

RESOLUTION NO. 30965

A RESOLUTION AUTHORIZING THE INTERIM ADMINISTRATOR OF ECONOMIC DEVELOPMENT TO ENTER INTO AN ARTWORK DONATION AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE COMMUNITY FOUNDATION OF GREATER CHATTANOOGA TO ACCEPT THE “ED JOHNSON MEMORIAL” VALUED AT ONE MILLION ONE HUNDRED TWENTY-ONE THOUSAND FOUR HUNDRED THIRTY-NINE AND 64/100 DOLLARS (\$1,121,439.64).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Interim Administrator of Economic Development to enter into an Artwork Donation Agreement, in substantially the form attached, with the Community Foundation of Greater Chattanooga to accept the “Ed Johnson Memorial” valued at \$1,121,439.64.

ADOPTED: December 7, 2021

/mem



**ARTWORK TRANSFER AND DONATION
AGREEMENT BETWEEN
THE CITY OF CHATTANOOGA
AND
THE COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC.**

This ARTWORK TRANSFER AND DONATION AGREEMENT (the “Agreement”) is hereby made and entered into this _____ day of _____, 2021 by and between THE COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC., a Tennessee not-for-profit corporation with its principal office located at 1400 Williams Street, Chattanooga, Tennessee 37408 (the “Foundation”) and the CITY OF CHATTANOOGA, a Tennessee municipal corporation with its principal office located at 101 E. 11th Street, Chattanooga, Tennessee 37402 (the “City”).

WHEREAS, the Foundation commissioned the creation of artwork for the Ed Johnson Memorial (the “Artwork”) as set forth in the Public Art Agreement (the “Art Agreement”) between Foundation and the artist which is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the Foundation has offered to donate the Artwork to the City to be installed on public property owned by the City; and

WHEREAS, the City is willing to accept the donation of the Artwork under the terms and conditions herein.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. The Foundation hereby irrevocably donates, transfers, and conveys all right, title, interest, and ownership of the Artwork to the City. The donation shall be effective as of the date this Agreement is signed by the City.
2. The Foundation warrants and represents that it is the sole and legal owner of the Artwork.
3. The Foundation certifies that the Artwork is free of encumbrances and does not infringe upon any copyrights subject to the terms of the Art Agreement.
4. The person executing this agreement on behalf of the Foundation hereby warrants and represents that he or she has the full competency, power, and authority to bind the Foundation in accordance with the terms of this Agreement, and that no further action is required to make this Agreement valid and binding.

5. The Foundation hereby confirms that it has completed the Artwork Informational Sheet, which is attached hereto as **Exhibit B**, as well as all required supporting documents, photographs, etc. which shall also be attached as part of **Exhibit B**. City reserves the right to request additional information about the Artwork from Foundation, as deemed necessary by City.
6. The City may remove or de-accession the Artwork at its sole discretion. The City will give Foundation the right of first refusal to reacquire the donated Artwork pursuant to the terms and conditions established by the City.
7. The fabrication and installation of the Artwork yielded unexpected costs that exceeded the original budget amount. In the interest of ensuring the continued progression and ultimate completion of this culturally and historically significant art installation, the City, along with two different supporting foundations, paid the excess costs, and the City agreed that the Foundation would not be required to transfer funds for the ongoing care and maintenance of the Artwork.

City agrees to provide all maintenance, repair, replacement and restoration reasonably necessary to keep the Artwork in a good and safe state of condition and repair, and City will regularly inspect the site at which the Artwork is located and will maintain it in a clean and orderly condition, free of rubbish and debris. The City will perform the maintenance, repair etc. for the Artwork as set forth in the Maintenance Plan drafted by the designers of the Artwork, which is attached hereto as **Exhibit C** and incorporated herein by reference. The terms and costs associated with storing and maintaining the Artwork shall be the responsibility of the City and the Foundation shall have no further obligations related thereto.

8. Foundation agrees to defend, indemnify, and hold harmless the City, its officers, employees, agents, or other representatives from any and all claims for damages arising from the Foundation's breach of this Agreement or from any negligent acts of the Foundation in connection with its performance of its obligations under this Agreement.
9. Additionally, Foundation hereby assigns to the City all rights of the Foundation under the Art Agreement arising out of or in connection with a claim that the Artwork infringes, violates or misappropriates a valid third party copyright or other proprietary right, subject to the rights and waivers and other provisions governing intellectual property related to the Artwork set forth in the Art Agreement.
10. Any notices, documents, correspondence or other communications concerning this Agreement shall be addressed to the contact person for each party as set forth below:

If to Foundation:	If to City:
Community Foundation of Greater Chattanooga, Inc. Attn: Maeghan Jones 1400 Williams Street Chattanooga, Tennessee 37408 (423) 265-0586	City of Chattanooga Attn: Director of Public Art 101 E. 11 th Street Chattanooga, Tennessee 37402 (423) 643-7830

11. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

12. City and the Foundation each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

13. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and the Foundation.

14. This Agreement represents the entire and integrated agreement between City and the Foundation. All prior and contemporaneous communications, representations, and agreements by the Foundation, whether oral or written, relating to the subject matter of this Agreement are hereby incorporated into and shall become a part of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized signatories.

CITY OF CHATTANOOGA

By: _____

Print Name: _____

Title: _____

Date: _____

COMMUNITY FOUNDATION OF GREATER
CHATTANOOGA, INC.

By: _____

Print Name: _____

Title: _____

Date: _____

Exhibit A

Contract Documents for the Design, Fabrication, and Installation of the Ed Johnson Memorial

STANDARD FORM AGREEMENT: PUBLIC ART DESIGN PHASE

Name	Ed Johnson Memorial – Design Phase
Client	Community Foundation of Greater Chattanooga “Client”
Artist/Studio	Jerome Meadows/Meadowlark Studio
Public Art Project Name	Ed Johnson Memorial
Public Art Project Location	Plot of land adjacent to South End of Walnut Street Bridge/Plaza (Property of the City of Chattanooga “City”)
Contract	May 11, 2018
Design Phase Completion	On or before August 1, 2018
Amount	\$45,000

This PUBLIC ART AGREEMENT by and between the above-referenced parties to this AGREEMENT sets forth conditions for participation in this contract.

1. Final Design Concept

a. *Description:*

Continuity of flowing planar geometry between the Memorial and the proposed Walnut St Plaza
 Creation of a Sacred Space by using surrounding elements of benches, Story Walls, plantings and four new trees to enfold the space
 Provision of on-grade accessibility to the Memorial
 Focus of the Memorial view towards the second span of the Walnut Street Bridge
 Continuity of Memorial downslope utilizing artistic elements and planting

Lighting:

Memorial Entrance Wall
 Uplighting from recessed fixtures within the Memorial with fill in lighting from planted perimeter
 Uplighting of three Central Sculptural Figures
 Skim lighting to illuminate Memorial plaza and emphasize paving level engraved quotes
 Side lighting of the Story Walls beonze plaques
 Up lighting from the base of the three “Those As Yet Unsung” figures on the slope
 Up lighting of the four new trees

2. Scope of Work

- a. Revised Design Plans addressing design input as described in 1a submitted between mid June – July 1, 2018.
- b. Team report of progress at 50% completion (between mid June – July 1, 2018).
- c. Submission of final design documents and construction drawings on or before August 1, 2018.
- d. Proposed site visits/meetings include team meeting mid-May; site visits TBD.

3. Construction Drawings

Creation of a full set of Construction Documents detailing materials and construction specifications in accordance with the items identified above in the section: **Design Development descriptions.**

4. Payment and Conditions

Client will render a payment to the Artist in the above-stated amount Agreement in three payments. The first payment of \$15,000 shall be made within ten (10) days of the full execution of this Agreement. The second payment of \$15,000 will be made after approval of revised design drawings. The final payment of \$15,000 will be paid upon delivery of a completed design and construction drawings satisfactory to the Client. Client shall not be responsible for any other costs incurred by the Artist. Artist agrees to pay any taxes owed on payment.

5. Non-Performance

In the event the Artist fails to submit a final design and construction drawings by the above stated deadline, the Artist shall be invoiced for the full amount of the initial payment. In the event that Client must pursue legal action to recover the payment, any action will be brought in the courts of the state of Tennessee, Hamilton County. The Artist agrees to pay all legal fees accrued by the Client associated with any action taken by the Client, whether mediation or lawsuit, to recover monies owed.

6. Agreement Changes

Any changes to the design phase or its terms must be agreed to in writing by all parties to this Agreement.

7. No Liability

Client and City shall have no liability as a result of this Agreement. The Artist agrees to hold harmless and indemnify Client and City, its agents, subcontractors, administrators, officers, officials, and employees for any damages, claims and costs resulting from the Artist carrying out its responsibilities as outlined in this Agreement.

8. Copyright Infringement

The Artist agrees that he/she shall not infringe upon any copyright, with regard to the work submitted. The Artist may copyright the work submitted, provided that the Artist grants Client and City a license to make photographs, videos or other two dimensional reproductions of the work for marketing, educational and public presentation purposes.

9. Insurance. Should the Client contract with the Artist to fabricate and install the designed artwork, Artist will be required to maintain insurance coverage which will satisfactorily insure Artist against claims and liabilities which arise because of the agreement with the Client and the City, with the minimum insurance coverage as follows:

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- a. **Commercial General Liability Insurance**, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- b. **Automobile Liability Insurance**, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- c. **Worker's Compensation Insurance and Employer's Liability Insurance**, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- d. **Professional Liability Insurance**, with a limit of \$1,000,000 for each claim and aggregate.

If any of the above cited policies expire during the life of the Agreement, it is the Artist's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

- i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 1. Commercial General Liability
 2. Auto Liability
 3. Worker's Compensation Insurance and Employer's Liability Insurance
 4. Professional Liability Insurance

ii. Artist's insurance must be primary insurance as respects performance of subject Agreement.

iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Artist under this Agreement.

10. **Records Retention.** The term "Artist" is used interchangeably to describe signatories to Agreements, grants, and agreements with the Client and applies to reflect the relationship with the Client (Engineer, Contractor, Licensee, Supplier, Vendor, Grant Recipient, etc.)

- a. All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Artist, or any of the Artist's independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the City. Additionally, said records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Artist and its personnel to perform the obligations of this Agreement, and the records of expenses incurred by the Artist in its performance under said Agreement. The Artist shall maintain and protect these records for no less than seven (7) years after the completion of the Project, or for any longer period of time as

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may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from the Project.

- b. The City, or its assigns, may audit all financial and related records (including digital) associated with the terms of the Agreement or agreement, including timesheets, reimbursable out of pocket expenses, materials, goods and equipment claimed by the Artist. The City may further audit any of the Artist's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the Agreement or agreement), or to identify conflicts of interest.
- c. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Artist and any subcontractors or suppliers of goods or nonprofessional services to the extent that those subcontracts or agreements relate to fulfillment of the Artist's obligations to the City.
- d. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City, unless the audit identifies significant findings that would benefit the City. The Artist will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
- e. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

11. Termination for Convenience. Client reserves the right to terminate this order or any part of this order at its sole convenience with thirty (30) days written notice. In the event of termination, Artist must immediately stop all work and immediately cause any of its suppliers or subcontractors to cease any further work. Artist will be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed before the notice of termination, plus actual direct costs resulting from termination. Artist will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Artist's suppliers or subcontractors which Artist could reasonably have avoided.

12. Termination for Cause. Client may also cancel this order, or any part of this order, with seven (7) days written notice for cause in the event of any default by Artist, or if Artist fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Client, upon request, with adequate assurances of future performance are all causes allowing Client to cancel this order for cause. In the event of cancellation for cause, Client is not liable to Artist for any amount, and Artist is liable to Client for any and all damages sustained by reason of the default which gave rise to the cancellation. If it should be determined that Client has improperly cancelled this Agreement for a default, the cancellation is considered a termination for convenience.

13. Dispute Resolution. Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement, or breach thereof, shall be subject to mediation in Chattanooga, Tennessee, in accordance with the following provisions:

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- a. The mediation shall be conducted by a mediator mutually acceptable to both parties.
- b. The parties agree to share equally in the expense of the mediation.
- c. Such mediation may include the Artist or any other person or entity who may be affected by the subject matter of the dispute.
- d. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order, or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.

14. Delay in Performance. Neither Client nor Artist shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage; judicial restraint; discovery of unanticipated hazardous wastes; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Artist under this Agreement. Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement. If the Artist is delayed in the performance of the services for more than sixty (60) days, either by the City or circumstances beyond his control, an equitable adjustment to the Agreement amount can be made to compensate for additional costs incurred.

For delays in performance by Artist caused by circumstances which are within its control, such delays shall be documented and presented to the Client at the conclusion of Project and acknowledged by both Client and Artist. Completed form shall be retained by City for a period of seven years and reviewed prior to Artist selection for future City projects. In the event Artist is delayed in the performance of Services because of delays caused by City, Artist shall have no claim against City for damages or Agreement adjustment other than an extension of time.

15. Hazardous Materials. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The City and Artist agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. City and Artist also agree that the discovery of unanticipated hazardous materials may make it necessary for the Artist to take immediate measures to protect health and safety. City agrees to compensate Artist for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

Artist agrees to notify City when unanticipated hazardous materials or suspected hazardous materials are encountered. City agrees to make any disclosures required by law to the appropriate governing agencies, and agrees to hold Artist harmless for any and all consequences of disclosures made by Artist which are required by governing law. In the event the project site is not owned by City, the Artist agrees to inform the City of the discovery of unanticipated hazardous materials or suspected hazardous materials.

16. Communications. Any notice to the Client shall be made in writing to the address specified below:
Community Foundation of Greater Chattanooga
1270 Market Street

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Chattanooga, TN 37402
(423) 265-0586

Jerome B. Meadows
915 Waters Ave
Savannah, GA 31404
202/213-0036
meadowspark@aol.com

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of Artist and Client.

17. **Waiver.** A waiver by either Client or Artist of any breach of this Agreement shall be in writing. Client's failure to insist on performance of any of the terms or conditions of this purchase order or to exercise any right or privilege, or Client's waiver of any breach does not waive any other terms, conditions, or privileges, whether of the same or similar type
18. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
19. **Integration.** This Agreement represents the entire and integrated agreement between Client and Artist. All prior and contemporaneous communications, representations, and agreements by Artist, whether oral or written, relating to the subject matter of this Agreement, as set forth in the Purchase Order, are hereby incorporated into and shall become a part of this Agreement.
20. **Successors and Assigns.** Client and Artist each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.
21. **Assignment.** Neither Client nor Artist shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Artist from employing independent Artists, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event Artist employs independent Artists, associates, and subcontractors to assist in performance of the Services, Artist shall

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be solely responsible for the negligent performance of the independent Artists, associates, and subcontractors so employed.

- 22. Third Party Rights.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Client and Artist.
- 23. Relationship of Parties.** Nothing contained herein shall be construed to hold or to make the Client a partner, joint venturer, or associate of Artist, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.
- 24. Non-Disclosure.** Artist agrees not to disclose or to permit disclosure of any information designated by the Client as confidential, except to the Artist's employees and independent Artists, associates, and subcontractors who require such information to perform the services specified in this agreement.
- 25. Non-Discrimination.** Artist agrees to comply with all federal, state, and local nondiscrimination laws and regulations. Artist agrees not to discriminate against any participant in this Agreement on the basis of race, color, religion, sex, age or national origin. Artist further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.
- 26. Drug-Free Workplace.** Artist certifies that it will provide a drug-free workplace and agrees to comply with the applicable requirements of the Drug-Free Workplace Act of 1988.
- 27. Federal or State Funding.** In the event that the Project is funded in whole or in part by Federal or State grants, Artist agrees to abide by all applicable Federal and State laws, regulations, grant conditions and procedures.
- 28. Compliance with Laws.** The Client has entered into this agreement with Artist relying on his knowledge and expertise to provide the services contracted for. As part of that reliance, Artist represents that he knows and understands the relevant and applicable federal and state laws that apply to the services provided through this Agreement, and agrees to comply with these relevant and applicable federal and state laws.

IN WITNESS THEREOF, the Client and the Artist have read and understood the terms of this Agreement and agree to execute their respective responsibilities as outlined in this Agreement.

ARTIST	COMMUNITY FOUNDATION OF GREATER CHATTANOOGA
Jerome Meadows <i>Jerome Meadows</i>	Community Foundation of Greater Chattanooga President's Name <i>L. Maeghan Jones</i>
[Artist Signature] <i>[Signature]</i>	[Signature of Community Foundation President] <i>L. Maeghan Jones</i>

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EJMP

Design Phase: Contract Extension Agreement

This Contract Extension Agreement ("Extension") is dated as of August 1, 2018 (the "Effective Date"), by and between the Community Foundation of Greater Chattanooga ("Client") and Jerome Meadows/Meadowlark Studio ("Jerome Meadows"), (collectively, the "Parties").

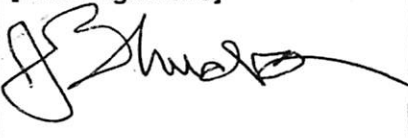
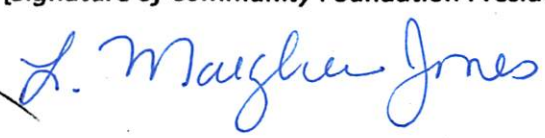
WHEREAS the Parties hereby entered into an Agreement on May 11, 2018 (the "Original Contract").

WHEREAS the Parties hereby agree to extend the terms of the Original Contract in accordance with the terms of the Original Contract as well as the terms provided herein.

In consideration of the mutual covenant, the Client and Jerome Meadows mutually covenant and agree as follows:

- The Original Contract, which is attached hereto as part of this Extension, will end on August 1, 2018.
- The Parties agree to extend the Original Contract for an additional period, which will begin immediately upon the expiration of the original time period and will end on August 31, 2018.
- This Extension bind and benefits both Parties and any successors or assigns. This document, including the attached Original Contract, is the entire agreement between the Parties.

All other terms and conditions of the Original Contract remain unchanged.

ARTIST	COMMUNITY FOUNDATION OF GREATER CHATTANOOGA
Meadowlark Studio Jerome Meadows	Community Foundation of Greater Chattanooga L. Maeghan Jones
[Artist Signature]	[Signature of Community Foundation President]
	

**COMMUNITY FOUNDATION OF GREATER CHATTANOOGA
PUBLIC ART AGREEMENT**

This PUBLIC ART AGREEMENT (“Agreement”) governs the purchase and creation of permanent works of art (“Artwork”) for the Ed Johnson Memorial to be constructed and installed on public property owned by the City of Chattanooga (the “City”).

In consideration of the mutual promises and covenants contained herein, the Community Foundation of Greater Chattanooga, Inc., (“Foundation”) and Jerome Meadows (“Artist”), as further defined herein, (collectively “Parties”) agree as follows:

1. Effective Date.

This Agreement is effective as of the date signed by the Foundation and the Artist.

2. Governing Documents.

The following documents are Exhibits to this Agreement and incorporated herein by reference, unless otherwise indicated in writing and signed by both parties:

- a. Insurance Terms (**EXHIBIT A**)
- b. Scope of Work/Specifications and Compensation Schedule (**EXHIBIT B**)
- c. Artwork Site Diagram and Drawing (**EXHIBIT C**)
- d. Artwork Preliminary Design (**EXHIBIT D**)

3. Term.

The term of the Agreement shall terminate thirty (30) days after the Foundation’s written acceptance of the Artwork; but in no instance shall the Agreement extend beyond five (5) years from the Effective Date. Certain provisions shall survive the termination of the contract period, including the Representations and Warranties in Sections 8 and 9, the provisions governing Indemnification in Section 10, Insurance in Section 11, and Intellectual Property in Section 15 and 16.

4. Scope of Work.

The Artist shall prepare a Scope of Work and Compensation (**EXHIBIT B**) that shall set forth the following:

- a. Project phases and deliverables at each phase (initial design, 25 percent completion, 50 percent fabrication and completion)
- b. Project milestones and dates for completion of each milestone
- c. Proposed site visits/meetings
- d. Costs associated with all work and expenses and an applicable payment schedule.

5. Work Completion and Change Orders.

Artist understands that time is of the essence in the rendering of services under this Agreement and shall complete the work in accordance with the schedule set forth in Scope of Work, **EXHIBIT B**. Any amendments to the schedule require a written change order to be approved in writing by the Foundation.

6. Approval.

The Foundation and the Chattanooga Public Art Director shall review and approve the Artwork at the designated project phases. The approval shall not release the Artist of the responsibility for the correction of mistakes, errors or omissions contained in the plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the plans were developed or approved. Subject to the warranties and indemnification rights provided herein, the Artist will be released of responsibility after the Foundation and the Chattanooga Public Art Director sign off on the final project.

The Parties acknowledge that the Art Work is to be fabricated at locations away from the designated City property ("Site"). The Foundation and the Chattanooga Public Art Director reserve the right to inspect each of the elements at the locations where fabricated.

7. Transportation and Storage.

Artist is responsible for arranging transportation and delivery of the Artwork to a storage facility agreed upon by the Parties in consultation with the appropriate City Public Art and Public Works personnel. The terms and costs associated with storing the Artwork pending its ultimate installation at the Site shall be the subject of a separate agreement entered by the City.

The Artist shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the fabrication of the Artwork at his expense. The Artist shall take reasonable precautions for the safety of, and shall provide protection to prevent damage, injury or loss to persons involved in the fabrication of the Artwork and to the Artwork itself.

8. Representations and Warranties.

Artist represents and warrants:

- a. The Artist has full power and authority to enter into this Agreement.
- b. The Artwork is solely the result of the artistic effort of Artist, and Artist is the sole creator of the Artwork.
- c. The Artwork is a unique and original creation from the Artist that has not been previously created or sold in any form (except as related to the procurement forming the basis of this Agreement).
- d. The Artist is the owner of the Artwork.
- e. The Artwork is free and clear of all liens.

- f. The Artist has free and clear right to sell the Artwork.
- g. The Artwork, or duplicate thereof, has not been accepted for sale elsewhere.
- h. The Artwork is not in the public domain.
- i. The Artwork does not infringe on the proprietary right at common law or intellectual property rights of any third party.
- j. Artist will not enter into any agreements with any other person or entity that conflict with the terms of this Agreement.

The representations and warranties of this section shall survive termination of this Agreement.

9. Warranties-Quality and Condition.

Artist represents and warrants that all work will be performed in accordance with professional workmanlike standards and be free from defective or inferior materials and workmanship, including any defects consisting of inherent vice, or qualities that cause or accelerate the deterioration of the Artwork.

Artist represents and warrants that the Artwork and materials used are not currently known to be harmful to the public health and safety. Artist will accordingly provide a list of materials and substances used in the completion of the Artwork.

The representations and warranties of this section shall survive termination of this Agreement.

10. Indemnification and Hold Harmless.

Artist, his employees, officers, contractors, and subcontractors shall indemnify (including attorney's fees) and hold harmless the Foundation, its officials, employees, officers, and agents (the "Indemnified Parties"), in the event of any claim, lawsuit, liability, judgment, or costs arising directly or indirectly from the Artist's performance of this Agreement. **The provisions of this section shall survive termination of this Agreement.**

11. Insurance.

During the term of this Agreement, Artist shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof insurance in accordance with the terms of **EXHIBIT A** and produce a Certificate of Insurance upon request of the Foundation.

