

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A PUBLIC IMPROVEMENT CONTRIBUTION AGREEMENT WITH HAMILTON PLACE MALL GENERAL PARTNERSHIP (CBL) RELATIVE TO IMPROVEMENTS TO THE HAMILTON PLACE BOULEVARD INTERCHANGE AT INTERSTATE 75, IN THE AMOUNT OF FORTY MILLION DOLLARS (\$40,000,000.00).

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 Public Improvement Contribution Agreement with Hamilton Place Mall General Partnership (CBL) relative to improvements to the Hamilton Place Boulevard interchange at Interstate 75, in the amount of \$40 million.

ADOPTED: _____, 2015

/mem

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: July 17 2015

Preparer: Bert Kuyrkendall

Department: Transportation

Brief Description of Purpose for Resolution/Ordinance: _____ Res./Ord. # _____ Council District # 4,6

A resolution authorizing the Administrator of the Department of Transportation to enter into a Public Improvement Contribution Agreement with Hamilton Place Mall General Partnership (CBL) relative to improvements to the Hamilton Place Boulevard interchange at Interstate

75

Name of Vendor/Contractor/Grant, etc.	<u>CBL</u>	New Contract/Project? (Yes or No)	<u>Yes</u>
Total project cost \$	<u>40,000,000.00</u>	Funds Budgeted? (YES or NO)	<u>-</u>
Total City of Chattanooga Portion \$	<u>-</u>	Provide Fund	_____
City Amount Funded \$	<u>-</u>	Provide Cost Center	_____
New City Funding Required \$	<u>-</u>	Proposed Funding Source if not budgeted	_____
City's Match Percentage %	_____	Grant Period (if applicable)	_____

List all other funding sources and amount for each contributor.

<u>Amount(s)</u>	<u>Grantor(s)</u>
<u>\$32,000,000.00</u>	<u>Tennessee Department of Transportation/Federal Highway Administration</u>
<u>\$8,000,000.00</u>	<u>CBL</u>
<u>\$</u>	_____

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: October, 2011

PUBLIC IMPROVEMENT CONTRIBUTION AGREEMENT

THIS PUBLIC IMPROVEMENT CONTRIBUTION AGREEMENT (this “Agreement”) is entered into as of the ____ day of _____, 2015, between the **CITY OF CHATTANOOGA, TENNESSEE**, a Tennessee municipal corporation (the “City”), and **HAMILTON PLACE MALL GENERAL PARTNERSHIP**, a Tennessee general partnership (“CBL”).

RECITALS

A. The City has determined that the construction of certain improvements described below to the Hamilton Place Boulevard interchange at Interstate Highway 75 (the “Project”) are in the best interest of the City and are expedient to maintain the safety, peace, good government and welfare of the City, its citizens, trade and commerce.

B. The Project is part of the City’s Long Range Plan and will provide direct access to Hamilton Place Boulevard for south bound I-75 traffic and direct access to I-75 for north bound traffic from Hamilton Place Boulevard, both of which will reduce the traffic burden on the Shallowford Road I-75 interchange and the traffic burden on Shallowford Road.

C. The City and the Tennessee Department of Transportation (“TDOT”) anticipate entering into an agreement that will obligate the City to pay twenty percent (20%) of the total cost of the Project (the “Local Share”). The total Project Cost is presently estimated to be \$40,000,000.00 (the “Project Cost”). The remaining eighty percent (80%) of the Project Cost will be funded to TDOT as state-allocated funding included in the State Transportation Improvement Plan (“STIP”) by the Federal Highway Administration.

D. CBL has agreed with the City to pay the Local Share of the Project Cost, with the result that the City will not bear any direct costs to fund the Project.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and CBL agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein as part of this Agreement.

2. TDOT Agreement. The City shall negotiate an agreement with TDOT (the “TDOT Agreement”) in good faith for the construction of the Project. The TDOT Agreement shall not obligate the City to fund more than the Local Share, as defined above. The City shall provide CBL with copies of drafts of the TDOT Agreement as they are received for CBL’s review and comment; provided, however, the City shall have final decision-making authority with respect to the TDOT Agreement. The City shall furnish CBL with a copy of the executed TDOT Agreement upon completion.

3. Funding of Local Share. CBL shall pay directly to the City the Local Share within fifteen (15) business days prior to the date such amounts become due and owing by the City under the TDOT Agreement based upon invoices from the City to CBL accompanied by supporting documentation from TDOT. The City shall promptly pay the Local Share to TDOT when received by the City from CBL.

