

RESOLUTION NO. 32249

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A LICENSE AGREEMENT WITH THE STATE OF TENNESSEE, ACTING BY AND THROUGH ITS COMMISSIONER OF TRANSPORTATION, AND THE INDUSTRIAL DEVELOPMENT BOARD, IN SUBSTANTIALLY THE FORM ATTACHED, FOR A TEMPORARY FORTY (40') FOOT LOCKED GATE OPENING IN THE STATE'S CONTROLLED ACCESS FENCE AT MILE MARKER 1.569 ADJACENT TO I-75N, WITH A TERM THAT WILL AUTOMATICALLY TERMINATE UPON COMPLETION OF THE CONSTRUCTION PROJECT, WITH THIS BEING AT AN ANNUAL FEE OF ZERO DOLLARS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a License Agreement with the State of Tennessee, acting by and through its Commissioner of Transportation, and the Industrial Development Board, in substantially the form attached, for a temporary forty (40') foot locked gate opening in the State's controlled access fence at mile marker 1.569 adjacent to I-75N, with a term that will automatically terminate upon completion of the construction project, with this being at an annual fee of zero dollars.

ADOPTED: October 1, 2024

/mem

This Instrument prepared by:
State of Tennessee
Department of Transportation
Region 2
7512 Volkswagen Drive
Chattanooga, TN 37416
(Local Government)

Project No. I-75-1(7)0
Tract: 1
Hamilton County
Request No. 7199

LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of this the _____ day of _____, 2024 by and between THE STATE OF TENNESSEE, acting by and through its Commissioner of Transportation, (hereinafter referred to as “State”) and the **CITY OF CHATTANOOGA, TENNESSEE** and the INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA (hereinafter referred to as “Licensees”).

WHEREAS, Licensees desire to use a portion of the Licensed Premises for a temporary forty (40’) foot locked gate opening in the state’s controlled access fence at mile marker 1.569 adjacent to I-75 N for the purpose of constructing storage tanks in Hamilton 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** – Licensees are hereby granted permission to use the Licensed Premises for a temporary forty (40’) foot gated opening in the state’s controlled access fence at mile marker 1.569 adjacent to I-75 N for the purpose of constructing storage tanks in Hamilton County, Tennessee, being more specifically described in Exhibit A, attached hereto, and made a part of this License Agreement (hereinafter referred to as the “Improvements”).
2. **USE OF LICENSED PREMISES** - Licensees shall be permitted to use the Licensed Premises **for a public use purpose, subject to cancellation for failure to continue public use** for the construction of the Improvements. Licensees may only use the Licensed Premises between 9:00 pm eastern time and 6:00 am eastern time Sunday through Thursday. The opening shall be used for large construction equipment only and shall not be used as a staff entrance. Licensees shall not be permitted to use the Licensed Premises for any other purpose or at any other times of the day except by prior written permission of the State. Licensees’ 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** – Licensees shall pay \$0 per year to the State for the use of the Licensed Premises.
4. **TERM** – This License Agreement shall be effective upon execution by the parties and shall terminate upon the completion of construction of the project. Licensees

shall restore the Licensed Premises to its original condition upon termination of this Licensed Agreement.

5. **ACCESS** – Licensees shall be provided access to the Licensed Premises upon coordination with TDOT Region 2 Operations for all planned times of the uses authorized herein. TDOT shall be provided a key to the gate placed on the controlled access fence.
6. **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. Licensees are responsible for providing traffic control for this work zone in accordance with the requirements of the current *Manual on Uniform Traffic Control Devices*. Final entrance plans, including traffic control and signing, shall be reviewed and approved by TDOT before work may begin. If proper traffic control is not in place, TDOT may order Licensees to stop work until proper traffic control is put in place.
7. **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. LICENSEES shall provide access, at all times, for firefighters and accompanying equipment.
8. **DAMAGE TO STATE PROPERTY** - Licensees shall be liable for any damage to state property resulting from Licensees' 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.
9. **LIABILITY** - Licensees shall assume all liability for claims arising out of conduct on the part of the Licensees for which they 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, Licensees shall require that any contractor of Licensees 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.
10. **INSURANCE** - The Licensees, their successors and assigns, agree 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 Licensees' 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, Licensees shall require that any contractor of Licensees 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.

11. **PERMITS** – Licensees are 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, Licensees shall notify Tennessee One Call regarding any excavation(s) and shall ensure that the provisions of TCA 65-31-101 et seq. are met.
12. **COMPLIANCE** – All work on the Licensed Premises 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 Licensees 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, Licensees 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 Licensees.
13. **TITLE VI ASSURANCES** – The Licensees for themselves, their 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 Licensees 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.
14. **AMERICANS WITH DISABILITIES ACT ASSURANCES** – The Licensees for themselves, their 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 Licensees 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 Licensees further agree that if any pedestrian facilities are constructed, maintained, or operated on the property described in this License, the Licensees 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).
15. **REVERSION** – In the event that the Licensed Premises is needed for a transportation project, Licensees 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 highway 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 Licensees' use of the Licensed Premises may cease or be impaired until the utility maintenance activity is completed.

- 16. **ADJACENT PROPERTY** – Licensees state and affirm 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 Licensees' adjacent or nearby property for protection under Section 4(f).
- 17. **NO PERMANENT OWNERSHIP** – Licensees do not currently possess, nor through this Agreement acquire, permanent ownership or control over the Licensed Premises.
- 18. **TERMINATION** – The State may terminate this License at will with 60 days written notice to Licensees.
- 19. **ASSIGNMENT** – The License shall not be transferred, conveyed or assigned to another party without prior written approval from the State.

