

RESOLUTION NO. 29051

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE OF STATE OWNED PROPERTY WITH THE STATE OF TENNESSEE, IN SUBSTANTIALLY THE FORM ATTACHED, FOR A PUBLIC GREENWAY WALKING TRAIL ALONG THE SOUTH CHICKAMAUGA CREEK ON A PORTION OF PARCEL NO. 138A-A-014 AT 4005 CROMWELL ROAD, FOR A TERM OF FORTY (40) YEARS WITH RENT MONIES WAIVED DUE TO THE PUBLIC PURPOSE RESTRICTIONS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute a Lease of State Owned Property with the State of Tennessee, in substantially the form attached, for a public greenway walking trail along the South Chickamauga Creek on a portion of Parcel No. 138A-A-014 at 4005 Cromwell Road, for a term of forty (40) years with rent monies waived due to the public purpose restrictions.

ADOPTED: May 30, 2017

/mem

THIS INSTRUMENT PREPARED BY:
State of Tennessee
Real Estate Asset Management
Tennessee Tower, 24th Floor
312 Rosa L. Parks Ave.
Nashville, TN 37243

LEASE OF STATE OWNED PROPERTY

THIS LEASE, between the State of Tennessee, hereinafter called the STATE,
and The City of Chattanooga, Tennessee, hereinafter called the LESSEE,

WITNESSETH:

THE STATE, for and in consideration of the covenants and agreements hereinafter contained and made on the part of the LESSEE, does hereby lease to the LESSEE a certain portion of State owned real property located in Hamilton County, Tennessee and being more particularly described as follows (the "Leased Premises"):

Beginning at an Interior Point formed by the northerly line of the Western & Atlantic Railroad (100' wide), with the southerly line of the Lands of the Tennessee Department of Transportation as described in Deed Book 1092, Page 562, at a point approximately 192 feet southeasterly from the Centerline of the South Chickamauga Creek (said point being approximately 125 feet perpendicular to the easterly bank of the Creek), as shown on a Plan of Conveyance as prepared by Beginning Point Surveys, Inc. Project TN-0216A, dated 11/17/2003.

Thence, in a northerly direction along an arc following the curvature of the East Bank of the South Chickamauga Creek and being 125 feet therefrom, approximately 337.14 feet to the lands of now or former Reed L. Bacon (DB 2890 / 491); Thence extending North 68 degrees West, the distance of 236.5 feet to the Centerline of the South Chickamauga Creek; Thence extending South, following the centerline of the Creek, 352.11 feet along the curve of the Creek to a point where the Centerline of the Creek meets the Northerly Right of Way line of the Western & Atlantic Railroad (100' Wide); Thence Southeasterly, along the Northerly Right of Way line of the Western & Atlantic Railroad, 192 feet to the Point of Beginning.

Being an area of 1.45 Acres of land, more or less.

Being a part of the same property conveyed to the State of Tennessee, by Deed of Record in Book 1092, Page 562 and recorded in the Register's Office of Hamilton County, Tennessee.

THE LESSEE for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that:

1. **TERM:** The term of this Lease shall be forty (40) years commencing on the date that this Lease is fully executed.

2. **RENT:** The LESSEE covenants and agrees that the Leased Premises shall be used for a public use purpose, as provided in Paragraph 3 herein, and accordingly

the LESSEE shall pay no rent. In the event that LESSEE ceases to use the Leased Premises for a public use purpose, this Lease shall terminate, and LESSEE shall immediately remove any and all of its improvements from the Leased Premises and surrender all rights and privileges under this Lease.

3. **PERMISSIBLE USE:** LESSEE may use the Leased Premises for a public greenway walking trail along the South Chickamauga Creek and for no other purpose. LESSEE shall be responsible for all development and operational aspects and costs of use.

4. **FIRE HAZARD:** The Leased Premises 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 the Leased Premises will be subject to regulation by the STATE to protect against fire or other hazard. LESSEE shall provide access, at all times, for firefighters and accompanying equipment.

