

RESOLUTION NO. 28562

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO EXECUTE AGREEMENT NO. C-16-002-501 WITH DONNA FAYE GILBERT FOR THE PROPERTY LOCATED AT 6012 MILL ROAD, CHATTANOOGA, TN, TO BE USED AS A FILL SITE FOR PUBLIC WORKS EXCESS SOIL AND FILL.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Public Works to execute agreement No. C-16-002-501 with Donna Faye Gilbert for the property located at 6012 Mill Road, Chattanooga, TN, to be used as a fill site for Public Works excess soil and fill.

The property owner has agreed to allow Public Works to fill her property free in exchange for the elevation of the property being raised by the fill.

ADOPTED: March 22, 2016

/mem

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: 3/3/2016

Preparer: Britt Elmore

Department: Public Works

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # \_\_\_\_\_ Council District # 3

A City Council resolution is requested to approve agreement No. C-16-002-501 with Donna Faye Gilbert. The property, located at 6012 Mill Road Chattanooga TN, is to be used as a fill site for public works excess soil and fill. The property owner has agreed to allow Public Works to fill on her property for free in exchange for the elevation of the property being raised by the fill.

Name of Vendor/Contractor/Grant, etc. \_\_\_\_\_  
Total project cost \$ N/A  
Total City of Chattanooga Portion \$ -  
City Amount Funded \$ -  
New City Funding Required \$ \$ -  
City's Match Percentage % 0%

New Contract/Project? (Yes or No) Yes  
Funds Budgeted? (YES or NO) YES  
Provide Fund \_\_\_\_\_  
Provide Cost Center S-16-002  
Proposed Funding Source if not budgeted N/A  
Grant Period (if applicable) \_\_\_\_\_

List all other funding sources and amount for each contributor.

| Amount(s) | Grantor(s) |
|-----------|------------|
| _____     | _____      |
| _____     | _____      |
| _____     | _____      |

Agency Grant Number \_\_\_\_\_

CFDA Number if known \_\_\_\_\_

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: \_\_\_\_\_

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

**FILL SITE WORK AGREEMENT, No. 16-002-501**

This Fill Site Work Agreement ("Agreement") establishes the terms and conditions governing the City of Chattanooga's ("City") use of the Property more fully described herein.

1. **General Terms.** This Agreement is entered into on the stated Effective Date between the Property Owner and the City (collectively "Parties") as defined more fully herein, for the purpose of certain work on a portion of the Property (the "Site"), as outlined in the diagram attached hereto as **Exhibit A** and incorporated herein by reference.

In consideration of the mutual promises and covenants, the Parties agree as follows:

|                          |   |
|--------------------------|---|
| Effective Date           |   |
| Term                     | Four (4) years from the Effective Date, with an option to renew for an additional term of one (1) year. Parties must approve the renewal in writing at least thirty (30) days before the expiration of the current term.  |
| Property Owner           | Donna Faye Gilbert  |
| Property Address         | 6012 Mill Road, Hixson TN 37343 (the "Property")  |
| Tax/Parcel ID            | 100J B 001  |
| Notice to Property Owner | Donna Faye Gilbert<br>7968 East Brainerd Rd.<br>Chattanooga, TN 37421   |
| Notice to City           | Britt Elmore<br>Civil Engineer-Stormwater<br>City of Chattanooga, Department of Public Works<br>1250 Market Street, Suite 2100<br>Chattanooga, TN 37402-2713<br>(423) 643-6048<br><br>Copy to: Office of the City Attorney<br>100 East 11th Street, Suite 200<br>Chattanooga, Tennessee 37302<br>(423) 643-8250 |

2. **Consideration.** In consideration for the right to enter the Property for the purposes of depositing soil fill on the Site and for the exclusive right of use of the Site for the term of this Agreement, the City agrees to perform the following:

- (a) Install temporary fencing along the Mill Road frontage for purposes of discouraging illegal dumping;
- (b) Deposit soil fill to raise the elevation of the Site; and
- (c) Stabilize the Site with grass/vegetation to prevent erosion of the soil.

3. **Exclusive License of the Site.** The Property Owner grants the City an exclusive license to perform the work described herein and deposit soil fill on the Site Monday through Friday between

the hours of 7:00 a.m. and 4:30 p.m. The City reserves the right to make exceptions to the schedule due to unforeseen circumstances. It is the responsibility of the Property Owner to make all reasonable efforts to prevent unauthorized dumping on the Site.

4. Assignment. Property Owner shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Property Owner's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Property Owner of Property Owner's obligation to perform all other obligations to be performed by Property Owner hereunder for the term of this Agreement.

5. Termination. The City reserves the right to cancel, suspend, or abandon the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Property Owner at the notice address provided in Paragraph 1. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination.