TO THE LICENSEES:

City of Chattanooga, Tennessee
Real Property Division
Attention: Gail Hart
101 East 11th Street, Suite G-18
Chattanooga, Tennessee 37402

TO THE STATE:

Department of Transportation
Brian Dickerson, Excess Land Office
Suite 600, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0337

Industrial Development Board of the City of Chattanooga
101 East 11th Street
Chattanooga, Tennessee 37402

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

LICENSEES:

CITY OF CHATTANOOGA, TENNESSEE

Richard J. Beeland
Administrator of Economic Development

DATE: _____

INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA

DATE: _____

APPROVED AS TO FORM

License Agreement
Request No. 7199

AND LEGALITY:

Attorney for Licensees

DATE: _____

STATE OF TENNESSEE

Howard H. Eley
Deputy Governor and Commissioner
Tennessee Department of Transportation

DATE: _____

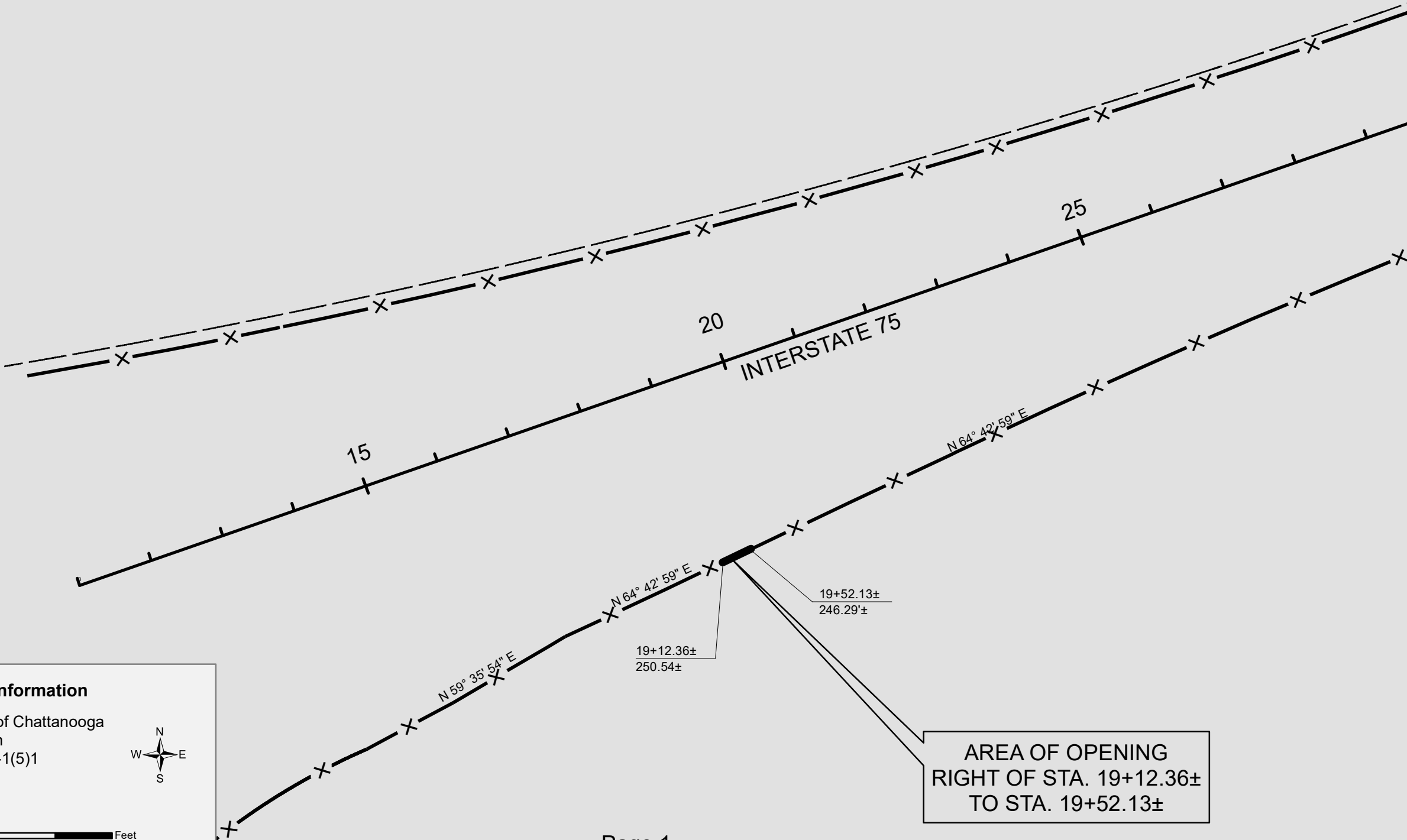
APPROVED AS TO FORM
AND LEGALITY:

Leslie South, General Counsel
Tennessee Department of Transportation

DATE: _____

City of Chattanooga - Access Opening - I-75

POT-1+00.00



AREA OF OPENING
RIGHT OF STA. 19+12.36±
TO STA. 19+52.13±

Map Information

Requestor: City of Chattanooga
County: Hamilton
Federal No: I-75-1(5)1
State No: N/A
Tract No: 1

