

RESOLUTION NO. 30531

A RESOLUTION RECOGNIZING THE SETTLEMENT OF ALL CLAIMS BETWEEN THE CITY OF CHATTANOOGA, DON LEPARD, AND GLOBAL GREEN LIGHTING (“GGL”), AS SET FORTH IN THE SETTLEMENT AGREEMENT SIGNED BY FORMER CITY ATTORNEY WADE HINTON (“FORMER CITY ATTORNEY”) ON JUNE 6, 2018, WHICH PROVIDED FOR THE COMPLETE RESOLUTION OF ANY AND ALL CLAIMS OF GGL AND/OR MR. LEPARD AGAINST THE CITY AND BY THE CITY AGAINST GGL AND/OR MR. LEPARD.

It appearing that there was a dispute over the valuation of GGL lights based on the initial contract purchase by the City and technological changes in the electrical system by the Electric Power Board between the time of purchase by the City and the time that such lights were authorized to be transferred back to GGL in 2018; and

It further appearing that the Settlement Agreement and Release of Claims signed by City Attorney, Wade Hinton, in 2018 (attached as Exhibit A) has resulted in the dismissal of all outstanding litigation between the parties, including EPB, in three different civil suits in Hamilton County, Tennessee Circuit Courts as Case Numbers 17-C-425, 17-C-535, and 17-C-1150 since October 15, 2018; and

It further appearing that no Agreed Final Judgment was filed approving the transfer of lights which was authorized by the former City Attorney’s signature on the Settlement Agreement and Release of Claims, and Case No. 17-C-1150 was dismissed by the Hamilton County Circuit Court on procedural steps in 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE CHATTANOOGA CITY COUNCIL
AS FOLLOWS:

1. At this time, the City Council recognizes and acknowledges that GGL and/or Mr. Lepard removed the City owned Street lights Assets from the City's storage facilities after being provided access and GGL and/or Mr. Lepard are properly in possession of all lights to which they received from the City pursuant to the Settlement Agreement and Release of Claims signed by City Attorney Hinton on June 6, 2018, as the City's authorized representative.

2. The City Council ratifies and accepts all of the terms in connection with the dismissal of three (3) lawsuits which has occurred following the execution of the Settlement Agreement and Release of All Claims against GGL, Don Lepard and the City that are set forth in Exhibit A to this Resolution.

3. The City Council ratifies and accepts the Covenants Not to Sue, Mutual Non-Disparagement, Indemnification, and all other terms and conditions contained in the Settlement Agreement and Release of All Claims executed by Don Lepard and GGL dated May 17, 2018 and approved by the former City Attorney on June 6, 2018.

4. The City Council did not obtain any documentation from the former City Attorney that this Settlement Agreement and Release of All Claims was timely approved by the City Council within ninety (90) days of its execution by the City's authorized representative until it received a Memorandum from Internal Audit dated July 2, 2020.

5. It is Resolved that such documentation of this Settlement Agreement was not properly maintained or properly provided to the City Council in a public meeting during the time of execution and transfer of lights in June of 2018, by the former City Attorney, as required by City Code § 2-49, which has resulted in confusion and delayed action by the City Council on this matter.

6. The City Council ratifies this Settlement Agreement and Release of All Claims at this time and this Resolution ratifies all terms of the Settlement Agreement and the transfer of lights to GGL in full and final satisfaction of all parties' claims.

ADOPTED: October 20, 2020.

PAN/kap/mem

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (this "Agreement") is entered into as of the 12 day of June, 2018, by and among Global Green Lighting, LLC, a limited liability company organized under the laws of the State of Tennessee ("GGL"), Don Lepard ("Mr. Lepard"), individually, and the City of Chattanooga, a municipal corporation organized under the laws of the State of Tennessee ("City"), (collectively "Parties").

