Agreement Number: 080064

Project Identification Number: 110689.00

CFDA#: 20.205

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20___ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and Shelby County (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Highland Oaks Elementary School

A. PURPOSE OF AGREEMENT

A.1 Purpose:

a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") to provide departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the Project will be undertaken and completed.

b) In the event this Agreement includes a Safe Routes to School Grant for non-infrastructure activities, a Detailed Grant Budget as further described in Attachment 1 attached hereto and by this reference made a part hereof (hereinafter called the "Project") shall provide line-item amounts as applicable only to expenses incurred during the period between the effectual date of this Agreement and the completion date shown in Section B.2(c) hereof. Expenditures, reimbursements, and payments under this Grant Agreement shall adhere to the Grant Budget. The Agency may vary from a Grant Budget line-item amount by up to fifteen percent (15%) 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 Agreement amount detailed in the Grant Budget and provided that written approval of any such variance is received prior to the expenditure. The percentage of expenditure for non-infrastructure work versus infrastructure work also cannot be changed. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Agreement.

A.2 Modifications and Additions:

a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by: Agency or Project
Environmental Clearance by:	**Agency**	**Agency/Project**
Right-of-Way by:	**Agency**	**Agency/Project**
Utility Coordination by:	**Agency**	**Agency/Project**
Construction by:	**Agency**	**Agency/Project**

b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.

c) A full time employee of the Agency shall supervise the herein described and assigned phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

a) This provision B.2(a) does not apply.

b) This provision B.2(b) does not apply.

c) The Agency agrees to complete the project within two (2) years from the date of this Agreement. If the Agency does not complete the Project within in this time period, the Project will be terminated and any federal and/or state funds received

by the Agency must be refunded and all work completed after the expiration date of the Agreement will not be reimbursed by the Department.

d) This provision B.2(d) does not apply.

B.3 Environmental Regulations:

a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.

b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

B.4 Plans and Specifications

a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.

c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for

the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.

b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.

d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if

the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.

d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

B.7 Utilities

a) This provision B.7(a) does not apply.

b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:

1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.

2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.8 Railroad

a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

B.9 Safe Routes to School Requirements

a) If the herein described project is funded with Safe Routes to School (SRTS) funds, Section B.9 shall apply.

b) The Agency shall provide pre and post Parent Surveys and Student Tally Sheets for each school under this Agreement:

1) The Pre Parent Surveys and Student Tally Sheets are to be completed and returned with this Agreement.

2) The Post Parent Surveys and Student Tally Sheets are to be sent no later than six (6) months from the completion of the infrastructure as defined herein with the final reimbursement request.

3) The final reimbursement shall not be paid until the Post Parent Surveys and Student Tally Sheets are received by the Department.

4) These surveys and tallies are to be completed on those specific forms sent to the Agency with the detailed instruction letter. (Required forms and instructions are available at: www.saferoutesindo.org/resources)

c) The Agency shall obtain prior approval from the Department before purchasing any equipment and/or products under this Agreement. If prior approval is received, procurement shall be made on a competitive basis, in accordance with applicable state and local laws and regulations provided that the procurement conforms to applicable federal law and the standards identified in 49CFR18.36.

d) The Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Local Programs Development Manager, for such decision and non-competitive procurement. Further, 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.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its

application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**
There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**
The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**
There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

a) This Agreement 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 Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, 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.2 General Compliance with Federal, State, and Local Law:

a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. 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.6 Rights and Remedies Not Waived:

a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department Not Obligated to Third Parties:

a) The Department shall not be obligated or liable hereunder to any party other than the Agency.

D.8 Independent Contractor:

a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement 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.

b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. Accordingly, except to the extent that the Department is responsible for maintaining such part of the project that lies on the State system of highways, as provided in T.C.A. Sections 54-1-126, 54-5-201, and 54-5-202, the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of the project, including maintenance and operation of all electrically operated devices together with their related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project.

b) This provision D.9(b) does not apply.

c) In the event the Project is located on State Highway Right-of-Way, the Agency shall have the sole responsibility - at its own expense - of maintaining and keeping the project in good repair and in a safe and clean condition, including picking up litter that may accrue at the site.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

a) **DBE Policy:**

It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) **DBE Obligation:**

The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color,

national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

a) In accordance with the Tennessee Department of Transportation regulations governing contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subcontractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in

this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;

2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and

4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

a) 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. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

a) The Agency warrants that no 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 Agreement.

b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of it's subcontracts, the following provision:

1) "No 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 Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

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 Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension,

continuation, renewal, amendment, or modification of any federal agreement, 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 grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," 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 sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.

b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the Project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

a) The Agency shall permit, and shall require its contractor, subcontractor or materials vendor to permit, the Department's authorized representatives and authorized

agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any contractor, subcontractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

a) In the event that an Agency expends $500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.

b) 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 agreement between the Agency and the licensed independent public accountant shall be on an agreement 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.

c) 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 agreement 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.22 Termination for Convenience:

a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement 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.

b) In the event that the Project herein described includes the state highway system, the Department may rescind its authorization for the location of the Project upon state highway right-of-way at any time by giving the Agency at least ninety (90) days advance written notice thereof, and the Agency shall be obligated to close the Project to public use and remove it at the Agency's expense and restore the premises to the satisfaction of the Department by or before the effective date of such termination.

