

RESOLUTION NO. 30358

A RESOLUTION DECLARING SURPLUS OF A 2.94 ACRE PORTION OF TAX MAP NO. 136C-A-002.01 IN THE 2000 BLOCK OF CURTAIN POLE ROAD AND ENTERING INTO A DONATION AGREEMENT WITH CHATTANOOGA AREA FOOD BANK, INC., A REGISTERED NON-PROFIT, IN SUBSTANTIALLY THE FORM ATTACHED, AND TO EXECUTE ANY RELATED DOCUMENTS FOR THE CONVEYANCE OF THE PROPERTY FOR THE PURPOSE OF LEADING A NETWORK OF PARTNERS IN ELIMINATING HUNGER AND PROMOTING BETTER NUTRITION FOR THE BENEFIT OF THE COMMUNITY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby declaring surplus of a 2.94 acre portion of Tax Map No. 136C-A-002.01 in the 2000 block of Curtain Pole Road and entering into a Donation Agreement with Chattanooga Area Food Bank, Inc., a registered non-profit, in substantially the form attached, and to execute any related documents for the conveyance of the property for the purpose of leading a network of partners in eliminating hunger and promoting better nutrition for the benefit of the community.

ADOPTED: May 26, 2020

/mem

DONATION AGREEMENT

THIS DONATION AGREEMENT (the “Agreement”) is made this ____ day of _____, 2020, by and between the **CITY OF CHATTANOOGA**, a Tennessee municipal corporation, having an address of 101 E. 11th Street, City Hall, Chattanooga, Tennessee 37402 (“Donor”) and **CHATTANOOGA AREA FOOD BANK, INC.**, a Tennessee nonprofit corporation with its principal place of business at 2009 Curtain Pole Road, Chattanooga, Tennessee 37406 (“Donee”).

RECITALS:

- A. Donor is the fee simple owner of a certain parcel of real property located in Chattanooga, Hamilton County, Tennessee, bearing tax parcel No. 136C-A-002.01 and being more particularly described on **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”).
- B. Donor desires to donate a portion of the Property to Donee for the purpose of leading a network of partners in eliminating hunger and promoting better nutrition for the benefit of the community, and Donee desires to accept such donation from Donor.
- C. The parties desire to set forth the terms and conditions of the donation in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Donation.**

(a) For and in consideration of the mutual covenants and promises contained in this Agreement, and in acknowledgment of Donee’s material reliance on this Agreement, Donor agrees to grant and convey to Donee the Property described on **Exhibit “B”** (the “Donated Property”). Donee shall not be obligated to accept the Donated Property if (a) the donation of the Donated Property is not consummated under this Agreement because of Donor’s failure, refusal or inability to perform any of its obligations under this Agreement; (b) Donee elects to terminate this Agreement because any of Donor’s representations cease to be true prior to Closing (hereinafter defined); (c) Donee elects to terminate this Agreement because Donor is unable to remove a title exception objected to by Donee; or (d) Donee elects not to close by reason of damage to the Donated Property in accordance with Paragraph 10 of this Agreement.

(b) The parties agree that a reasonable estimate of the value of the Donated Property is \$100,000.

2. **Closing.** The donation of the Donated Property by Donor (the “Closing”) shall take place on or before _____, 2020, provided that Donee has not elected to extend or terminate this Agreement pursuant to the terms hereof. Donee’s obligation to accept title to the Donated Property shall be contingent on Donor’s performance of all of its duties and obligations hereunder.

3. **Title; Termination of Lease; No Warranty.**

Title.

(a) Donor shall convey the Donated Property to Donee by executing and delivering to Donee a quitclaim deed (the "Deed"). Donee shall be under no obligation to accept the Deed from Donor if Donee, in its examination of title to the Donated Property, determines that it is subject to liens, encumbrances or other matters of title other than (a) the lien of ad valorem property taxes for the year in which the Closing occurs, (b) any encumbrances created by Donee including without limitation deeds of trust, assignment of rents and leases or financing statements; (c) exceptions listed on a title commitment (the "Title Commitment") issued by a national title insurance company, which exceptions are accepted by Donee in writing; and (d) any other matters approved by Donee in writing.

