

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING PAYMENT TO ROBERT BACHMAN FOR A PERMANENT STORM DRAINAGE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT RELATIVE TO CONTRACT NO. S-09-008-508, NORTH ST. ELMO DRAINAGE IMPROVEMENT PROJECT, FOR TRACT NO. 8, PROPERTY LOCATED AT TAX MAP NO. 155J-F-003.01, FOR AN AMOUNT NOT TO EXCEED SIXTY-FIVE THOUSAND TWO AND 89/100 DOLLARS (\$65,002.89), OR TO AUTHORIZE THE OFFICE OF THE CITY ATTORNEY TO BEGIN EMINENT DOMAIN PROCEEDINGS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing payment to Robert Bachman for a permanent storm drainage easement and temporary construction easement relative to Contract No. S-09-008-508, North St. Elmo Drainage Improvement Project, for Tract No. 8, property located at Tax Map No. 155J-F-003.01, for an amount not to exceed \$65,002.89, or to authorize the Office of the City Attorney to begin eminent domain proceedings.

ADOPTED: _____, 2015

/mem

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: September 9, 2015

Preparer: Dennis Malone

Department: Public Works

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # _____

Council District # _____

7

Council approval is requested to authorize either payment to Robert Bachman, for a Permanent Storm Drainage Easement and Temporary Construction Easements, relative to Contract S-09-008-508, North St. Elmo Drainage Improvement Project, for Tract No. 8, property located at Tax Map No. 155J-F-003.01, in the amount not to exceed \$65,002.89, or to authorize the Office of the City Attorney to begin eminent domain proceedings.

Name of Vendor/Contractor/Grant, etc. Robert Bachman
Total project cost \$ 65,002.89
Total City of Chattanooga Portion \$ 65,002.89
City Amount Funded \$ 65,002.89
New City Funding Required \$ _____
City's Match Percentage % _____

New Contract/Project? (Yes or No) Yes

Funds Budgeted? (YES or NO) Yes

Provide Fund 6031

Provide Cost Center K80116

Proposed Funding Source if not budgeted _____

Grant Period (if applicable) _____

List all other funding sources and amount for each contributor.

Amount(s)

Grantor(s)

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Funded in Water Quality FY15 Capital Budget

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

Mail Tax Bill To:
Walgreen Co.
Real Estate Tax Dept.
P.O. Box 1159
Deerfield, Illinois 60015
Attn: Tax Dept., Re: Store No. 6143
(Map 155J "F" Parcel 003.01)

This Instrument Prepared By and Return to:
City of Chattanooga
Engineering Division
1250 Market Street, Suite 2100
Chattanooga, TN 37402
(TAX EXEMPT GOVERNMENTAL AGENCY)

**PERMANENT STORM SEWER AND DRAINAGE EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT**

This Storm Sewer and Drainage Easement ("Easement") is made this ___ day of _____, 2015, by Robert Bachman ("Grantor") being the owner in fee simple of property described in the attached and incorporated **Exhibit A** (the "Real Property"). Walgreen Co., an Illinois corporation ("Walgreens") hereby joins this Easement by and through its consent attached hereto and incorporated herein as a third party beneficiary.

Grantor, in consideration of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby transfers, conveys and grants to The City of Chattanooga ("Grantee"), a municipal corporation, a permanent storm sewer and drainage easement and appurtenances thereto and a temporary construction easement upon the Real Property situated in Hamilton County, Tennessee, all subject to the terms and conditions contained in this Easement.

1. Nature and location of permanent easement areas. This Easement granted by Grantor herein shall be a permanent easement for the benefit of Grantee over, upon, across,

through and under the Real Property, which easement areas are described in **Exhibit B** (the “Permanent Easement Areas”) and depicted on Easement Exhibit S-09-008-T008 attached hereto as **Exhibit D**, both of which are incorporated herein by reference, for the purposes of installing, laying, constructing, maintaining, inspecting and repairing a ten (10’) foot by ten (10’) box culvert, a seven (7’) foot by seven (7’) foot box culvert, and eighteen (18’) inch storm sewers and necessary appurtenances (the “Storm Sewer Facilities”), including the right of ingress and egress for said purposes in accordance with the terms of this Easement. Grantee agrees, by acceptance of this Easement, that all Storm Sewer Facilities shall be maintained and kept in good working order and condition at Grantee's sole cost and expense.

