

RESOLUTION NO. 28909

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A DONATION FROM DEFOOR BROTHERS DEVELOPMENT, LLC, FOR THE VALUE OF WORK TO PERFORM CERTAIN ROAD IMPROVEMENTS ON PINE STREET FROM MARTIN LUTHER KING BOULEVARD TO 7TH STREET, PROJECT NO. T-17-001, FOR THE APPROXIMATE AMOUNT OF SIX HUNDRED EIGHTY-EIGHT THOUSAND THREE HUNDRED TWENTY-FOUR DOLLARS (\$688,324.00), SUBJECT TO THE CITY AND B. P. CONSTRUCTION COMPANY EXECUTING AN AGREEMENT FOR SAID IMPROVEMENTS AND THAT THE CITY OF CHATTANOOGA DEPARTMENT OF TRANSPORTATION BEING AUTHORIZED TO ENTER INTO AN AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH B. P. CONSTRUCTION COMPANY FOR THE IMPROVEMENTS TO PINE STREET AT NO COST TO THE CITY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the acceptance of a donation from DeFoor Brothers Development, LLC, for the value of work to perform certain road improvements on Pine Street from Martin Luther King Boulevard to 7th Street, Project No. T-17-001, for the approximate amount of \$688,324.00, subject to the City and B. P. Construction Company executing an agreement for said improvements and that the City of Chattanooga Department of Transportation being authorized to enter into an agreement, in substantially the form attached, with B. P. Construction Company for the improvements to Pine Street at no cost to the City.

ADOPTED: January 24, 2017

/mem

**CITY OF CHATTANOOGA
DONATION AGREEMENT**

THIS DONATION AGREEMENT (“AGREEMENT”) is entered into on this _____ day of January 2017, (“Effective Date”) by and between DeFoor Brothers Development, LLC, a Tennessee Limited Liability Company (“DONOR”) and the City of Chattanooga, a Tennessee Municipal Corporation (“DONEE”).

WHEREAS, the DONOR desires to donate all labor, materials, equipment, services, taxes, and all other items, now or to be identified in the future (“DONATION”), necessary to perform certain road improvements on Pine Street from Martin Luther King Boulevard to 7th Street (the “PROJECT”); and

WHEREAS, the DONEE affirms that the proposed PROJECT is suitable to aid in the maintenance of City roads and provide an improvement that shall serve as a public benefit.

NOW, THEREFORE, in consideration of the mutual promises, DONEE accepts the DONATION, and DONOR agrees to the terms and conditions stated herein:

1. DONOR understands acceptance of this DONATION by the DONEE is contingent upon the execution of a construction contract between the DONEE and B.P Construction Company.
2. DONOR shall acquire all labor, tools, materials, equipment and signage necessary to complete the PROJECT.
3. The work covered under the Project is depicted on **Exhibit A** attached hereto and incorporated by reference and shall consist of furnishing all materials, equipment and labor for the proposed work on Pine Street. Said work shall consist of, but is not limited to: mobilization, public notification, placement of traffic control devices per MUTCD requirements, cleaning and conditioning of the roadways, milling as directed, sawcut and removal of existing concrete pavement and curbing where indicated, repair of base failures as needed, grading, proper compaction, installation of new storm drainage piping and structures, removal and/or conversion of existing storm structures as directed, the adjustment of sanitary manholes and other publicly owned structures as required, installation of new concrete curbing, sidewalks (including standard concrete and decorative pavers), concrete pavement (stamped, colored and/or scored), and asphalt pavement as required. Additional work shall include the installation of tree protection, tree removal as directed, new plant and tree installation, placement of temporary and permanent pavement markings and signage as required, and installation of street furnishings and decorative lighting as indicated.
4. The estimated cost of construction for the PROJECT in the amount of Six Hundred Fifty-Eight Thousand Three Hundred Twenty-Four and No/100 Dollars (\$658,324.00), together with the design cost for the PROJECT in the amount of Thirty Thousand and No/100 Dollars (\$30,000.00) for a total PROJECT cost of Six Hundred Eighty-Eight Thousand Three Hundred Twenty-Four and No/100 Dollars (\$688,324.00) shall be paid by the DONOR toward costs associated with the completion of the PROJECT. DONOR

understands that the costs are an estimate. Any additional expenditures for labor, materials, equipment, services, taxes, employee benefits and all other items that may be identified as necessary to complete this PROJECT shall be paid by the DONOR.