(b) Donee may obtain at its expense either a title report or a Title Commitment from a national title insurance company reflecting good and marketable fee simple title to the Donated Property in Donor. If obtained, Donee may examine the title report/Title Commitment and shall furnish to Donor at least twenty (20) days prior to the Closing a written statement of any objections to matters of title. Matters reflected by the survey of the Donated Property obtained by Donee pursuant to Paragraph 4 below may be treated as title defects and referenced in the above-referenced title objection letter. Donor may, but shall not be obligated to, cure any such title or survey objections.

(c) Following Donee's initial title examination, Donee shall have until the time of closing to re-examine title to the Donated Property and to give Donor notice of any additional objections disclosed by such re-examination, which were not filed and indexed of record on the date of Donee's initial examination. If all of the stated title and survey objections are not cured or satisfied by the date set for Closing, Donee may, at its option:

(i) waive the title objections and proceed to Closing;

(ii) terminate this Agreement, and, except as may expressly be provided herein to the contrary, Donor and Donee shall have no further rights or obligations under this Agreement.

(d) Donor agrees to provide to Donee and the title insurer all routine or otherwise available documents necessary or desirable to confirm Donor's title to and authorization to convey the Donated Property, and to permit Donee to obtain an ALTA Owner's Policy (2006 Form), as amended, at Donee's sole cost and expense with respect to the Donated Property.

(e) **Termination of Lease.** The Lease entered into by Donor and Donee evidencing the lease of the Donated Property will be terminated at closing.

(f) **No Warranty- Acceptance of the Donated Property in its AS-IS Condition.** Donee acknowledges that Donor makes no guarantee, representation or warranty regarding the physical or environmental condition of the Donated Property, and Donee expressly disclaims any and all obligations and liability to Donor regarding any defects or structural

damage which presently exists on the Donated Property. Donee hereby agrees to accept the Donated Property in its **AS-IS-WHERE-IS, WITH ALL FAULTS** condition and Donee assumes all risks associated with the physical and environmental condition of the Donated Property, regardless of the cause or date of origin of such condition, and releases all rights or claims against Donor relating to such condition or for any costs of remediation or cure of any physical or environmental condition.

4. **Survey.** Prior to Closing, Donee, at its expense, may obtain a boundary survey of the Donated Property, signed and sealed by a Tennessee registered surveyor, certified to Donee and the title insurer, prepared according to state standards. The legal description drawn from any such survey shall serve as the legal description for the Donated Property, as set forth in the Deed.

5. **Right of Reversion.** Donee or its assigns shall use the Donated Property for the sole purpose of leading a network of partners in eliminating hunger and promoting better nutrition for the benefit of the community for a period of twenty (20) years from the date of the quitclaim deed from Grantor. Should the Donated Property cease to be operated for the above-stated purpose, as solely determined by Donor, then Donor may elect to exercise its right of reversion in the Donated Property donated herein and all improvements and fixtures located thereon shall revert to Donor. This reversionary provision shall survive the Closing and shall be included in the Quitclaim deed.

6. **Donor's Representations.** Donor represents as follows:

(a) To the best of Donor's knowledge, but without conducting an investigation, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Donated Property or any portion thereof, or pending or threatened against Donor, which could affect Donor's title to the Donated Property or any portion thereof, affect the value of the Donated Property or any portion thereof, affect Donor's duties and obligations under this Agreement or subject an owner of the Donated Property, or any portion thereof, to liability;

7. **Donee's Representations and Warranties.** In addition to Donee's representations and warranties made elsewhere herein, Donee represents and warrants to Donor the following:

(a) Donee is accepting the Donated Property solely in reliance on its own information and/or findings and not on any information, representation or warranty provided or to be provided by Donor, its officials, representatives, agents, employees, or assigns; and

(b) Neither Donor, nor its officials, representatives, agents, employees, or assigns have made any representations or warranties, implied or expressed, relating to the condition of the Donated Property or the contents thereof.

8. **Remedies Upon Default.** In the event Donor defaults in the performance of any of Donor's obligations under this Agreement, Donee's sole remedy shall be the right of specific performance against Donor. In the event Donee defaults in the performance of any of its obligations under this Agreement, Donor shall have the right to any remedy provided in this Agreement or by law or equity, except Donor shall not have the right to sue Donee for damages.