2. Nature and location of temporary construction easement areas. The temporary construction easement granted by Grantor herein shall be for the benefit of Grantee over, upon, across, through and under the Real Property, which temporary construction easement areas are described in **Exhibit C** (the “Temporary Construction Easement Areas”) and depicted on **Exhibit D**, for the purposes of installing, laying, constructing, maintaining, inspecting and repairing the Storm Sewer Facilities, including the right of ingress and egress for said purposes in accordance with the terms of this easement.

3. Encroachment/Construction Activity. Except for at grade parking and landscaping, and other facilities, structures or improvements existing as of the date hereof or permitted by utility or easement agreements existing as of the date hereof, no permanent structures or obstructions shall be placed over the Storm Sewer Facilities or in, upon or over the Permanent Easement Areas by Grantor. Further, Grantor is prohibited from altering or placing anything in the Permanent Easement Areas that obstructs or impedes the flow of storm water or surface drainage, it being further understood and agreed that at grade parking and landscaping,

and other facilities, structures or improvements existing as of the date hereof or permitted by utility or easement agreements existing as of the date hereof shall not be prohibited under this easement.

4. Compliance with Laws. Grantee agrees, by acceptance of this easement, that in the exercise of any of the foregoing easement rights including, without limitation, the excavation, removal and/or disposal of any excavated materials that such excavation, removal and/or disposal activities and all other activities conducted in connection with this easement shall be conducted in accordance with all federal, state and local laws, codes, ordinances and regulations including, without limitation, all federal and state environmental laws and Tennessee Department of Environmental and Conservation rules, regulations, orders and directives (collectively, the "Laws"). Should any excavation be required in connection with this easement, Grantee agrees that Grantee or its contractor, agents or employees will sample and screen any excavated materials to ensure proper removal and/or disposal in accordance with the Laws. Additionally, Grantee further agrees that in the event any such excavated materials are removed and/or disposed of that Grantee shall cause its contractor or engineer to certify to Grantor that all such excavation, removal and/or disposal activities were performed in compliance with the Laws. Grantee agrees to be responsible for any and all costs associated with any environmental cleanup required to comply with the Laws.

5. Easement Agreements. In the exercise of any of the easement rights granted to Grantee hereunder, Grantee shall (i) perform any construction, operation, maintenance, repair, enlargement, reconstruction, relocation and inspection of the facilities so as to minimize interference with the businesses being operated on the Real Property; (ii) promptly repair any damage caused by Grantee to the Real Property or any improvements located thereon from time

to time; (iii) not interfere with the utility or other easements or facilities located in the easement premises or immediately adjacent hereto; (iv) restore the Permanent Easement Areas and Temporary Construction Easement Areas to their condition prior to any disturbance from construction, operation, maintenance or repair of the Storm Sewer Facilities; (v) whenever practicable, use existing roads, driveways and parking areas located on the Real Property, and Grantee also agrees not to interfere with the utility or other easements or facilities located in the Permanent Easement Areas and Temporary Construction Easement Areas as depicted on **Exhibit D**; (vi) provide thirty (30) days written notice to Walgreens at 3550 Broad Street, Chattanooga, TN 37409 Attn: Store Manager, prior to the commencement of any construction, operation, maintenance, or repair of the Storm Sewer Facilities stating the start date and the estimated completion date except in cases of an emergency or public health, safety and welfare; and (vii) shall coordinate times and manner of entry onto the Real Property with Walgreens on-site personnel, (Curtis Haman (423) 634-7797)

6. Third-Party Claims. Subject to the provisions of T.C.A. sections 29-20-101 *et seq.*, Grantee shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to property, caused by any activities conducted by Grantee on the herein described property, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of the Grantor. _

7. Remedies. The parties hereto shall be entitled to specific performance of all rights granted hereby. In the event any party fails to abide by the terms hereof, the other parties shall be entitled to all applicable remedies at law or in equity, including, but not limited to, restraining orders, temporary and permanent injunctions and damages for destruction or injury to any person or property.