5. DONOR shall be responsible for all costs associated with re-routing traffic pursuant to a Construction Traffic Control Plan approved by a designated representative of City of Chattanooga's Department of Transportation. Said costs may include, but are not limited to, signage necessary to ensure motorists, cyclists, pedestrians and patrons of neighboring businesses are properly alerted of any necessary road closures or access limitations.
6. DONOR shall be responsible for all costs that may be incurred as a result of additional work that may be deemed necessary after PROJECT completion but before expiration of the CONTRACTOR's guarantee period.
7. DONEE undertakes no responsibilities whatsoever as it relates to the performance of the PROJECT for which the DONATION is provided.
8. DONOR must defend, indemnify and hold harmless the DONEE against all damages, claims, liabilities and expenses (including reasonable attorney's fees) arising out of or resulting in any way from this DONATION or from any act or omission of DONOR.
9. DONEE reserves all rights and remedies available to it under law in the event the DONOR fails to perform as required by this Agreement.
10. DONOR acknowledges that DONEE's acceptance of DONATION is not an exchange for present or future remuneration or services of any kind by the DONEE to DONOR.
11. DONEE makes no representations regarding publicity, acknowledgement, or recognition to the DONOR regarding the DONATION.
12. This AGREEMENT does not transfer ownership rights to the DONOR nor expand any access or entry rights of the DONOR upon the improved public street and in no way limits DONEE's rights of entry or access onto public streets during or after the PROJECT.
13. This AGREEMENT shall be governed by the laws of the state of Tennessee.

The signatories to this AGREEMENT affirm they possess the authority to enter into this AGREEMENT on behalf of the DONOR and DONEE and by signing below represent they understand and agree to be bound by the terms stated herein.

	<p>DONEE: CITY OF CHATTANOOGA</p> <hr/> <p>Administrator, Chattanooga Department of Transportation</p>
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	<p>DONOR: DEFOOR BROTHERS DEVELOPMENT, LLC</p> <hr/> <p>Name:</p> <hr/> <p>Title:</p> <hr/>

CONTRACT

ARTICLES OF AGREEMENT entered into this _____ day of _____, 2017, by and among the CITY OF CHATTANOOGA, TENNESSEE, hereinafter called the City, and **B. P. Construction Company**, Contractor, of the City of Chattanooga, State of Tennessee, hereinafter called the Contractor, and DeFoor Brothers Development, LLC, hereinafter called the Donor.

ARTICLE I. The Contractor hereby contracts and agrees to furnish all supervision, labor, materials and equipment and execute in a thorough and workmanlike manner, complete in every respect, in accordance with the Drawings, Specifications and other Contract Documents made therefor and hereto attached, and to the satisfaction of the City of Chattanooga, or its successor, all of the Work shown, specified and otherwise required in these Contract Documents, to-wit:

T-17-001 Pine Street Road Improvement Project

ARTICLE II. The Work performed by Contractor shall be paid by Donor as set forth in that certain Donation Agreement between the City and Donor dated the ____ day of _____, 2017, a copy of which is attached hereto as **Exhibit 1** and incorporated herein by this reference Contractor for the proper and satisfactory completion of the work specified herein, including all contingencies, in full conformity with the Contract Documents. This compensation paid by Donor shall be full payment for the performance of the work and the furnishing of labor, materials, transportation, supplies, tools, equipment, taxes, employee benefits, incidentals, services, and other items necessary or convenient for completion of the work in a satisfactory and acceptable manner, and within the intent of these Contract Documents.