6. Hold Harmless and Indemnification Agreement. The Property Owner assumes the risk and agrees to indemnify the City and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property (collectively, "Claims") brought by any person, which arise from, or are in any way related to work performed on the Site. Such Claims shall also include Claims for non-payment of labor and materials. Property Owner further agrees to defend, pay all costs of defense, including reasonable attorney's fees, and/or any judgment or cost for any claim or suit brought against City. This indemnification of City shall survive the expiration or sooner termination of this Agreement.

7. Third-Party Claims. Subject to the provisions of T.C.A. sections 29-20-101 *et seq.*, City shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to property and/or injury to privacy or reputation, caused by any activities conducted by City employees in connection with this Agreement, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of Property Owner.

8. Governing Law. This Agreement shall be governed by the laws of the State of Tennessee.

9. Notice. Any notice that either party may or is required to give, shall be given by mailing the same, postage prepaid, to the Notice address provided in Paragraph 1 of this Agreement.

10. Notice to Sell Property. The Property Owner shall notify the City, to the Notice address provided in Paragraph 1 above, within ten (10) calendar days of listing the Property for sale. The Property Owner shall disclose this Agreement in writing to the buyer of the Property and his or her real estate agent.

11. Representations. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement on behalf of him or herself, their respective corporation, sole proprietorship, partnership or other entity. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance

with its terms. This Agreement is not intended in any way to dedicate the Site for public use by the City. The City, in executing this Agreement and performing this work, is not accepting the dedication thereof as a public facility nor assuming any future right or duty to maintain same unless such right or duty existed prior to the execution hereof. This Agreement is not intended to affect or interfere with the pre-existing rights or duties of the Property Owner and is solely intended to grant a license to the City for purposes of performing the work on the Site described in Paragraph 2.

12. Warranties. City makes no warranties as to the suitability, marketability or fitness for use of any particular purpose of the Site after the work described herein is performed and upon termination of this Agreement.

13. Amendments. Only a writing executed by a party hereto may amend this Agreement. Any amendments must be agreed to in writing by all signatories to this Agreement.

14. Dispute Resolution. Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement, or breach thereof, shall be subject to mediation in Chattanooga, Tennessee, in accordance with the following provisions:

a. The mediation shall be conducted by a mediator mutually acceptable to both Parties.

b. The Parties agree to share equally in the expense of the mediation.

c. Such mediation may include the Parties or any other person or entity that may be affected by the subject matter of the dispute.

d. Unless the Parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order, or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.

15. Force Majeure. If the Site is damaged by any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of Property Owner, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, terrorist acts, strikes, labor disputes, failure to pay utilities or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, Property Owner is hereby released by City from any damage so caused thereby.

16. Non-discrimination. In performing this Agreement, Property Owner shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation.

17. Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights or elections, will

not prejudice such party from later enforcing or exercise the same or any other provisions, rights, or elections which it may have under this Agreement.

18. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Paragraph 18 shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

19. Entire Agreement. The Parties acknowledge that this Agreement expresses their entire understanding, and that there have been no warranties, representations, covenants or understandings made by either party to the other except such as are expressly set forth in this Paragraph 18. The Parties further acknowledge that this Agreement supersedes, terminates and otherwise renders null and void any and all prior Agreements or contracts, whether written or oral, entered into between the Property Owner and the City with respect to the matters expressly set forth in this Agreement.

The Parties have executed this Agreement, effective on the Effective Date stated herein.

**CITY OF CHATTANOOGA**

By: JUSTIN HOLLAND  
Public Works Administrator

Signature: [Handwritten Signature]

Date: 5/5/16

By signing this Agreement, I represent that I am the legal Property Owner of the Property described herein and that I understand and agree to the terms outlined in this Agreement.

**PROPERTY OWNER**

By: DONNA FRANK GILBERT Steve R. Gilbert  
Name of Legal Property Owner

Signature: [Handwritten Signature] [Handwritten Signature]

