

Resolution No. RS2020 - 189

A resolution approving amendment one to an intergovernmental agreement by and between the State of Tennessee, Department of Transportation, and The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Nashville Department of Public Works, for intersection improvements on Nolensville Pike from McNally Drive to Natchez Drive.

WHEREAS, The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Nashville Department of Public Works, previously entered into an intergovernmental agreement with the State of Tennessee, Department of Transportation, for intersection improvements on Nolensville Pike from McNally Drive to Natchez Drive approved by RS2019-135; and,

WHEREAS, the parties wish to amend Attachment 1, Agency Participation, Construction, of the intergovernmental agreement by correcting a typographical error from \$47,047.40 to \$41,047.40 which represents five percent of the total construction cost, a copy of which amendment one is attached hereto; and,

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that amendment one be accepted.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That amendment one to the intergovernmental agreement, by and between the State of Tennessee, Department of Transportation, and The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Nashville Public Works Department, for intersection improvements on Nolensville Pike from McNally Drive to Natchez Drive, a copy of which amendment one is attached hereto and incorporated herein, is hereby approved, and the Metropolitan Mayor is authorized to execute the same.

Section 2. That this resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY
OF FUNDS:



Talia Lomax-O'dneal, Director
Department of Finance

INTRODUCED BY:

APPROVED AS TO FORM AND
LEGALITY:

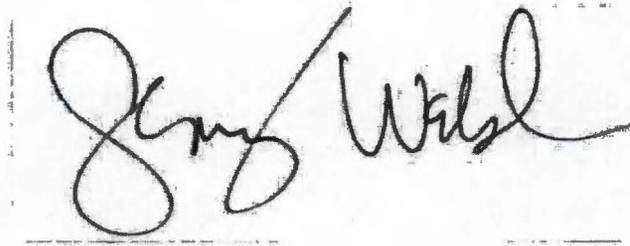


Assistant Metropolitan Attorney

Member(s) of Council

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink, appearing to read "Ginny Welsch". The signature is written in a cursive style with a large initial "G". The signature is positioned above a horizontal dashed line.

Ginny Welsch

Council Member, District 16

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink that reads "Bob Mendes". The signature is written in a cursive style with a large, stylized "B" and "M".

Bob Mendes
Councilman At-Large

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

Angie E. Henderson

Angie Henderson
Councilmember, District 34

GRANT BUDGET

Agreement Number: 1900224
 Project Identification Number (PIN) 128602.00
 State Project Number: 19LPLM-S3-158

PHASE	GRANT CONTRACT	AGENCY PARTICIPATION	TOTAL PROJECT
NEPA	\$34,214.25	\$1,800.75	\$36,015.00
DESIGN	\$86,450.00	\$4,550.00	\$91,000.00
RIGHT OF WAY	\$4,750.00	\$250.00	\$5,000.00
CONSTRUCTION	\$779,900.60	\$41,047.40	\$820,948.00
CONSTRUCTION ENGINEER INSPECTION (CEI)	\$20,939.90	\$1,102.10	\$22,042.00
DEPARTMENT ENGINEERING OVERSIGHT ¹	\$4,750.00	\$250.00	\$5,000.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
GRAND TOTAL	\$931,004.75	\$49,000.25	\$980,005.00

¹“Department Engineering Oversight” is defined as engineering activities provided by and for the Department to conduct grant monitoring.

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

RECOMMENDED BY:

STATE OF TENNESSEE
DEPARTMENT OF
TRANSPORTATION



Mark Sturtevant, Director
Department of Public Works

Clay Bright
Commissioner

APPROVED AS TO AND
AVAILABILITY OF FUNDS

APPROVED AS TO FORM AND
LEGALITY



Kevin Crumbo, Director
Department of Finance *K*

John H. Reinbold
General Counsel

APPROVED AS TO FORM AND
LEGALITY



Metropolitan Attorney

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

By: _____
John Cooper
Metropolitan Mayor

ATTEST, this ____ day
Of _____, 20__

BY: _____
Metropolitan Clerk

APPROVED AS TO RISK AND INSURANCE

By:  _____
Director of Insurance



**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
METRO GOVERNMENT NASHVILLE**

This Grant Contract made and entered into this _____ day of _____, _____ by and between the State of Tennessee Department of Transportation (hereinafter referred to as the "Department") and Metro Government of Nashville (hereinafter referred to as the "Agency") is for the provision of the SR-11/Nolensville Pike from McNally Drive to Natchez Court as further defined in the "SCOPE OF PROJECT."

