreement, nor any transportation related activities occurring on the Licensed Premises (including, but not limited to, maintenance activities, construction activities, etc.), would result in a substantial impairment to the activities, features, or attributes that may qualify Licensee's adjacent or nearby property for protection under Section 4(f).

18. **NO PERMANENT OWNERSHIP** – Licensee does not currently possess, nor through this Agreement acquire, permanent ownership or control over the Licensed Premises.

19. **TERMINATION** – The State may terminate this License at will with 60 days written notice to Licensee.

20. **ASSIGNMENT** – The License shall not be transferred, conveyed or assigned to another party without prior written approval from the State.

TO THE LICENSEE:

Metro Government of Nashville
and Davidson County, TN
c/o Metro Nashville Board of Parks
and Recreation
P.O. 196340
Nashville, TN 37219-6340

TO THE STATE:

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

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

LICENSEE:

METRO GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE

By: _____ DATE: _____

Title: Mayor

ATTEST:

_____ DATE: _____
Metropolitan Clerk

APPROVED AS TO AVAILABILITY OF FUNDS: DATE: _____

_____ DATE: 4.22.19
Director of Finance

APPROVED AS TO RISK AND INSURANCE:

_____ DATE: 4/23/19
Director of Insurance

APPROVED AS TO FORM AND LEGALITY:

_____ DATE: 5/6/19
Assistant Metropolitan Attorney

STATE OF TENNESSEE

_____ DATE:_____

Clay Bright, Commissioner
Tennessee Department of Transportation

APPROVED AS TO FORM
AND LEGALITY:

_____ DATE:_____

John Reinbold, General Counsel
Tennessee Department of Transportation

EXHIBIT A
Legal Description
440 Greenway Project

Being a parcel of land in the 24th Council District of Nashville, Davidson County, Tennessee, and being further described as an encroachment area upon the Interstate Right of Way of the Tennessee Department of Transportation and being more particularly described as follows:

Beginning at a concrete monument found at the easterly corner of the intersecting right of way of Interstate-440 and West End Avenue, said monument being at Station 9+07.65 and an offset of 439.50' right as shown on Tennessee Department of Transportation right of way plans for this section of Interstate-440 (T.D.O.T. Project Number: I-440-4(53)206, Dated 1983); said point also being the westerly corner of O.I.C. Continental Condominium Subdivision as of record in Plat Book 5200, page 399 at the register's office of Davidson County, Tennessee;

Thence, with the northeasterly right of way line of Interstate-440 and the southwesterly line of said O.I.C. property S 50°09'54" E a distance of 198.84' to a concrete monument found, said point being the northerly corner of Ellis & Pennington, Instrument Number 201112060095012 at the register's office of Davidson County, Tennessee;

Thence with said Ellis & Pennington property the following two calls:
S 40°23'13" W a distance of 154.16' to a point;
S 11°30'50" E a distance of 44.09' to a point;

Thence leaving Ellis & Pennington and creating new lines with the following three calls:
S 78°29'10" W a distance of 20.00' to a point;
N 14°13'38" W a distance of 268.14' to a point;
N 36°41'18" E a distance of 40.00' back to the point of beginning and having an area of 0.51 acres (22,497.64 square feet), more or less according to a Survey Exhibit drawn by Collier Engineering dated 5/4/2016

Description Prepared By:
COLLIER ENGINEERING CO., INC.
5560 Franklin Pike Circle
Brentwood, TN 37027
(615) 331-1441