5. **ENVIRONMENTAL DISCHARGE:** The LESSEE's occupancy of the Leased Premises shall not be such that would permit hazardous or objectionable smoke, fumes, vapors, odors, drippings, droppings or discharges of any kind to be emitted from the Leased Premises.

6. **SIGNS AND JUNKYARDS:** No junkyard as defined by 23 U.S.C. 136 or by Tennessee Code Annotated § 54-20-103, shall be established or maintained on the Leased Premises. No signs, billboards, outdoor advertising structures, or advertisements of any kind as described by 23 U. S. C. 131, shall be erected, displayed, placed or maintained on the Leased Premises, except that on-premise signs, displays or devices which indicate ownership and type of on-premise activity may be erected subject to regulation by the STATE and the Federal Highway Administration with respect to number, size, location, lighting, and design.

7. **IMPROVEMENTS:** Any improvement(s) made by LESSEE on the Leased Premises shall be subject to the prior written approval of the STATE and in accordance with the By-laws, Policy and Procedure of the State Building Commission.

Any improvement(s) erected upon the Leased Premises must be properly maintained and shall be kept free of refuse, trash or any other unsightly materials. If said improvement(s) and area are not so maintained in accordance with the standards set by the STATE, such improvement(s) and area shall be brought up to such standards immediately by the LESSEE upon being directed to do so by a representative of the STATE.

8. **RIGHT TO ENTER:** The STATE shall have the right to enter upon the Leased Premises at all times.

9. **DAMAGE TO STATE PROPERTY:** LESSEE shall be liable for any damage to state property resulting from LESSEE's (or its contractors' or agents') use of the Leased Premises and/or installation and operation of improvements thereon, 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:** LESSEE shall assume all liability for claims arising out of conduct on the part of the LESSEE for which it would be liable under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101, up to the limits for which it can be held liable for such conduct under that act, arising from its use of the Leased Premises. In addition, LESSEE shall require that any contractor of LESSEE that performs any work on the Leased Premises, including any installation, maintenance, or operation of any 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 LESSEE shall maintain adequate public liability insurance which may include self insurance and will provide satisfactory evidence of such insurance to the State. The liability limits of this insurance shall not be less than the exposure and limits of the State's liability under the Claims Commission Statute, Tennessee Code Annotated § 9-8-307, as it may be from time to time amended and/or construed by the claims commission and courts. This statute currently limits liability of the State to \$300,000 per claimant, \$1,000,000 per occurrence. The insurance policy

shall include a provision requiring 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, LESSEE shall require that any contractor of the LESSEE that performs any work on the Leased Premises, including any installation, maintenance, or operation of any improvements, shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than \$1,000,000.00 per occurrence and \$300,000 per claimant, naming the State of Tennessee as an additional insured.

12. **TRANSFER:** The Leased Premises shall not be subleased, transferred, conveyed or assigned by the LESSEE without prior written approval from the STATE.

13. **FUTURE NEEDS:** The LESSEE's use of the Leased Premises shall in no way interfere with the future needs of the STATE in developing or improving its highway facilities.

14. **SIXTY DAY CANCELLATION:** This Lease may be canceled by either party upon sixty (60) days written notice to the other party.

15. **CANCELLATION FOR CAUSE:** The STATE may cancel this Lease without notice if the LESSEE abandons the Leased Premises, ceases the permissible use of the Leased Premises, or violates any of the terms of this Lease.

16. **DISCRIMINATION:** (1) No person on the ground of sex, handicap, race, color, or national origin shall be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities, constructed on the Leased Premises. (2) No person on the ground of sex, handicap, race, color, or national origin shall be denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon. (3) The LESSEE shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination of Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; Title 49, Code of Federal Regulations, Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial

Assistance; and 23 U.S.C. 324. That in the event of breach of any of the above nondiscrimination covenants, the STATE shall have the right to immediately terminate this Lease and to reenter and repossess the Leased Premises and the facilities thereon.