D.23 Termination for Cause:

a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement 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 Agreement by the Agency.

b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.

c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Completeness:

a) This Agreement 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 Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

b) The Agency certifies, by its signature hereunder, that it has no contractual arrangement with a third party that will conflict with or negate this agreement in any manner whatsoever.

D.27 Amendment:

a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

a) The obligations of the parties to this Agreement 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, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Costs:

This provision D.31 does not apply.

D.32 Third Party Liability:

a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

This provision D.35 does not apply.

D.36 Investment of Public Funds:

a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		**Open to Public and Vehicular Traffic**
$1.00 - $200,000	=	5 Years
>$200,000 - $500,000	=	10 Years
>$500,000 - $1,000,000	=	20 Years

b) Projects over $1,000,000 carry a minimum 25 year open to public and vehicular traffic requirement and will be subject to individual review.

c) This provision D.36.(c) does not apply.

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

Shelby County

By: _____
Mayor

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

By: _____
Gerald F. Nicely
Commissioner

APPROVED AS TO FORM AND LEGALITY

By: _____
Attorney

APPROVED AS TO FORM AND LEGALITY

By: _____
John Reinbold
General Counsel

EXHIBIT "A"

Infrastructure Budget

CONTRACT NO.: 080064

PROJECT IDENTIFICATION NO.: 110689.00

PROJECT DESCRIPTION: Highland Oaks Elementary School

TYPE OF WORK: Construction and reconstruction of 20,490 square feet of sidewalks within the vicinity of Highland Oaks Elementary School. Project also includes a vehicle feedback sign. The purpose of the project is not location dependent. The purpose of the project shall be accomplished in accordance with the project application, budget and/or scope of work on which approval of the project was based, AASHTO standards and Exhibit B (which are the AASHTO path standards). The application, budget and/or scope of work may be amended from time to time as agreed to by the parties and when amended will serve as the revised project standard.

FUNDING:

PHASE	FUNDING SOURCE	FED %	STATE %	AGNECY %	ESTIMATED COST
PE	Safe Routes to School (SRTS)	100	0	0	$18,500.00
PE	Safe Routes to School (SRTS)	100	0	0	$1,500.00
Environ. Dept. Oversight	Safe Routes to School (SRTS)	100	0	0	$500.00
Final Design Dept. Oversight	Safe Routes to School (SRTS)	100	0	0	$200.00
PHASE	**FUNDING SOURCE**	**FED %**	**STATE %**	**AGNECY %**	**ESTIMATED COST**
ROW	Safe Routes to School (SRTS)	100	0	0	$15,000.00
PHASE	**FUNDING SOURCE**	**FED %**	**STATE %**	**AGENCY %**	**ESTIMATED COST**
CONST	Safe Routes to School (SRTS)	100	0	0	$188,375.00
CONST Dept. Oversight	Safe Routes to School (SRTS)	100	0	0	$3,694.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure of the funds shown herein above or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provides funding for the development of the herein-described project as denoted above, which is comprised of 100% federal funds.

Legislative Authority:

SRTS: 23 U.S.C.A., Section 401 et seq.

SAFETEA-LU, Section 1404

EXHIBIT "B"

BICYCLE PATH STANDARD

Bicycle paths shall be constructed on a compacted subgrade using a four (4) inch course of mineral aggregate, Type "A" Base, Grading "D" and a two (2) inch course of Bituminous Plant Mix Base (Hot Mix) Grading "E". The minimum width of bicycle paths shall not be less than six (6) feet for a one-way path. It should be recognized, however, that one-way paths will often be used as two-way facilities unless effective measures are taken to assure one-way operation. The recommended width for a two-way, shared use path is ten (10) feet but a reduced width of eight (8) feet may be used as a minimum.

WALKING PATH STANDARD

Walking paths shall be constructed on a compacted subgrade using four (4) inches of mineral aggregate, Type "A" Base, Grading "D" and four (4) inches of Portland cement concrete, Class "A". The minimum width of walking paths shall be not less than five (5) feet. It should be noted that a five (5) foot path will require signing prohibiting bicycles.

