RESOLUTION NO. 28945

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A PARTNERSHIP AGREEMENT WITH THE GOLD BUILDING – A DEFOOR BROTHERS DEVELOPMENT, PROJECT NO. T-17-002-801, FOR THE WESTIN CHATTANOOGA LOCATED AT 801 PINE STREET AND TO ACCEPT A CONTRIBUTION TOWARDS THE COST OF ELEVEN (11) PEDESTRIAN LIGHT POLES, CONDUITS, AND INSTALLATION, IN THE AMOUNT OF TWENTY-SEVEN THOUSAND EIGHT HUNDRED TWENTY-SEVEN AND 03/100 DOLLARS (\$27,827.03).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Transportation to enter into a Partnership Agreement with The Gold Building – A DeFoor Brothers Development, Project No. T-17-002-801, for the Westin Chattanooga located at 801 Pine Street and to accept a contribution towards the cost of eleven (11) pedestrian light poles, conduits, and installation, in the amount of

ADOPTED: February 21, 2017

/mem

\$27,827.03.



CITY OF CHATTANOOGA PUBLIC/PRIVATE PARTNERSHIP STANDARD FORM AGREEMENT

This PUBLIC/PRIVATE PARTNERSHIP STANDARD FORM AGREEMENT ("Agreement") is entered into by the City of Chattanooga, a Tennessee Municipal Corporation, (hereafter "City") and the Developer identified below, subject to the following terms and conditions:

1. <u>General Terms</u>

Effective Date	, 2017	
Developer Name	DeFoor Brothers Development, LLC	
Developer Entity Type and Address	The Gold Building - DeFoor Brothers Development, LLC, 801 Broad Street, Suite 200 Chattanooga, TN 37402	
Project Name	Westin Chattanooga	
Project Number	T-17-002-801	
Project Location	801 Pine Street	
Term	Complete Installation	
Source of Project Funds	Developer	
Project Purpose	(11) Pedestrian Lights	
Communication to City	City of Chattanooga Transportation Department Attn: Administrator 1250 Market Street Chattanooga, TN 37402	
Communication to Developer	Ken DeFoor, Partner The Gold Building - DeFoor Brothers Development, LLC 801 Broad Street, Suite 200 Chattanooga, TN 37402	
Communication to City	Gregory E. Herold 1250 Market Street, Suite 3030 Chattanooga, TN 37402 gherold@chattanooga.gov	
City	1. The City is the sole owner of the Pedestrian Light Poles and thus is the only entity approved to order the poles fabricated by Sun Valley at a	

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Responsibilities	cost of \$675.00 each and light fixtures at a cost of \$894.73, by a competitive bid process. Once payment has been received from the Developer, the poles and fixtures shall be ordered. 2. The City shall be responsible for the installation of the electrical wiring, the PLP's, and light fixtures at a cost of \$960.00 each to be paid by the Developer. 3. The City and the Electric Power Board of Chattanooga (EPB) will be responsible for maintenance of all standard light fixtures and poles within the public rights-of-way, as well as the costs for electricity usage for said fixtures.
Developer Responsibilities	The Gold Building - Developer Responsibilities: 1. The Gold Building. The Developer shall construct the streetscape along all public streets that are part of the Westin Chattanooga located at 801 Pine Street. The work shall include foundations for the Pedestrian Light Poles (PLP), conduits and handhold boxes. 2. The Gold Building - Developer shall provide a contribution of \$27,827.03 towards the cost of (11) PLP's and light fixtures including installation and wiring at cost of \$2,529.73 each.

- 2. <u>Project Purpose</u>. The Parties enter into this Agreement for the Project Purpose stated in Section 1.
- 3. <u>Responsibilities</u>. The City and Developer agree to undertake the responsibilities as set forth in Section 1.
- 4. <u>Non-performance</u>. In the unlikely event the City is unable to perform its duties under this Agreement, the Developer agrees to hold the City harmless and waive any rights to make any claim against the City for costs associated with non-performance.
- 5. <u>Insurance</u>. Consultant shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Consultant against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:
 - A. Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
 - B. Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
 - C. Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
 - D. Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

If any of the above cited policies expire during the life of this Agreement, it is the Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

i. City of Chattanooga, its agents, representatives, officers, directors,

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officials and employees must be named an Additional Insured under the following policies:

- a) Commercial General Liability
- b) Auto Liability
- c) Worker's Compensation Insurance and Employer's Liability Insurance
- d) Professional Liability Insurance
- ii. Consultant's insurance must be primary insurance as respects performance of subject contract.
- iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.
- 6. Audit. City may audit all financial and related records (including digital) associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by Developer. City may further audit any records associated with the terms of the Agreement to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the expenditure of any funds appropriated by City) or to identify conflicts of interest. Developer shall at all times during the term of the Agreement and for a period of seven (7) years after the expiration or earlier termination of this Agreement, keep and maintain the foregoing records. Documents shall be maintained by Developer necessary to clearly reflect all work done and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Developer shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by City at all reasonable times and upon reasonable prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between Developer and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Developer's obligations to City under this Agreement.

Costs of any audits conducted in accordance with this Section and not addressed elsewhere will be borne by City unless the audit identifies significant findings that benefit City. Developer shall reimburse City for the actual and reasonable costs of an audit that identifies significant findings that benefit City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit City may have by federal, state, or municipal law, whether those rights, powers, or obligations are express or implied.