Date: 18 April, 2016

18 April 2016

**Exhibit A  
Diagram of Fill Site**

RESOLUTION NO. 28562

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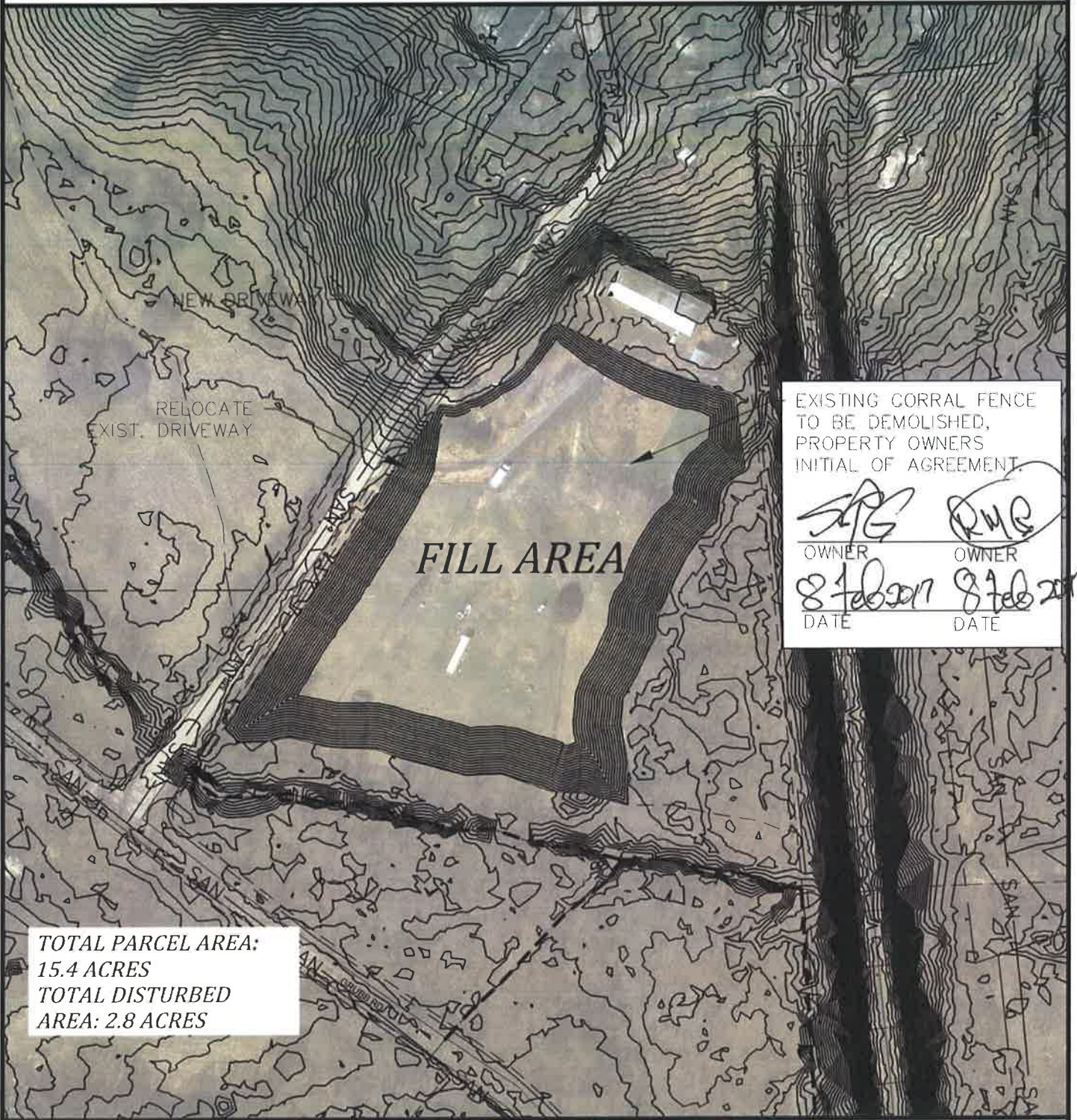
The property owner has agreed to allow Public Works to fill her property free in exchange for the elevation of the property being raised by the fill.

ADOPTED: March 22, 2016

/mem

*Donna Faye Gilbert*  
*Donna Faye Gilbert*  
18 April, 2016

EXHIBIT A



EXISTING CORRAL FENCE  
TO BE DEMOLISHED,  
PROPERTY OWNERS  
INITIAL OF AGREEMENT.

|            |            |
|------------|------------|
| <i>SLG</i> | <i>RMB</i> |
| OWNER      | OWNER      |
| 8 Feb 2017 | 8 Feb 2017 |
| DATE       | DATE       |

**TOTAL PARCEL AREA:**  
15.4 ACRES  
**TOTAL DISTURBED**  
**AREA: 2.8 ACRES**

CITY OF CHATTANOOGA FILL SITE  
6012 MILL ROAD  
CITY OF CHATTANOOGA/HAMILTON COUNTY



|  |   |                           |  |
|--|---|---------------------------|--|
| PREPARED BY AND FOR<br>THE CITY OF CHATTANOOGA |   | SCALE:<br>1"=150'         | CONTRACT NO.:S-16-002                  |
| ADMINISTRATOR:<br>JUSTIN HOLLAND               | CITY ENGINEER:<br>WILLIAM C.<br>PAYNE, P.E. | DRAWN: BAE<br>DESIGN: BAE | DRAWING:<br>6012MILL-FILL-SWPPP-Nx.DWG |
|  |   | CHECKED: MDH              | JANUARY 2017                           |