12. Acceptance.

Foundation shall provide written notice of acceptance of the Artwork by the Foundation and the Chattanooga Public Art Director at the time of delivery of the Artwork to the storage location agreed upon by the Parties. Until the point of acceptance, any injury to persons or property caused by the Artist's Artwork or any damage to, theft of, vandalism to, complete destruction of, or acts of God or nature affecting the Artist's Artwork are the sole responsibility of the Artist.

13. Final Inspection.

Final inspection of the Artwork shall be conducted by the Foundation and the Public Art Director within thirty (30) days of receiving written notice from the Artist of the completed fabrication and delivery to the storage location. Artist is responsible for any costs associated with storing the Artwork in advance of the delivery to the storage location agreed upon by the Parties.

Installation of the Artwork at the Site will be addressed in a Construction Contract between a third party and the Artist and the Foundation shall have no obligation or responsibilities with respect to the installation of the Artwork at the Site.

Upon delivery to the storage location and upon final acceptance and final payment, title to the Artwork shall be transferred by the Artist to the Foundation pursuant to a deed in a form acceptable to the Foundation.

14. Documentation.

Prior to receipt of final payment, Artist shall provide photographic documentation of the Artwork, including: a set of three high resolution digital files of the Artwork and a written narrative description of the Artwork.

15. Copyright, Trademark, Service Mark and Infringement of Third Party Intellectual Property Rights.

Artist shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against the Foundation to the extent it is based on a claim that the Artwork infringes upon the intellectual property rights of a third party.

Artist shall further indemnify and hold harmless the Foundation against any award of damages and costs made against Foundation by a final judgment of a court of last resort in any such suit.

All copyright and further reproduction rights to the Artwork remain with the Artist subject to the terms of Section 16 below.

Foundation shall provide the Artist immediate notice in writing of the existence of any such claim and give the Artist the full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Artist to do so.

Foundation reserves the right to participate in the defense of any such action.

Artist shall have the right to enter into negotiations for and to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon Foundation unless approved by the Foundation. **The provisions of this section shall survive termination of this Agreement.**

16. Intellectual Property: Rights and Waivers.

a. Copyright.

Artist retains all copyrights not otherwise granted to the Foundation herein. Artist is responsible for registering the Artwork in his or her name with the U.S. Register of Copyrights at no additional cost to the Foundation.

b. Reproductions.

Artist shall not create or display three-dimensional reproductions of the Artwork at any location, nor shall Artist grant permission for others to create or display three-dimensional reproductions, except with written permission of the Foundation and the Ed Johnson Memorial Committee (the "Committee").

c. Exclusive License for Non-Commercial Reproductions.

Artist grants Foundation and the Committee the exclusive right to publicly display and reproduce images of the Art Work by photographic, electronic, digital, mechanical, or any other method that may become available for educational, procurement, public relations, arts promotional, tourism, and other non-commercial purposes. On any such reproductions, Foundation and the Committee will acknowledge Artist's authorship and provide copyright notification substantially in the following form: Artist's name and date of publication. In the event Foundation or the Committee wishes to use the Artwork for commercial purposes, Foundation and the Committee shall contact the Artist to negotiate a separate agreement regarding commercial use.

d. Publicity.

Foundation and the Committee shall have the right to use the Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork.

e. Credits.

Artist agrees that any reproduction made by Artist for publicity purposes shall refer to City of Chattanooga Public Art and Ed Johnson Project. Foundation and the Committee shall have the right to review and approve any public announcements or press releases generated by Artist or Artist's sub-contractors regarding the Artwork until the Artwork has been publicly dedicated and final acceptance has been issued.

Artist agrees to be photographed or videoed for purposes of promoting the Artwork. Artist grants Foundation and the Committee permission to use his likeness in photograph, video or digital reproduction, for purposes of promoting the Artwork.

The provisions of this section shall survive termination of this Agreement.

17. Waiver.

No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

18. Attorney Fees.

Artist agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of the contract, and in the event Foundation prevails in such action, Artist shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for Foundation.

19. Death or Incapacity of Artist.

In the event of Artist's physical incapacity or death prior to the completion of the Artwork, all work completed up to the point of incapacity or death will be reasonably compensated. Upon payment to compensate Artist or Artist's estate for all work performed to the date of incapacity or death, the incomplete Artwork and any material paid for by Foundation will become the property of Foundation. However, if the Artwork is substantially designed and/or completed and it is feasible for the work to be fully completed without undue delay, Foundation may elect to proceed under the terms of this Agreement and hereby has the consent of the Artist to proceed. In the event the Foundation elects to proceed with the completion of the Artwork, all remaining work to be completed in accordance with this Agreement will be delegated to:

Name: Amber Meadows

Address: 1874 Tubman Road, SE
Washington, DC 20020

Phone Number: 202-340-0759

20. Venue.

Any action between the parties arising from this Agreement shall be maintained in the courts of Hamilton County, Tennessee.

21. Compensation.

The pricing details for the Artwork are contained in **EXHIBIT B**. Artist shall be paid as work is completed and Foundation is accordingly invoiced as milestones as set forth in **EXHIBIT B** are completed and approved by Foundation.

There will be no other charges or fees for performance under this Agreement. Foundation will make payments within thirty (30) days of receipt of invoice.

A Construction Contract will be executed to address the installation of the Artwork and completion of the Ed Johnson Memorial at the Site between a third party and the Artist. The Construction Contract shall be executed for the sum of \$452,054, with adjustments to be made for changes in construction costs. The Foundation shall have no obligations or responsibilities with respect to the terms or performance of the Construction Contract.

22. Taxes.

Any sales, use or excise taxes or similar charges relating to services and materials related to the fabrication of the Artwork shall be paid by the Artist. Foundation shall not be responsible for any taxes that are imposed on Artist. Furthermore, Artist understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Foundation.

23. Governing Law.

The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Artist may provide.

24. Termination.

Breach. Should Artist fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if he should violate any of the terms of this Agreement, Foundation shall have the right to immediately terminate the Agreement and the incomplete Artwork and any material paid for by Foundation will become the property of Foundation. Such termination shall not relieve Artist of any liability to Foundation for damages sustained by virtue of any breach by Artist.

Notice by Foundation. Foundation may terminate this Agreement at any time upon thirty (30) days written notice to Artist and a reasonable reconciliation of costs incurred up to the date of written termination. Upon payment to compensate Artist for all work performed to date, the incomplete Artwork and any material paid for by Foundation will become the property of Foundation.

Lack of Funding. Should funding for this Artwork be discontinued, Foundation shall have the right to terminate the Agreement immediately upon written notice to Artist and a reasonable reconciliation of costs incurred up to the date of written termination. Upon payment to compensate Artist for all work performed to date, the incomplete Artwork and any material paid for by Foundation will become the property of Foundation.

25. Relationship of the Parties.

The Artist shall perform all work as an independent contractor and not as an agent or an employee of the Foundation. The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance, or visual quality of the Artwork and shall be carried out under the personal supervision of the Artist.

26. Third-Party Beneficiary.

The Artist acknowledges and agrees that the City is the intended beneficiary of the terms of this Agreement and the warranties made herein, and such terms and warranties shall accrue to the benefit of the City as the Foundation's successor and assign. Furthermore, the Artist acknowledges and agrees that after transfer of the Artwork to the City by the Foundation, the City shall have all rights under this Agreement and at law in equity as though it were a signatory hereto.

The Parties have read and understand the terms set forth herein. By signing this Agreement, the Parties affirm they have the authority to enter into this legally binding Agreement on behalf of the Parties hereto.

COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC.

Signature: L. Maeghan Jones
L. Maeghan Jones / President

Date: 6/4/19

ARTIST
Signature: Jerome B. Meadows
Jerome B. Meadows

Date: 6/07/19

EXHIBIT A
INSURANCE TERMS

1. **INDEMNIFICATION.** Artist must defend, indemnify and hold harmless the Foundation against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased, or from any act or omission of Artist, its agents, employees or subcontractors.

2. **INSURANCE.** Artist shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Artist against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

- a. **Commercial General Liability Insurance**, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- b. **Automobile Liability Insurance**, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- c. **Worker's Compensation Insurance and Employer's Liability Insurance**, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- d. **Professional Liability Insurance**, with a limit of \$1,000,000 for each claim and aggregate.

If any of the above cited policies expire during the life of this Agreement, it is the Artist's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

i. Community Foundation of Greater Chattanooga, Inc., its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:

- a) Commercial General Liability
- b) Auto Liability
- c) Worker's Compensation Insurance and Employer's Liability Insurance
- d) Professional Liability Insurance

ii. Artist's insurance must be primary insurance as respects performance of subject contract.

iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against Foundation, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Artist under this Agreement.

3. **LIMITATIONS OF RESPONSIBILITY.** Any action resulting from any breach of this Agreement by Artist as to the goods or nonprofessional services delivered must be commenced within one (1) year after the cause of action has accrued.

EXHIBIT B

SCOPE OF WORK/SPECIFICATIONS AND COMPENSATION SCHEDULE

I. SCOPE OF WORK

Artist shall execute the Artwork in accordance with the design proposal as attached and identified as EXHIBIT D and the following description and specifications:

DESCRIPTION OF WORK

ARTWORK/PROJECT NAME: Ed Johnson Memorial

ARTWORK INSTALL LOCATION: Adjacent to the southern terminus of the Walnut Street Bridge

ARTIST NAME: Jerome B. Meadows

ARTIST ADDRESS: 915 Waters Ave, Savannah, GA 31404

ARTIST PHONE: 202-213-0036

ARTIST EMAIL: meadowspark@aol.com

CREDIT: Jerome B. Meadows – Lead Designer, Artist
(Exact form of Artist's name for attribution in all written materials, exhibition, labels, etc.)

TITLE OF ARTWORK: TBD

DESIGN: AS SET FORTH IN EXHIBIT D

MEDIUM: Cast bronze and etched bronze plates

DIMENSIONS: varied set within a site-specific memorial

ESTIMATED INSURANCE VALUATION: **\$264,300**

PROJECT PHASES & DELIVERABLES

Design Development Phase:

1. Artist agrees to attend a plans pre-submittal meeting with City of Chattanooga departmental review. Completed.
2. Chattanooga Public Art Commission review and approval of final design. Completed

Fundraising Phase:

1. Artist agrees to provide recognition to project donors as artist and the Ed Johnson Memorial Committee deem appropriate in the final design.
2. Artist agrees to provide and allow use of any renderings, images or documents pertaining to the memorial's design for fundraising purposes.

Artist Deliverables: Completed.

Fabrication Phase:

1. Artist agrees to fabricate all elements as illustrated in EXHIBIT D.

Artist Deliverables:

- a. Progress photos of fabrication – corresponds to Installment 1
- b. Progress photos of fabrication – corresponds to Installment 2
- c. Progress photos of fabrication – corresponds to Installment 3
- d. Photos of completion – corresponds to Installment 4

PROJECT MILESTONES & DEADLINES

Poetry Workshops (4) currently underway

locating venues and organizing workshops in schools and community centers
Undertaking workshops, 2 weeks in each location Completed

Three Representational Figures 18"

Rendering in clay	Completed
Rubber molding	end of May 2019
Plaster cast & coloring	end of May 2019
Packaging, transport, delivery	TBA

Three Representation Figures

Rendering in clay	May – July 2019
Rubber molding	end of September 2019
Molding incidentals (allowance)	
Bronze cast & patina	end of September 2019
Delivery	TBA

Three Abstract Figures

Rendering in clay	July – August 2019
Rubber molding	August – November 2019
Bronze casting & patina	August – November 2019
Delivery	TBA

Pass Through Barrier

Rendering	August 2019
Bronze casting & Patina	November 2019

Story Walls (4)

Consultation and design	September – November 2019
-------------------------	---------------------------

Fabrication of 40 components (approx.) TBD

7 @ 12” X 16”- text:
 15 @ 12” x 12” – text:
 10 @ 6” x 6” – photo, map, documents
 8 @ 7” diameter – photo

COMPENSATION SCHEDULE

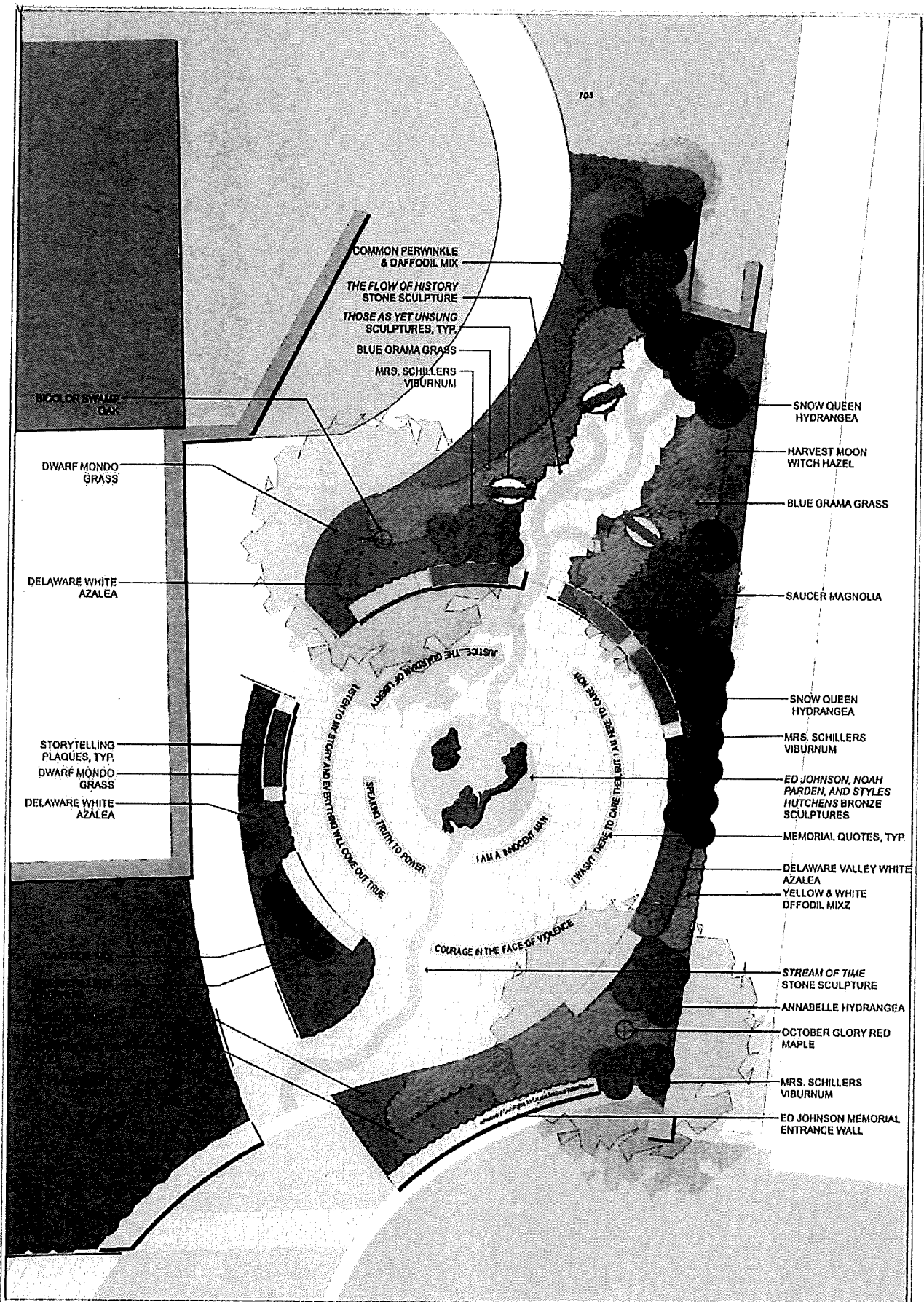
Foundation agrees to compensate Artist a fixed fee in accordance with the following schedule, which shall constitute full compensation for all services, materials, travel, delivery and insurance to be furnished under the terms of this Agreement.

Total Compensation: \$264,300		
Installment	Amount	Deliverable
Installment 1	\$34,500 less 10% studio fee: \$1,200 \$33,300	Upon receipt of budget, timeline and executed Agreement.
Installment 2	\$196,800 less 10% studio fee: \$6,780 \$190,020	Tasks: 1. Completion of poetry workshops. 2. Fabrication and casting of 18” scale figures. 3. Commence fabrication of life-size figures, abstract figures and barrier
Installment 3	\$33,000	1. Completion and casting of

	Less 10% studio fee: \$1,500 \$31,500	life size figures, abstract figures and barrier. 2. Commence consultation with Committee members determining Story Wall content and design and fabrication of Story Wall panels.
Installment 4	Balance of \$9,480	Completion of Story Walls and securing all art components for storage.

Any changes to the Compensation amounts and associated deliverable must be approved in writing by an appropriate Foundation representative.

EXHIBIT C
ARTWORK SITE DIAGRAM AND DRAWING

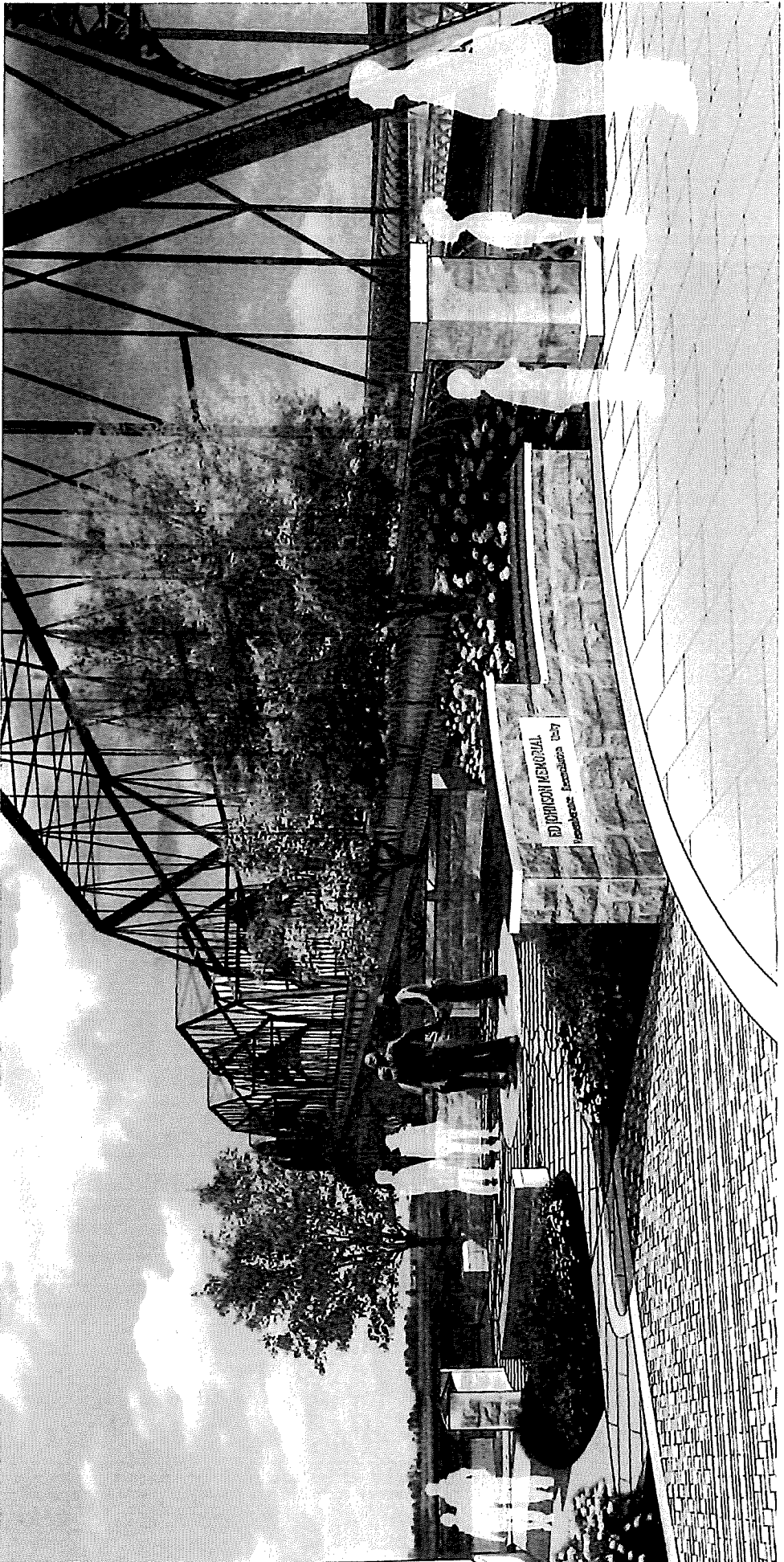


ED JOHNSON MEMORIAL

JEROME MEADOWS • ROSS/FOWLER LANDSCAPE ARCHITECTURE • JAN CHENOWETH • ROGER HALLIGAN • CHARLIE ANDERSON • LESLEE AMES

EXHIBIT D
ARTWORK DESIGN







CITY OF CHATTANOOGA
PUBLIC ART DONATION OFFER ACKNOWLEDGEMENT AGREEMENT

This ARTWORK DONATION OFFER ACKNOWLEDGEMENT AGREEMENT (hereafter "Agreement") is hereby made and entered into this _____ day of May 2019 by and between the Community Foundation of Greater Chattanooga, Inc., ("Foundation") and Jerome Meadows ("Artist") and the CITY OF CHATTANOOGA, a Tennessee municipal corporation with its principal office located at 101 E. 11th Street, Chattanooga, TN 37402 ("City"), each individually referred to herein as a "Party" and collectively as the "Parties". This Agreement shall be effective as of the date signed by the City's authorized signatory ("Effective Date").

WHEREAS, the Foundation has requested that the Artist fabricate artwork as described more fully in **Exhibit A** (the "Artwork") which is attached hereto and incorporated herein by reference; and

WHEREAS, the Artwork will ultimately be installed on the property described in **Exhibit B** (the "Property") which is owned by the City; and

WHEREAS, upon completion of the Artwork and delivery for storage at a mutually acceptable facility, the Foundation desires to donate the Artwork to the City; and

WHEREAS, the City hereby acknowledges the Foundation's desire to donate the Artwork; and

WHEREAS, the City will consider accepting the Artwork as a donation, if the Parties agree in writing to the terms and conditions stated herein and comply with the terms and conditions stated herein before, during, and after the completion of the Artwork.