WHEREAS, GGL and City entered into an Agreement for Energy Efficient Lighting on or around March 29, 2012 (the "Contract"), wherein City retained GGL to overhaul and replace the City's street-lighting, in exchange for a fee;

WHEREAS, GGL and Mr. Lepard, have filed lawsuits against, among others, the City, the Mayor, and EPB arising out of the Contract in the Circuit Court, one of which is currently pending and identified as Case No. 17C1150; another of which remains open on the issue of attorney fees only, which is identified as Case No. 17C425, (collectively "Lawsuits");

WHEREAS, GGL, Mr. Lepard, and City deny all allegations made in the Lawsuits;

WHEREAS, in order to avoid the expense, burden and delay of litigation, and without admitting or acknowledging any liability, the parties to this Agreement now wish to affect a complete resolution and settlement of any and all claims against the other, directly or indirectly related to the Agreement, including any and all claims that have not been raised, and freely and voluntarily enter into this Agreement for that purpose;

NOW THEREFORE, in consideration of the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Complete Resolution. It is the intent of this Agreement to resolve, fully and forever, any and all claims of GGL and/or Mr. Lepard against City, and City against GGL and/or Mr. Lepard, related to actions by or on behalf of the parties, pursuant to the terms herein.

2. Transfer of the Lights. Within ninety (90) days and upon approval of City Council to dispose of lights and City's authorized representative's signature of this Agreement, the City shall transfer ownership, use, and control of any and all GGL lights currently in its possession and stored at the City building located at 1815 E Main Street, Chattanooga, Tennessee, the lot on Lynbrook behind Armando's. GGL shall be solely responsible for the pick-up, transfer, and storage of the lights at the time of transfer, including, but not limited to, any and all liability associated with the pick-up and transfer. The City shall ensure GGL's access to the lights during business hours at the locations where the lights are currently stored.

City agrees that any GGL lights (lights original purchased by City from GGL) that are taken down from the electrical poles within the next twenty four (24) months will be transferred to GGL, City will send an email notice to Don Lepard and his attorney that such lights are available for pickup at a designated location.

2. Releases

a GGL, for itself and its successors and assigns, hereby releases, discharges and holds harmless the "City Released Parties" (as defined below) from any and all known or unknown claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses and expenses whatsoever, existing now or in the future, under any municipal, local, state or federal law, common or statutory, related to, concerning, or arising, directly or indirectly, out of any injury, damage, loss or expense incurred in connection with actions by or on behalf of the City, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuits. The term "City Released Parties" shall mean the City of Chattanooga and its current and former parents, subsidiaries,

affiliated and related companies, partnerships and entities, their successors and assigns, and any current or former administration, officers, agents, representatives, and employees of City or its current or former parents, subsidiaries, affiliated and related companies, partnerships and entities, and their guardians, successors, assigns, heirs, executors and administrators.

b Don Lepard, for itself and its successors and assigns, hereby releases, discharges and holds harmless the "City Released Parties" (as defined below) from any and all known or unknown claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses and expenses whatsoever, existing now or in the future, under any municipal, local, state or federal law, common or statutory, related to, concerning, or arising, directly or indirectly, out of any injury, damage, loss or expense incurred in connection with actions by or on behalf of the City, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuits. The term "City Released Parties" shall mean the City of Chattanooga and its current and former parents, subsidiaries, affiliated and related companies, partnerships and entities, their successors and assigns, and any current or former administration, officers, agents, representatives, and employees of City or its current or former parents, subsidiaries, affiliated and related companies, partnerships and entities, and their guardians, successors, assigns, heirs, executors and administrators.

c City, for itself and its successors and assigns, hereby releases, discharges and holds harmless the "GGL Released Parties" (as defined below) from any and all known or unknown claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses and expenses whatsoever, existing now or in the future, under any municipal, local, state or federal law, common or statutory, related to, concerning, or arising, directly or indirectly, out of any injury, damage, loss or expense incurred in connection with actions by or on behalf of Mr. Lepard and/or GGL, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit. The term

“GGL Released Parties” shall mean GGL and its current and former parents, subsidiaries, affiliated and related companies, partnerships and entities, their successors and assigns, and any current or former owners, shareholders, officers, directors, agents, representatives, and employees of GGL or its current or former parents, subsidiaries, affiliated and related companies, partnerships and entities, and their guardians, successors, assigns, heirs, executors and administrators.