The Local Agency may choose to use either of the above standards for the composition of the trail whenever the use of the path will include both cycling and walking, provided the minimum widths contained in each of the standards shall remain unchanged.

Bicycle Safety, Pedestrian Safety, Health and Stranger Awareness

Objective: Create a comprehensive unit on bicycle safety, pedestrian safety and stranger safety to effectively educate children from preschool through the fifth grade.

Aims Multimedia Inc.

McGruff on the Law: Bicycles and Pedestrians **$79.95**

McGruff explains why bicycle and pedestrian laws protect bicyclists and other people.

Students in 2nd-5th grade will be trained on proper bicycle safety and laws during the month of August. This video will also be shown during the first Open House meeting to the parents and will be available for parent use.

Safely—Walk to School (2nd Edition) **$49.95**

Greg and friends walk to school safely.

Students in 2nd-5th will be trained in the proper and safe way to walk to school during the month of August. This video will also be shown during the first Open House meeting to the parents and will be available for parent use.

Bicycle Safety and You **$49.95**

A police officer advises students on how to make bicycle riding safe and fun.

All students who make the decision to ride a bike to school will be encouraged to watch this video. A separate after school meeting will be held for students who are going to ride their bikes to school and their parents. This video will be shown to educate students and parents on bicycle safety.

Health: Exercise, Nutrition and Sleep **$49.95**

Amy and Mark, having skipped gym class, are confronted by a visitor who calls herself "PT" (Personal Trainer).

Students in 3rd grade will participate in a lesson on health and exercise in November and again in March.

McGruff on Dangerous Strangers **$79.95**

McGruff reviews practical ways children can stay safe on the way to and from school.

Students in 4th and 5th grade will participate in this second lesson on personal safety during the second semester.

McGruff's Guide to Personal Safety **$79.95**

Illustrates the difference between the actions of people whose close contact is natural and those who may put a child's safety at risk.

Students in 3rd grade will participate in training on personal safety during the month of September.

Stranger Danger: Playing it Safe **$79.95**

Playing It Safe shows children exactly what to do if approached by a stranger.

Students in 4th and 5th grade will participate in personal safety training during the months of September and October.

Submitted by: Michael Oakes, County Engineer
Name & Title of Person Submitting Budget
(901) 545-4380

MOakes 1.31.08
Signature & Date

TDOT Recommended Approval: Diana Benedict, SRTS Coordinator
(615) 253-2421

Diana Benedict
Signature & Date

Safety Rules and You **$49.95**
Children will learn that everybody needs to be safe—even adults.
Students in 2nd grade will learn general safety rules during the first semester of school and will review these rules during the second semester.

Kidproofusa. com
Stranger Safety DVD **$12.99**
Important safety tips for parents and kids, including an up-to-date way for kids to think about 'strangers.'
This video will be part of the Parent Training Program that gives parents information about safety and ways to talk with their child regarding strangers.

Stranger Smart Classroom Kit (2 @ $99 each) **$198.00**
Teach students to make safe choices around strangers.
Third grade teachers will use the kits for classroom discussion on strangers and safety. Teachers will use the kits throughout the year, beginning in August.

Big Kids.Com
Danger Rangers: Mission 547 Safety Rules **$14.95**
Exciting adventures include bike, pool and fire safety.
A lesson on safety for 2nd and 3rd grade students in May to encourage them to be safe over the summer time.

Elephants Never Forget **$7.99**
This short video will accompany safety instruction for 2nd grade students.

Library Video Company
Fitness for Kids **$14.95**
Covers the basics of nutrition and exercise for children.
Second grade students will watch this video as part of a lesson on health and nutrition during November.

Safe Kids 101: Preparing Kids to Stay Safe at Home and in the Community **$19.95**
Covers important safety tips.

Parent Resource Guide—will be located in the Parent Library for parental use.

Exercise: It's Good for You! **$49.95**
Encourages children to exercise and set personal health goals.
Students in 4th and 5th grade will participate in a lesson on health and nutrition during November.

Peaceful Playgrounds
The Complete Walking Program Kit (6 kits @ $399.00 each) **$2394.00**
It includes 12 pedometers for the students, workbooks, certificates and more.
This is a great program for 4th grade students to use throughout the school year to encourage walking to school and fitness (walking during recess).