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations as set forth herein, the Parties agree as follows:

1. **Governing Documents.** The following documents are Exhibits to this Agreement and are incorporated herein by reference, unless otherwise indicated in writing and signed by the Parties:
 - a. Written Description/Proposal of Artwork (Exhibit A)
 - b. Legal Description and Drawing of City Property (Exhibit B)
 - c. Scope of Work (Exhibit C)
2. **Term.** The term of this Agreement shall begin on the Effective Date and shall end upon City's acceptance of the Foundation's donation of the Artwork.
3. **Scope of Work.** The Artist shall prepare a Scope of Work which is attached hereto as **Exhibit C** that shall set forth the following:

- a. Project phases and deliverables at each phase (conceptual design, final design/structural design, fabrication and completion)
 - b. Project milestones and deadline for completion of each milestone
 - c. Proposed site visits/meetings
4. **Compensation.** The Parties hereby acknowledge and agree that the Foundation has commissioned the Artwork and shall be solely responsible for compensating the Artist for the Artwork fabrication and delivery for storage at the agreed-upon storage facility. City shall not be responsible for any compensation or other payment made to the Artist for the Artwork fabrication performed under this Agreement. City's potential acquisition of the Artwork shall only be through the Foundation's donation of the Artwork to City.
5. **Approval.** The Public Art Director and/or the Public Art Commission shall review and approve the Artwork at the designated project phases. The City's approval, through its Public Art Division and/or the Public Art Commission, shall not release the Artist of the responsibility for the correction of mistakes, errors or omissions contained in the plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the plans were developed or approved.
6. **Licenses and Permits.** The Artist shall secure and purchase any and all required licenses, permits and similar legal authorizations necessary for the fabrication of the Artwork.
7. **Representations and Warranties.** Artist represents and warrants:
 - a. The Artist has full power and authority to enter into this Agreement.
 - b. The Artwork is solely the result of the artistic effort of Artist, and Artist is the sole creator of the Artwork.
 - c. The Artwork is a unique and original creation from the Artist that has not been previously created or sold in any form (except as related to the procurement forming the basis of this Agreement).
 - d. The Artist is the owner of the Artwork.
 - e. The Artwork is the exclusive work of the Artist.
 - f. The Artwork is free and clear of all liens.
 - g. The Artist has free and clear right to sell the Artwork.
 - h. The Artwork, or duplicate thereof, has not been accepted for sale elsewhere.
 - i. The Artwork is not in the public domain.
 - j. The Artwork does not infringe on the proprietary right at common law or intellectual property rights of any third party.
 - k. Artist will not enter into any agreements with any other person or entity that conflict with the terms of this Agreement.
8. **Warranties-Quality and Condition.** Artist represents and warrants that all work will be performed in accordance with professional workmanlike standards and be free from defective or inferior materials and workmanship, including any defects consisting of inherent vice, or qualities that cause or accelerate the deterioration of the Artwork. Artist represents and warrants that the Artwork and materials used are not currently known to

be harmful to the public health and safety. Artist will accordingly provide a list of materials and substances used in the completion of the Artwork. If within one year after acceptance of the Artwork, City observes any breach of warranty that is curable by Artist, City agrees to provide reasonably prompt notice to Foundation of any breach. City shall ensure that Artist promptly cure any breach to the satisfaction of the City and consistent with professional conservation standards, at no cost or expense to the Foundation nor City.

9. **Indemnification/Liability.**

- a. **General.** Artist shall defend, indemnify and hold harmless the City and each of City's officers, employees and agents (each, a "City Indemnitee") from and against all losses, penalties, damages, injuries, settlements, charges, professional fees, or other expenses of liabilities of every kind and character including reasonable attorney's fees and costs (Collectively, "Losses"), arising out of or resulting from any third party claim, suit, action or proceeding (each, an "Action"), to the extent that such Action arises out of or results from Artist's performance of this Agreement.
- b. **Infringement.** Artist shall defend, indemnify and hold harmless City from and against any and all third party claims and liabilities (including, without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of or in connection with a claim that the Artwork infringes, violates or misappropriates a valid third party patent, copyright or other proprietary right, provided that Artist is notified promptly in writing of the action and Artist is given the option, at its expense, to control the action and all requested reasonable assistance to defend the same.
- c. Until the point of acceptance by the Foundation and City and delivery of Artwork to the agreed-upon storage facility, any injury to persons or property caused by the Artist's Artwork or any damage to, theft of, vandalism to, complete destruction of, or acts of God or nature affecting the Artist's Artwork are the sole responsibility of the Artist.
- d. The provisions of this Section shall survive termination of this Agreement.

10. **Insurance.** Artist shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Artist against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

- a. **Commercial General Liability Insurance**, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- b. **Automobile Liability Insurance**, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.

- c. **Worker's Compensation Insurance and Employer's Liability Insurance**, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- d. **Professional Liability Insurance**, with a limit of \$1,000,000 for each claim and aggregate.

Artist shall not commence performance under this Agreement until a Certificate of Insurance has been submitted to the City showing proof that Artist has obtained the necessary insurance coverage.

If any of the above cited policies expire during the life of this Agreement, it is the Artist's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

- i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - ii. Artist's insurance must be primary insurance as respects performance of subject contract.
 - iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Artist under this Agreement.
11. **Transportation and Storage.** Artist is responsible for arranging transportation and delivery of the Artwork to a storage facility agreed upon by the Parties in consultation with the appropriate City Public Art and Public Works personnel. The terms and costs associated with storing the Artwork pending its ultimate installation at the Property shall be the subject of a separate agreement entered by the City.
12. **Final Inspection.** Final inspection of the Artwork shall be conducted by the Foundation and the City within thirty (30) days of receiving written notice from the Artist of the completed fabrication and delivery to the storage location.
13. **Pending Donation Acceptance.** If, after final inspection of the Artwork, City determines that the Artwork has met the satisfaction of the City, and the City chooses to formally accept the Artwork, the Foundation and City will enter into a separate donation agreement in the form set forth as Exhibit D. Such donation agreement shall transfer ownership of the Artwork from the Foundation to the City. Installation of the Artwork at

the Property will be addressed in a Construction Contract between a third party and the Artist and the Foundation shall have no obligation or responsibilities with respect to the installation of the Artwork at the Property.

14. **Notice.** Any notice or communication required to be given to any Party to this Agreement shall be given in writing and shall be delivered personally or sent by United States mail postage prepaid or sent by e-mail to the addresses specified below:

City:
City of Chattanooga
Attn: Public Art
101 E. 11th Street
Chattanooga, TN 37402

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

Foundation:
Community Foundation of Greater Chattanooga, Inc.
Attn: Maeghan Jones
1400 Williams Street
Chattanooga TN 37408
MJones@cfdc.org

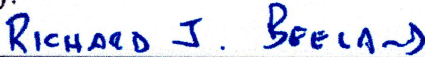
Artist:
Jerome B. Meadows
915 Waters Ave
Savannah, GA 31404
meadowspark@aol.com

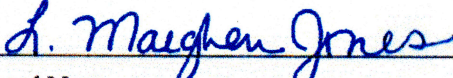
15. **Termination.** If Foundation and Artist terminate their agreement that governs the fabrication of the Artwork prior to the completion of the Artwork, the Foundation shall notify the City of the termination in writing no more than three (3) business days after the date of termination. Upon receiving written notice of such termination, this Agreement between the Parties shall automatically terminate. Furthermore, Artist shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.
16. **Waiver.** A waiver by either Party of any breach of this Agreement shall be in writing. A Party's failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege does not waive any other terms, conditions, or privileges, whether of the same or similar type.

17. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
18. **Assignment.** Neither Party shall assign any rights or duties under this Agreement without the prior written consent of the other Parties. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.
19. **Governing Law.** This Agreement shall be governed by the laws of the State of Tennessee and the Codes of the City of Chattanooga.
20. **Third Party Rights.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Foundation, City, and Artist.
21. **Integration.** This Agreement represents the entire and integrated agreement between the Parties. All prior and contemporaneous communications, representations, and agreements by the Parties, whether oral or written, relating to the subject matter of this Agreement, are hereby incorporated into and shall become a part of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this Agreement which shall become effective as of the Effective Date stated herein.

	CITY OF CHATTANOOGA, TENNESSEE
	By: 
	Printed Name: <u>HJP</u>
	Title: <u>DEPUTY, CEO</u>
	Date: <u>6-10-19</u>

	COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC.
	By: 
	Printed Name: <u>L. Maughan Jones</u>
	Title: <u>President</u>
	Date: <u>6/4/19</u>

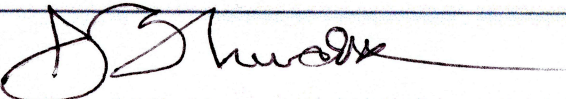
	JEROME MEADOWS
	By: 
	Printed Name: <u>JEROME G. MEADOWS</u>
	Title: <u>ARTIST / DESIGNER</u>
	Date: <u>6/12/19</u>

EXHIBIT A

SCULPTURAL COMPONENTS

Primary Representational Sculptures:

Three full size, cast bronze figures are located within the center of the primary plaza of the Memorial (that is to say the level area directly adjacent to the terminus of the Walnut Street Bridge). These figures, standing at ground level, represent Ed Johnson at the apex of a triangular configuration flanked from behind by the two attorneys – Noah Parden and Styles Hutchens - who fought fearlessly to overcome the severe injustice that Mr. Johnson, as well as the community of Chattanooga, endured at the hands of mob violence. Their relative placement with regards to one another is such that the public is encouraged to walk among them and take up positions within the grouping to identify with the experiences and importance of each individual and in acknowledgement of their roles within this important story. These three figures are depicted as outstanding and heroic members of the Chattanooga community.

Those As Yet Unsung:

The occurrence of lynchings was comparatively limited in the city of Chattanooga, with only 3 known cases listed in addition to Ed Johnson – Alfred Blount, Charles Brown, and Charles Williams. Indeed, Alfred Blount had been lynched from the first span of the Walnut Street Bridge 13 years prior to Ed. Johnson. In recognition of these additional individuals, 3 semi-abstract sculptures containing figurative references are located along the severe slope leading down to the Chattanooga River just beyond the northern boundary of the Memorial Plaza. They are also cast in bronze, with a design elements suggestive of vines and branches which articulate the outline of human forms. These 3 sculptures compliment the grouping of 3 representational figures while increasing the conceptual and artistic experience of the Memorial for the public.

INFORMATIONAL / EDUCATIONAL COMPONENTS

Title of the Memorial:

The Memorial wall which faces directly onto the Walnut Street Plaza along the Memorial's southern boundary contains the wording of the title: ***Ed Johnson Memorial – Remembrance, Reconciliation, Unity***. This text is etched onto an embedded stone panel. In addition, a lowered section of the same wall contains a quote from Supreme Court Justice John Marshall Harland which reads: ***"In Respect of Civil Rights, All Citizens Are Equal Before The Law"***. Justice Marshall's inclusion here is an important acknowledgment of his official support of Ed Johnson's cause. Taken together, the title and text are designed to put forth the historic importance of the Memorial and its ongoing relevance to the pursuit of equality and justice and to do so within this highly visited public environment.

Story Telling Walls:

Integrated into the circular boundary of the Memorial are 4 Story Telling Walls providing a total running surface of 24'. These Story Telling Walls consist of angled stone surfaces containing bronze panels embellished with text, photographic images and other elements designed to showcase various aspects of the Ed Johnson story. Included as well is an original poem written by Jerome Meadows about Ed Johnson and work(s) that were selected from poetry workshops involving younger members of the Chattanooga community.

Text Bearing Pavers:

Five large, curved paving components are dispersed within the circular area of the Memorial Plaza. The text etched onto these paving elements further expresses the over all theme of the Memorial and its relevance to the Chattanooga community. As such, these components have a

direct connection with the aforementioned quote by Justice Harlan. Two of the quotes sourced locally are: ***“Listen to my story and everything will come out true”***; and ***“I wasn’t there to care then but I am here to care now”***. The first by the renowned Ms. Bessie Smith, the second by an unknown city resident. A third paver contains the last words of Ed Johnson: ***“May God Bless You All I Am A Innocent Man”***.

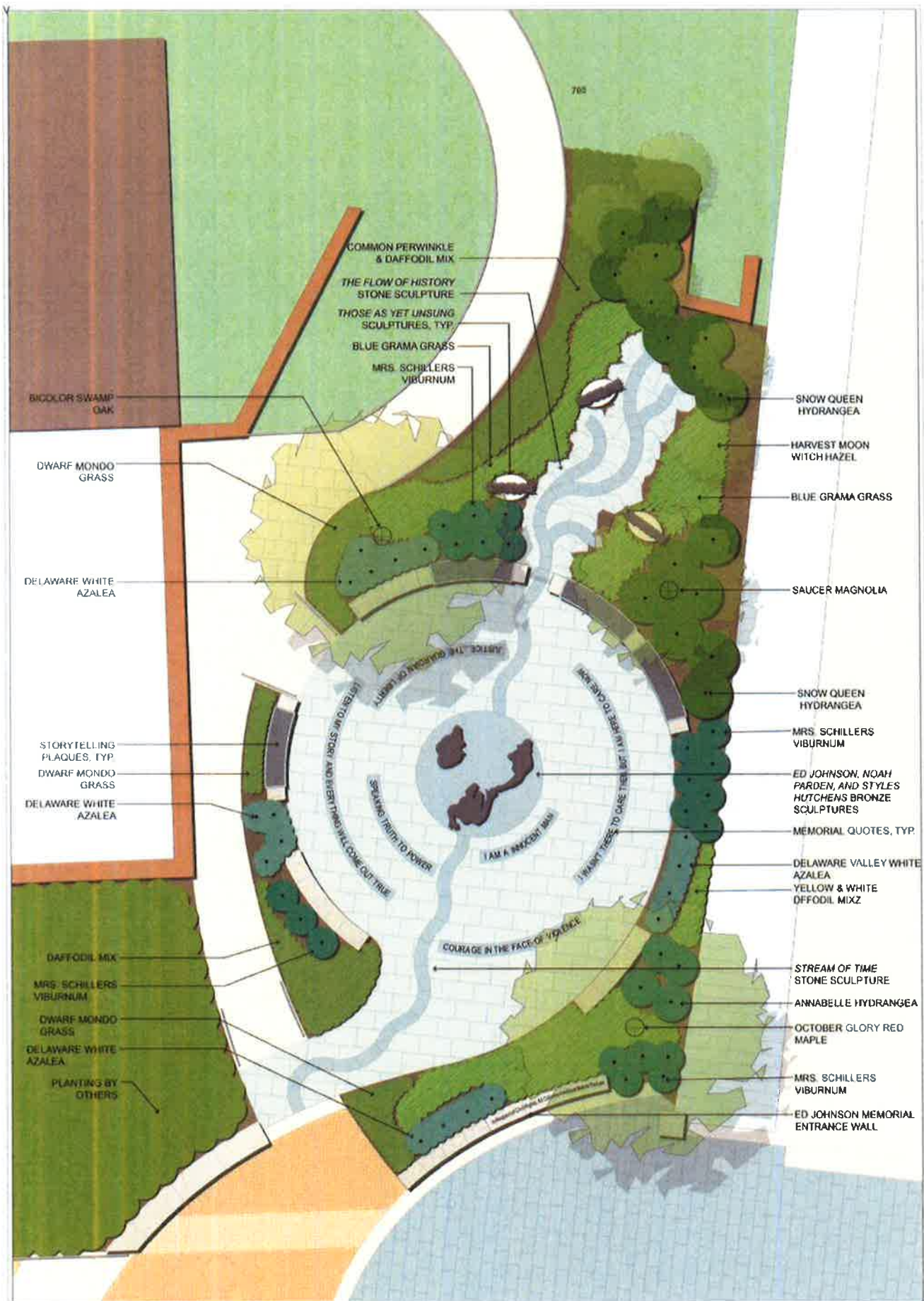
OVER ALL SITE DESIGN

Stone Walls:

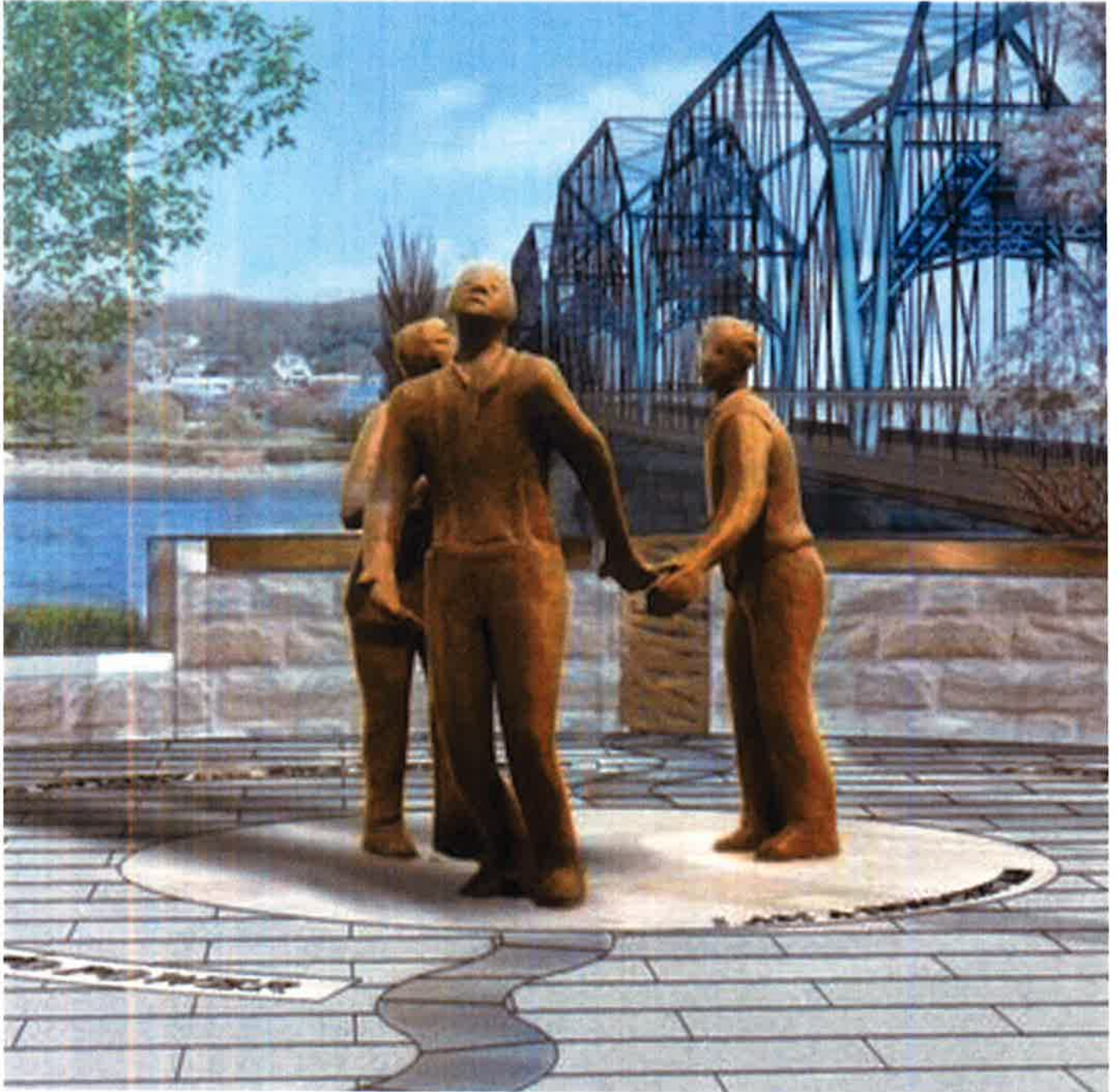
The primary, circular area of the Memorial is defined by stone walls consisting of seating and the aforementioned Story Telling Walls. The circular motif, bounded by these walls, provides a comfortable and engaging space - separate from the Walnut Street Plaza - in which to experience the objective of the Memorial both as an individual and along with others. The use of stone makes reference to the Walnut Street Bridge both in character and as the remaining existent feature tracing back to the era of the lynching. In addition, the use of stone alludes to Ed Johnson’s profession as a stone mason.

Stream of Time / The Flow of History:

The siting of the Memorial in relationship to the bridge is underscored by an axial paving component consisting of curvilinear stones referred to as the Stream of Time. This element dissects the circular plaza, running directly underneath the location of the 3 representational figures, and lines up with the second span on the bridge from which Ed Johnson was lynched. At the northern boundary of the Memorial the Stream passes through an opening in the wall with a sculptural barrier derived from the 3 aforementioned semi-abstract works. Beyond this point the Stream extends for a distance down the slope, dividing and now referred to as the ***Flow of History***.



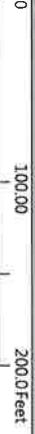
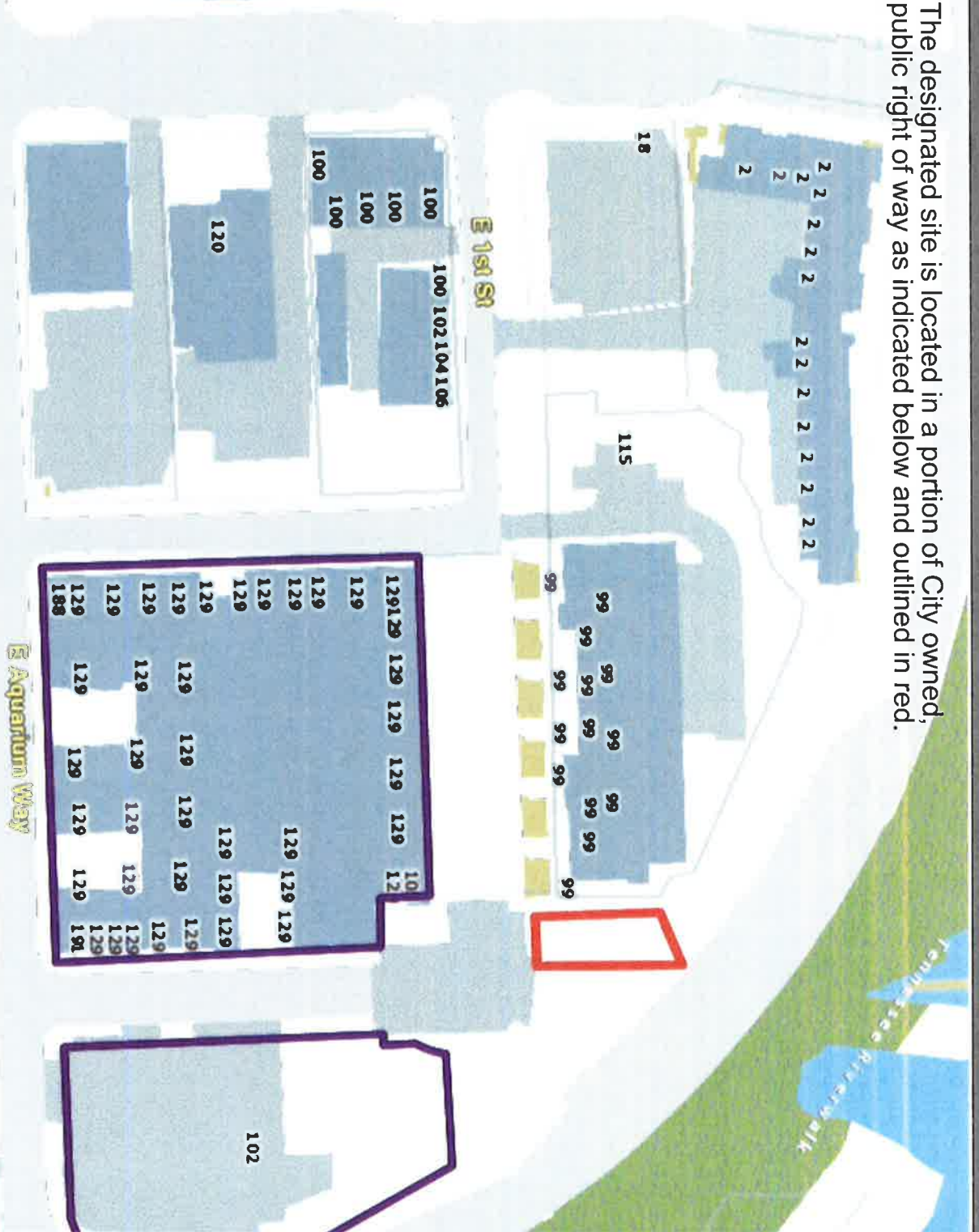
ED JOHNSON MEMORIAL





GISMO 5

The designated site is located in a portion of City owned, public right of way as indicated below and outlined in red.