17. **AMERICANS WITH DISABILITIES ACT ASSURANCES:** The LESSEE 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 Leased Premises 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 LESSEE 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 LESSEE further agrees that if any pedestrian facilities are constructed, maintained, or operated on the Leased Premises, the LESSEE 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).

18. **REMOVAL OF IMPROVEMENTS:** If this Lease is terminated for any reason, and STATE deems it necessary to remove any or all improvement(s) and/or facilities, installed or constructed on the Leased Premises, the LESSEE agrees to remove such improvements(s) and/or facilities within sixty (60) days after notice of termination in a manner prescribed by the STATE and to restore the Leased Premises to its original condition, all without cost to the STATE. If the LESSEE has not complied with this provision within sixty (60) days after notice of termination of this Lease, the STATE may remove such improvement(s) and/or facilities and restore the Leased Premises to its original condition and LESSEE shall pay all related costs. The LESSEE waives any and all claims against the STATE concerning removal of LESSEE'S improvement(s) and/or facilities.

19. **REVERSION:** In the event that the Leased Premises are needed for a transportation project, LESSEE shall remove any and all of its improvements from the Leased Premises and surrender all rights and privileges under this Lease within 60 days of receiving written notice from the State. In the event that the Leased Premises are needed for a maintenance project, the use of the Leased Premises will cease temporarily until the maintenance project is completed.

20. **ADJACENT PROPERTY:** LESSEE states and affirms that any improvements constructed and maintained on the Leased Premises will not be relevant to any adjacent property's activities, features, or attributes that qualify such 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 Lease, nor any transportation related activities occurring on the Leased 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 LESSEE's adjacent or nearby property for protection under Section 4(f).

21. **NO PERMANENT OWNERSHIP:** LESSEE does not currently possess, nor through this Lease will LESSEE acquire permanent ownership or control over the Leased Premises.

22. **NO THIRD PARTY BENEFICIARIES:** The parties do not intend this Lease to apply to third parties and no third parties shall have or possess any rights or claims against STATE under this Lease.

23. **NOTICE:** Any notice given by either party to the other regarding this Lease shall be in writing, by certified mail, postage prepaid, with return receipt requested. Notice shall be deemed to have been given at the time it shall be deposited in the United States Mail in the prescribed manner. Personal service of any written notice is also acceptable. Notice shall be forwarded to following respective addresses:

State of Tennessee:

Department of Transportation
Gary McDaniel, Excess Land Coordinator
P.O. Box 22369
Chattanooga, Tennessee 37422

Lessee:

City of Chattanooga
Gail Hart
101 East 11th St., Suite G4
Chattanooga, TN 37402

IN WITNESS WHEREOF, the parties have executed this Lease as of this

_____ day of _____ 2017.

LESSEE:

Andy Berke
Mayor
City of Chattanooga

APPROVED AS TO FORM
AND LEGALITY:



Attorney for LESSEE

STATE OF TENNESSEE

Robert E. Oglesby,
Commissioner
Tennessee Department of General Services

APPROVED:

Herbert H. Slatery III
Attorney General and Reporter

Bill Haslam
Governor

STATE OF: TENNESSEE

COUNTY OF: HAMILTON

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared ANDY BERKE, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the Mayor of the City of Chattanooga, the within named lessee, and that he as such officer being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the Lessee by himself as such Mayor.

WITNESS my hand and seal at office this ____ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF TENNESSEE

COUNTY OF DAVDISON

Personally appeared before me, the undersigned Notary Public, ROBERT E. OGLESBY, Commissioner of Tennessee Department of General Services, with whom I am personally acquainted and who, upon oath, acknowledged that he is the Commissioner of Tennessee Department of General Services and that he as Commissioner, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the State of Tennessee by himself as Commissioner.

WITNESS my hand and seal at office, this ____ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires: _____