

RESOLUTION NO. 29265

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MANAGEMENT AGREEMENT WITH THE TRUST FOR PUBLIC LAND, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THEIR SERVICES RELATED TO THE DESIGN PROCESS OF THE ALTON PARK GREENWAY FOR A DESIGN FEE NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS (\$200,000.00).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor is hereby authorized to execute a Management Agreement with the Trust for Public Land, in substantially the form attached, for their services related to the design process of the Alton Park Greenway for a design fee not to exceed \$200,000.00.

ADOPTED: December 12, 2017

/mem

## MANAGEMENT AGREEMENT

This Management Agreement is entered into as of the Effective Date set forth below, by and between the **City of Chattanooga, Tennessee** (the “City”) and **THE TRUST FOR PUBLIC LAND**, a non-profit California Corporation (“TPL”).

### RECITALS

WHEREAS, TPL has entered into a binding Purchase and Sale Agreement (“the “Agreement”) to purchase certain property more particularly described in Exhibit “A” attached hereto and incorporated herein, described as the “Alton Park Greenway,” situated in Hamilton County, Tennessee (collectively, the “Property”) for the express purpose of donating the Property to the City for development and use as a linear recreational greenway; and

WHEREAS, TPL has obtained, at its expense, the due diligence work on the Property including the title insurance commitment, the survey, and the Phase I and Phase II Environmental Site Assessment (collectively, the “Due Diligence”), all certified to and for use by the City; and

WHEREAS, City will reimburse TPL up to \$35,000 for the Due Diligence; and

WHEREAS, TPL intends to donate the Property to the City upon review and acceptance by the City of all of the Due Diligence provided by TPL; and

WHEREAS, upon the closing of the donation from TPL to the City, the City and TPL desire to accomplish a valuable public purpose of designing the Alton Park Greenway, or “Greenway” by utilizing an open and inclusive public process that prioritizes the needs of the local community and long term economic objectives of the City; and

WHEREAS, upon the donation of the Property by TPL to the City, the City and TPL desire to commence the design of the Greenway with TPL taking the lead in the design process and the City funding the design process; and

WHEREAS, this Management Agreement is intended to clarify the roles of the parties relative to the design of the Alton Park Greenway.

NOW, THEREFORE, in consideration of the parties’ continuing efforts to preserve and conserve the Property for public use by the citizens of the City in Hamilton County, Tennessee, the parties hereby agree as follows:

- 1) TPL will carry out the services (the “Services”) as further outlined in the Scope of Services attached hereto as Exhibit “B” and incorporated herein by this reference, and TPL shall furnish the necessary personnel, incidental services, equipment and facilities to perform the Services hereunder.

- 2) TPL shall regularly consult with the City on the status and results of the Services, and shall submit written reports pursuant to a timeline as agreed to by the parties in order to keep the City fully informed as to the status of the Services.
- 3) TPL will facilitate the design of the Greenway consistent with the Services and agrees that it shall use its best efforts to work cooperatively with the City to achieve a mutually acceptable design that can be reasonably implemented by the City.
- 4) Upon approval by the Chattanooga City Council and within 30 days of the acceptance of the donation of the Property by the City, City hereby agrees to pay TPL a design fee in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) (the “Design Fee”) in order for TPL to implement the Services set forth in Exhibit “B”.
- 5) The term “Contractor” is used interchangeably to describe signatories to contracts, grants, and Agreements with the City and applies to reflect the relationship with the City (Engineer, Contractor, Licensee, Supplier, Vendor, Contractor, Grant Recipient, etc.)
  - a. All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any of the Contractor’s independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the City. Additionally, said records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel to perform the obligations of this Management Agreement, and the records of expenses incurred by the Contractor in its performance under said Management Agreement. The Contractor shall maintain and protect these records for no less than **seven (7) years** after the completion of the Project, or for any longer period of time as may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from the Project.
  - b. The City, or its assigns, may audit all financial and related records (including digital) associated with the terms of the contract or Management Agreement, including timesheets, reimbursable out of pocket expenses, materials, goods and equipment claimed by the Contractor. The City may further audit any of the Contractor’s records to conduct performance audits (to identify waste and abuse or to determine efficiency

and effectiveness of the contract or Management Agreement), or to identify conflicts of interest.