NAD_1983_StatePlane_Tennessee_FPS_4100_Feet
© Latitude Geographics Group Ltd.



Legend

- Parcels
- Addressing <1200
- County Boundary
- Recycling Centers
- Healthcare Facilities
- Emergency Services Locations
 - FIRE
 - MEDIC
 - POLICE
- Cemeteries
- Religious Facilities
- Schools
- Building Footprints
- Miscellaneous Structures
- Driveways
- Parking
- Water Bodies
- Other Water Bodies
- Recreational Areas
- Surrounding
 - Hamilton

Disclaimer: This map is to be used for reference only, and no other use or reliance on the same is authorized. This map was automatically generated using HCGIS Mapping System. Parcel lines are shown for reference only and are not intended for conveyances, nor is it intended to substitute for a legal survey or property abstract.

EXHIBIT B

EXHIBIT B C

SCOPE OF WORK/SPECIFICATIONS AND COMPENSATION SCHEDULE

I. SCOPE OF WORK

Artist shall execute the Artwork in accordance with the design proposal as attached and identified as EXHIBIT D and the following description and specifications:

DESCRIPTION OF WORK

ARTWORK/PROJECT NAME: Ed Johnson Memorial

ARTWORK INSTALL LOCATION: Adjacent to the southern terminus of the Walnut Street Bridge

ARTIST NAME: Jerome B. Meadows

ARTIST ADDRESS: 915 Waters Ave, Savannah, GA 31404

ARTIST PHONE: 202-213-0036

ARTIST EMAIL: meadowspark@aol.com

CREDIT: Jerome B. Meadows – Lead Designer, Artist
(Exact form of Artist's name for attribution in all written materials, exhibition, labels, etc.)

TITLE OF ARTWORK: TBD

DESIGN: AS SET FORTH IN EXHIBIT D

MEDIUM: Cast bronze and etched bronze plates

DIMENSIONS: varied set within a site-specific memorial

ESTIMATED INSURANCE VALUATION: \$264,300

PROJECT PHASES & DELIVERABLES

Design Development Phase:

1. Artist agrees to attend a plans pre-submittal meeting with City of Chattanooga departmental review. Completed.
2. Chattanooga Public Art Commission review and approval of final design. Completed

Fundraising Phase:

1. Artist agrees to provide recognition to project donors as artist and the Ed Johnson Memorial Committee deem appropriate in the final design.
2. Artist agrees to provide and allow use of any renderings, images or documents pertaining to the memorial's design for fundraising purposes.

Artist Deliverables: Completed.

Fabrication Phase:

1. Artist agrees to fabricate all elements as illustrated in EXHIBIT D.

Artist Deliverables:

- a. Progress photos of fabrication – corresponds to Installment 1
- b. Progress photos of fabrication – corresponds to Installment 2
- c. Progress photos of fabrication – corresponds to Installment 3
- d. Photos of completion – corresponds to Installment 4

PROJECT MILESTONES & DEADLINES

Poetry Workshops (4) currently underway

locating venues and organizing workshops in schools and community centers

Undertaking workshops, 2 weeks in each location Completed

Three Representational Figures 18"

Rendering in clay	Completed
Rubber molding	end of May 2019
Plaster cast & coloring	end of May 2019
Packaging, transport, delivery	TBA

Three Representation Figures

Rendering in clay	May – July 2019
Rubber molding	end of September 2019
Molding incidentals (allowance)	
Bronze cast & patina	end of September 2019
Delivery	TBA

Three Abstract Figures

Rendering in clay July – August 2019
 Rubber molding August – November 2019
 Bronze casting & patina August – November 2019
 Delivery TBA

Pass Through Barrier

Rendering August 2019
 Bronze casting & Patina November 2019

Story Walls (4)

Consultation and design September – November 2019
 Fabrication of 40 components (approx.) TBD
 7 @ 12” X 16”- text:
 15 @ 12” x 12” – text:
 10 @ 6” x 6” – photo, map, documents
 8 @ 7” diameter – photo

COMPENSATION SCHEDULE

Foundation agrees to compensate Artist a fixed fee in accordance with the following schedule, which shall constitute full compensation for all services, materials, travel, delivery and insurance to be furnished under the terms of this Agreement.

Total Compensation: \$264,300		
Installment	Amount	Deliverable
Installment 1	\$34,500 less 10% studio fee: \$1,200 \$33,300	Upon receipt of budget, timeline and executed Agreement.
Installment 2	\$196,800 less 10% studio fee: \$6,780 \$190,020	Tasks: 1. Completion of poetry workshops. 2. Fabrication and casting of 18” scale figures. 3. Commence fabrication of life-size figures, abstract figures and barrier
Installment 3	\$33,000	1. Completion and casting of

	Less 10% studio fee: \$1,500 \$31,500	life size figures, abstract figures and barrier. 2. Commence consultation with Committee members determining Story Wall content and design and fabrication of Story Wall panels.
Installment 4	Balance of \$9,480	Completion of Story Walls and securing all art components for storage.

Any changes to the Compensation amounts and associated deliverable must be approved in writing by an appropriate Foundation representative.

**COLLABORATION AGREEMENT BETWEEN
COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC.
AND
THE CITY OF CHATTANOOGA**

This Collaboration Agreement ("Agreement") is entered into by and between COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC., a Tennessee non-profit corporation with its principal address at 1400 Williams Street, Chattanooga, TN 37408 ("Community Foundation") and the CITY OF CHATTANOOGA, a Tennessee municipal corporation with its principal office located at 101 E. 11th Street, Chattanooga, Tennessee 37402 (the "City").

WHEREAS, the City will be performing construction work on 1st Street on/near Walnut Plaza in Chattanooga, Tennessee; and

WHEREAS, the Ed Johnson Committee ("EJC"), through its fiscal agent, Community Foundation, has commissioned an artist to design and fabricate, pursuant to that certain Public Art Agreement (the "Art Agreement"), and install, pursuant to a Construction Contract (the "Construction Contract"), a sculptural artwork piece known as the Ed Johnson Memorial (the "Artwork") on Walnut Plaza which will require site improvement work separate from the City's construction work; and

WHEREAS, Community Foundation and the City have entered into a separate agreement that memorializes Community Foundation's intent to donate the Artwork to the City, and thus the Artwork could potentially become a part of the City's public art collection; and

WHEREAS, in the interest of continued collaboration, the City has offered to include the site improvement work for the Artwork installation as part of its original construction work and Community Foundation has accepted such offer; and

WHEREAS, Community Foundation shall pay the total estimated cost of the Artwork site improvement work to City.

NOW THEREFORE, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the Agreement is signed by the City's Authorized Signatory.

2. **Term.** This Agreement shall commence on the Effective Date and shall remain in effect for a period of two (2) years. Upon expiration of the Term, the parties may, upon mutual agreement, extend the Term and such an extension shall be in writing signed by both parties.

3. Responsibilities of the Parties.

Community Foundation Responsibilities: Community Foundation shall:

- a. Collect private donations to fully fund the Artwork installation.
- b. Contract with an artist for the Artwork design, fabrication, and installation.
- c. Ensure through the terms of the Art Agreement and the Construction Contract that the artist obtains all required permits and insurance coverage to perform the Artwork installation on City property.
- d. Pay the City for the total cost of the portion of the Walnut Plaza site work that is tied to the site improvement work for the Artwork installation.

City Responsibilities: City shall:

- a. Utilize the City's standard bid process to identify, select, and contract with a general contractor to do the original City planned construction work on/near Walnut Plaza as well as the site improvement work for the Artwork installation on/near Walnut Plaza as specified on the attached Exhibit A.
- b. Utilize the donated funds received from Community Foundation to pay for the portion of the construction work on/near Walnut Plaza that is tied to the site improvement work for the Artwork installation.
- c. Receive the donated funds from Community Foundation and appropriate the donated funds to the Walnut Plaza site improvement work via a Capital Budget Ordinance.
- d. Provide, through the City's Department of Public Works, construction project management services to oversee the Walnut Plaza site improvement work for the Artwork installation. The City agrees to waive any fees associated with the construction project management services.
- e. Provide, through the City's Public Art Division, project management services to facilitate the Artwork installation. The City agrees to waive any fees associated with the project management services.
- f. As approved by the Chattanooga Public Art Commission, provide through the City's Public Art Capital budget, a source of funding for the required contingency funds for an amount up to Fifty Thousand Dollars and 00/100 (\$50,000) to support the site work tied to the Ed Johnson Memorial.

4. Payment for Site Improvement Work.

- a. The total estimated cost of the site improvement work for the Artwork installation is Two Hundred Ninety Thousand Ninety Five Dollars and 00/100 (\$290,095.00), which accounts for the following work:
 - i. The total estimated cost of the site preparation work for the Ed Johnson Memorial sculpture is Two Hundred Twenty Five Thousand Ninety Five Dollars and 00/100 (\$225,095.00).
 - ii. The total estimated cost of the lower wall construction on/near Walnut Plaza is Sixty-Five Thousand Dollars and 00/100 (\$65,000.00).
- b. Community Foundation shall pay the total estimated cost of Two Hundred Ninety Thousand Ninety Five Dollars and 00/100 (\$290,095.00) to the City for the Artwork installation site improvement work.
- c. The parties hereby acknowledge and agree that the total estimated cost of Two Hundred Ninety Thousand Ninety Five Dollars and 00/100 (\$290,095.00) is an estimate only and the total final cost of the site improvement work could be different from the above stated total estimated cost.
- d. Upon receiving the payment from Community Foundation for the total final cost of the site improvement work, City shall appropriate the total final cost in the capital budget for fiscal year 2021.
- e. In the event that the total final cost of the site improvement work is greater than Three Hundred Forty Thousand Ninety-Five Dollars and 00/100 (\$340,095.00), the Community Foundation agrees to pay the additional cost in excess of Three Hundred Forty Thousand Ninety-Five Dollars and 00/100 (\$340,095.00) up to, but not to exceed, an additional amount of Forty-Three Thousand Five Hundred Fourteen Dollars and 25/100 (\$43,514.25). If necessary, the parties shall seek additional funding from public or private sources to cover any additional cost and any commitments for additional funding shall be memorialized in a written amendment to this Agreement which shall be signed by both parties.

5. Liability.

- a. Community Foundation shall ensure that the terms of the Art Agreement and the Construction Agreement contain a full indemnification and hold harmless to the City from the artist from and against any and all losses, penalties, damages, injuries, settlements, costs, charges, professional fees, including reasonable attorney's fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character in connection with the Artwork installation performed by the artist hired by Community Foundation, the artist's agents, servants, employees or subcontractors, or anyone directly employed by any of

them, but the Community Foundation shall not provide a separate indemnification and hold harmless to the City with respect to any such losses.

- b. Any liability of City to Community Foundation for any claims, damages, losses, or costs arising out of or related to acts performed by City under this Agreement shall be governed by the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101, *et seq.*

6. **Insurance.** Community Foundation shall ensure that the terms of the Art Agreement and Construction Contract will require the artist to provide insurance in the amounts set forth in **Exhibit B**, attached hereto and incorporated by reference. The parties acknowledge that the City is self-insured in accordance with the Tennessee Governmental Tort Liability Act, which establishes the limits of liability for governmental entities in the State of Tennessee, and will, therefore, not be required to maintain general liability insurance.

7. **Force Majeure.** Neither party shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage; judicial restraint; discovery of unanticipated hazardous wastes; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either party under this Agreement. Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement. If the nonconforming party is delayed in the performance of the services for more than three hundred sixty-five (365) calendar days, by circumstances beyond its control, an equitable adjustment to the Agreement can be made to compensate for additional costs incurred.

8. **Records Retention and Audit.**

- a. All records relating in any manner whatsoever to this Agreement, or any designated portion thereof, which are in the possession of Community Foundation, or any of Community Foundation's independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the City. Additionally, said records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the work performed under the Agreement. Said records expressly include those the records of expenses incurred by the Contractor in its performance under said Agreement. The Contractor shall maintain and protect these records for no less than **seven (7) years** after the completion of the Project, or for any longer period of time as may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from the Project.

- b. The City may further audit any of the Contractor's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement), or to identify conflicts of interest.
 - c. Community Foundation shall at all times during the term of the Agreement, and for a period of seven (7) years after the end of the Agreement, keep and maintain records of the work performed pursuant to this Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by Community Foundation. Documents shall be maintained by Community Foundation, which are necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with general accepted accounting principles. Community Foundation shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.
 - d. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between Community Foundation and any subcontractors or suppliers of goods or non-professional services to the extent that those subcontracts or agreements relate to fulfillment of Community Foundation's obligations to the City.
 - e. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City, unless the audit identifies significant findings that would benefit the City. Community Foundation will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
 - f. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.
9. **Communications.** Any communications required by this Agreement shall be made in writing, unless otherwise noted, to the addresses specified below:

Community Foundation:

Attn: Maeghan Jones
1400 Williams Street
Chattanooga, TN 37408
MJones@cfgc.org

City:

Department of Public Works
Attn: Justin Holland
1250 Market Street, Suite 200
Chattanooga, TN 37402
jholland@chattanooga.gov

Public Art Division
Attn: Katelyn Kirnie
101 E. 11th Street, 3rd Floor
Chattanooga, TN 37402
kkirnie@chattanooga.gov

With Copy to:

Office of the City Attorney
101 E. 11th Street, Suite 200
Chattanooga, TN 37402

10. General Terms and Conditions.


- a. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee, partner, joint venturer, or associate between the parties, nor shall either party be deemed the agent of the other.
- b. This Agreement is subject to the appropriation and availability of City funds. In the event that the funds are unavailable, City reserves the right to terminate this Agreement upon written notice to Community Foundation. Said termination shall not be deemed a breach of this Agreement by City. Upon such termination, Community Foundation shall have no right to recover from City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- c. City may terminate this Agreement without cause for any reason. Said termination shall not be deemed a breach of contract by City. City shall give Community Foundation at least thirty (30) days' written notice before the effective termination date. Should City exercise this provision, Community Foundation shall not have any right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- d. Community Foundation shall not assign this Agreement without obtaining the prior written approval of City. Unless otherwise stated in the written approval to an assignment, no assignment will release or discharge Community Foundation from any obligation under this Agreement.


- e. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Agreement shall be held to be waived, modified, or deleted, except by a written amendment signed by the parties hereto.
- f. Community Foundation shall comply with all applicable state and federal laws and regulations in the performance of this Agreement.
- g. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- h. This Agreement shall be governed by the laws of the State of Tennessee and the Codes of the City of Chattanooga.
- i. City and Community Foundation each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.
- j. This Agreement represents the entire and integrated agreement between City and Community Foundation. All prior and contemporaneous communications, representations, and agreements or otherwise, between the parties, whether oral or written, relating to the subject matter of this Agreement are hereby incorporated into and shall become a part of this Agreement.
- k. Section headings are for reference purposes only and should not be construed as part of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized signatories.

CITY OF CHATTANOOGA, TENNESSEE

By: 
Name: DONNA WILLIAMS
Title: ADMINISTRATOR, ECD
Date: 6-3-2020

By: 
Name: JUSTIN HOLLAND
Title: ADMINISTRATOR PUBLIC WORKS
Date: 5-29-2020

COMMUNITY FOUNDATION OF GREATER CHATTANOOGA


By: 
Name: L. Maighan Jones
Title: President
Date: 5/13/20

EXHIBIT B



CITY OF CHATTANOOGA Insurance Requirements

Community Foundation shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Community Foundation against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

- a. Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- b. Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- c. Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- d. Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

Community Foundation shall not commence work under this Agreement until a Certificate of Insurance has been submitted to the City showing proof that Community Foundation has obtained the necessary insurance coverage.

Certificates must specifically cite the following provisions:

- i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
- ii. Community Foundation's insurance must be primary insurance as respects performance of this Agreement.
- iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of Community Foundation's performance under this Agreement.

21A	Pull boxes- includes four new pull boxes to feed lights, with installation	EA	4	\$475.00	Removed
22A	Grounding and bonding	LS	1	\$3,205.00	\$3,205.00
23A	120 V Power connections to irrigation controller	LS	1	\$2,016.00	\$2,016.00
24A	GFCI rated Circuit Breakers	EA	3	\$156.00	\$468.00
25A	New Memorial flood lights attached to plaza light pole (Type S5, S6, S10)	EA	3	\$2,252.00	\$6,756.00
26A	Wall Lights (Type S1)	EA	4	\$1,946.00	Removed
27A	Wall Lights (Type S8)	EA	8	\$908.00	Removed
28A	Button Accent Lights	EA	8	\$544.00	Removed
29A	Sculpture Uplights (Type S4)	EA	3	\$858.00	Removed
30A	Sculpture Uplights (Type S8)	EA	5	\$1,409.00	Removed
31A	Electrical Systems- Misc.	LS	1	\$12,515.00	Removed

Total Ed Johnson Memorial Bid \$290,095.00

Total Bid (Plaza and Memorial) \$2,200,652.50



Ed Johnson scope Certified by Ross/Fowler

The following work is related to the Ed Johnson Memorial

Item	Description				
GENERAL					
1A	Surveying and Staking	LS (site)	1	\$15,000.00	\$15,000.00
2A	Fencing and Site Protection	LS (site)	1	\$15,000.00	\$15,000.00
3A	General Conditions, including mobilization, management, temporary facilities and controls, and all overhead expenses required to supervise and complete the work	LS (site)	1		
				\$74,275.00	\$74,275.00

SITE WORK

	Demolition of existing site elements including:				
5A	Demolish existing trees to be removed including grinding out the stumps	SF	150	\$35.00	\$5,250.00
6A	Demolish existing shrubs, vegetation and topsoil within Memorial limit of work	SF	135	\$25.00	\$3,375.00
7A	Demolish existing cast in place concrete steps and handrails	SF	65	\$10.00	\$650.00
8A	Demolish existing concrete paving and plaza pavers to bare earth subgrade	LS	1	\$15,000.00	\$15,000.00
9A	Remove existing concrete and steel lower retaining wall.	EA	1	\$20,000.00	\$20,000.00
10A	Remove existing light pole next to bridge	LS	1	\$1,092.00	Removed
11A	Existing electrical box adjacent to the bridge to be relocated outside Memorial work limits to a new location under the bridge as per City direction.	LS	1	\$2,500.00	\$2,500.00
12A	Demolish existing irrigation within work limits. Cap existing irrigation outside Memorial work limits	LS	1	\$5,000.00	\$5,000.00
13A	Erosion Control- Includes Inlet Protection, Silt Fence, Concrete Washout Area, and Construction Entrance	LS	1	\$15,000.00	\$15,000.00
14A	Stormwater connection to existing structures	LS	1	\$8,500.00	\$8,500.00
15A	Nyloplast Drain Structure	EA	2	\$350.00	\$700.00
16A	6" ADS N12 Drainline, includes stone bedding and backfill as specified	LF	45	\$30.00	\$1,350.00
17A	Construct Lower Soil Nail Retaining wall complete in place. (Design not yet complete, to be clarified via addendum)	LS	1	\$65,000.00	\$65,000.00

Electrical

18A	New panel to include astronomical time clock and lighting contractor to include driver enclosure and Unistrut mounting frame, with installation and associated wiring within a stainless steel weather proof cabinet. Includes new 100A-3P circuit breakers in existing panel.	LS	1	\$16,039.00	\$16,039.00
19A	Conduit main- to include new underground conduit from existing panel to new panel, pull box and all associated installation.	LS	1	\$15,011.00	\$15,011.00
20A	Conduit- includes all conduit in scope	LS	1	\$9,105.00	Removed

METALS

62	Lighted Rails for Oval Stair, includes rail, posts, connections, and lights	LF	21	\$220.00	\$4,620.00
63	Lighted Rails for Holmberg Stair, includes rail, posts, connections, and lights	LF	97	\$223.00	\$21,631.00
64	Guard Rail for Holmberg Stair	LF	58	\$280.00	\$16,240.00
65	Guard Rail for Oval Wall	LF	46	\$270.00	\$12,420.00
66	Holmberg Stainless Steel Stair	SF	863	\$56.00	\$48,328.00
67	Holmberg Stair Screen	SF	60	\$272.00	\$16,320.00
68	Stainless Steel Bench Supports	EA	3	\$9,930.00	\$29,790.00

SPECIAL CONSTRUCTION

69	Relocate High Four Sculpture	LS	1	\$3,000.00	\$3,000.00
70	Disassemble and Reconstruct Historic Stone Piers	LS	1	\$5,000.00	\$5,000.00
71	Stone Wall Cap	SF	126	\$119.00	\$14,994.00
72	Timber Steps to match Walnut Bridge at the bridge	SF	40	\$100.00	\$4,000.00
73	Black Locust Bench Slats	LF	326	19.5	\$6,357.00

PLUMBING

74	Removed from Project	LS	1		
75	Relocate Irrigation supply and hose bib	LS	1	\$7,500.00	\$7,500.00

ELECTRICAL

76	Relocated irrigation power	LS	1	\$3,000.00	\$3,000.00
77	Lighted Handrails at Oval Stair, includes transformers or drivers, installation, and associated wiring	LS	1	\$7,207.00	\$7,207.00
78	Lighted Handrails at Holmberg Stair, includes transformers or drivers, installation, and associated wiring.	LS	1	\$16,122.00	\$16,122.00
79	2-Head Pole light with 24'-8" pole, includes wiring, transformer, installation	EA	1	\$5,980.00	\$5,980.00
80	2-Head Pole light with 29'-8" pole, includes wiring, transformer, installation	EA	1	\$6,984.00	\$6,984.00
81	4-Head Pole Light with 24'-8" pole, includes transformers, wiring and installation.	EA	2	\$7,975.00	\$15,950.00
82	Pull boxes to feed pole lights, with installation	EA	3	\$475.00	\$1,425.00
83	Electrical Systems - misc.	LS	1	\$12,672.00	\$12,672.00
84	Grounding and bonding	LS	1	\$2,900.00	\$2,900.00

UTILITIES

85	Reset manhole covers, valves, and other utility surface features at new grades with recessed concrete collars	LS	1	\$6,500.00	\$6,500.00
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Total Base Bid Walnut Plaza

\$1,910,557.50



Walnut Plaza certified by WMW

PLANTING

27	Soil cells to provide 575 CF of uncompacted soil	LS	1	\$14,000.00	\$14,000.00
28	Planting soil, include existing stockpiled on site	CY	60	\$65.00	\$3,900.00
29	Mulch	CY	18	\$80.00	\$1,440.00
30	Irrigation, includes moving valves, control, connecting to and extending existing system	LS	1	\$13,068.00	\$13,068.00
31	Acer rubrum 'Autumn Blaze', 4" caliper	EA	1	\$1,650.00	\$1,650.00
32	Quercus bicolor, 4" caliper	EA	1	\$1,731.00	\$1,731.00
33	Hydrangea quercifolia, 3 gallon	EA	2	\$53.00	\$106.00
34	Ilex vomitoria 'Hoskins Shadow', 6-foot height	EA	10	\$313.50	\$3,135.00
35	Viburnum nudum 'Winterthur', 5 gallon	EA	35	\$53.00	\$1,855.00
36	Viburnum obovatum 'Mrs. Schiller's Delight', 3 gallon	EA	131	\$40.00	\$5,240.00
37	Bouteloua gracilis, plug	EA	50	\$8.00	\$400.00
38	Coreopsis auriculata 'Nana', plug	EA	96	\$9.25	\$888.00
39	Echinacea tennesseensis 'Rocky Top', plug	EA	20	\$14.00	\$280.00
40	Geranium x 'Tiny Monster', plug	EA	16	\$28.00	\$448.00
41	Waldsteinia fragaroides, plug	EA	96	\$15.00	\$1,440.00
42	Type II Fescue sod	SF	2,200	\$0.90	\$1,980.00