9. **Right to Inspect the Donated Property.** Donee, through its employees and agents, may enter upon the Donated Property in order to conduct such survey, appraisal, environmental, physical, engineering, feasibility studies and other inspections and investigations as Donee deems appropriate in an effort to determine whether or not to proceed with the Closing. Donee hereby agrees to indemnify Donor, its officials, officers, agents, and employees and save it harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to property, including civil rights actions, to any person or for any cause whatsoever caused wholly or in part by any act or omission of Donee, its agents, employees, invitees, contractors or assigns. Donee 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 Donor as a result of any claim brought against Donee, its agents, employees, invitees, contractors, or assignees for Donee's temporary use of the Donated Property for the above-stated purpose.

10. **Risk of Loss.** Donee is operating the Chattanooga Food Bank on the Donated Property. As such, all risk of loss shall remain with Donee. In the event the Donated Property is destroyed or damaged prior to Closing, such that the Donated Property is, in the sole discretion of Donee, no longer suitable for Donee's public purposes, Donee shall have the right, by notice given to Donor as provided in Paragraph 12 below, to terminate this Agreement, and, except as may be provided expressly to the contrary herein, Donor and Donee shall have no further rights, obligations or duties under this Agreement.

11. **Indemnification.** Donee agrees to indemnify and hold harmless Donor, its officials, representatives, employees or agents from and against any and all losses, claims, demands, liabilities, costs, damages, and expenses (including reasonable attorneys' fees and costs) that Donor may incur to the extent arising from Donee's actions or failure to act on, respond to or comply with any written notices received after closing regarding violation of any local, state or federal laws, rule or ordinance affecting the Donated Property.

12. **Notices.** All notices pertaining to this Agreement shall be in writing, delivered to the parties hereto personally by hand, by United States mail, certified or registered, with return receipt requested, by telecopier (provided a confirmation copy is sent via another mode) or courier service at the addresses set forth in the introductory paragraph of this Agreement. All notices shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

If served personally, if sent by first class mail, registered or certified, postage prepaid, or if sent by a national recognized overnight delivery service, paid by the sending party and addressed as follows:

Grantor: City of Chattanooga
ATTN: Real Property of ECD
101 E. 11th Street, G-4
Chattanooga, TN 37402

With a copy to: Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Grantee: Chattanooga Area Food Bank, Inc.
2009 Curtain Pole Road
Chattanooga, TN 37406

With a copy to: _____

Any party may change its address for notices under this Right of Entry by giving written notice of such change to the other party in accordance with the terms of this paragraph.

13. **Prorations and Fees.** The Donated Property is presently exempt from the payment of real property taxes. From and after the Closing, the Donated Property will be placed on the tax roll, and Donee shall be responsible for the payment of real property taxes. Water quality fees assessed for the year 2019 (regardless of when due and payable) shall be prorated as of the Closing. Special assessments levied prior to the Closing shall be the responsibility of Donor. Any documentary tax or real property transfer tax arising out of the conveyance of the Donated Property, the premium for the title insurance policy, and any other fees and charges shall be paid by Donee. The provisions contained in this paragraph shall survive the Closing and shall not be merged into the Deed.

14. **No Agents or Brokers.** Each party hereto represents to the other that it has not discussed the transactions contemplated in this Agreement with any real estate broker, agent or salesman so as to create any legal right or entitlement to claim a real estate commission or similar fee with respect to the conveyance of the Donated Property to Donee.

15. **Time of the Essence.** Time is of the essence of this Agreement.

16. **Possession.** Possession of the Donated Property shall be transferred to Donee at Closing.

17. **Binding on Successors.** This Agreement shall be binding not only upon the parties hereto but also upon their personal representatives, assigns, and other successors in interest. Donee, with Donor's prior written consent, which shall not be unreasonably withheld or delayed, may assign its rights under this Agreement to another charitable organization or to a governmental entity, in which case Donee shall be released in full from all duties and obligations hereunder, provided Donee's assignee agrees in writing to assume such duties and obligations.

18. **Additional Documents.** Donor and Donee agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

19. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between Donor and Donee pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.

20. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

21. **No Merger.** The obligations contained in this Agreement, except for those specifically discharged at Closing shall survive the Closing.

22. **Headings; Rules of Construction.** The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument.

24. **No Waiver.** Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Any party hereto may waive the benefit of any provision, contingency or condition for its benefit contained in this Agreement.

25. **Effective Date.** The effective date of this Agreement shall be the latter date of the execution dates below.