- c. The Contractor shall at all times during the term of the contract or Management Agreement, and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed pursuant to this contract or Management Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor, which are necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with general accepted accounting principles. The Contractor shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.
  - d. The obligations of this Section shall be explicitly included in any subcontracts or Agreements formed between the Contractor and any subcontractors or suppliers of goods or non-professional services to the extent that those subcontracts or Agreements relate to fulfillment of the Contractor's obligations to the City.
  - e. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City, unless the audit identifies significant findings that would benefit the City. The Contractor will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
  - f. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.
- 6) The Design Fee shall be used by TPL only for delivery of the Services and for no other purposes, and TPL acknowledges that any expenditures for internal costs over and above the Management Agreement of the Design Fee will be the responsibility of TPL.
- 7) The term of this Management Agreement shall commence as of the date the last of the parties executes this Management Agreement (the "Commencement Date") and shall continue until the Services are completed, but shall in no event extend beyond 16 months from the Commencement Date.
- 8) Except as otherwise provided in this Management Agreement, this Management Agreement may not be terminated by either party except in good faith, for good cause shown, and upon written notice to the other party. A termination of this Management

Agreement shall be considered to be a termination “for good cause,” if such termination is for reasons including but not limited to the following: (1) failure of TPL to complete the Services in accordance with the terms of this Management Agreement; (2) failure of City to provide the Design Fee in accordance with the terms of this Management Agreement; and (3) failure of Consultant to perform services under or comply with the terms of this Management Agreement.

- 9) In the event of a termination by either party, the unused portion of the Design Fee shall be returned to the City by TPL, after reduction for the City’s approved costs and expenses incurred by TPL in providing the Services from the Commencement Date until the date of termination.

10) Miscellaneous.

- a. Modification: No supplement, modification, or amendment of this Management Agreement shall be binding and no waiver of any provision in this Management Agreement effective, unless executed in writing by all the parties.
- b. Execution: This Management Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same Management Agreement. Signatures required under this Management Agreement may be transmitted by facsimile and, once received by the party to the Management Agreement to whom such signatures were transmitted, shall be binding on the party transmitting its signatures as though they were an original signature of such party.
- c. Assignment. This Management Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.
- d. Governing Law: This Management Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
- e. Exclusive Benefit: This Management Agreement is entered into to promote and complete a successful design process for the Alton Park Greenway. This Management Agreement in no way restricts the parties from participating in similar activities or arrangements with other entities or agencies.
- f. Third Parties: Nothing in this Management Agreement shall confer any rights or obligations upon any third parties. This Management Agreement shall NOT be construed to create a joint venture, partnership, agency or similar relationship between TPL and the City.

- g. Marketing: The parties agree that both the City and TPL branding and logos may be included in marketing materials, advertisements and signage related to the Greenway.
- h. Signage: The parties agree that temporary and permanent signage on the Property shall provide for the recognition of the role of both the City and TPL. In all cases, the design and location of signs shall be subject to the approval of both parties, which approval shall not be unreasonably withheld. The City shall be responsible for any maintenance or repair of signage. The right to install signage shall not be deemed to be an interest in real property held by the City or TPL, but rather a contractual obligation between the City and TPL.

11) All communications between the City and TPL shall be addressed in the case of TPL to:

David Johnson  
Chattanooga Program Manager  
The Trust for Public Land  
202 Tremont Street  
Chattanooga, Tennessee 37405

With a copy to:  
Peter Fodor, Esq.  
Division Legal Director  
The Trust for Public Land  
306 N. Monroe Street  
Tallahassee, FL 32301

and in the case of the City to:

City of Chattanooga  
Real Property of Economic and Community Development  
101 E. 11<sup>th</sup> Street, Suite G-4  
Chattanooga, TN 37402

With a copy to:

Office of the City Attorney  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402

12) This Management Agreement constitutes the entire Management Agreement between TPL and the City pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Management Agreement shall be binding unless executed in writing by all the parties.

This Management Agreement is intended to be a binding agreement between the parties and may be relied upon by both parties as to the covenants, agreements and obligations set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Management Agreement this \_\_\_\_ day of \_\_\_\_\_, 2017.

The Trust for Public Land

Witnesses:

By: \_\_\_\_\_

\_\_\_\_\_

Name:

Title:

\_\_\_\_\_

The City of Chattanooga

Witnesses:

By: \_\_\_\_\_

\_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

## EXHIBIT A

A tract of land situated in the City of Chattanooga, Hamilton County, Tennessee. Said tract of land being hereafter referred to as the Tract 1 - CSX Railway and being more particularly described as follows:

Beginning at a point intersecting the eastern right-of-way line of St. Elmo Avenue having a variable width and the northern right-of-way line of the CSX Railway having a variable right-of-way width, point being located 30 feet north from the centerline of the aforementioned CSX Railway railroad track, point also being the southwestern most corner of the Cindy R. Grant property as described in Deed Book 2720, Page 626 in the Register's Office of Hamilton County, Tennessee; thence, leaving said point and eastern right-of-way line of the aforementioned St. Elmo Avenue, with and along the northern right-of-way line of the aforementioned CSX Railway having a chord bearing of South 67 degrees, 30 minutes, 11 seconds East, and passing through an iron rod found at the intersection of the eastern right-of-way line of Broad Street having a right-of-way width of 80 feet and the northern right-of-way line of the aforementioned CSX Railway, point also being located at the southwestern corner of the Lookout Mountain Suites, LLC property as described in Deed Book 8322, Page 295 in the Register's Office of Hamilton County, Tennessee, a distance of 332.05 feet, also passing through an iron rod found at the intersection of the eastern right-of-way line of Williams Street having a right-of-way width of 50 feet and the northern right-of-way line of the aforementioned CSX Railway, point also being located at the southwestern corner of the Chattanooga Christian School, Inc. property as described in Deed Book 9392, Page 817 in the Register's Office of Hamilton County, Tennessee a distance of 977.07 feet, for a total distance of 2,827.59 feet to a point intersecting the western right-of-way line of Alton Park Boulevard having a right-of-way width of 100 feet and the northern right-of-way line of the aforementioned CSX Railway, point also being the southeastern corner of the Alton Park Properties, LLC as described in Deed Book 4673, Page 426 in the Register's Office of Hamilton County, Tennessee; thence, leaving said point and western right-of-way line of the aforementioned Alton Park Boulevard, South 78 degrees, 45 minutes, 51 seconds East, 102.42 feet to a point intersecting the eastern right-of-way line of the aforementioned Alton Park Boulevard and the northern right-of-way line of the aforementioned CSX Railway, point being located 50 feet north from the centerline of the aforementioned CSX Railway railroad track, point also being the southwestern corner of the R & D Properties property described in Deed Book 4964, Page 114 in the Register's Office of Hamilton County, Tennessee; thence, leaving said point and eastern right-of-way line of the aforementioned Alton Park Boulevard, with and along the northern right-of-way line of the aforementioned CSX Railway, South 67 degrees 30 minutes, 11 seconds East, 216.52 feet to a point intersecting the northern right-of-way line of the aforementioned CSX Railway and the western right-of-way line of CSX Railway, having a right-of-way width of 35 feet; thence, leaving said point and crossing the 35 foot right-of-way of the aforementioned CSX Railway, South 51 degrees, 14 minutes, 57 seconds East, 35.73 feet to a point located 40 feet north from the centerline of aforementioned CSX Railway railroad track; thence, with and along the northern right-of-way line of the



aforementioned CSX Railway, South 67 degrees, 30 minutes, 11 seconds East, 561.32 feet to a point; thence, South 22 degrees, 29 minutes, 49 seconds West, 24.36 feet to a point; thence, with and along the northern right-of-way line of the aforementioned CSX Railway, continuing with a distance of 30 feet north of the centerline of the railroad track, in a curve to the right having a radius of 1,156.40 feet, a curve length of 603.27 feet, and being subtended by a chord bearing of South 45 degrees, 06 minutes, 07 seconds East, 596.45 feet to a point; thence, in a curve to the right having a radius of 1,225.76 feet, a curve length of 308.08 feet, and being subtended by a chord bearing of South 22 degrees, 57 minutes, 23 seconds East, 307.27 feet to a point; thence, in a curve to the right having a radius of 923.07 feet, a curve length of 123.72 feet, and being subtended by a chord bearing of South 11 degrees, 54 minutes, 59 seconds East, 123.62 feet to a point; thence, in a curve to the right having a radius of 368,484.14 feet, a curve length of 70.14 feet, and being subtended by a chord bearing of South 8 degrees, 04 minutes, 56 seconds East, 70.14 feet to a point; thence, in a curve to the right having a radius of 574.91 feet, a curve length of 79.18 feet, and being subtended by a chord bearing of South 04 degrees, 08 minutes, 31 seconds East, 79.12 feet to a point; thence, in a curve to the right having a radius of 2,077.47 feet, a curve length of 113.04 feet, and being subtended by a chord bearing of South 1 degrees, 21 minutes, 45 seconds West, 113.02 feet to a point; thence, South 87 degrees, 04 minutes, 43 seconds East, 15.00 feet to a point located 45 feet from the centerline of the aforementioned CSX Railway railroad track; thence, continuing with and along the eastern right-of-way line of the aforementioned CSX Railway, 45 feet from the centerline of the railroad track, in a curve to the right having a radius of 2,185.90 feet, a curve length of 129.29 feet, and being subtended by a chord bearing of South 4 degrees, 41 minutes, 29 seconds West, 129.27 feet to a point; thence, in a curve to the right having a radius of 80,287.23 feet, a curve length of 212.04 feet, and being subtended by a chord bearing of South 06 degrees, 27 minutes, 42 seconds West, 212.04 feet to a point; thence, South 06 degrees, 32 minutes, 14 seconds West, 1,241.40 feet to a point; thence, crossing the aforementioned CSX right-of-way, North 83 degrees, 27 minutes, 46 seconds West, 75 feet to a point located 30 feet from the centerline of the aforementioned CSX railroad track, point also being located along the eastern property line of the Chattanooga Housing Authority property as described in Deed Book 1043, Page 223 in the Register's Office of Hamilton County, Tennessee, point also being located along the western right-of-way line of the aforementioned CSX Railway; thence, continuing with and along the western right-of-way line of the aforementioned CSX Railway, North 06 degrees, 31 minutes, 34 seconds East, 1,453.34 feet to a point located along the eastern property line of the Alton Place 2009, LP property as described in Deed Book 9577, Page 358 in the Register's Office of Hamilton County, Tennessee; thence, in a curve to the left having a radius of 2,017.47 feet, a curve length of 234.43 feet, and being subtended by a chord bearing of North 03 degrees, 07 minutes, 58 seconds East, 234.30 feet to a point; thence, in a curve to the left having a radius of 514.91 feet, a curve length of 70.93 feet, and being subtended by a chord bearing of North 04 degrees, 08 minutes, 32 seconds West, 70.87 feet to a point; thence, North 08 degrees, 04 minutes, 56 seconds West, 70.14 feet to a point; thence, in a curve to the left having a radius of 864.36 feet, a curve length of 115.69 feet, and being subtended by a chord bearing of North 11 degree, 54 minutes, 59 seconds West, 115.60 feet to a point; thence, in a curve left having a radius of 1,164.85 feet, a curve length of 292.99 feet, and being subtended by a chord bearing of North 22