PAVING

43	Brick Pavers on 10" aggregate with sand setting bed	SF	6,200	\$27.50	\$170,500.00
44	Vehicular Stone Pavers on 8" concrete slab with mortar setting bed	SF	4,900	\$47.00	\$230,300.00
45	Stone Edge on 12" concrete curb with mortar setting bed	SF	200	\$52.00	\$10,400.00
46	Stone Paving on 4" concrete slab with sand setting bed	SF	225	\$42.50	\$9,562.50
47	5" Concrete Paving on 4" aggregate	SF	62	\$10.00	\$620.00
48	Reset existing unit pavers on sand setting bed	SF	800	\$15.00	\$12,000.00
49	Stone Stairs on concrete footing and mortar setting bed	SF	290	\$134.00	\$38,860.00

SITE FURNISHINGS

50	Bike Racks	EA	2	\$900.00	\$1,800.00
51	Trash Receptacle	EA	1	\$1,750.00	\$1,750.00
52	Dog Station Kit	EA	1	\$750.00	\$750.00

CONCRETE

53	Oval Wall footing	CY	17.5	\$730.00	\$12,775.00
54	Oval Wall with color and sand blast finish	CY	21	\$850.00	\$17,850.00
55	Seat Wall Footing	CY	1.6	\$750.00	\$1,200.00
56	Seat Wall with color and sand blast finish	CY	1.6	\$2,500.00	\$4,000.00
57	Border Wall footing and wall	CY	3	\$2,750.00	\$8,250.00
58	Oval Stair Footing	CY	17	\$3,413.00	\$58,021.00
59	Bench Footings	CF	1.7	\$750.00	\$1,275.00
60	Paving slabs, including vehicular stone paving and stone edge	CY	164	\$435.00	\$71,340.00
61	Light Pole Footers including conduit and anchors	EA	4	\$1,475.00	\$5,900.00

EXHIBIT A

BID TABULATION

Walnut Street Plaza
 Project No. R-19-007
 City of Chattanooga, Tennessee

Thomas Brothers

Item No.	Description	UNIT	EST NO OF UNITS	UNIT PRICE	TOTAL
GENERAL					
1	Surveying and Staking	LS (site)	1	\$60,000.00	\$60,000.00
2	Fencing, Site Protection, and Traffic Control	LS (site)	1	\$85,000.00	\$85,000.00
3	General Conditions, including mobilization, management,	LS (site)	1	\$598,535.00	\$598,535.00

DEMOLITION

4	Demolish 1 concrete stair and portion of another	SF	155	\$5.00	\$775.00
5	Demolish 2 small concrete steps at bridge	SF	50	\$5.00	\$250.00
6	Demolish CIP Concrete paving/pads	SF	8100	\$3.00	\$24,300.00
7	Salvage dry laid unit (concrete and stone) pavers	SF	1500	\$5.00	\$7,500.00
8	Salvage Bench, demolish stone support	LS	1	\$3,750.00	\$3,750.00
9	Remove trees and stumps	EA	9	\$750.00	\$6,750.00
10	Remove and grub shrubs	EA	25	\$150.00	\$3,750.00
11	Excavate and stockpile soil at lawn west of plaza	CY	76	\$35.00	\$2,660.00
12	Remove and reinstall or salvage site Furnishings (signs,	EA	6	\$575.00	\$3,450.00
13	Salvage Light Poles	EA	3	\$620.00	\$1,860.00
14	Demolish Trench Drain	EA	1	\$2,000.00	\$2,000.00
15	Selective Demolition of Holmberg aluminum stair	SF	680	\$18.00	\$12,240.00

SITE PREP

16	Excavation for wall footers	CY	250	\$75.00	\$18,750.00
17	Excavation for soil cells	CY	21	\$30.00	\$630.00
18	Undercut below subgrade as directed by testing agency	CY	15	\$30.00	\$450.00
19	Backfill undercut areas with crushed stone as directed	CY	65	\$60.00	\$3,900.00
20	Tree Protection Fence	LF	166	\$3.00	\$498.00
21	Erosion Control, includes Inlet Protection, Silt Fence,	LS	1	\$60,000.00	\$60,000.00

DRAINAGE

22	10" SDR-PVC Pipe, includes stone bedding and backfill as specified	LF	64	\$50.00	\$3,200.00
23	8" SDR-PVC Pipe, includes stone bedding and backfill as specified	LF	10	\$45.00	\$450.00
24	4" SDR-PVC Pipe, includes stone bedding and backfill as specified	LF	27	\$40.00	\$1,080.00
25	Brick Slot Drain, includes covers, channels, access units, concrete surround, and catch basin	LF	98.4	\$300.00	\$29,520.00
26	6" PVC Sleeves	LF	107	\$15.00	\$1,605.00

**FIRST AMENDMENT TO
PUBLIC ART DONATION OFFER ACKNOWLEDGEMENT AGREEMENT**

This First Amendment to Public Art Donation Offer Acknowledgement Agreement (the "First Amendment") is made and entered into as of the 3rd day of December, 2020, by and between City of Chattanooga ("City") and Community Foundation of Greater Chattanooga, Inc. ("Foundation") and Jerome Meadows ("Artist") (City, Foundation, and Artist are collectively referred to as the Parties). The Parties agree as follows:

RECITALS

- A. City, Foundation, and Artist entered into that certain Public Art Donation Offer Acknowledgement Agreement effective June 10, 2019 (the "Agreement").
- B. The Parties now wish to amend the Agreement as provided herein.

AMENDMENT

- 1. Transportation and Storage. Section 11 of the Agreement is hereby amended and restated in its entirety as follows:

"Upon completing fabrication of the Artwork, Artist shall arrange for transportation and delivery of the Artwork to a storage facility. The Artwork shall remain in storage and under the Artist's ownership and responsibility until the City conducts a final inspection and formally accepts the Artwork into the City's permanent art collection. Based on information provided by the Artist, the Artwork will be stored at the following location:

Harmonic Production Services
3709 Calhoun Avenue, Suite 10B
Chattanooga, TN 37407

The storage contact person is as follows:

Johnny Smith
McKenzie Foundation
1407 A Market Street
Chattanooga, TN 37402
(423)386-2262
Johnny@mckenziefdn.org

Furthermore, Artist hereby acknowledges and agrees that City reserves the right to add the Artwork to the City of Chattanooga's Fine Art insurance policy while the Artwork is still in storage and under the Artist's ownership."

- 2. Final Inspection. Section 12 of the Agreement is hereby amended by deleting the section in its entirety.

- 3. Pending Donation Acceptance. Section 13 of the Agreement is hereby amended and restated in its entirety as follows:

Final Inspection and Pending Donation Acceptance. Within thirty (30) days after installation of the Artwork on the Property, City shall conduct a final inspection of the completed memorial site. If, after final inspection of the memorial site, City determines that the Artwork has met the satisfaction of the City, the Chattanooga Public Art Commission ("CPAC") and the Chattanooga City Council ("City Council") will vote whether or not the City will formally accept the donation of the Artwork. If CPAC and City Council affirmatively vote to accept the donation of the Artwork, the Foundation and City will enter into a separate donation agreement in the form set forth as Exhibit D. Such donation agreement shall transfer ownership of the Artwork from the Foundation to the City."

NO OTHER AMENDMENTS


Except as expressly amended herein, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the day and year first above written.

CITY OF CHATTANOOGA

**COMMUNITY FOUNDATION OF
GREATER CHATTANOOGA, INC.**

By: 
Richard Beeland
Deputy Administrator
Office of Economic and Community Dev.

By: 
L. Maeghan Jones
President
Community Foundation of Greater
Chattanooga, Inc.

JEROME MEADOWS
By: 
Jerome Meadows
Artist

**FIRST AMENDMENT TO
COLLABORATION AGREEMENT BETWEEN
COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC.
AND
THE CITY OF CHATTANOOGA**

This First Amendment to Collaboration Agreement Between Community Foundation of Greater Chattanooga, Inc. and the City of Chattanooga (the "First Amendment") is made and entered into as of the 17th day of December 2020, by and between the CITY OF CHATTANOOGA ("City") and the COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC. ("Community Foundation") (hereinafter collectively referred to as the "Parties"). The Parties agree as follows:

RECITALS

WHEREAS, City and Community Foundation entered into a Collaboration Agreement dated June 3, 2020 (the "Agreement"); and

WHEREAS, the Parties now wish to amend the Agreement as provided herein.

AMENDMENT

1. Section 3. City Responsibilities. Section 3(a) of the City Responsibilities sub-section of the Agreement is hereby amended by incorporating Additional Scope of Services. The Additional Scope of Services is set forth in Exhibit A-1, Exhibit A-2, and Exhibit A-3 (collectively the "Supplemental Exhibits"), all of which are attached hereto.

2. Section 4. Payment for Site Improvement Work. Section 4 of the Agreement is hereby amended by adding subsection (f) to read as follows: "The work to be performed pursuant to the Additional Scope of Services shall be charged against the Fifty Thousand Dollars and 00/100 (\$50,000) in contingency funds provided by the Public Art Capital fund. In the event any additional work is required to be performed beyond the Additional Scope of Services, such work shall be charged against the Forty Three Thousand Five Hundred Fourteen Dollars and 25/100 (\$43,514.25) to be provided by the Community Foundation."

NO OTHER AMENDMENTS

Except as expressly amended herein, the Agreement shall remain in full force and effect.

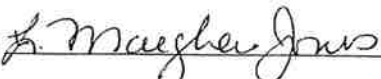
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the day and year first above written.

CITY OF CHATTANOOGA

**COMMUNITY FOUNDATION OF
GREATER CHATTANOOGA, INC.**

By: 
Title: Interim Administrator - Dept. of Public Works

By: 
Title: President


By: 
Title: Administrator, ECD

Exhibit A-1

CITY OF CHATTANOOGA
 DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION
 1250 Market Street, Suite 2100
 Chattanooga, TN 37402
 PHONE: (423) 757-5117 | FAX: (423) 757-0586



CRF# 1
 Date Issued: 7/16/2020

CHANGE REQUEST FORM (CRF)

City Contract No. R-19-007-201
Project Name: Walnut Street Plaza/Ed Johnson Memorial
Engineer: Matt Whitaker
Contractor: Thomas Brothers Construction

Requested By: Eric Booker
Purchase Order No. _____
Drawing No. See Attached
Problem Desc. This CRF is to pay Thomas Brothers for mass grading of the site.

This CRF is an agreement for Thomas Brothers to take on mass grading for the site per the attached documents.

Thomas Brothers is not to start excavation for footers until the artist coordinates installation with concrete group. The City wants to make sure we don't leave an open excavation that might lead to an undercut or remediation.

This price is all inclusive except for:

- Stump Removal
- Unsuitable Soils
- Testing
- Capping or relocating existing utilities

Item No.	Description	Unit	Qty	Unit Price	Item Total
ADD					
CRF1a	Replace Driveway Concrete for Upper Drive	LS	1	\$20,000.00	\$ 20,000.00
DEDUCT					
TOTAL \$					20,000.00

Contractor Acknowledgement:
 No Change in Contract Amount is required. A Change in Contract Amount is required. \$20,000.00
 No Change in Contract Time is required. A Change in Contract Time is required.

APPROVALS

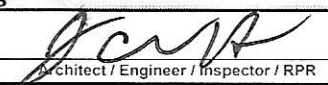



 _____ Architect / Engineer / Inspector / RPR	 _____ Contractor
Change in Contract Amount is within the Contingency Amount authorized under Resolution No. <u>29830</u> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Proceed with Execution <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
 _____ Engineer / Architect Project Manager	 _____ City Project Manager

Exhibit A-2

CITY OF CHATTANOOGA
 DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION
 1250 Market Street, Suite 2100
 Chattanooga, TN 37402
 PHONE: (423) 757-5117 | FAX: (423) 757-0586



CRF# 2
 Date Issued: 8/24/2020

CHANGE REQUEST FORM (CRF)

City Contract No. R-19-007-201
Project Name: Walnut Street Plaza/Ed Johnson Memorial
Engineer: Matt Whitaker (W.P) David Payne (E.J.M)
Contractor: Thomas Brothers Construction

Requested By: Eric Booker
Purchase Order No. _____
Drawing No. See Attached
Problem Desc. Engineering is asking for clarification on the scope of the project. We are making adjustments to the quantity or price.

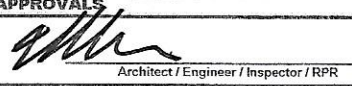

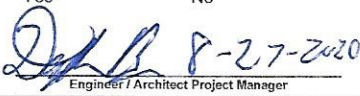

- CRF 2A: Parks has requested a 4 inch conduit for future connectivity, need pricing from the contractor (26). W.P
- CRF 2C: Credit for the dog sculpture (69). W.P
- CRF 2D: Bollards (installation only) Matt provided drawing (LSK-001 updated), James is going to provide bollards. W.P
- CRF 2E: Irrigation notified for W.P.
- CRF 2F: We need an electrical service from the panel to the current bike share location with a pull box. W.P
- CRF 2G: Add 26A Title Wall light fixtures and installation, \$7,784. E.J.M
- CRF 2I: Undercut cost at E.J.M.

Item No.	Description	Unit	Qty	Unit Price		Item Total
ADD						
CRF 2A	4 inch conduit for future connectivity	LF	410	\$15.00	\$	6,150.00
CRF 2C	Dog Sculpture	LS	1	(\$1,500.00)	\$	(1,500.00)
CRF 2D	Bollards installation (All inclusive) W.P	EA	7	\$750.00	\$	5,250.00
CRF 2E	Irrigation needs adjustment price for W.P.	LS	1	\$3,120.00	\$	3,120.00
CRF 2F	Electrical Service from panel to pull box	LF	1	\$1,300.00	\$	1,300.00
CRF 2G	Title Wall light fixtures and installation	EA	4	\$1,946.00	\$	7,784.00
CRF 2I	Undercut cost at E.J.M.	LF	1	\$4,920.00	\$	4,920.00
						DEDUCT
					W.P Total C.R.F 2	\$ 14,320.00
					E.J.M Total C.R.F 2	\$ 12,704.00
					TOTAL	\$ 27,024.00
					E.J.M CRF1 + CRF2 Total	\$ 32,704.00

Contractor Acknowledgement:

No Change in Contract Amount is required: _____
 A Change in Contract Amount is required: _____
 No Change in Contract Time is required: _____
 A Change in Contract Time is required: _____

APPROVALS

 Architect / Engineer / Inspector / RPR	 Contractor
Change in Contract Amount is within the Contingency Amount authorized under Resolution No. <u>29830</u> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>  Engineer / Architect Project Manager	Proceed with Execution Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>  City Project Manager

Distribution: City Engineer, Central Files

public art 8/27/2020

Exhibit A-3

CITY OF CHATTANOOGA
 DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION
 1250 Market Street, Suite 2100
 Chattanooga, TN 37402
 Phone: (423) 757-5117 | Fax: (423) 757-0586



CRF# 3
 Date Issued: 9/9/2020

CHANGE REQUEST FORM (CRF)


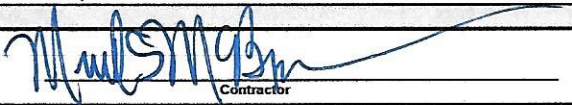


City Contract No. R-19-007-201
Project Name: Walnut Street Plaza/Ed Johnson Memorial
Engineer: Matt Whitaker (W.P) David Payne (E.J.M)
Contractor: Thomas Brothers Construction

Requested By: Eric Booker
Purchase Order No. _____
Drawing No. See Attached
Problem Desc. The City of Chattanooga needs a agreement with Thomas Brothers for the additional scope of work to fast track and streamline the project.

- CRF 3A: Electrical Writing for new memorial flood lights attached to plaza light pole (25A). E.J.M
- CRF 3B: Electrical Writing for wall lights (26A). E.J.M
- CRF 3C: Masonry cost. E.J.M
- CRF 3D: Concrete cost. E.J.M
- CRF 3E: Pay 20,000(per wall) to remove existing concrete and steel lower retaining wall (9A). E.J.M
- CRF 3F: Construct Lower Soil Nail Retaining wall complete in place (17A). E.J.M
 *Contractor must provide documentation for justification of sum.
- CRF 3G: Credit for tile wall light fixture

Item No.	Description	Unit	Qty	Unit Price	Item Total
ADD					
CRF 3A	Electrical Writing for new memorial flood lights	LS	1	\$1,237.00	\$ 1,237.00
CRF 3B	Electrical Writing for wall lights	LS	1	\$1,125.00	\$ 1,125.00
CRF 3C	Masonry cost	LS	1	\$3,600.00	\$ 3,600.00
CRF 3D	Concrete cost	LS	1	\$15,800.00	\$ 15,800.00
CRF 3E	Remove existing concrete and steel lower retaining wall	EA	1	\$20,000.00	Included in Bid
CRF 3F	Construct Lower Soil Nail Retaining wall complete in place	LS	1	(\$4,139.00)	(\$ 4,139.00)
CRF 3G	Credit for tile wall light fixture	EA	1	(\$1,946.00)	(\$ 1,946.00)
DEDUCT					
				W.P Total C.R.F 3	\$ -
				E.J.M Total C.R.F 3	\$ 15,677.00
				TOTAL	\$ 15,677.00
E.J.M CRF1(20,000) + CRF2(12,704) + CRF3(15,677) Total					\$ 48,381.00
E.J.M Money Left(50,000 - 48,381)					\$ 1,619.00

Contractor Acknowledgement:
 No Change in Contract Amount is required. A Change in Contract Amount is required: _____
 No Change in Contract Time is required. A Change in Contract Time is required: _____

 Architect / Engineer / Inspector / RPR	 Contractor
Change in Contract Amount is within the Contingency Amount authorized under Resolution No. <u>29830</u> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Proceed with Execution <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   Engineer / Architect Project Manager City Project Manager

Distribution: City Engineer; Central Files

9/17/2020

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the “Contract”) is executed this 19th day of February, 2021, by and between the Community Foundation of Greater Chattanooga, Inc., a Tennessee non-profit corporation, (the “Foundation”) located at 1400 Williams Street, Chattanooga, Tennessee 37402, and Pointe General Contractors, LLC (“Contractor”), whose address is 1209 Pointe Center Drive, Chattanooga, TN 37421.

WHEREAS, Foundation has entered into a Construction Services Agreement dated February 19, 2021, (the “Services Agreement”) with Jerome Meadows (the “Artist”) pursuant to which Artist shall serve as the representative of the Foundation in supervising and overseeing the construction of the project envisioned hereunder.

IN CONSIDERATION of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. Scope of Work; Engagement. Contractor hereby agrees to furnish all materials and labor required for the construction of the pedestrian pathways, walls, artwork foundation, landscaping and other sitework for the project identified as the Ed Johnson Memorial (the “Project”) situated on public property owned by the City of Chattanooga, Tennessee, (the “City”) at the southern terminus of the Walnut Street Bridge (the “Property”) as described on Exhibit A attached hereto (the “Work”) on the terms and conditions set forth herein. It is understood between the parties to this Contract that the Foundation and Contractor have authorization from the City to enter and perform the construction services hereunder on the Property where the Work will take place. Contractor acknowledges that Contractor has reviewed and familiarized himself with the terms of access to the City’s Property and City’s construction guidelines, and that the Contractor agrees to cooperate, comply, and abide by the terms of access and construction guidelines that affect this Agreement and the Work.

2. Plans and Specifications. All materials supplied or work performed by the Contractor shall be in compliance with the requirements set forth herein and the plans and specifications for the Project attached as Exhibit B (“Plans and Specifications”). Contractor hereby acknowledges that it has relied on and is familiar with the Plans and Specifications and all current general conditions at the Project site.

3. Qualifications. Contractor represents that it is fully qualified and licensed, to the extent required by the City, to do business in the jurisdiction in which the Project is located, has the requisite expertise, skill and capability to perform the Work in the manner contemplated by this Agreement, and shall maintain the requisite skilled employees and other workers, materials, equipment and tools necessary to perform the Work as and when required under this Agreement.

4. Standard of Work. All materials supplied by the Contractor shall be new and of the quality designated in the Plans and Specifications. All Work shall be performed in a good and workmanlike manner, free from faults and defects, and in accordance with the highest standards of the trade and in accordance with the Plans and Specifications and applicable governmental building codes and other laws, rules, ordinances, requirements and regulations applicable to the Project. The Work shall be performed in a manner satisfactory to Foundation.

Contractor agrees that if, in the opinion of Foundation, the workmanship or behavior of any of Contractor's employees or laborers or subcontractors is not equal to the foregoing standard, then Contractor shall, upon receipt of written notice from Foundation, cause the Contractor to remove said employee, laborer or subcontractor from the Project site.

5. Construction Schedule. Contractor acknowledges that he has examined the construction schedule for the Project included in Exhibit A (the "Construction Schedule") and warrants that the time allotted thereon for completion of the Work is ample. The Construction Schedule is prepared for the convenience and benefit of Foundation and imposes no obligations whatsoever on Foundation. Foundation may modify the Construction Schedule in its sole discretion and may extend the dates for performance in the Construction Schedule. Construction Schedule has a commencement date of February 22, 2021 and requires completion on or before May 31, 2021.

6. Administration of the Contract. The City will provide for the administration of the Contract and will be the project manager (1) during construction, (2) until final payment is due and (3) during the one-year period for correction of Work described in Section 27. Representatives of the City will visit the Project site at intervals appropriate to the stage of the Contractor's operations (i) to become generally familiar with and to keep the Foundation informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Plans and Specifications. The City will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these will solely be the Contractor's rights and responsibilities. Based on the City's evaluations of the Work and of the Contractor's Applications for Payment, the City will review and certify the amounts due the Contractor and will issue certificates for payment in such amounts. The City will have authority to reject Work that does not conform to the Plans and Specifications. Prior to request for final payment, the Contractor shall provide a Certificate of Final Completion to the City and the Foundation certifying that the Work has been completed in full compliance with the Plans and Specifications. Similarly, the Artist, as representative of the Foundation, in connection with the landscape architects for the Project, shall perform periodic inspections of the Project as necessary to determine the compliance by the Contractor with the terms of the Construction Contract and provide general oversight to ensure timely completion including monitoring the progress of subcontractor work and other construction details, including reviewing Contractor applications for payment and certifying the same.

7. Work Stoppage. Foundation shall have the authority to stop the progress of the Work whenever, in Foundation's opinion, such stoppage may be necessary to ensure its proper execution.

8. Damages for Delay. If Contractor fails to complete the Work within the time periods established in the Construction Schedule, Foundation shall have the right to such damages as Foundation may establish in addition to all other remedies in equity or at law that the Foundation may have.