ARTICLE III. The Contractor agrees that he has informed himself fully of the conditions relating to the construction and labor under which the work will be or is now being performed, and this Contractor must employ, so far as possible, such methods and means in the carrying out of his work as will not cause any interruption or interference with any other contractor.

ARTICLE IV. All work and material required under this Contract shall be in such quantities, kinds and qualities, and in such places, and of such dimensions and forms as may be designated by the plans and specifications, or by the working plans provided by the Engineer.

ARTICLE V. The purchase of all materials, the delivery of same, and all incidental expenses which may arise during the construction and finishing of said work above specified, shall be at the sole cost and expense of the Contractor.

ARTICLE VI. All materials which the said Contractor may procure or deliver upon or in the vicinity of said work herein specified to be incorporated in and become a part of said improvement, shall, from the time of such procurement or delivery become the property of the City of Chattanooga, except any surplus which shall remain over the final completion of this Contract.

ARTICLE VII. The Contractor hereunder contracts and agrees to complete the whole of the work contemplated in this Contract in **100 (one hundred)** calendar days. Time of the completion of the work is the essence of the Contract, and the Contractor is prepared to make completion of the work in such quantity and on such dates as are herein specified, and the parties having agreed, after estimates, that the sum of **Five Hundred dollars and no cents (\$500.00)** per day would be liquidated damages in case of the Contractor's failure to perform, now, therefore, the aforementioned sum per day, not as a penalty but to be considered and taken as liquidated damages suffered by the City of each day's delay in completion of this Contract.

ARTICLE VIII. It is agreed that the Contractor will not assign, transfer, or sublet the said work or any part thereof without the written consent of the City of Chattanooga.

ARTICLE IX. All Progress Payments shall be paid by Donor and City has no responsibility to make any payments.

ARTICLE X. The parties acknowledge the Donor is entitled to the benefit of all of the rights of the City under this Contract with respect to the Contractor and the Contractor's work and services pursuant hereto and in the event the City elects not to enforce the terms of this Contract against the Contractor in the event the Contractor's default under this Contract the Donor may elect to do so in accordance with the terms of this Contract.

All documents bound herein and all other documents not bound herein but given to Contractor in connection with the work shall be and are hereby made a part of this contract. These Contract Documents shall include, but not be limited to, the following: the Contract, Advertisement for Bids, Instructions to Bidders, Bid Proposal and Proposal Documents, Bid Bond, Performance Bond, Payment Bond, Certificates, General Provisions, Supplementary General Provisions, Specifications, Drawings, Addenda, Change Orders, Notice to Proceed, and Specifications, Drawings, and Engineering Data furnished to the Contractor.

SIGNATURES ON FOLLOWING PAGE

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

Attest:

CITY OF CHATTANOOGA

City Finance Officer

By: _____
CDOT Administrator

CONTRACTOR

Name

Attest:

By: _____

Title

DEFOOR BROTHERS DEVELOPMENT, LLC

By: _____

CITY ATTORNEY'S APPROVAL

This contract approved as to form and legality this the ____ day of _____, 2017.