3. Covenants Not to Sue

a GGL hereby agrees not to commence or assist, directly or indirectly, with any lawsuit, action, claim (including a third-party claim), arbitration, regulatory action or other proceeding against City Released Parties with respect to any and all actions by or on behalf of the City, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuits, except for a lawsuit or other action against City for breach of this Agreement. This covenant not to sue is a material inducement, without which City would not have entered into this Agreement.

b Mr. Lepard hereby agrees not to commence or assist, directly or indirectly, with any lawsuit, action, claim (including a third-party claim), arbitration, regulatory action or other proceeding against City Released Parties with respect to any and all actions by or on behalf of the City, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuits, except for a lawsuit or other action against City for breach of this Agreement. This covenant not to sue is a material inducement, without which City would not have entered into this Agreement.

c City hereby agrees not to commence or assist, directly or indirectly, with any lawsuit, action, claim (including a third-party claim), arbitration, regulatory action or other proceeding against GGL Released Parties with respect to any and all actions by or on behalf of the

GGL and/or Mr. Lepard, including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuit, except for a lawsuit or other action against GGL for breach of this Agreement. This covenant not to sue is a material inducement, without which GGL would not have entered into this Agreement.

d Should either party breach this Agreement by filing a cause of action against the other, then the parties agree that the non-breaching party shall be entitled to \$500.00 per day in liquidated damages, and the statute of limitations for any and all causes of actions the non-breaching party may have as of the date of this Agreement may be tolled.

4. Mutual Non-Disparagement. Mr. Lepard agrees not to intentionally make, or intentionally cause any other person to make, any public statement that is intended to criticize or disparage the City, any of its affiliates, or any of its respective elected officials, officers, administrators, or employees related to any matters concerning the Lawsuits. The City agrees to use commercially reasonable efforts to cause its elected officials, officers, administrators, or employees not to intentionally make, or intentionally cause any other person to make, any public statement that is intended to criticize or disparage the GGL and/or Mr. Lepard. This provision shall not be construed to prohibit any person from responding publicly to incorrect public statements or from making truthful statements when required by law, subpoena, court order, or the like.

5. Agreed Final Judgment. The parties shall execute and file the Agreed Final Judgment in Case No.17C1150 thereby dismissing GGL's Complaint with prejudice within seven (7) days from the execution of this Agreement.

6. Indemnification. The parties agree not to participate in, assist in the preparation of, or otherwise involve itself in any litigation brought by a third party against any City Released Party

or GGL Released Party with respect to the Agreement including without limitation any and all claims described in, arising out of, or in any way related to the Lawsuits.

7. Representations and Warranties. The parties each represent and warrant that (i) it is not relying upon any statements (oral or written), understandings, representations, expectations or agreements other than those expressly set forth in this Agreement, (ii) it has had the opportunity to be represented and advised by legal counsel in connection with this Agreement, (iii) this Agreement is being made voluntarily and of each party's own choice and not under coercion or duress, (iv) it has no expectation of that any of the other parties will disclose facts material to this Agreement, (v) it knowingly waives any and all rights to rescind or avoid this Agreement based upon presently existing facts, known or unknown, and (vi) it has the full power, authority and capacity to make the commitments contained in this Agreement. The parties each understand that it is giving up any and all claims against the other for damages that are currently known as well as any and all claims for damages that have not yet been discovered or that do not yet exist, but which may be discovered or arise in the future. The parties each agree and stipulate that the other party is relying on these representations and warranties as a material inducement to enter into the Agreement. The parties each expressly waive any claim of fraud or fraudulent inducement with respect to this Agreement and agree that no party shall be deemed to be the drafter. These representations and warranties shall survive the execution of this Agreement indefinitely and without regard to the statute of limitations.

8. Disclaimer of Liability. By entering into this Agreement, the parties do not admit, and do not specifically deny, any violation of any local, state, or federal law, common or statutory. Neither the execution of this Agreement nor the consideration provided for herein shall constitute

or be construed as an admission by any party of any fault, wrongdoing or liability, whatsoever, and the parties acknowledge that all such liability is expressly denied.