9. Guaranteed Price. Contractor covenants that it will furnish all supplies, perform all the Work, and satisfy all the obligations hereunder for the guaranteed Contract Price hereinafter described, and that said price shall include all labor, building materials, accessories, and installations required herein. The guaranteed Contract Price is a stipulated lump sum that includes all sales, use, and other applicable taxes for materials, labor, work, or services to be furnished or supplied by Contractor. The guaranteed Contract Price is \$370,676 as set forth in the attached Exhibit C. In the event the Foundation seeks changes in the Work, or Contractor encounters unknown physical conditions at the site or other circumstances resulting in unanticipated costs for the Project, the parties shall seek to agree on a written Change Order pursuant to Section 29 authorizing the additional work and costs and any additional costs shall be added to the Contract Price.

10. Site Inspection by Contractor. Contractor represents that it has inspected the Property where the Project will be constructed and is familiar with its condition and accepts the condition of the Project as it exists and states that there shall be no request by Contractor for additional compensation due to site conditions.

11. Other Contractors. The City has awarded separate contracts with other contractors in connection with other construction or operations on the Walnut Plaza site. Contractor will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures undertaken by the City or its other contractors and Contractor shall have no liability with respect to work performed by the City or its other contractors at the Walnut Plaza site. Contractor has been apprised of the scope of work and the schedule of the City and understands that, with respect to the Project and the other work on Walnut Plaza, cooperation of all contractors is essential to the collective effort to execute the Project and the other work at Walnut Plaza, in a timely and effective manner. Contractor shall make every reasonable effort to coordinate its Work with that of the other contractors in the collective effort to complete the Project and the other work at Walnut Plaza in a timely and workmanlike manner.

12. Subcontractors. The Contractor shall furnish in writing to the Foundation and the City the names of any proposed Subcontractors for the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Foundation or the City has made reasonable and timely objection. Contracts between the Contractor and any Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of this Contract, including applicable insurance and indemnity obligations and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by this Contract, assumes toward the Foundation, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to the by this Contract.

13. Payment for Materials. The Foundation has separately purchased \$25,955.25 in quarried stone and agrees to purchase an additional \$25,877.75 in quarried stone from a third-party to be furnished to Contractor to be incorporated in the Project. Payments to the Contractor shall be made in accordance with the schedule set forth on Exhibit A, and subject to Foundation's compliance therewith, Contractor shall pay in full for any other materials required for the Work prior to their delivery to the Project.

14. Tools, Equipment, Etc. Contractor shall furnish all tools, equipment, supplies, and materials necessary to perform the Work. Foundation shall not be responsible or liable for any loss of Contractor's tools, equipment, materials and supplies.

15. Security. During the pendency of the Project, Contractor shall exercise all reasonable precautions to protect the Work and all property placed under its control and prevent any damage to other work at the Project and prior work at Walnut Plaza by other contractors of the City, provided, however, that Contractor shall have no affirmative obligation to protect other work at the Project or prior work at Walnut Plaza from damage by other persons. The Contractor shall supervise the Work at the site and shall be responsible for coordinating the delivery and storage of materials and equipment at the site, securing access to the site and, in conjunction with the City, coordinating safely the construction activities at the site with vehicular and pedestrian traffic at Walnut Plaza. The Contractor shall promptly remedy any damage or loss to Walnut Plaza, prior work at Walnut Plaza or other property of the City caused in whole or in part by Contractor, a Subcontractor or anyone directly or indirectly employed by Contractor or a Subcontractor.

16. Waste Removal. Contractor shall be responsible for removing all rubbish, debris, and waste material arising from the Work as may be necessary from time to time to accommodate other work that may be occurring on the jobsite and to ensure the jobsite is free from dangerous conditions.

17. Contractor's Representatives. At all times when the Work of Contractor or Subcontractors is in progress, Contractor shall be available to receive instructions and to make decisions in connection with the Work and Contractor shall maintain a representative on-site to receive instructions and to make decisions on behalf of, and to represent, Contractor in connection with the Work.

18. Drawings and Specifications. Contractor agrees that all drawings, specifications, and copies thereof furnished by the City or the Foundation are the property of the City or the Foundation and are not to be used on other work or given to other parties except as needed during the course of the work to be performed hereunder.

19. Cooperation of Contractor. Contractor shall cooperate with the City, the Artist, the Foundation and all other contractors of the City in the performance of this Agreement and the development of the Project.

20. Safety. Contractor shall take all reasonable safety precautions with respect to the Work, shall comply with all safety measures initiated by the City or the Foundation and all applicable laws, ordinances, rules, regulations, requirements, and orders of any public authority for the safety of persons or property, including specifically the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969.

21. Employment Practices. Contractor, in the performance of the Work, is an independent contractor and, as such, shall be responsible for compliance with the provisions of all applicable state and federal social security, unemployment compensation, workers' compensation,

sales and use tax, withholding tax, and other tax laws now or hereafter in effect, and shall pay all taxes, contributions, and premiums required thereunder.

22. No Liens. Contractor shall deliver the Work to Foundation in good condition, free and clear of all claims, liens, and encumbrances arising by, through, or under Contractor. At all times, Contractor shall defend and hold Foundation harmless from and indemnify Foundation from and against all such claims, liens, or encumbrances, pending or threatened.

23. Setoff. Foundation may withhold such sums from any monies due or to become due to Contractor hereunder as Foundation, in its sole discretion, deems necessary to protect Foundation from any loss, damage, or expense relating to or arising out of Contractor's performance of the Work, or to prevent liens or in response to any claim or threatened claim of which Foundation becomes aware concerning Contractor or the performance of Contractor's duties hereunder.

24. Insurance. Contractor shall, in a manner satisfactory to Foundation, maintain at its own expense until the completion of the Work and final payment therefor the following insurance:

a. Commercial General Liability Insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.

b. Automobile Liability Insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.

c. Worker's Compensation and Employer's Liability in accordance with statutory requirements with a limit of \$500,000 for each accident.

d. Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

Maintenance of the required insurance protection does not relieve the Contractor of responsibility for any losses not covered by the above required policies. Contractor shall furnish original certificates, together with copies of the policies, evidencing the existence of the required coverage, with Foundation and City named as a coinsured. Failure of Contractor to fulfill any of its obligations contained in this Section shall constitute a material breach of this Agreement.

25. Acceptance. The Work shall not be deemed complete until it has been inspected and approved by the City as construction manager and by the Foundation.

26. Indemnity. Contractor hereby indemnifies and saves Foundation harmless against any and all loss, damage, liability, claims, demands, costs, or expense, including attorneys' fees and costs of litigation, arising from or in any way attributable to the activities of Contractor or any of Contractor's employees or agents or its Subcontractors or their agents or employees, Contractor's work or Contractor's presence or activities on the project site, including without limitation injuries or deaths to persons and damage to property.

27. Warranty. Contractor hereby warrants that all materials furnished and workmanship performed on the Project shall be free from defect for a period of one (1) year (the "Warranty Period") from the date of completion. The foregoing warranty shall be against any and all defects in materials and/or equipment, violations of applicable laws, codes, statutes, ordinances, regulations, and requirements and provisions set forth in the Plans and Specifications or otherwise set forth in this Agreement. If, within one year after the date of completion of the Work, any of the Work is found to be not in accordance with the requirements of the Plans and Specifications, the Contractor shall correct it promptly after receipt of written notice from the Foundation or the City to do so unless the Foundation or the City has previously given the Contractor a written acceptance of such condition. The Foundation or the City shall give such notice promptly after discovery of the condition.

28. Draw Procedure. Provided that Contractor is not in default hereunder, Foundation shall, upon receipt of a certification for payment from the City, pay the guaranteed Contract Price in accordance with the schedule set forth in Exhibit A. Upon request of the Foundation, Contractor shall furnish Foundation proof of payment of all taxes, fees, utilities or other third-party charges as may be incurred by Contractor in connection with the performance of the Work.

29. Change Orders. No extra work or changes or extra charges of any kind or nature, in connection with this work by Contractor, shall be undertaken or commenced by Contractor, or recognized, or paid by Foundation, unless prior to the commencement of such change or extra work, a written Change Order has been executed by both Foundation and Contractor.

30. Foundation's Remedies. Contractor shall, be liable to Foundation for any damages sustained by Foundation as a result of Contractor's breach of the terms set forth in this Agreement. Further, Contractor shall be liable for and pay all damages caused by its workmen or its subcontractors to the work of others related to the Project or Walnut Plaza. In the event of default by Contractor under this Agreement, Contractor shall be responsible for and shall promptly pay all of Foundation's reasonable attorney's fees.

31. Breach by Foundation. If Foundation breaches this Agreement through no fault of Contractor, Contractor shall give Foundation written notice specifying the nature of the breach. Foundation shall have 30 days from its receipt of such notice to cure the breach before Contractor is entitled to stop work under this Agreement or exercise any other remedies; provided, however, if it is or becomes impossible or commercially impracticable for Foundation to cure such breach within 30 days, then Foundation shall have such additional time as is necessary to cure the breach until the impossibility or commercial impracticability ceases to exist.

32. Termination.

a. In General. This Agreement shall terminate upon satisfaction of all requirements contained herein by both parties, or in any other manner as provided herein. However, all warranties and representations and insurance and indemnity obligations contained herein shall survive the termination or completion of this Agreement.

b. Upon Breach by Contractor. In the event of Contractor's breach of the terms set forth in this Agreement, the following procedure will apply:

- (1) Foundation shall notify Contractor of said breach and shall give Contractor ten (10) days to remedy said breach.
- (2) In the event Contractor fails to timely correct said breach in a manner satisfactory to Foundation, then Foundation may notify Contractor that this Agreement is terminated because of Contractor's breach, and Contractor shall be liable to Foundation for all damages and/or costs sustained by Foundation as a result of said breach.
- (3) Upon termination of the Agreement upon a breach by Contractor, Foundation may assign the Work or any part thereof to an alternate contractor or subcontractor and complete the work and deduct the amount paid to the alternate contractor or subcontractor from the Guaranteed Contract Price.

c. Termination or Stoppage for Force Majeure. Foundation may, in its sole discretion, at any time, order postponement of the Work or any portion thereof, and/or terminate this Agreement, as a result of flood, fire, earthquake, acts of God, strikes, picketing, work stoppage, labor dispute, or any other cause beyond the Foundation's control.

33. Payment No Release. No payment to Contractor under this Agreement, whether in full or in part, shall be deemed to operate as Foundation's acceptance of any work or an admission that Contractor has complied with any provisions of this Agreement.

34. Remedies Not Exclusive. The options and remedies provided herein shall not be exclusive nor deemed as limiting Foundation's rights and remedies under this Agreement or under applicable law. Foundation shall be entitled to exercise all of its rights and remedies under this Agreement or under applicable law, concurrently, and in such order as Foundation in its sole discretion determines.

35. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any permitted successors and assigns of the parties hereto.

36. Notice. Any notice required pursuant to the terms of this Agreement shall be considered to have been received when delivered in writing to the other party or an officer or manager thereof, in person or one (1) day after placing such notice in the United States mail, certified mail, return receipt requested, postage prepaid, properly addressed to the party at the address appearing for such party on page 1 of this Agreement or at such other address as any party may furnish to the other party in accordance herewith for the purposes of this notice. Actual receipt shall not be required to effect notice hereunder.

37. No Waiver. Any failure to enforce or waiver of any breach of any of the provisions of this Agreement shall not constitute a waiver of any continued or additional breach

of the same or any other provisions of this Agreement. Foundation's failure to give notice to Contractor shall not limit, alter, diminish, restrict, or waive Contractor's obligations set forth in this Agreement.

38. Entire Agreement. Both parties hereby agree that this Agreement and all documents referred to herein represent and constitute the entire Agreement between said parties, and no other document or representation, either verbal or written, whether made heretofore, simultaneously with the execution hereof, or hereafter, except as set forth herein, shall be binding on either party hereto.

39. Amendment. This Agreement may be amended, altered, or modified only by written instrument validly executed by both parties hereto.

40. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of Tennessee.

41. Severability. The provisions of this Agreement are severable, and should any provision be found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provision hereunder.

42. Independent Contractor. Contractor is not an employee or agent of Foundation, but only an independent contractor. Nothing in this Agreement shall authorize or empower Contractor to create or assume any obligation or responsibility whatsoever, express or implied, in the name or on behalf of Foundation, nor to make any representation, warranty or agreement on Foundation's behalf.

43. Time of the Essence. Time shall be the essence of this Agreement.

44. Third Party Beneficiary. The parties hereto acknowledge and agree that the City, as the owner of the Property, is an intended beneficiary of the terms of this Agreement and the rights of the Foundation set forth hereunder and the warranties made herein shall inure to the benefit of the City and the City shall have all rights under this Agreement at law or in equity as though it were a signatory hereto.

IN WITNESS WHEREOF, the Foundation and Contractor for themselves, their heirs, representatives, successors and assigns, have executed this Agreement as of the day and year written.

**COMMUNITY FOUNDATION OF
GREATER CHATTANOOGA, INC.**

Maeghan Jones

By: Maeghan Jones

Title: President

Date: 02/19/2021

CONTRACTOR CERTIFIES THAT HE HAS READ, UNDERSTANDS, AND AGREES TO ALL OF THE PROVISIONS CONTAINED HEREIN.

Pointe General Contractors, LLC

Jason Medeiros

By: JASON MEDEIROS

Title: PRESIDENT

Date: 2.19.21

Exhibit A

PROJECT: Ed Johnson Memorial

Work: Contractor shall prosecute and complete the following Work in accordance with the Contract between Contractor and Manager: Provide material, labor, equipment and supervision to complete the Ed Johnson Memorial work at the South end of the Walnut Street Bridge, Chattanooga, TN 37416 as described on the contract documents listed above as well as Contractor's trade itemization. It shall be an estimated Twelve (12) weeks of active construction.

A copy of the Contractor's schedule of values dated 2.18.21 is attached for additional terms.

Exterior pole lighting (S1, S5, S6 and S10) are existing (existing- provided by others); service panel (existing- provided by others); lighting controller (existing- provided by others); concrete sidewalk tie-in (existing or under construction- provided by others); ½ of the quantity of the flowers and grasses as noted and agreed too; lower caliper size of trees; storm structures and piping (existing- provided by others); sculptures/artwork is NOT included.

\$52,745 of paver/stone material cost is NOT included- noted purchased directly by the Community Foundation of Greater Chattanooga, Inc.

Hamilton County/ City of Chattanooga impact/utility fees; builders risk and performance and payment bonds; hazardous and unsuitable material removal; construction testing; new utility service are NOT included.



February 18, 2021

VIA E-MAIL (runderwood@cfgc.org)

Rebecca Underwood
Community Foundation of Greater Chattanooga, Inc.

Re: Ed Johnson Memorial, Chattanooga, Tennessee - **REVISED 4**

Pointe General Contractors proposes the following preliminary budget to provide material, labor, equipment and supervision to complete the site improvements for the Ed Johnson Memorial for a total of **Four Hundred Five Thousand Three Hundred Eighteen Dollars (\$405,318)**. This proposal is based on the following assumptions and qualifications:

1. Based on the permit plans labeled Ed Johnson Memorial dated 3.31.20 issued by Ross/Fowler landscape architects as numerated on the cover sheet except sheet L4.2 and the conditions of the existing building on 12.30.20.
2. Pointe General Contractors estimates an active **Twelve (12) week construction schedule**. This assumes finish selection, materials and permit being available (and good weather).
3. Schedule of Values:

\$14,929	General Conditions -Fence/E&S/GL/Temp Services/OH
\$23,118	Full-time Supervision – based on 12 weeks
\$48,649	Concrete Steps & Paver Bed ALLOWANCE (SF)
\$4,300	Handrail Allowance (McGill)
\$16,020	Electrical Service Connections (NABCO)
\$16,032	Lighting Fixtures (FSA)
\$221,732	Masonry and Brick Paving Installation (Jenkins Masonry)
\$30,479	Landscaping & Irrigation (Ooltewah)
\$3,543	Layout & Engineering/As-built (ASA or North Pointe)
<u>\$26,516</u>	<u>Fee</u>
\$405,318	Total

DEDUCT ALTERNATE for providing part-time supervision: (\$8,126)

DEDUCT ALTERNATE donation of estimated fee: (\$26,516)

4. **Reference attached Qualification/ Unit Rate page.**
5. This proposal assumes that a standard AIA agreement for construction terms with net 30 days apply.

Thank you for the opportunity to provide this proposal. Please call with questions or comments.

Jason Medeiros
Pointe General Contractors

CC: Jerome Meadows/ Bruce Foster



GC & Remodeling Qualification/Specifications Summary:

- i. Hamilton County and City of Chattanooga impact/utility fees are NOT included but may be priced if requested.
- ii. Exterior pole lighting (S1, S5, S6 and S10) are existing (existing- provided by others); service panel (existing- provided by others); lighting controller (existing- provided by others); concrete sidewalk tie-in (existing or under construction- provided by others); ½ of the quantity of the flowers and grasses as noted and agreed too; lower caliper size of trees; storm structures and piping (existing- provided by others); sculptures/artwork is NOT included.
- iii. **\$51,833 of paver material cost is NOT included- noted purchased directly by the Community Foundation of Greater Chattanooga, Inc.**
- iv. Builders Risk policy and Performance and Payment Bond costs are NOT included but may be priced if requested.
- v. Hazardous abatement and unsuitable material removal is NOT included but may be provided upon request.
- vi. Construction material testing is NOT included.
- vii. New utility service metering is NOT included – but may be budgeted if required, budget assumes that existing electrical and water service is adequate and available to contractor for use.



February 18, 2021

VIA E-MAIL (runderwood@cfgc.org)

Rebecca Underwood
Community Foundation of Greater Chattanooga

Re: EJM Preliminary Cash Flow Statement

Preliminary Cash Flow Statement based on February 2021 mobilization:

February 30, 2021:	\$9,664	(Permit & Earthwork)
March 31, 2021:	\$88,469	(Concrete, Electrical, Pavers)
April 30, 2021:	\$108,572	(Pavers, Stone)
May 31, 2020:	\$163,971	(Pavers, Stone, Electrical & Landscaping)

Please call with questions or comments.

Jason Medeiros
Pointe General Contractors

CC K Gilliland/ B. Foster

ID	Task Name	Start	Finish	2/14	2/21	2/28	3/7	3/14	3/21	3/28	4/4	4/11	4/18	4/25	5/2	5/9	5/16	5/23	June 5/30	
1	Ed Johnson Memorial	Mon 2/15/21	Mon 5/31/21																	
2	Owner Contract	Mon 2/15/21	Fri 2/19/21																	
3	Subcontract Buyout	Mon 2/15/21	Fri 2/19/21																	
4	Construction	Mon 2/15/21	Mon 5/31/21																	
5	Site Development	Mon 2/15/21	Mon 5/31/21																	
6	Fencing, Barricades, protection of finishes	Mon 2/22/21	Fri 2/26/21																	
7	Survey	Mon 3/1/21	Fri 3/5/21																	
8	Irrigation & Electrical Rough in lower Stream of time	Mon 3/8/21	Fri 3/12/21																	
9	Grading & Concrete at lower stream of time	Mon 3/8/21	Fri 3/12/21																	
10	Stone set at lower stream of time	Thu 3/18/21	Wed 3/17/21																	
11	Grading /Stone Memorial area proper	Thu 3/18/21	Wed 3/17/21																	
12	Electrical rough at benches & Walls	Tue 3/23/21	Fri 3/26/21																	
13	Vertical Masonry (walls & Benches) (minus etchings)	Mon 3/29/21	Fri 4/16/21																	
14	Concrete paver beds Memorial area proper	Mon 3/29/21	Fri 4/2/21																	
15	Concrete paver beds Memorial area proper	Mon 4/5/21	Fri 4/9/21																	
16	Layout of etched radiuses	Mon 4/12/21	Mon 4/12/21																	
17	stone cuts of etched radiuses & benches	Mon 4/12/21	Fri 4/16/21																	
18	etching of radiuses & benches	Mon 4/19/21	Fri 4/30/21																	
19	Set etchings	Mon 5/3/21	Wed 5/5/21																	
20	Pavers (Interior of memorial)	Thu 5/6/21	Fri 5/21/21																	
21	Electrical Trim out/Set lights	Mon 3/8/21	Fri 5/28/21																	
22	Concrete Paver beds outside memorial proper	Mon 4/12/21	Tue 4/20/21																	
23	Pavers set outside memorial proper	Wed 4/21/21	Tue 5/11/21																	
24	Final Inspections/ C of O	Mon 5/24/21	Tue 5/25/21																	
25	Punch Out	Mon 5/24/21	Mon 5/31/21																	

Exhibit B

PROJECT: Ed Johnson Memorial

<u>CONTRACT DOCUMENT(S) TITLE</u>	<u>REVISION/ ADDENDUM</u>	<u>NUMBER</u>	<u>DATE</u>
Cover Sheet	N/A	N/A	3.31.20
Site Drainage	N/A	C1.0	8.14.19
Sediment and Erosion Control	City Comments	C2.0	7.28.20
Site Details	1	C3.0	9.23.19
Partial Topographical Survey	N/A	1	11.15.17
Demolition Plan	N/A	L0.1	8.14.19
Site Location Plan	N/A	L1.0	10.5.18
Overall Site Plan	1	L1.1	9.14.20
Enlarged Site Plan	N/A	L1.2	8.14.19
Site Details	N/A	L2.1	8.14.19
Site Details	N/A	L2.2	8.14.19
Site Details	N/A	L2.3	8.14.19
Site Details	N/A	L2.4	8.14.19
Site Details	N/A	L2.5	8.14.19
Site Details	2	L2.6	12.31.20
Layout Plan	N/A	L3.1	3.14.20
Stream of Time Layout Plan	N/A	L3.2	3.14.20
Overall Grading Plan	N/A	L4.1	8.14.19
Overall Rough Grading Plan	N/A	L4.12	8.14.19
Irrigation Plan	N/A	L5.1	8.14.19
Irrigation Details	N/A	L5.2	8.14.19
Planting Plan	1	L6.1	11.25.20
Planting Details	1	L6.2	11.25.20
Electrical Legends, Notes and Details	N/A	E1.0	8.14.19
Lighting Plan	N/A	E1.1	12.31.20
Lighting Plan	2	L7.1	12.31.20
Site Details	N/A	C4.0	1.8.21

Exhibit C

Description	Sub	Pointe - 2/18/2021
General Conditions (Fence/E&S/GL/Temp Svc/OH)	OH	14,929
Masonry and Brick Paving Installation	Jenkins Masonry	221,732
Handrail <i>ALLOWANCE*</i>	McGill	4,300
Concrete Steps & Paver Bed <i>ALLOWANCE*</i>	SF	48,649
Electrical Service Connections	NABCO	16,020
Lighting Fixtures	FSA	16,032
Landscaping & Irrigation	Ooltewah	30,479
E&S Certification/As--built	ASA or North Poin	3,543
		355,684
Supervision (24/7)		23,118
fee		26,516
		405,318
fee (donated)		(26,516)
		378,802
reduce supervision to PT		(8,126)
Total Construction Contract Cost		370,676

PROJECT:	Ed Johnson Memorial	
ARCHITECT'S JOB NUMBER:	17010	
Change Order NUMBER: 1	COR 2, COR 3, COR 4	
DATE:	10/6/2021	
CONTRACTOR:	Pointe General Contractors	
COR # & Name		
Subcontractor/Vendor Name		Amount
COR 2 Additional Step Stones required for completion	Cumberland Mountain Stone & PGC Transporting	\$1,225.36
COR 3 Additional Paver Stones required for completion	Cumberland Mountain Stone & PGC Transporting	\$2,093.71
COR 4 Replanting Stream of History	Ooltewah Nurseries	\$3,871.00
Total for Work by Subcontractors		\$7,190.07
Work by General Contractor		
Subtotal for Work by General Contractor		0.00
Fee (5%) for General Contractor		0.00
Total for Work by Contractor		0.00
Bond Premium		
Total		\$7,190.07
Approval:		
Bruce F Foster		11/23/21
Pointe General Contractors LLC		Date
<i>Maighan Jones</i>		11/23/2021
Foundation		Date

CONSTRUCTION SERVICES AGREEMENT

THIS CONSTRUCTION SERVICES AGREEMENT (the “Agreement”) is executed this 19th day of February, 2021, by and between the Community Foundation of Greater Chattanooga, Inc., a Tennessee non-profit corporation, (the “Foundation”) located at 1400 Williams Street, Chattanooga, Tennessee 37402, and Jerome B. Meadows (“Artist”), whose address is 915 Waters Avenue, Savannah, Georgia 31404.