4. Funding Schedule. The funding schedule for the Local Share of the Project under the TDOT Agreement is expected to be as follows:

a. The total cost of an environmental study of the Project and the engineering and design costs for the Project (“Preliminary Design Costs”)) are expected to be approximately Three Million Four Hundred Thousand Dollars (\$3,400,000.00) and will be funded 100% by CBL as part of the Local Share. Approximately Six Hundred Eighty Thousand Dollars (\$680,000.00) of the Preliminary Design Costs is expected to be due in full in late summer or fall, 2015 and shall be paid by CBL directly to the City in accordance with Section 3 of this Agreement. CBL shall pay directly to the City the remaining portion of the Preliminary Design Costs in accordance with Section 3 of this Agreement.

b. When the plans and specifications for the Project are complete and TDOT is ready to put them out for bid, at the written request of TDOT, CBL will pay approximately One Million Dollars (\$1,000,000.00) directly to the City as part of the Local Share in accordance with Section 3 of this Agreement.

c. The balance of the Local Share, based on TDOT’s then current estimate of the Project Cost after bidding of the construction contract for the Project, will be paid by CBL directly to the City at the written request of TDOT in accordance with Section 3 of this Agreement. .

d. All sums paid by CBL shall be included in the Local Share.

e. CBL agrees to pay any overages for which the City is obligated under the TDOT Agreement.

5. Invoices; Communications. The City agrees to furnish promptly to CBL copies of all invoices, statements, plans, specifications, reports, studies and related correspondence with TDOT, its engineers, consultants and contractors with respect to the Project. The City agrees to permit CBL and its representatives to participate in all meetings and telephone conversations with TDOT, its engineers, consultants and contractors with respect to the Project, to review and comment on all engineering design drawings and construction plans, and to otherwise permit CBL to participate in the Project; provided, however, the City shall have final decision-making authority with respect to the Project, so long as the scope and general plan of the Project do not change materially from the initial concept that induced CBL to enter into this Agreement.

6. Termination. In the event the Federal Highway Administration does not fund or commit to fund the Project by September 30, 2018, either party may terminate this Agreement by written notice to the other party; provided, however, the City's obligation to fund any remaining portion of the Local Share pursuant to the TDOT Agreement has first been extinguished. In the event funding of the Project occurs or is committed in accordance with the preceding sentence, and in the event construction of the Project does not commence by September 30, 2020, either party may terminate this Agreement by written notice to the other party; provided, however, the City's obligation to fund any remaining portion of the Local Share pursuant to the TDOT Agreement has first been extinguished. CBL specifically waives any recourse, whether at law or equity, to recover from the City any portion of the Local Share paid by CBL on behalf of the City in the event of termination by either party as permitted herein to the extent the Local Share was paid by the City to TDOT pursuant to the TDOT Agreement.

7. Miscellaneous.

a. Choice of Law. This Agreement shall be governed by the law of the State of Tennessee, excluding its principles of conflicts of laws.

b. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

c. Notices. Any notice, request or demand given pursuant to this Agreement shall be deemed to have been given when personally delivered during business hours, three (3) days after mailing by certified mail, return receipt requested, or by electronic mail delivered prior to 5:00 P.M. Eastern time on business days, with a paper copy delivered by personal delivery or certified mail, return receipt requested, as follows:

To the City:

City of Chattanooga
Department of Transportation
1250 Market Street, Suite 3030
Chattanooga, Tennessee 37402
Attention: Administrator of Transportation
Email: bbailey@chattanooga.gov

To CBL:

Hamilton Place Mall General Partnership
c/o CBL & Associates Management, Inc.
2030 Hamilton Place Boulevard
CBL Center, Suite 500
Chattanooga, Tennessee 37421
Attention: Chief Legal Officer
Email: jeff.curry@cblproperties.com

d. Counterparts; Execution. This Agreement and any amendments may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that signatures transmitted by scanning and email shall have the legal effect of original signatures.

8. City Council Approval. This Agreement is subject to approval by the Chattanooga City Council.

IN WITNESS WHEREOF, the City and CBL have executed this Agreement as of the date first above written.

CITY OF CHATTANOOGA, TENNESSEE

By _____
Name: _____
Title: _____

HAMILTON PLACE MALL GENERAL PARTNERSHIP,
By CBL & Associates Management, Inc.,
Managing Agent

By _____
Name: _____
Title: _____