

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING A LICENSING AGREEMENT WITH  
THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR  
THE FEDERAL ROADSCAPES PROJECT AND AUTHORIZING  
THE MAYOR TO EXECUTE THE LICENSE AGREEMENT AND  
AUTHORIZING THE EXECUTION OF ALL OTHER DOCUMENTS  
NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE  
OF THE AMENDMENT

WHEREAS, in May 2013, by Resolution No.: 2013-189, the board approved a license agreement with the State of Tennessee Department of Transportation for a Tennessee Roadscapes Grant to be used to install trees, signs, and other beautification items along State Routes 1, 36, 93, and 126; and

WHEREAS, the original agreement had a term of ten years and expired in June, 2023, and in May, 2023, by Resolution No.: 2023-248, the city agreed to a holdover notice that initiated the license agreement renewal process; and

WHEREAS, the new agreement will likewise be for a ten year term and allows city personnel to continue maintenance efforts on the improvements for future year.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the license agreement with the State of Tennessee Department of Transportation for a Tennessee Roadscapes Grant to continue installation and maintenance of landscaping along State Routes 1, 36, 93, and 126 is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, a license agreement with the State of Tennessee, Department of Transportation for a Tennessee Roadscapes Grant, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution; said agreement being generally as follows:

This Instrument prepared by:  
State of Tennessee  
Department of Transportation  
Region 1  
P. O. Box 58  
Knoxville, Tennessee 37901  
government)

Project No.: N/A  
Sullivan County  
Tract No.: N/A  
Request No.: 6573 (Local

**LICENSE AGREEMENT**

THIS AGREEMENT is made and entered into as of this the \_\_\_\_\_ day of \_\_\_\_, 20\_\_\_\_ by and between THE STATE OF TENNESSEE, acting by and through its Commissioner of Transportation, (hereinafter referred to as "State") and the CITY OF KINGSPORT, TENNESSEE (hereinafter referred to as "Licensee").

WHEREAS, Licensee desires to use a portion of the Licensed Premises to landscape several intersections and/or interchanges on State Routes 1, 36, 93 and 126 in Sullivan County, Tennessee, being more specifically described by the plans for the "Tennessee Roadscapes Gateway Landscape

Enhancements" which are attached as Exhibit A and made a part of this License; 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 landscape several intersections and/or interchanges on State Routes 1, 36, 93 and 126 in Sullivan County, Tennessee (hereinafter referred to as the "Improvements").

2. **USE OF LICENSED PREMISES** - Licensee shall be permitted to use the Licensed Premises for a public use purpose subject to cancellation for failure to continue public use for the operation 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. Licensee's use of the Licensed Premises is subject to any easements of record and to the right of any utility owner to operate and maintain any existing utility facilities within the Licensed Premises.

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 \_\_\_\_\_ and shall end on \_\_\_\_\_.

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. **PERMITS** – 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. Prior to commencing the work authorized herein, Licensee shall notify Tennessee One Call

regarding any excavation(s) and shall ensure that the provisions of TCA 65-31-101, et seq. are met.

13. **COMPLIANCE** – All work on the Licensed Premise shall be performed in compliance with current TDOT Landscape Design Guidelines and TDOT Standard Drawings in addition to applicable federal, state and local laws and regulations. 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; otherwise, on written notification by the State, the Improvements will be removed and said Licensed Premises restored to its former condition in a timely manner at the expense of the Licensee.

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. In the event that a utility owner needs to maintain an existing utility facility, the Licensee's use of the Licensed Premises may cease or be impaired until the utility maintenance activity 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:**

The City of Kingsport, Tennessee  
415 Broad Street  
Kingsport, Tennessee 37660  
Suite 600, James K. Polk Building 505 Deaderick Street  
Nashville, Tennessee 37243-0337

**TO THE STATE:**

State of Tennessee  
Department of Transportation  
Brian Dickerson

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

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort, and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 1st day of August, 2023.

\_\_\_\_\_  
PATRICK W. SHULL, MAYOR

ATTEST:

\_\_\_\_\_  
ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
RODNEY B. ROWLETT, III, CITY ATTORNEY