9. Tennessee Open Records Act. The terms of this Agreement shall be subject to the provisions of the Tennessee Open Records Act, T.C.A. § 10-7-101, *et seq.*

10. Miscellaneous. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed herein and supersedes all prior and contemporaneous negotiations and agreements, oral or written, all of which are deemed incorporated and merged into this Agreement or abandoned. This Agreement cannot be assigned, amended, modified or terminated without the express written consent of all parties. No waiver of any breach or failure to enforce one or more of the terms and conditions hereof shall be construed as an implied amendment or agreement to modify or as a waiver of the right to later enforce such terms. If any provision of this Agreement is held invalid, then to the fullest extent permitted by law, such invalidity shall not affect the validity of any other provision of this Agreement. Each party shall bear its own attorneys' fees and costs. This Agreement shall be covered by and interpreted under the laws of the State of Tennessee. This Agreement shall be binding on, and shall inure to the benefit of, the parties, their heirs, successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be binding and enforceable as an original, and electronic or facsimile signatures shall be deemed valid as originals.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Signed and sealed on this 17th day of May, 2018.

GLOBAL GREEN LIGHTING, LLC

By: [Signature]

Print Name: DONALD E. LEPAARD

Title: Chief Operator / President

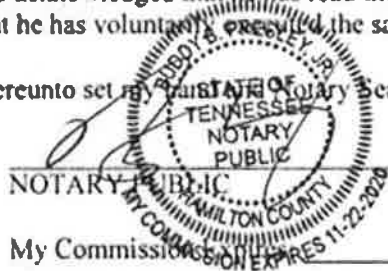
STATE OF TENNESSEE)
COUNTY OF HAMILTON)

Before me, a Notary Public of the State and County aforesaid, personally appeared Don Lepard, Chief Manager and who acknowledges himself as an authorized signatory representative of Global Green Lighting, LLC, to me known to be the persons herein named and who executed the foregoing release, and who acknowledged that he has read the foregoing release and understands the contents thereof and that he has voluntarily executed the same.

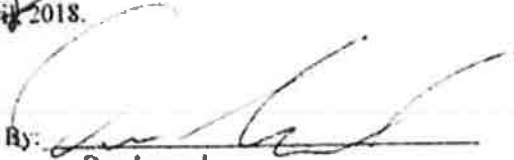
IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal.

[Signature]
NOTARY PUBLIC

My Commission Expires 11-22-2020



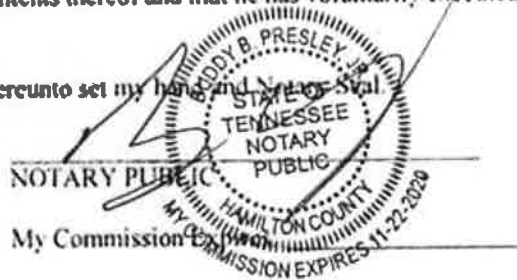
Signed and sealed on this 17th May day of ~~April~~ 2018.

By: 
Don Lepard

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

Before me, a Notary Public of the State and County aforesaid, personally appeared Don Lepard, individually, known to be the persons herein named or who has provided appropriate identification, and who executed the foregoing release, and who acknowledged that he has read the foregoing release and understands the contents thereof and that he has voluntarily executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and Seal of Office


NOTARY PUBLIC
My Commission Expires 11-22-2020

Signed and sealed on this 17th day of April, 2018.

CITY OF CHATTANOOGA

By: [Signature]
Print Name: Wade A. Denton
Title: CITY MANAGER

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

Before me, a Notary Public of the State and County aforesaid, personally appeared Wade A. Denton, and who acknowledges himself as an authorized signatory representative of City of Chattanooga, to me known to be the persons herein named and who executed the foregoing release, and who acknowledged that he has read the foregoing release and understands the contents thereof and that he has voluntarily executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal.



Vanessa Meachen
NOTARY PUBLIC

My Commission Expires: 9/21/19