WHEREAS, Foundation has entered into a Construction Contract dated February 19, 2021, (the “Construction Contract”) with Pointe General Contractors (the “Contractor”) pursuant to which Contractor shall be the general contractor for the construction of the pedestrian pathways, walls, artwork foundation, landscaping and other sitework (the “Work”) for the project identified as the Ed Johnson Memorial (the “Project”) situated on public property owned by the City of Chattanooga, Tennessee, (the “City”) at the southern terminus of the Walnut Street Bridge (the “Property”).

WHEREAS, Foundation desires to retain the services of Artist to provide assistance and general supervision of the construction of the Project and certain other services in connection with the performance of the Work pursuant to the terms of this Agreement.

IN CONSIDERATION of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. Relationship of Parties. In connection with Contractor’s performance of the Work under the Construction Contract, the Artist shall supervise and oversee, as the representative of the Foundation, the construction of the Project by the Contractor.

2. Construction Services. Artist agrees to provide, for the benefit of Foundation, day-to-day, on-site project management relative to the Work; and with this general responsibility, Artist’s obligations shall include but not be limited to the following (the “Services”):

(a) Perform periodic inspections of the Project as necessary to determine the compliance by the Contractor with the terms of the Construction Contract and provide general oversight to ensure timely completion including monitoring the progress of subcontractor work and other construction details.

(b) Pursuant to the Proposal dated December 3, 2020, by Ross/Fowler, P.C., (the “Architect”) engage the Architect for the landscape design services necessary in connection with the Project, coordinate with the Architect in supervising the progress and quality of the Project and its conformance with the Plans and Specifications for the Project, including reviewing Contractor applications for payment and certifying the same, and providing for the payment of all fees or other items charged by the Architect.

(c) Provide guidance and interpretation with respect to all aesthetic aspects of the Project and the ultimate integration of the artwork for the Project in the Work.

(d) Provide the Foundation prompt written notice if the Artist becomes

aware of any fault or defect in the Project, the construction of the same or non-conformance with this Agreement or the Construction Contract.

(e) Work with the Contractor to obtain and maintain (1) all approvals and permits from all governmental authorities having jurisdiction over the Project, and (2) all approvals and consents from others as may be necessary for completion of the Project.

(f) Work with the Contractor to obtain and maintain Certificates of Insurance with respect to all policies of insurance the Contractor is required to provide under the Construction Contract.

(g) Provide such other assistance to the Contractor as may be required including coordinating subcontractor work and materialmen/supplier relations including selecting, scheduling, and coordinating delivery of materials and supplies for the Project.

3. Meetings and Consultation. Artist shall make available time for and shall attend regular meetings with Foundation, City and Contractor as Foundation may deem reasonably necessary for reviewing and administering the Work and performing Artist's duties hereunder.

4. Foundation Responsibilities. The Foundation shall designate a representative authorized to act on the Foundation's behalf with respect to the Project. Foundation shall have responsibility for the direct payment of construction costs of the Project to the Contractor pursuant to the Construction Contract. Such construction costs will include but not be limited to all costs and expenses to third parties, including the Contractor, subcontractors, suppliers, and governmental authorities except for the fees to Artist and Architect covered in this Agreement.

5. Compensation. As compensation for Artist's performance of the Services, Foundation shall pay to Artist a fixed fee (herein, the "Fee") equal to \$36,500.00 payable as specified in accordance with the schedule attached as Exhibit A.

6. Term. The term of this Agreement shall be co-extensive with the term of the Construction Contract; in the event the Construction Contract is terminated for any reason, then this Agreement shall automatically be terminated.

7. Indemnification and Insurance.

(a) Indemnity. Artist hereby indemnifies and saves Foundation harmless against any and all loss, damage, liability, claims, demands, costs, or expense, including attorneys' fees and costs of litigation, arising from or in any way attributable to the activities of Artist or any of Artist's employees or agents hereunder, Artist's work or Artist's presence or activities on the project site, including without limitation injuries or deaths to persons and damage to property.

(b) Insurance. Artist shall, in a manner satisfactory to Foundation, maintain at its own expense until the completion of the Work and final payment therefor the following insurance:

(i) Commercial General Liability Insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.

(ii) Automobile Liability Insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.

(iii) Worker's Compensation and Employer's Liability in accordance with statutory requirements with a limit of \$500,000 for each accident.

(iv) Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

Maintenance of the required insurance protection does not relieve the Artist of responsibility for any losses not covered by the above required policies. Artist shall furnish original certificates, together with copies of the policies, evidencing the existence of the required coverage, with Foundation and City named as a coinsured. Failure of Artist to fulfill any of its obligations contained in this Section shall constitute a material breach of this Agreement.

8. Default. In the event Artist fails to or is unable to provide the Services to the satisfaction of Foundation or otherwise defaults in its obligations under this Agreement (a "Default"), then Foundation shall provide Artist with written notice of same and shall afford Artist ten (10) days from the date such notice is received by Artist to cure such Default. If the Default is not timely cured, Foundation shall be entitled (i) to terminate this Agreement upon written notice to Artist, and (ii) to pursue any and all remedies and/or damages as may be available at law or in equity.

9. Miscellaneous.

(a) Assignment. As this is an Agreement for personal services, Artist may not assign this Agreement without the prior written consent of the Foundation.

(b) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any permitted successors and assigns of the parties hereto.

(c) Notice. Any notice required pursuant to the terms of this Agreement shall be considered to have been received when delivered in writing to the other party or an officer or manager thereof, in person or one (1) day after placing such notice in the United States mail, certified mail, return receipt requested, postage prepaid, properly addressed to the party at the address appearing for such party on page 1 of this Agreement or at such other address as any party may furnish to the other party in accordance herewith for the purposes of this notice. Actual receipt shall not be required to effect notice hereunder.

(d) No Waiver. Any failure to enforce or waiver of any breach of any of the provisions of this Agreement shall not constitute a waiver of any continued or additional breach of the same or any other provisions of this Agreement. Foundation's failure to give notice to Artist shall not limit, alter, diminish, restrict, or waive Artist's obligations set forth in this Agreement.

(e) Entire Agreement. Both parties hereby agree that this Agreement and all documents referred to herein represent and constitute the entire Agreement between said parties, and no other document or representation, either verbal or written, whether made heretofore,

simultaneously with the execution hereof, or hereafter, except as set forth herein, shall be binding on either party hereto. Specifically, this Agreement shall supersede and replace in its entirety the Construction Contract dated December 12, 2020, between the parties hereto, which shall be deemed terminated and of no further force or effect.

(f) Amendment. This Agreement may be amended, altered, or modified only by written instrument validly executed by both parties hereto.

(g) Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of Tennessee.

(h) Severability. The provisions of this Agreement are severable, and should any provision be found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provision hereunder.

(i) Independent Contractor. Artist is not an employee or agent of Foundation, but only an independent contractor. Nothing in this Agreement shall authorize or empower Artist to create or assume any obligation or responsibility whatsoever, express or implied, in the name or on behalf of Foundation, nor to make any representation, warranty or agreement on Foundation's behalf.

(j) Time of the Essence. Time shall be the essence of this Agreement.

(k) Third Party Beneficiary. The parties hereto acknowledge and agree that the City, as the owner of the Property, is an intended beneficiary of the terms of this Agreement and the rights of the Foundation set forth hereunder and the warranties made herein shall inure to the benefit of the City and the City shall have all rights under this Agreement at law or in equity as though it were a signatory hereto.

IN WITNESS WHEREOF, the Foundation and Artist for themselves, their heirs, representatives, successors and assigns, have executed this Agreement as of the day and year written.

**COMMUNITY FOUNDATION OF
GREATER CHATTANOOGA, INC.**

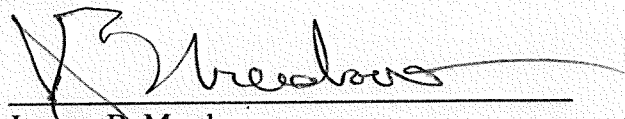


By: Maeghan Jones

Title: President

Date: February 19, 2021

ARTIST CERTIFIES THAT HE HAS READ, UNDERSTANDS, AND AGREES TO ALL OF THE PROVISIONS CONTAINED HEREIN.



Jerome B. Meadows

Date: MAR. 19, 2021

EXHIBIT A

COMPENSATION SCHEDULE

Ross/Fowler, P.C. Administrative Services [\$18,500.00]

Artist Facilitation Fee [\$18,000.00]

Total Compensation: [\$36,500.00]		
Installment	Amount	Deliverable
Installment 1	\$9,125.00	Upon execution of contract.
Installment 2	\$9,125.00	Upon completion of blockwork, concrete, center stone.
Installment 3	\$9,125.00	Upon completion of ashlar stone, stream of time, steps, caps sandblasting, paving, electrical, landscaping and irrigation.
Installment 4	\$9,125.00	Upon finalization and signoff of project completion.

December 03, 2020

Jerome Meadows
Meadowlark Studio
915 Waters Avenue
Savannah, Georgia 31404

RE: Ed Johnson Memorial
Chattanooga, Tennessee
Proposal for Additional Landscape Architectural Services

Dear Jerome:

Per our recent Discussion, please find attached our request for additional services for Bidding and Construction administration phase services performed by Ross/Fowler for the Ed Johnson Memorial. Due to circumstances unforeseen when the original contract with Team Meadows was executed, we are respectfully requesting consideration of these additional services. We feel this additional work exceeds what was outlined in the original fee proposal issued on May 4th, 2018 (See Section E. Construction Administration Phase)

As you are aware significant unanticipated expenses were encountered including the following:

- Having to coordinate and re-package our completed Memorial construction documents with the City of Chattanooga to separate the scope between the Walnut Plaza Contractor and Team Meadows for City of Chattanooga bidding purposes.) **[12hrs PM II & 12hrs LA I]**
- Lengthy and Extensive Value Engineering (VE) conversations, budget preparations & meetings regarding the work, scope, and costs to be divided between Thomas Brothers and Team Meadows. **[12hrs Project Manager II & 4hrs LA I]**
- Coordination of the lower wall design with a Structural Engineer and Geotechnical consultants - which was not initially brought into the Memorial project scope until the bidding phase. **[4hrs PM II & 4hrs LA I]**
- Reaching out and creating bid packages for masonry and concrete sub-contractors for performative and cost analysis. **[2hrs PM & 2hrs LA I]**
- Consultation with General Contractors for performing work in case Charlie was unable to secure licensure. **[2hrs PM II & 2hrs LA I]**
- Attending all of the Walnut Street Plaza construction meetings prior to Katelyn's full involvement. **[12hrs LA I]**
- Soliciting Building and Land Disturbance permits for the City of Chattanooga. **[4hrs PM II & 40hrs LA I]**
- Seeking and securing a written proposal for Landscape Contractor services (Ooltewah Landscaping) **[2hrs PM II]**
- Abandoned waterline GIS coordination and document modifications (wall relocation) **[2hrs PM II & 6hrs LA I]**



- Coordination of the construction of the Thomas Brothers scope – grading plans, wall footings, masonry, rebar, drainage, and lighting elements which due to schedule and licensing constraints had to be performed by the Walnut Plaza Contractor. [4hrs PM II & 12hrs LA I]
- Construction administration for Thomas Brothers scope, field reports, site visits, submittal review, and meeting notes. [4hrs PM II & 12hrs LA I]

Based on the current schedule and the remainder of EJM scope to finish the project Ross/Fowler seeks additional fees in the areas related to:

- Updating construction drawings: Fencing exhibits, laydown, planting, and renderings [2hrs PM II & 10hrs LA I]
- Updates to planting design, layout, quantities, and incorporation of the historic Lenten Rose gift. [6hrs LA I]
- Irrigation inspection & coordination [2hrs PM II & 4hrs LA I]
- Attending remaining City lead meeting (every two weeks) [8hrs LA I]
- Additional team meetings and coordination [2hrs PM II & 8hrs LA I]
- Monthly site visits (3) [24hrs LA I]

Project Manager II @ 150.00hr X 54
Landscape Architect I @ 65.00hr X 160

\$ 8,100.00
\$ 10,400.00

The total amount for the additional services request is a stipulated sum of **18,500.00**

Please let us know if this request is acceptable or if you have any questions.

Sincerely,

ROSS/FOWLER, P.C.



David S. Payne, ASLA.
Project Manager

C: File 17010



Invoice

Jerome B. Meadows
Meadowlark Studio
915 Waters Avenue
Savannah, GA 31404

Date: October 10, 2019

Project: Ed Johnson Memorial
Chattanooga, Tennessee

Project No. 17010
Invoice No. 17010-6

The following amount is now due for additional consultant services for geotechnical soil review/ testing and retaining wall structural design on the above referenced project through September 30, 2019.

The fees listed below are the not to exceed sums as specified in the agreements.

Consultant	Fee	Previously Billed	Markup	Invoice Amount
S&ME - Geotechnical soil review/ testing	\$8,200.00	\$0.00	1.2	\$9,840.00
March Adams - retaining wall structural design	\$1,000.00	\$0.00	1.2	\$1,200.00
	\$9,200.00	\$0.00		\$11,040.00
Amount Due This Invoice				\$11,040.00

The amount of this invoice must be paid within 10 days of receipt of invoice or a service charge of 1 1/2% per month will be incurred.

- Attachments: 1. S&ME Invoice #951942
2. March Adams Invoice #130236

Prior Billing Information

Invoice	0 - 30	31 -60	61 - 90	Over 90	Balance
Prior Unpaid Total					\$0.00
Current Total Amount Due:					\$11,040.00



INVOICE



RECEIVED

SEP 27 2019

ROSS/FOWLER

Ross/Fowler Landscape Architecture
5103 Kingston Pike
Knoxville, TN 37919

Invoice # : 951942
Invoice Date : 9/18/2019
Project : 128119063
Project Name : Ed Johnson Memorial Park
Terms : Due Upon Receipt
(Unless otherwise stated below)
Client Code : 104840

Attention: David Payne
david.payne@rossfowler.c

FOR PROFESSIONAL SERVICES RENDERED
TERMS: Net 30 Days

Amount Due : \$8,200.00

PROJECT MANAGER *D. Payne*

S&ME, INC.
4291 HIGHWAY 58
CHATTANOOGA, TN 37416
(423) 499-0957

Remit to: S&ME, Inc.
PO Box 277523
Atlanta, GA 30384-7523 USA
Federal ID#56-0791580

March Adams & Associates, Inc.

P.O. Box 3689
Chattanooga, TN 37404

Invoice

DATE	INVOICE NO.
9/30/2019	130236

CLIENT:

Ross/Fowler Landscape Architects
5103 Kingston Pike Suite 105
Knoxville, TN 37919

RECEIVED

OCT 04 2019

ROSS/FOWLER

PROJECT	18371_Ed Johnson Memorial	PURCHASE ORDER		
SCOPE OF SERVICES		QTY	RATE	AMOUNT
ADDITIONAL SERVICES for the lower retaining wall in accordance with ASA #1 dated 8/2/19 (see attached).				
Lump Sum Fee			1,000.00	1,000.00
TERMS	Net 30 days	Total Due		\$1,000.00

FOR BILLING INQUIRIES, PLEASE CALL (423) 698-6675

**SECOND AMENDMENT TO
COLLABORATION AGREEMENT BETWEEN
COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC.
AND
THE CITY OF CHATTANOOGA**

This Second Amendment to Collaboration Agreement Between Community Foundation of Greater Chattanooga, Inc. and the City of Chattanooga (the "First Amendment") is made and entered into as of the 17th day of May 2021, by and between the CITY OF CHATTANOOGA ("City") and the COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC. ("Community Foundation") (hereinafter collectively referred to as the "Parties"). The Parties agree as follows:

RECITALS

WHEREAS, City and Community Foundation entered into a Collaboration Agreement dated June 3, 2020 (the "Agreement"); and

WHEREAS, the City and Community Foundation entered into a First Amendment to Collaboration Agreement Between Community Foundation of Greater Chattanooga, Inc. and the City of Chattanooga dated December 16, 2020 (the "First Amendment"); and

WHEREAS, the Parties now wish to amend the Agreement as provided herein.

AMENDMENT

1. Section 4. Payment for Site Improvement Work. Subsection 4(b) of the Agreement is hereby amended by deleting the subsection in its entirety and replacing it with the following language: "The total estimated cost of the Artwork installation site improvement work is Two Hundred Ninety Thousand Ninety Five Dollars and 00/100 (\$290,095.00). In an effort to assist with the funding gap for the site improvement work the City hereby agrees to reduce the funds that Community Foundation owes to City under this Agreement by Twenty Seven Thousand Three Hundred Five Dollars and 00/100 (\$27,305.00). Thus, of the total estimated cost, Community Foundation shall pay Two Hundred Sixty Two Thousand Seven Hundred Ninety Dollars and 00/100 (\$262,790.00) to the City for the Artwork installation site improvement work."

NO OTHER AMENDMENTS

Except as expressly amended herein, the Agreement shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment as of the day and year first above written.

CITY OF CHATTANOOGA

**COMMUNITY FOUNDATION OF
GREATER CHATTANOOGA, INC.**

By: Wm. C. [Signature]
Title: Interim Administrator of Public Works

By: L. Maughan Jones
Title: President

By: [Signature]
Title: Interim Administrator of ECD



MASTER SERVICES AGREEMENT

This Master Services Agreement (“MSA” or “Agreement”) is dated June 8, 2021 and is between **Simple Focus, LLC**, a Tennessee limited liability company (“Agency”), and the **Community Foundation of Greater Chattanooga, Inc.**, a Tennessee non-profit corporation (“Client”). Capitalized terms not defined in context have the meanings given in Section 10.

1. *Services Provided, Client Obligations*

- 1.1. *Services and SOWs.* Agency shall provide the services described in the SOW. Services can only be provided through an SOW. Although Agency may provide tangible items to Client, this Agreement is a contract for services and not the sale of goods.
- 1.2. *Acceptance.* Agency shall periodically submit work created to Client for approval. Client must accept or reject submitted work within ten business days, unless otherwise specified by Agency. Client may only reject work for materially failing to either provide the functionality or satisfy the acceptance criteria of the applicable SOW. If Client does not accept or reject work within the applicable timeframe, it is deemed accepted. Agency has a commercially reasonable amount of time to fix any properly rejected work. Previously accepted work may not be later rejected.
- 1.3. *Obligations of Client.* In addition to any Client obligations specified in the SOW, Client shall cooperate with Agency in the delivery of Services by: timely responding to requests for information or feedback, providing needed materials and information in a usable format, making itself reasonably available for consultation during the course of the project, and otherwise complying with its obligations under this Agreement.

2. *Compensation*

- 2.1. *Invoicing and Payment.* Agency shall deliver invoices in the manner specified in the applicable SOW to the Billing Contact provided in the SOW. Client shall pay Agency the fees, reimbursable expenses, and any applicable sales, use or value added taxes, even if assessed after payment. Unless otherwise specified in the applicable SOW, invoices are due within 15 days of Client’s receipt.
- 2.2. *Expenses.* Client shall reimburse Agency for reasonable and

pre-approved out of pocket expenses incurred by Agency as provided in the SOW or otherwise approved by Client.

3. *Intellectual Property*

- 3.1. *Ownership of Existing IP.* Each party will own and retain all rights to its pre-existing IP and any IP developed outside of the Deliverables.
- 3.2. *Work for Hire and Assignment of Deliverables.* The work completed by Agency under this Agreement shall be work made for hire for Client, and Client shall own all IP in such work made for hire. Upon payment in full of all amounts due under the applicable SOW, Agency will take such actions as are reasonably necessary to evidence and perfect Client's rights in the Deliverables.
- 3.3. *Agency Tools.* If any Agency Tools are incorporated into the Deliverables, subject to the condition of Client's payment in full of amounts due under the applicable SOW, Agency hereby grants to Client a worldwide, nonexclusive, perpetual, royalty-free, license to use the Agency Tools for internal purposes only in the manner contemplated by the SOW.
- 3.4. *Third-Party IP.* All Third-Party IP are the exclusive property of their respective owners. Agency shall, at Client's expense, either (i) obtain a license of Third-Party IP permitting Client's use of the Deliverables as contemplated by the SOW, or (ii) inform Client of any need to license such Third-Party IP.
- 3.5. *Use of Client Materials*
 - 3.5.1. Client grants Agency a nonexclusive, revocable license to copy, use and distribute any Client Materials provided to it to the extent necessary to perform the Services. Client retains all other interest in Client Materials. Agency may sublicense the right to use Client Materials to its subcontractors only to the extent necessary for subcontractors to perform services for Agency related to this Agreement. Agency may rely on and use the Client Materials without independent verification.
 - 3.5.2. Client may revoke the license to Client Materials at any time for any reasonable business reason. The license will terminate automatically with the termination of the applicable SOW. Agency will promptly return any Client Materials on request or termination of Agency's license.

3.6. *Authorized Access.* Agency is authorized to access Client's website, hosting provider, servers, development environment, and online services as may be necessary to provide the Deliverables.

3.7. *Open Source.* In its work, Agency may use libraries of, and submit back improvements to, "open source" software. Such open-source libraries and improvements are subject to the terms of the open-source license governing the applicable software. Agency is authorized to use open-source software licensed under APL/Apache, Eclipse, MIT, BSD, CPL, MS-PL or Mozilla Public licenses. Any other open-source software requires written approval from Client prior to use.

4. *Term and Termination*

4.1. *Termination by Client.* Client may terminate an SOW if (i) Agency fails to cure a breach of this Agreement within 10 days of receiving written notice of the breach from Client, or (ii) on 30 days advance written notice. (2) If Client terminates an SOW for a breach by Agency, Agency shall be liable to Client for all damages and costs sustained by Client as a result of said breach and Client may assign the services under the SOW to another vendor and complete the project and deduct the amount paid to the alternative vendor from any amounts payable to Agency hereunder. If Client terminates an SOW other than for a breach by Agency, then Client will pay all fees and pre-approved reimbursable expenses incurred by Agency through the termination date.

4.2. *Termination by Agency.* Agency may terminate an SOW if (i) Client fails to pay any amount when due; (ii) Client fails to cure a breach of this Agreement within 30 days of receiving written notice of the breach from Agency, or (iii) there is an Unpermitted Delay. If Agency terminates an SOW under this section, Client will pay all fees and pre-approved reimbursable expenses incurred by Agency through the termination date.

4.3. *Suspension of Work.* If Client breaches this agreement, Agency may stop work (without liability) until Client has cured the breach. Stopping work does not limit Agency's right to later terminate this MSA if Client has not timely cured the breach. Following any work stoppage, Agency may condition its further work on Client (i) curing the breach and (ii) accepting an amended SOW reflecting changes to the work, schedule, and fees related to Client's breach.