City Attorney

END OF DOCUMENT

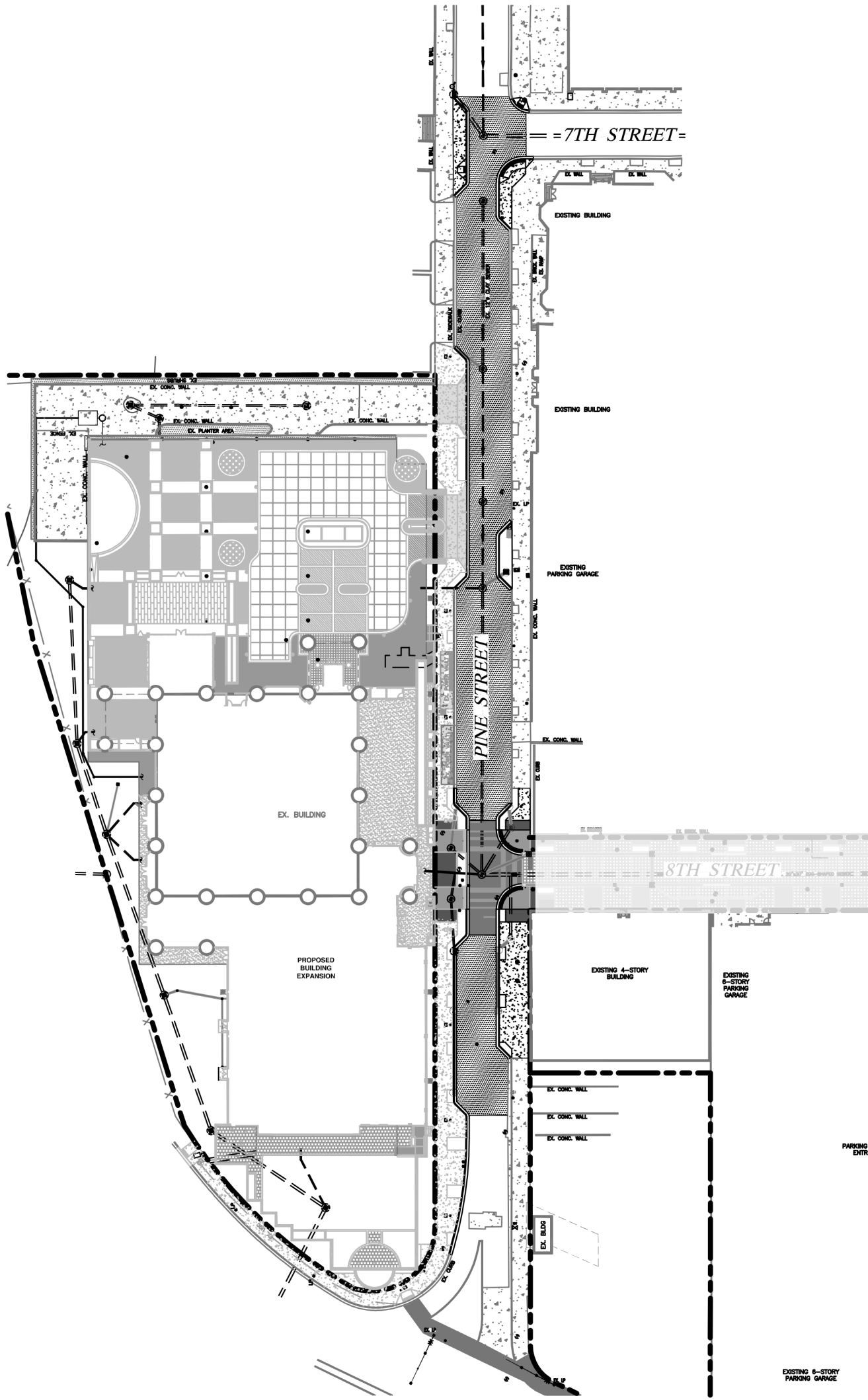
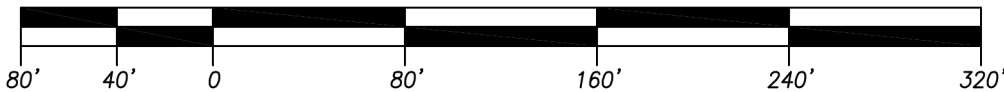


Exhibit 'A'

GRAPHIC SCALE



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DRAWN	DAB
CHECKED	MAP
DATE	01/12/17
SCALE	1" = 80'
MAP PROJECT:	15-170



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