degrees, 57 minutes, 23 seconds West, 292.22 feet to a point; thence, in a curve to the left having a radius of 1,076.50 feet, a curve length of 508.43 feet, and being subtended by a chord bearing of North 43 degrees, 34 minutes, 00 seconds West, 503.72 feet to a point located in the center line of West 33<sup>rd</sup> Street, having a right-of-way width of 50 feet; thence, North 22 degrees, 29 minutes, 49 seconds East, 25.00 feet to a point located along the northern right-of-way line of the aforementioned West 33<sup>rd</sup> Street, point also being located along the southern right-of-way line of the aforementioned CSX Railway; thence, with and along the northern right-of-way line of the aforementioned West 33<sup>rd</sup> Street and the southern right-of-way line of the aforementioned CSX Railway, North 67 degrees, 30 minutes, 11 seconds West, 3,748.90 feet to a point; thence, crossing the right-of-way of the aforementioned CSX Railway, North 22 degrees, 29 minutes, 49 seconds East, 60.00 feet to the POINT OF BEGINNING.

Said tract of land herein described contains 430,411.30 Sq.Ft. or 9.88 Acres.

**EXHIBIT “B”  
Scope of Services**

**Scope:**

- a. **Manage a park design process in collaboration with the City of Chattanooga that meets the requirements for programming and maintenance**
- b. **Create a project advisory committee to guide the community engagement and park design process**
- c. **Prepare and implement a communications plan for the project including project directory and communications matrix**
- d. **Manage the implementation of community conceptual design processes with the design team and community partners**
- e. **Prepare an RFQ to solicit proposals from design consultants for community engagement, concept design and final design of the project**
- f. **Work in concert with the advisory committee to select a design consultant**
- g. **Prepare and execute a professional services contract with the selected design consultant**
- h. **Manage the contract of the design consultant to ensure all timelines, activities and deliverables are completed**
- i. **Develop a funding plan for construction that considers public, private and grant opportunities**
- j. **Develop a plan to study impacts: pre- and post-project indicators (survey, usage, temp)**

**Deliverables:**

- k. **List of community partners and stakeholders**
- l. **Communications plan**
- m. **Meeting notes from all community engagement activities and committee meetings**
- n. **Community Engagement Plan prepared by the design consultant**
- o. **Summaries of all feedback submitted by attendees from community engagement activities**
- p. **Preliminary and final concept design plans prepared by the design consultant**
- q. **Construction documents prepared by design consultant (if funding allows)**
- r. **Funding plan for construction**
- s. **Impact evaluation plan**

**Notes:**

- a. **TPL may use a portion of Design Fee from the City for internal fees and charges such as contract administration, community engagement, creative placemaking, grant writing, and other associated administrative functions.**
- b. **Any expenses for community engagement, design, and fundraising above the accepted agreement will be the responsibility of TPL to fund.**