26. **Choice of Law.** The validity, construction, interpretation, and performance of this Agreement shall in all ways be governed and determined in accordance with the laws of the state of Tennessee.

27. **Miscellaneous.** In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days which are not on a Saturday, Sunday or legal holiday.

[SIGNATURE PAGES FOLLOW]

IN WITNESS of the foregoing provisions, the Donor, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONOR:

CITY OF CHATTANOOGA

By: _____

ANDY BERKE, Mayor

Execution Date: _____

IN WITNESS of the foregoing provisions, the Donee, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

DONEE:

CHATTANOOGA AREA FOOD BANK, INC.

By: _____

Execution Date: _____

EXHIBIT "A"
The "Property"

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

To find the point of beginning, start at an iron rod on the Western right-of-way of Old Curtain Pole Road, said right-of-way having a width of 50 feet, at the Easternmost corner of Edward N. Gomberg, et al, as described as Tract One (1) in Deed Book 2585, Page 700, in the Register's Office of Hamilton County, Tennessee, and then go North 62 degrees 54 minutes 23 seconds West, along the Northern line of said Gomberg property, a distance of 292.76 feet to an iron rod being the true point of beginning; thence continuing North 62 degrees 54 minutes 23 seconds West, along said Northern line, a distance of 506.94 feet to a concrete monument located at the top of the Eastern bank of the Tennessee River and the South end of a computed line; thence continuing North 62 degrees 54 minutes 23 seconds East, a distance of 3 feet to a point in the mean low water mark of the Nickajack reservoir of the Tennessee River; thence in a Northern direction, along said meandering mean low water mark, a distance of 975 feet, more or less, to a point on the Southern property of Hamilton County as recorded in Deed Book 3217, Page 968, in said Register's Office, also known as Tract 6 Centre South Industrial Park; thence South 61 degrees 30 minutes 21 seconds East, along said county tract, a distance of 28.6 feet to a concrete monument with disk, said monument being located North 19 degrees 36 minutes 40 seconds East, along a computed line, a distance of 975.50 feet from the previously described concrete monument at the top bank of the Tennessee River; thence continuing South 61 degrees 30 minutes 21 seconds East, along said county tract, a distance of 923.73 feet to a concrete monument located on the Western right-of-way of said Old Curtain Pole Road; thence South 26 degrees 53 minutes 39 seconds West, along said right-of-way, a distance of 18.00 feet to an iron rod; thence North 73 degrees 35 minutes 16 seconds West, along said right-of-way, a distance of 36.00 feet to a point; thence South 12 degrees 14 minutes 52 seconds West, along said right-of-way, a distance of 25.49 feet to an iron rod; thence North 61 degrees 30 minutes 21 seconds West, a distance of 263.91 feet to an iron rod; thence South 26 degrees 53 minutes 39 seconds West, a distance of 901.76 feet to the point of beginning, with said property being more fully described on that survey prepared by Harold N. Estes, Jr., Tennessee Registered Land Surveyor License No. 1220, at address 4926 Adams Road, Chattanooga, Tennessee 37343, being made at the time of the conveyance by Deed dated December 23, 1996, recorded in Book 4842, Page 94, in the Register's Office of Hamilton County, Tennessee.

LESS AND EXCEPT that part conveyed to the Chattanooga Area Food Bank by Deed recorded in Book 5760, Page 977, in the Register's Office of Hamilton County, Tennessee.

LESS AND EXCEPT that part conveyed to Synair Corporation by Deed recorded in Book 5946, Page 75, in the Register's Office of Hamilton County, Tennessee.

LESS AND EXCEPT that part conveyed for road right of way by Deed recorded in Book 762, Page 416, and in Book 2747, Page 322, in the Register's Office of Hamilton County, Tennessee.