Agreement Number: 190024

Project Identification Number (PIN): 128602.00

State Project Number: 19LPLM-S3-158

A. SCOPE OF PROJECT:

- A.1. The Agency shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Grant Contract.
- A.2. Description: Intersection improvements on Nolensville Pike. Project also includes sidewalks, ADA upgrades, curb and gutter, striping, transit stop improvements, pedestrian signals and drainage.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Agency's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.
- a. this Grant Contract document;
 - b. the Grant Budget (Attachment 1);
 - c. the Agency's Multimodal Access Grant Guidelines and Multimodal Access Grant Application, incorporated by reference to elaborate supplementary Scope of Project specifications (located at <http://www.tn.gov/tdot/topic/multimodal-multimodal-access-grant>).
 - e. the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/assets/entities/tdot/attachments/LGG_Manual.pdf) to elaborate the processes, documents, and approvals necessary to obtain funds under this Grant Contract.

B. CONTRACT PERIOD:

- B. 1. This Grant Contract shall be effective from the period beginning July 1, 2019, and ending July 1, 2023. 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 within July 1, 2021. 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.

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. 2. An extension of the aforesaid completion date of this Agreement may only be effected by a written amendment to the Agreement, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement. Otherwise, without an extension of the aforesaid completion date of this Agreement, the Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Grant Contract exceed Nine Hundred Eighty Thousand Five Dollars and No Cents (\$980,005.00). The Grant Budget, attached and incorporated hereto as Attachment 1, shall constitute the maximum amount due the Agency for all service and Agency obligations hereunder. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Agency.
- C.2. Compensation Firm. The maximum liability of the Department is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Agency shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in Section C.1. Upon progress toward the completion of the work, as described in Section A of this Grant Contract, the Agency shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. The Agency shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Agency shall invoice the Department no more often than monthly, with all necessary supporting documentation, and present such to:

LPD.Invoices@tn.gov

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice/Reference Number (assigned by the Agency).
 - (2) Invoice Date.
 - (3) Invoice Period (to which the reimbursement request is applicable).
 - (4) Grant Contract Number (assigned by the Department).
 - (5) Grantor: State of Tennessee, Department of Transportation, Division of Multimodal Transportation Resources.
 - (6) Grantor Number (assigned by the Agency to the above-referenced Grantor).
 - (7) Agency Name.
 - (8) Agreement Number, Project Identification Number (PIN), and State Project Number Referenced in Preamble of this Grant Contract.
 - (9) Agency Remittance Address.
 - (10) Agency Contact for Invoice Questions (name, phone, and/or fax).
 - (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:

- i. The amount requested by Grant Budget line-item (including any documentation and receipts attached to the invoice).
- ii. The amount reimbursed by Grant Budget line-item to date.
- iii. The total amount reimbursed under the Grant Contract to date.
- iv. The total amount requested (all line-items) for the Invoice Period.

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

- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
- (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
- (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the Department is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.
- (4) An invoice under this Grant Contract shall be presented to the Department within ninety (90) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Agency. An invoice submitted more than ninety (90) days after such date will NOT be paid. The Department will not deem such Agency costs to be allowable and reimbursable by the Department unless, at the sole discretion of the Department, the failure to submit a timely invoice is warranted. The Agency shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Agency's plan for submitting future invoices as required, and it must be signed by an Agency agent that would be authorized to sign this Grant Contract.

C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Agency may vary from a Grant Budget line-item amount by up to ten percent (10%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.