7. <u>Indemnification</u>. Developer agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Developer's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Developer,

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its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Developer, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Developer, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Developer, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Developer shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.

8. Miscellaneous.

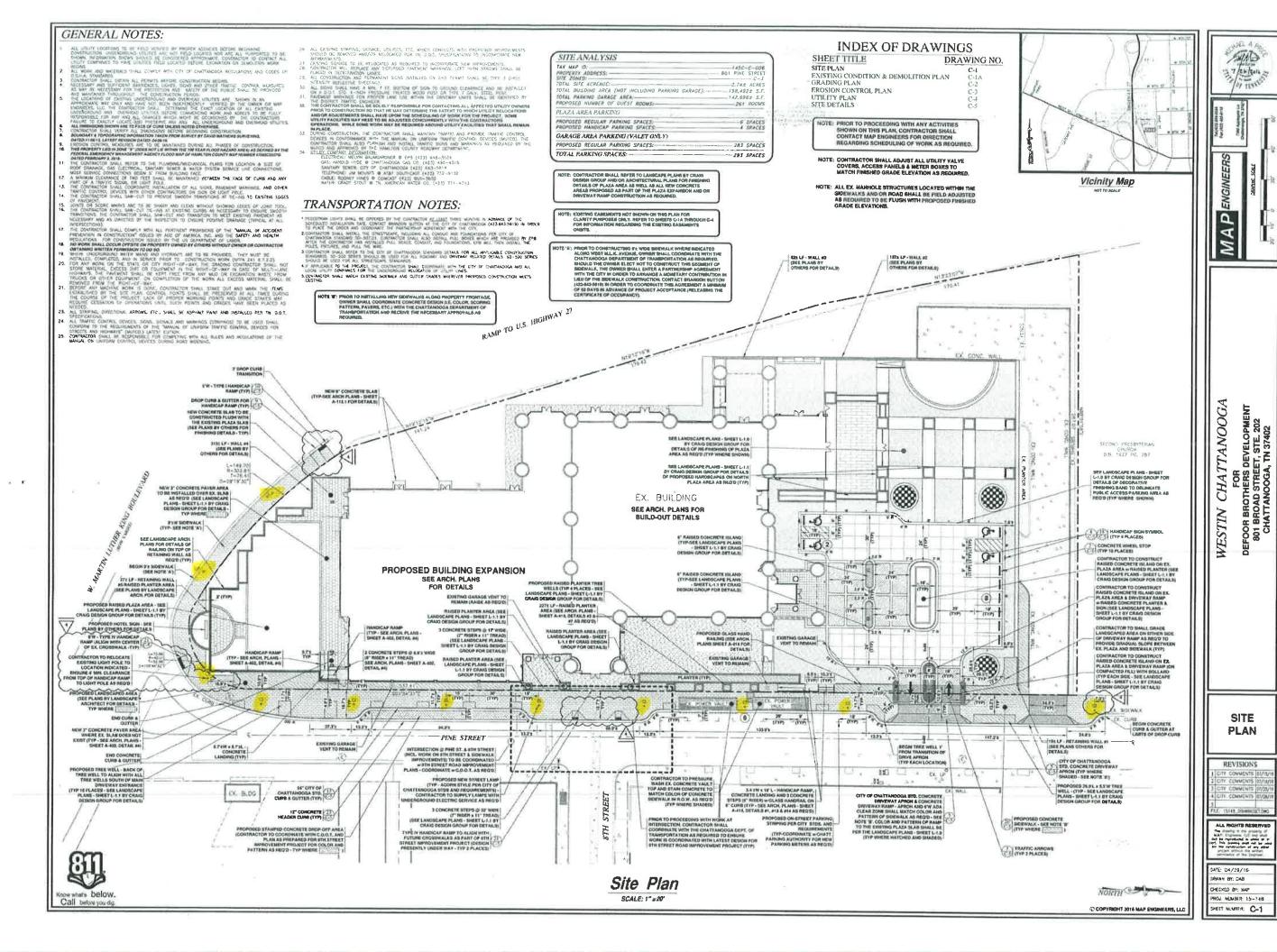
- A. <u>Assignments</u>. Neither this Agreement nor any rights, duties or obligations described in this Agreement shall be assigned or subcontracted by Developer without the prior written consent of City, which shall not be unreasonably withheld. In the event that the City approves an assignment, each and all of the terms and conditions of this Agreement shall extend to the benefit of the successors and assigns of Developer.
- B. <u>Governing Law</u>. This Agreement shall be governed by the laws of the State of Tennessee as to all matters, including, but not limited to, matters of validity, construction, effect and performance.
- C. <u>Entire Agreement</u>. This Agreement and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the Parties with respect to the subject matter hereof.
- D. <u>Severability</u>. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provisions of this Agreement.

[signature page to follow]

The City and Developer are in agreement to the above terms as they pertain to the Project and by the execution of signatures below agree to perform their respective responsibilities as set out herein. The signatories to this Agreement affirm they are duly authorized to sign on behalf of the represented entities.

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CITY OF CHATTANOOGA			
By:			
Name/Title:			
DEVELOPER			
By:			
Name/Title:			
Verification Statements (Requesting Department and by Assigned Attorney)			
Requesting Department verifies no changes have been made to this Standard Form Agreement without prior review & approval by the Office of the City Attorney. Signed & Dated			
An Attorney for the City has reviewed this Agreement and approves it as to form and legality. Signed & Dated			



(11) Pedestrian Lights