Amazon.com *all books will be available for student, teacher, counselor and parent use. Many of the books will be used to support the curriculum focusing on safety, personal safety, and health and nutrition, as well as, generating interest in bicycling and walking.*

Bicycling With Children: A Complete How-To Guide	$14.95	
Safety on Your Bicycle	$16.58	
Bicycles Are Fun (Safety Town)	$5.90	
Bicycle Safety (Pancella, Peggy. Be Safe)	$7.99	
Bicycle Science Projects: Physics on Wheels	$26.60	
Sally Jean, the Bicycle Queen	$16.00	
Major Taylor: The Extraordinary Career of a Champion Racer	$20.95	
Bicycle Mystery (Boxcar Children)	$4.50	
Samantha's Blue Bicycle	$5.89	
Go Fly a Bike! The Ultimate Book of Bicycle Fun and Science	$16.99	
Bicycle Race	$6.95	
Bicycles (Transportation Around the World)	$25.36	
Marta y La Bicicleta	$7.95	
Bicycle (Great Inventions)	$7.90	
Bicycle Safety: Safety Sense Series	$19.93	
K-Gr2 Lowen outlines safety rules for youngsters, as Pickles and Roy, two cartoon canine pals teach examples of both right and wrong behaviors.		
Bicycle Safety: Living Well (teaches the fundamentals of bicycle safety)	$25.64	
Look Out! A Story About Safety on Bicycles	$28.50	
The Bicycle Man	$16.00	
Bicycles (How It's Made)	$6.95	
Muffy's Bicycle	$14.52	
Bicycle Across America	$14.95	
Exercise (Rookie Reader--about Health)	$5.95	
Teaching Children about Health: A Multidisciplinary Approach	$97.95	
	TOTAL	**$414.90**

League of American Bicyclists—*all materials from the League of American Bicyclists will be used in the training of students who wish to ride their bicycles to school.*

Enjoy the Ride DVD **$32.00**
Teaches children how to ride bicycles confidently in and around traffic.
This video will be used as part of the training program for students interested in riding their bikes to school.

Bike Education Commuter Student Manuals (60 copies @$10/copy) **$600.00**
Learn and teach others how to commute by bicycle--safely and efficiently.

Bike Education Road I (60 copies @ $10/copy) **$600.00**
The standard in bike education. Includes class sheets and certificates.

Bike Education Road II (60 copies @ $10/copy) **$600.00**
Continuation of bicycle safety from Bike Education Road I.

US Safety Vests and Apparel
Economy Safety Vests—Soft Mesh (50) – *Training and for "DADS" an extension of the PTA who assist children walking to and from school* **$378.00**
Ellison
Bicycle Die Cut **$85.00**
Bicycle Die Cut large **$120.00**
Traffic 4 Die Set **$120.00**

McGruff Safety --*materials to promote walking and riding to school while emphasizing safety.*

Bicycle Safety Tips Bookmarks (2000)	**$526.00**
McGruff Bike-Rite Reflector Set (1000)	**$938.00**
Reflective Sticker Sheet (1500)	**$600.00**
Stranger Danger Bookmarks (2000)	**$660.00**
McGruff Child Safety Pencils (40 packs—50 per pack)	**$600.00**

Additional Materials and Services:

Walkie-talkies (10 @ $100.00 each) *Two-way radios to aid parent volunteers assisting with students biking and walking to school (also to be used for activities/events).*	**$1000.00**
Digital Camera for documentation	**$90.00**
Bicycles (5) for training purposes Sizes: 12", 16", 2 @ 18" and 1 adult (5 @ $100.00) *Adult bicycle is for trainer (all bikes are SRTS property)*	**$500.00**
Obstacle course of equipment - Spectrum cones 9" (20 @ $10.88 each)	**$217.60**
Printed t-shirts (800 @ $5.00 each) *Encouragement campaign at Health Fair Events for students, staff and volunteers*	**$4,000.00**
Door Prizes for annual Health Fair Events (2008 & 2009) *Examples include safety vests, bicycle helmets, pedometers, sweat bands, walkman radios, whistles, reflectors, compasses, knee pads, water bottles, gift certificates for walking shoes.*	**$500.00**
Training of Coordinators (2008, 2009, and 2010) *Expenses such as certification, mileage, lodging, instructor fees, etc.*	**$1000.00**
Pre-program data assessment	**$500.00**
Post-program data assessment *Engineering services to be billed at $120.00 per hour for pre-and post SRTS surveys. Compilation to be completed by the National Center for SRTS (www.saferoutesinfo.org).*	**$500.00**
Guest speaker for Community Health Fair/Special Event *Speaker from the League of American Bicyclists, Bikes Belong, and/or local motivational speaker.*	**$1000.00**
Overtime Hours for Sheriff's Department for special events like the Community Health Fair, Walk to School Day, Special Events for 2009-2010 SRTS Program *Overtime is billed at $70.00 per hour and includes 2 years of events.*	**$3000.00**
TOTAL BUDGET:	**$21,814**