C.7. Indirect Cost. Should the Agency request reimbursement for indirect cost, the Agency must submit to the Department a copy of the indirect cost rate approved by the cognizant federal agency and the Department. The Agency will be reimbursed for indirect cost in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Agency makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the contract period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and the Department. If the indirect cost rate is provisional during the period of this Grant Contract, once the rate becomes final, the Agency agrees to remit any overpayment of funds to the Department, and subject to the availability of funds the Department agrees to remit any underpayment to the Agency.

C.8. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the contract period.

- C.9. Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the Department shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.10. Non-allowable Costs. Any amounts payable to the Agency shall be subject to reduction for amounts included in any invoice or payment that are determined by the Department, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.11. Department's Right to Set Off. The Department reserves the right to set off or deduct from amounts that are or shall become due and payable to the Agency under this Grant Contract or under any other agreement between the Agency and the Department under which the Agency has a right to receive payment from the Department.
- C.12. Agency Deposit. In the event the Agency elects to utilize a Department Local Programs On-Call Consultant for any phase of project delivery, the Agency shall be required to deposit its share of the estimated cost per phase as noted in Exhibit A. This deposit may be made either by check delivered to the Local Programs Development Office or via deposit into the Agency's Local Government Investment Pool account established under Tenn. Code Ann. 9-4-701 et seq.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Department is not bound by this Grant Contract until it is signed by the contract parties.
- D.2. Modification and Amendment. Except as specifically provided herein, this Grant Contract may be modified only by a written amendment signed by all parties hereto.
- D.3. Termination for Convenience. The Department may terminate this Grant Contract without cause for any reason. Said termination shall not be deemed a breach of contract 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.4. Termination for Cause. If the Agency fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Agency violates any terms of this Grant Contract, the Department shall have the right to immediately terminate the Grant Contract 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 Grant Contract by the Agency.
- D.5. Subcontracting. The Agency shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," "Records," "Monitoring," "State and Federal Compliance," "Title VI," "Americans with Disabilities Act," and "Governing Law"

(as identified by the section headings). Notwithstanding any use of approved subcontractors, the Agency shall remain responsible for all work performed.

- D.6. Conflicts of Interest. The Agency warrants that no part of the total Grant 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 Grant Contract.
- D.7. Lobbying. The Agency certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
 - c. The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.
- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate this Grant Contract upon written notice to the Agency. The Department's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Grant Contract. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Agency hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Agency

shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.11. HIPAA Compliance. The Department and the Agency shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.
- a. The Agency warrants to the Department that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
 - b. The Agency warrants that it will cooperate with the Department, including cooperation and coordination with Department privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The Department and the Agency will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the Department and the Agency in compliance with the Privacy Rules. This provision shall not apply if information received by the Department under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the Department to receive such information without entering into a business associate agreement or signing another such document.
- D.12. Public Accountability. If the Agency is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4, or if this Grant Contract involves the provision of services to citizens by the Agency on behalf of the State, the Agency agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Agency shall display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:
- NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454
- The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Agency, provide Agency with any necessary signs.
- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Agency shall include the statement, "This project is funded under an agreement with the State of Tennessee." All notices by the Agency in relation to this Grant Contract shall be approved by the Department.
- D.14. Licensure. The Agency and its employees and any approved sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

- D.15. Records. The Agency and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Agency and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Agency records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

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

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

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

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

The Agency shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Agency shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- D.16. Monitoring. The Agency's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Agency shall submit brief, periodic, progress reports to the Department as requested.
- D.18. Annual Report and Audit. The Agency shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Grant Contract to the Commissioner or head of the Department, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Agency that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and State of Tennessee funding for all its programs shall include audited financial statements. 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 contract between the Agency and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of

the Treasury. The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed contract 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.19. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for such decision and non-competitive procurement. Further, and notwithstanding the foregoing, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Agency's compliance with applicable federal procurement requirements.

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

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

- D.20. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.21. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract 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.
The Agency, being a political subdivision of the State of Tennessee, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State of Tennessee beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.
- D.22. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Agency or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or

otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.