FOR PRIOR TITLE, see Deed from Southern Foundry Supply, Inc., successor by merger to SMC Corporation, to City of Chattanooga, Tennessee, executed December 23, 1996 and recorded on March 27, 1997 in Book 4842, Page 94, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT "B"

Property description for part of deed book 4842, page 94:

A PARCEL OF LAND SITUATED IN HAMILTON COUNTY, TENNESSEE BEING A PART OF DEED BOOK 4842, PAGE 94 REGISTERS OFFICE HAMILTON COUNTY (R.O.H.C.). TO FIND THE TRUE POINT OF BEGINNING BEGIN AT THE REMOTE POINT OF BEGINNING WHICH IS THE SOUTHEAST CORNER OF ACCELLA POLYURETHANE SYSTEMS, DEED BOOK 10694, PAGE 460 R.O.H.C., THENCE WITH AND ALONG THE NORTHEAST LINE OF SAID ACCELLA POLYURETHANE SYSTEMS AFOREMENTIONED NORTH 63 DEGREES 05 MINUTES 11 SECONDS WEST 417.67 FEET TO THE TRUE POINT OF BEGINNING OF SAID PARCEL; THENCE CONTINUING WITH AND ALONG SAID NORTHEAST LINE NORTH 63 DEGREES 04 MINUTES 51 SECONDS WEST 189.35 FEET TO A REBAR CORNER FOUND; THENCE LEAVING SAID NORTHEAST LINE AND WITH AND ALONG THE EAST LINE OF THE CITY OF CHATTANOOGA WITH A SERIES OF BEARINGS AND DISTANCES AS FOLLOWS: NORTH 23 DEGREES 06 MINUTES 15 SECONDS EAST 44.54 FEET TO A POINT OF CURVE WITH CURVE MEASURED TO THE RIGHT AN ARC DISTANCE OF 175.06 FEET TO A POINT OF TANGENT. SAID CURVE HAS A RADIUS OF 259.13 FEET AND IS SUBTENDED BY A CHORD NORTH 41 DEGREES 55 MINUTES 56 SECONDS EAST 175.75 FEET, NORTH 64 DEGREES 25 MINUTES 17 SECONDS EAST 95.99 FEET TO A POINT OF TANGENT, WITH CURVE MEASURED TO THE LEFT AN ARC DISTANCE OF 202.09 FEET TO A POINT OF TANGENT. CURVE HAS A RADIUS OF 225.97 FEET AND IS SUBTENDED BY A CHORD NORTH 36 DEGREES 30 MINUTES 39 SECONDS EAST 195.43 FEET, NORTH 12 DEGREES 07 MINUTES 05 SECONDS EAST 45.42 FEET TO A POINT OF CURVE WITH A CURVE MEASURED TO THE RIGHT AN ARC DISTANCE OF 178.48 FEET TO A POINT. SAID CURVE HAS A RADIUS OF 142.56 FEET AND IS SUBTENDED BY A CHORD NORTH 48 DEGREES 44 MINUTES 49 SECONDS EAST 167.05 FEET; THENCE LEAVING SAID LINES AND WITH AND ALONG THE SOUTH LINE OF HAMILTON COUNTY DEED BOOK 3217, PAGE 968 (R.O.H.C.) SOUTH 61 DEGREES 26 MINUTES 31 SECONDS EAST 382.09 FEET TO A POINT; THENCE LEAVING SAID SOUTH LINE AND WITH AND ALONG THE WEST RIGHT OF WAY OF CURTAIN POLE ROAD A 50 FOOT DEDICATED RIGHT OF WAY SOUTH 12 DEGREES 38 MINUTES 15 SECONDS WEST 52.08 FEET TO A REBAR CORNER FOUND; THENCE LEAVING SAID RIGHT OF WAY AND WITH AND ALONG THE NORTH LINE OF LOT 1 FIA SUBDIVISION, PLAT BOOK 64, PAGE 22 R.O.H.C. NORTH 61 DEGREES 31 MINUTES 24 SECONDS WEST 263.78 FEET TO A REBAR CORNER FOUND; THENCE WITH AND ALONG THE WEST LINE OF LOT 1 FIA SUBDIVISION AFOREMENTIONED SOUTH 26 DEGREES 53 MINUTES 06 SECONDS WEST 307.07 FEET TO A REBAR CORNER FOUND; THENCE LEAVING SAID NORTH LINE NORTH 63 DEGREES 06 MINUTES 23 SECONDS WEST 124.88 FEET TO A REBAR CORNER FOUND; THENCE SOUTH 26 DEGREES 56 MINUTES 05 SECONDS WEST 316.80 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINS 2.94 ACRES, MORE OR LESS. THIS DESCRIPTION IS REFERENCED TO HOPKINS SURVEYING GROUP DRAWING NUMBER 2019-237-2 DATED AUGUST 12, 2019 (LOT 1, CITY FOOD BANK S/D, PLAT BOOK 64, PAGE 170).