EXHIBIT "A"

Legal Description of Real Property

LAND in Hamilton County, Tennessee, being Lot No. 1, on the Revised Plat of Resubdivision of Lot 1 and Lot 2-B, in Revised Pettway's Subdivision of the J.H. Fann Tract and Property of Hannah H. Baker, as shown on plat of record in Plat Book 64, page 34, in the Register's Office for Hamilton County, Tennessee, to which plat reference is hereby made for a more particular description.

Being the same property conveyed to WBA-Chattanooga, LLC, a Tennessee limited liability company, in Book 5870, Page 919 Register's Office for Hamilton County, Tennessee.

Subject to all existing covenants, conditions, restrictions, reservations, easements, exceptions and matters of record.

EXHIBIT "B"

PERMANENT EASEMENTS

Easement "A"

A variable width easement crossing the above noted parcel as shown on the attached Easement Exhibit to which reference is hereby made for a more complete description and containing an area of 854+ square feet or 0.02 acres, more or less.

Easement "B"

A variable width easement crossing the above noted parcel as shown on the attached Easement Exhibit to which reference is hereby made for a more complete description and containing an area of 3,401 square feet or 0.08 acres, more or less.

Easement "C"

A variable width easement crossing the above noted parcel as shown on the attached Easement Exhibit to which reference is hereby made for a more complete description and containing an area of 10,237 square feet or 0.24 acres, more or less.

Exhibit "D"

A 20 foot wide easement crossing the above noted parcel as shown on the attached Easement Exhibit to which reference is hereby made for a more complete description and containing an area of 2,357 square feet or 0.05 acres, more or less.

EXHIBIT "C"

TEMPORARY CONSTRUCTION EASEMENTS

Easement "A"

A 30 foot wide easement crossing the above noted parcel lying east of and adjacent to the above described Permanent Easement "A" as shown on the attached Easement Exhibit to which reference is hereby made for a more complete description and contains an area of 1,256 square feet or 0.03 acres, more or less.

Easement "B"

A 30 foot wide easement crossing the above noted parcel lying east of and adjacent to the above described Permanent Easement "B" for a length of \pm one hundred (100') feet as shown on the attached Easement Exhibit, to which reference is hereby made for a more complete description and contains an area of 2,334 square feet or 0.05 acres, more or less.

The above-described TEMPORARY easements shall terminate after construction of the storm sewer improvements is complete.

EXHIBIT "D"

**DEPICTION OF PERMANENT EASEMENT AREA AND TEMPORARY
CONSTRUCTION EASEMENTS**

(See following page attached hereto)

TENANT'S CONSENT

FOR VALUABLE CONSIDERATION, **WALGREEN CO.**, an Illinois corporation, as Tenant under that certain Lease dated July 7, 2000, as evidenced by that certain Memorandum of Lease recorded on August 18, 2000, in Book 5661, Page 193, in the Register's Office for Hamilton County, Tennessee, as assigned and amended (collectively, the "**Lease**"), for the property described in the attached Storm Sewer Easement (the "**Easement**") hereby: (i) consents to and agrees to be bound by all of the terms, covenants, conditions, provisions, easements, restrictions and agreements contained in the Easement; and (ii) consents to the execution and recordation of the Easement and agrees that the property described in the Easement shall be encumbered by all of the terms, covenants, conditions, provisions, easements, restrictions and agreements contained in the Easement.

TENANT:

Dated: _____, 2015

WALGREEN CO.,
an Illinois corporation

By: _____
Printed Name: _____
Title: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

On this ____ day of _____ 2015, before me appeared _____, to me personally known, who, being by me duly sworn, did say that s/he is the _____ of **Walgreen Co.**, an Illinois corporation, and that said instrument was signed on behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

My term expires: _____

**PERMANENT STORM SEWER AND DRAINAGE
EASEMENT COMPENSATION AGREEMENT**

In consideration of Robert Bachman granting to the City of Chattanooga ("City") a certain drainage easement and certain temporary easements as set forth in a Permanent Storm Sewer and Temporary Construction Easement of even date herewith, the City and Robert Bachman hereby agree that the total value of the rights conveyed hereunder is agreed to be \$65,002.89, which shall be paid by the City to Robert Bachman within ten (10) business days following approval by the Chattanooga City Council.

Executed by the duly authorized officers or agents of Robert Bachman and the City as of the ____ day of _____, 2015.

Mr. Robert Bachman

City of Chattanooga, Tennessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____