- D.23. Force Majeure. The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.24. State and Federal Compliance. The Agency shall comply with all applicable State of Tennessee and federal laws and regulations in the performance of this Grant Contract.
- D.25. Governing Law. This Grant Contract 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 Grant Contract. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.26. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.27. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.28. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.29. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Department:

Matthew Cushing, Program Monitor
Tennessee Department of Transportation, Multimodal Transportation Resources Division
James K. Polk Building, Suite 1800
Nashville, TN 37243
Matthew.Cushing@tn.gov

Telephone #: 615-741-2586

The Agency:

Darrell Moore, Capital Projects Manager
Metro Government Nashville
720 South Fifth Street

Nashville, TN 37206
darrell.moore@nashville.gov
Telephone 615-961-1104

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

- E.4. No Equipment Acquisition. This Grant Contract does not involve the acquisition and disposition of equipment acquired with funds provided under this Grant Contract.
- E.5. Department Right-of-Way. Nothing in this Grant Contract shall be construed to limit the Department's right to enter upon its highway right-of-way at any time.
- E.6. Maintenance. The Agency shall be responsible for the maintenance of the project. As an example, if the project funded hereunder results in the installation of any equipment, including but not limited to, traffic signals, lighting, electronically operated devices, solar-powered devices, then the Agency shall be responsible for and pay all costs associated with the maintenance and operation of the aforesaid equipment.
- E.7. Traffic Control. The Agency shall comply with and provide traffic control in accordance with the requirements of the current Manual on Uniform Traffic Control Devices. If proper compliance and traffic control is not in place, the Department may order the Agency to stop work until proper compliance and traffic control is put in place.
- E.8. Environmental Requirements. In the performance of this Grant Contract the Agency shall comply with all applicable environmental regulations and procedures, including but not limited to, the environmental procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/assets/entities/tdot/attachments/LGG_Manual.pdf) incorporated in Section A above. The aforesaid environmental procedures shall include, but not be limited to, complying with the Department's Tennessee Environmental Procedures Manual and Tennessee Environmental Streamlining Agreement, obtaining permits detailed in the Statewide Storm Water Management Plan, performing erosion control plans, performing an Erosion Control Conference when needed, and obtaining applicable permits. The Agency shall be solely responsible for compliance with all applicable environmental regulations and for any liability arising from noncompliance with the aforesaid regulations and the agency shall reimburse the Department for any loss incurred for noncompliance to the extent permitted by Tennessee law.
- E.9. Plans and Specifications. In the performance of this Grant Contract the Agency shall comply with all Department Design Policies and Procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/assets/entities/tdot/attachments/LGG_Manual.pdf) incorporated in Section A above. The Agency shall submit to the Department for approval all plans and specifications as detailed in the aforesaid Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects.

- E.10. Right-of-Way. In the performance of this Grant Contract the Agency shall comply with all right-of-way procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/assets/entities/tdot/attachments/LGG_Manual.pdf) incorporated in Section A above. The aforesaid right-of-way procedures shall include, but not be limited to, complying with applicable state laws, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. §§ 4601, et seq., 49 C.F.R. Part 24, and the Department's Right-of-Way Procedures Manual.
- E.11. Utilities. In the performance of this Grant Contract the Agency shall comply with all utility procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/assets/entities/tdot/attachments/LGG_Manual.pdf) incorporated in Section A above. The Agency shall provide for and accomplish all applicable utility connections within the right-of-way and easements prior to the construction of the project.
- E.12. Title VI. 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.
- E.13. Americans with Disabilities Act. The Agency shall comply with all the requirements as imposed by the Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq. and the regulations of the federal government issued thereunder.
- E. 14. Tennessee Department of Revenue Registration. The Agency shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- E. 15. Investment of Public Funds. The facility on which this Project is being developed shall remain open to the public and vehicular traffic for a sufficient time after completion of the Project to recoup the public investment therein, for at least the minimum length of time as shown below:

<u>Project Maximum Liability</u>	=	<u>Facility Open to Public and Vehicular Traffic</u>
\$1.00 - \$200,000	=	At least 5 Years
>\$200,000 - \$500,000	=	At least 10 Years
>\$500,000 - \$1,000,000	=	At least 20 Years

Projects over \$1,000,000 must remain open to public and vehicular traffic for a minimum of 25 years after completion of the Project and will be subject to individual review by the Department.