4.4. *Post Termination.* Following any termination, each party will return the confidential information and property of the other within 10 calendar days of the effective date of termination unless otherwise instructed. Agency shall provide reasonable assistance to Client to facilitate an

orderly transition of the work being provided by Agency to another vendor.

- 4.5. *Survival of Certain Provisions.* Sections 3, 5, 6, 7, 8, 9, 10, and 11, any unsatisfied payment obligations, and any remedies for breach shall survive the expiration or termination of this Agreement.

5. *Warranties*

- 5.1. *By Agency.* Agency warrants to Client that:

- 5.1.1. Agency has the right and authority to enter into this Agreement;
- 5.1.2. Agency has and will maintain any approvals, licenses, filings, or registrations necessary to perform its obligations under this Agreement;
- 5.1.3. Agency will comply with all applicable laws in performing its obligations under this Agreement;
- 5.1.4. The Services will be performed in a professional manner in accordance with industry standards;
- 5.1.5. To Agency's knowledge, the Deliverables (other than the Third Party IP) do not infringe any copyright or trademark rights of any third party; and
- 5.1.6. **Except as set forth in this Section 5.1, the Deliverables are provided "AS IS." To the maximum extent permitted by law, Agency disclaims any and all other warranties, whether express or implied, including, but not limited to, any implied warranties of merchantability, or fitness for a particular purpose.**

- 5.2. *By Client.* Client warrants to Agency that:

- 5.2.1. Client has the right and authority to enter into this Agreement;
- 5.2.2. Client's use of the Deliverables will comply with all applicable laws and restrictions governing the Deliverables; and
- 5.2.3. The Client Materials do not, and Agency's use will not, to Client's knowledge, infringe any copyright or trademark of any third party.

6. ***Non-Solicitation.*** Each party agrees, during the term of this Agreement and for a period of one year thereafter, not to solicit, recruit or attempt to solicit or recruit, either directly or indirectly, for itself or for any third party, the other party's employees for employment or the provision of services as a contractor, Agency, director, officer, advisor or in any other capacity.
7. ***Indemnification***
 - 7.1. ***By Agency.*** Agency shall indemnify Client, its Affiliates, and their respective directors, officers, employees, agents, successors, and assigns (each a "*Client Indemnified Party*") against all Claims to the extent that such Claims relate to Agency's material breach of any warranty or covenant in this Agreement. Agency has no liability under this Section 7.1 to the extent that Claims related to: (i) the grossly negligent or willful acts of a Client Indemnified Party; (ii) Agency's compliance with the instructions of Client, or (iii) a claim that a Deliverable is infringing where the alleged infringement is due to modifications made by Client or the inclusion of Client Materials in the Deliverable.
 - 7.2. ***By Client.*** Client shall indemnify Agency, its Affiliates, and each of their their respective directors, officers, employees, agents, successors, and assigns (each a "*Agency Indemnified Party*") against all Claims to the extent that the Claims relate to (i) Client's breach of any warranty or covenant in this Agreement.
 - 7.3. ***Indemnification Procedures.*** The indemnified party will: (1) provide the indemnifying party with reasonably prompt notice of Claims; (2) permit the indemnifying party through mutually acceptable counsel to answer and defend Claims; and (3) provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend Claims at the indemnifying party's expense. Any indemnified party may employ separate counsel and participate in the defense of any Claim at its own expense.
 - 7.4. ***Acknowledgment of Fault and Settling Claims.*** Neither party will admit any fault or liability on the part of the other without prior written consent. The indemnifying party will not settle any Claim or publicize any settlement without the other party's prior written consent.
 - 7.5. ***Infringement Remedies.*** In the event of a breach by Agency of its warranties under Section 5.1.5, Agency shall promptly replace the affected Deliverable with a complying equivalent or, if such

equivalent is not reasonably available, Agency shall refund to Client the Fees paid by Client for such Deliverable and Client shall discontinue use of such Deliverable. The remedy provided in this Section 7.5 is Client's sole remedy for Agency's breach of the warranty given in Section 5.1.5.

8. *Limitation of Liability*

8.1. ***No Consequential Damages.*** Except for damages arising from gross negligence or intentional wrongdoing, neither party shall be liable for any consequential, special, indirect, incidental, exemplary, or punitive damages (including damages for loss of data, revenue, or profits), whether or not foreseeable, regardless of the theory of such damages, and even if advised of the possibility of such damages.

8.2. ***Liability Cap.*** Agency's total liability to Client arising out of or related to this Agreement, whether in contract or in tort, direct or by indemnity, will not exceed the actual fees paid by Client to Agency under this Agreement.

9. *Confidentiality*

9.1. ***Nondisclosure.*** The parties shall comply with the terms of any nondisclosure agreement between them. If no such agreement exists or if such agreement imposes unilateral obligations, each party shall (a) protect and keep confidential any information obtained from the other party provided identified as confidential or that, given the nature of such information or the manner of its disclosure, reasonably should be considered confidential, and (b) use such information only for the purpose for which it was originally disclosed. All confidential information remains the exclusive property of the disclosing party. Subject to Section 11.2, neither party will issue press releases or publicity relating to this Agreement.

9.2. ***Security Procedures.*** Each party shall employ industry standard security procedures to prevent disclosure of the other party's confidential information to unauthorized third parties. Agency's security procedures include risk assessment and controls for system access, system application development/maintenance, change management, asset classification and control, incident response, physical and environmental security, disaster recovery/business continuity and training.

10. *Definitions*

- 10.1. ***“Affiliate”*** means any legal entity that owns, is owned by, or is commonly owned with a party. **“Own”** means having more than 50% ownership or the right to direct the management of the entity.
- 10.2. ***“Agreement”*** means this MSA and any SOWs signed pursuant to this MSA. Each SOW is incorporated by reference into this MSA. In the event of a conflict between this Agreement and an SOW, the SOW controls as to that SOW only.
- 10.3. ***“Claim”*** means all third-party claims, actions, demands, proceedings, damages, costs, and liabilities of any kind.
- 10.4. ***“Client Materials”*** means all materials, information, specifications, images, copy, software, documentation, know how, concepts, Trademarks, IP and other content provided by Client for use in preparing, or incorporation in, the Deliverables.
- 10.5. ***“Deliverables”*** means the work product and related IP developed or provided by Agency (or a subcontractor of Agency) for Client under an SOW.
- 10.6. ***“Intellectual Property”*** or ***“IP”*** means all intellectual property rights throughout the world, whether existing under statute or at common law or equity, now or hereafter recognized, including: (1) copyrights, trade secrets, trademarks and service marks, patents, inventions, designs, logos and trade dress, **“moral rights,”** mask works, publicity rights, and privacy rights; and (2) any application or right to apply for any of the rights referred to in Section 10.6(1) and all renewals, extensions and restorations of the forgoing.
- 10.7. ***“Agency Tools”*** means (i) Agency’s pre-existing or independently developed proprietary tools, processes or IP used in the Deliverables, (ii) Deliverables specifically identified in an SOW as Agency Tools or that will remain Agency Tools even if developed in connection with the Deliverables, and (iii) any modifications to or derivative works of the forgoing that Agency creates as part of the Deliverables, to the extent such modifications or derivative works are not uniquely applicable to the Deliverables.
- 10.8. ***“Personal Information”*** means any information provided by Client or collected by Agency in connection with this Agreement (i) that identifies or can be used to identify, contact, or locate the person to whom such information pertains; or (ii) from which identification or contact information of an individual person can be derived.

Additionally, if any other information (e.g., a personal profile, unique identifier, and/or IP address, etc.) is associated or combined with Personal Information, then such information is also Personal Information.

- 10.9. **"SOW"** means a written description of the services and Deliverables to be provided by Agency to Client that has been signed by both Agency and Client.
- 10.10. **"Third-Party IP"** means proprietary materials owned by a third-party that are included in the Deliverables. Third-Party IP includes, without limitation, stock photography, video, illustrations or textures; open source software and creative commons licensed content.
- 10.11. **"Trademarks"** means the specific trademarks, service marks and logos identified and provided by Client under an SOW.
- 10.12. **"Unpermitted Delay"** means a voluntary or involuntary suspension of work at Client's request or by Client failing to timely provide feedback, content, or approvals as required under the SOW.

11. **Miscellaneous**

- 11.1. **Independent Contractor.** Agency may utilize contractors in providing the Deliverables. If Agency uses contractors, Agency shall ensure that contractors agree to terms with Agency no less favorable to Client than those provided in this Agreement. Agency will provide the appropriate equipment, software and other materials necessary to perform its services at Agency's expense. Agency, its employees and subcontractors, are not employees of Client. Agency will pay all salaries, taxes, insurance and benefits with respect to its personnel.
- 11.2. **Portfolio.** After Client's use of the Deliverables has been released to the public, Agency may, without additional compensation to Client, use Client's name, marks, links to Client's website, and a description of Agency's work on behalf of Client in Agency's portfolio, social channels, and submissions for professional recognition.
- 11.3. **Assignment.** Either party may assign this Agreement without the prior written consent of the other party in connection with a change in control provided that (i) the assignee assumes the obligations herein and (ii) remains liable to the other party for their obligations.
- 11.4. **Attorneys' Fees.** The prevailing party in any dispute with respect to this Agreement, including in tort, is entitled to recover reasonable

attorneys' fees, costs and expenses incurred with respect to such dispute and in any appeal.

- 11.5. *Waiver.* A party waiving compliance with a provision in this Agreement may only do so by a signed writing. Unless otherwise specified in the writing, such a waiver only relates to the provision being waived and the particular instance giving rise to the waiver. Failure to enforce a provision of this Agreement does not constitute a waiver.
- 11.6. *Governing Law; Jurisdiction.* The laws of the state of Tennessee govern all matters arising out of this Agreement, including tort claims. The parties consent to jurisdiction and venue in the state and federal courts sitting in Chattanooga, Tennessee. The parties consent to the personal jurisdiction of such courts.
- 11.7. *Notices.* Notices may be provided either by electronic mail or US mail. Any required notice shall be given to the contact person(s) identified in the SOW. Either party may change its notice recipient by giving notice under this Section.
- 11.8. *This Agreement.* Amendments to this Agreement are only effective if in writing and signed by the parties. This Agreement and any SOW comprise the entire understanding of the parties with respect to the work described in such SOW and supersede all prior understandings, whether written or oral. This Agreement may be signed in separate counterparts. Faxed or scanned signatures are the same as original signatures. Only the parties to this Agreement are intended to benefit from its provisions. Each party will bear its own expenses in connection with the preparation and performance of this Agreement.

[Signature page follows]

Client and Agency signed this Master Services Agreement as of the date first written above.

Agency

Simple Focus, LLC
1216 E. Main, Ste. 212
Chattanooga, TN 37408

Signed: 

Name: Patrick McNeely

Title: Vice President of Experience

Date: June 8, 2021

Client

Community Foundation of Greater
Chattanooga, Inc.
1400 Williams Street
Chattanooga TN 37408

Signed: 

Name: Meaghan Jones

Title: President

Date: 6/8/21



STATEMENT OF WORK 21-01

The Ed Johnson Project Story Walls Design

This Statement of Work 21-01 ("**SOW21-01**") is dated June 8, 2021 and is between Simple Focus, LLC, a Tennessee limited liability company ("**Agency**"), and the Community Foundation of Greater Chattanooga, Inc., a Tennessee non-profit corporation ("**Client**").

1. **Scope of Services.** The Services are graphic design, environmental design, illustration, content strategy, and project management ("**Services**").
2. **Deliverables.** The anticipated deliverables are designs and project management for the design of twelve (12) story wall panels featuring content provided by Client and project partners. The templates will conform to the requirements listed in the Specifications below. ("**Deliverables**").
3. **Specifications.** The final deliverable will conform to the following specifications ("**Specifications**"):
 - 3.1. Agency is responsible for the visual design of story wall panels, including typesetting, layout, illustrations, or other design elements.
 - 3.2. Agency will collaborate with Client and Client partners to finalize content for each panel.
 - 3.3. Agency will collaborate with Client and Client partners to determine production considerations that may affect the design, and will submit designs consistent with requirements necessary for physical production of the story wall panels.
4. **Exclusions**
 - 4.1. If stock photography or custom fonts are needed to meet the requirements of the project, Client is responsible for purchasing those assets.

4.2. Agency is not responsible for Services or Deliverables that are not explicitly listed in this SOW 21-01.

4.2.1. In the event that new work or additional deliverables are requested that fall outside of the scope of this SOW 21-01, the Client and Agency will mutually agree to the scope of the changes, and a Change Order will be required, to be billed at our published hourly rate of \$135 per hour.

4.3. Agency is not responsible for written content or manufacturing and installation of plaques, story walls, statue and other physical portions of the memorial.

5. **Assumptions**

5.1. Client will provide Agency with timely access to all information and personnel reasonably necessary for Agency to perform its obligations under this agreement.

5.2. Client will designate a single point of contact for all communication and approvals.

5.3. All comments and feedback will be provided to Agency in a comprehensive manner from the designated contact within five (5) business days of work submission.

5.4. Agency will not be held responsible for any delays not attributable to their work.

5.5. If a Client deliverable — such as input, approvals, or payment — is late more than ten (10) business days the project will be considered “on hold.” Once the deliverable is received and the project is reactivated it will be rescheduled based on the Agency’s current workload and availability.

6. **Acceptance Testing.** Client will have a five-day period (“**Evaluation Period**”) to verify that Agency’s Deliverables do not materially fail to conform to the Specifications (“**Nonconformity**”). If Client notifies Agency of a Nonconformity before expiration of the Evaluation Period, Agency will correct such Nonconformity, whereupon Client will receive an additional five day period commencing upon Client’s

receipt of the corrected Deliverable(s) to verify that the previously reported Nonconformity has been corrected.

7. **Schedule.** Agency's normal hours of operation, excluding holidays, are 9:00 a.m. to 5:00 p.m. Central, Monday through Friday.
8. **Term.** The term of SOW 21-01 is ten (10) weeks ("**Term of SOW 21-01**"). Expiration of this term shall not constitute termination of the SOW.
9. **Payment of Fees.**
 - 9.1. Client agrees to and will pay Agency a fixed fee of \$30,000 USD ("**Agency Fee**") for the Services described in this SOW 21-01. Client agrees this is a reasonable price for the Services in this SOW and has had the opportunity to evaluate Agency.
 - 9.2. Agency will submit invoices to Client according to the following schedule:
 - 9.2.1. Payment 1: Initial Deposit (\$10,000 USD) upon execution of this Agreement
 - 9.2.2. Payment 2: Upon Client Approval of Story Wall Design Concept (\$10,000 USD)
 - 9.2.3. Payment 3: Upon Completion of Design and Client Approval (\$10,000 USD)
 - 9.3. Invoices are due within 15 days of receipt.
 - 9.4. Agency will submit invoices to the following Client contacts:

eatkins04@gmail.com
Attention: Eric Atkins

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this SOW 21-01 to be executed by their respective authorized representatives.

Agency

Simple Focus, LLC
21216 E. Main, Ste. 212
Chattanooga, TN 37408

Client

Community Foundation of Greater
Chattanooga, Inc.
1400 Williams Street
Chattanooga TN 37408

Signed: 

Name: Patrick McNeely

Title: Vice President of Experience

Date: June 8, 2021

Signed: 

Name: Meaghan Jones

Title: *President*

Date: *6/8/21*



ARCHITECTURAL SALES

1315 West Liberty Ave.
Pittsburgh, PA 15226
USA

Phone: 1-800-950-1317

Fax: 1-866-814-4028

Internet: www.matthewsbronze.net

Order Confirmation

Sold-To-Party
SIMPLE FOCUS
2527 BROAD AVE
MEMPHIS TN 38112

Ship-To-Party
SIMPLE FOCUS
2527 BROAD AVE
MEMPHIS TN 38112

Information	
Sales Order No.	105915713
Document Date	08/17/2021
Customer No.	1000042884
Currency	USD
CSR	Erin Bolyard
Phone Number	800-950-1317
E-mail	ebolyard@matw.com
Shipping Type	
Order Type	ZBRZ BRZ
Purchase Order No.	Ed Johnson Mem'l
Surname	ABOUT THE SCULPTURES
Estimated Ship Date	09/10/2021
SHIPPING ALERT	SHIP PREMIUM - QUICK SHIP

LINE NO.	INSCRIPTION
000010	3 TOTAL - ETCH,20.5X18.5X.250,COMM BRZ
000010	1 - ABOUT THE SCULPTURES ETC
000010	SEE COPY FOR TOTAL OF 3
000010	
000010	3 TOTAL - ETCH,21X18.5X.250,COMM BRZ
000010	1 - CHATTANOOGA IN 1906 ETC
000010	SEE COPY FOR TOTAL OF 3
000010	
000010	6 TOTAL - ETCH,22.5x18.5X.250,COMM BRZ
000010	1 - A FALSE ACCUSATION ETC
000010	SEE COPY FOR TOTAL OF 6
000140	(METAL PHOTOS)

Item	Material	Quantity	Price	Price Unit	Amount	Old Matl #
10	71048198 ETCH,257-576X.250,COMM BRZ	12.00 EA	2,061.40	USD 1 EA	24,736.80	
20	129408 HDW-D&T 8/32X2 STUDS	1.00 EA				
30	118282 DWG-NONE - IMMEDIATE PRODUCTION	1.00 EA				8580
40	120806 GRH-USE CUSTOMER ARTWORK	1.00 EA				8417
50	122455 ETC-LETTERING RECESSEDSTD ETCH DEPTH	1.00 EA				9065
60	115709 EMB-METALPHOTO PLATE SUNFAST GOLD	1.00 EA				8104
70	120680	1.00 EA				9085



ARCHITECTURAL SALES
 1315 West Liberty Ave.
 Pittsburgh, PA 15226
 USA

Phone: 1-800-950-1317
Fax: 1-866-814-4028
Internet: www.matthewsbronze.net

Order Confirmation

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Purchase Order No.	Ed Johnson Mem'l
Surname	ABOUT THE SCULPTURES
Estimated Ship Date	09/10/2021
SHIPPING ALERT	SHIP PREMIUM - QUICK SHIP

Item	Material	Quantity	Price	Price Unit	Amount	Old Matl #
	TLG-SQUARE CORNERS					
80	112684	1.00 EA				9155
	TLG-SQUARE EDGE (90 DEGREE)					
90	120190	1.00 EA				9162
	EDG-EDGES-PAINTED TO MATCH BACKGROUND					
100	127410	1.00 EA				
	FSH-RAISED,LIGHT OXIDIZED					
110	130290	1.00 EA				
	FIN-RECESSED-DARK OXIDIZED					
120	118385	1.00 EA				9175
	FSH-GLOSS CLEAR COAT					
130	115246	1.00 EA				9197
	TEM-TEMPLATE REQUIRED					
140	41036882	8.00 EA	100.00	USD	800.00	METALPH
	METAL PHOTO,SUNFAST GOLD					
Items total:					25,536.80	
QuickShip					6,384.00	
TN - STATE SALES/USE		7	%	31,920.80	2,234.45	
TN - STATE EXTENDED		2.75	%	5,536.68	152.26	
TN - SHELBY, COUNTY		2.25	%	26,384.00	593.64	
TN - MEMPHIS, CITY S		0.5	%	26,384.00	131.92	
Estimated Charge:					35,033.07	

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT is made and entered into this 9th day of June, 2021 by and between the Community Foundation of Greater Chattanooga, Inc., (hereinafter referred to as the "Contracting Party") and Dr. Steven Lewis (hereinafter referred to as the "Contractor").

WHEREAS, Contractor is engaged in the business of providing writing and research services to customers on an on-going basis; and,

WHEREAS, Contracting Party desires to engage Contractor for the purpose of writing content for twelve (12) story wall panels for the Ed Johnson Memorial being established in Chattanooga, Tennessee (the "Project"); and,

WHEREAS, it is the intent of the parties hereto that Contractor provide such services as an independent contractor and not as an employee or other agent of the Contracting Party.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, it is agreed:

1. **Term.**

This Agreement shall commence on the date hereof and continue until the Project has been completed by Contractor and accepted by the Contracting Party and shall be extended only upon the written consent of both parties hereto. Notwithstanding the foregoing, this Agreement may be earlier terminated by either party upon a default in the performance of obligations under, or a breach of the terms and conditions of, this Agreement by the other party, in which event the non-defaulting party shall give written notice of the default to the other party and if such default or breach is not cured within five (5) days of the receipt of such notice, this Agreement shall terminate upon the expiration of such five (5) day period. In the event of death, disability or incapacity of Contractor, this Agreement shall automatically terminate as of the date thereof.

2. **Services of Contractor; Independent Contractor Status.**

(a) Contractor shall use his best efforts to provide services to the Contracting Party in connection with the Project in accordance with the terms of this Agreement. In that regard, while Contractor is subject to general terms and conditions established by the Contracting Party in connection with the performance of the aforesaid services, Contractor and Contracting Party acknowledge that Contractor shall, at all times, exercise independent discretion and control over the performance of his services. Subject to the deadline for completion of the Project set forth herein, the time and place of performance of said services shall be at Contractor's discretion.

(b) Contractor's status is that of an independent contractor and not that of an employee, agent, partner or joint venture partner of the Contracting Party. Nothing in this Agreement shall be construed or interpreted to create a partnership, agency, joint venture or employer/employee relationship.

3. **Compensation.**

(a) In consideration for the above services, the Contracting Party agrees to pay Contractor as follows in connection with Contractor's services hereunder:

Payment 1: Initial Deposit (\$4,000 USD) upon execution of this Agreement

Payment 2: Upon Completion (\$3,000 USD) and acceptance by Contracting Party

Contractor agrees as necessary to submit invoices setting forth the work done and time spent by the Contractor in providing such services upon completion of the Project. The amounts payable hereunder may be adjusted upward or downward only upon the written consent of both parties hereto.

(b) The foregoing amounts shall be due and payable by the Contracting Party on or before the thirtieth (30) day after the dates set forth above.

4. **Deliverables.**

Contractor agrees to research and write twelve (12) story panels to tell the Ed Johnson story in historically accurate and precise language to be contained on bronze panels designed for the Ed Johnson Memorial with the language to be approved by the Contracting Party or its designated representatives. Contractor shall provide regular updates and rough drafts of the ongoing work to the Contracting Party or its designated representatives. Contractor agrees to complete the Project on or before July 21, 2021. The final product must be approved by the Contracting Party or its designated representatives.

5. **Materials Provided.**

The Contracting Party or its designated representatives will provide primary source materials for content. The Contracting Party or its designated representatives will also make available researchers and experts to answer questions and provide insight as needed.

6. **Insurance.**

Contractor agrees to carry and to keep in full force and effect throughout the term of this Agreement liability insurance in such amounts as may be customary for services of the type provided by Contractor for bodily injury, property damage or other loss arising from

the performance of services hereunder with Contracting Party named as an additional insured. Contractor shall bear the full cost of such insurance.

7. Employees or Contractors.

Contractor may hire or contract with employees or his own contractors in connection with the provision of services envisioned by this Agreement; provided however, the payment of such employees or contractors, including payment of all applicable taxes and benefits incurred with respect to such employees or contractors shall be the exclusive responsibility of Contractor. Contractor shall have supervision and control over his activities and duties and the activities and duties of such employees.

8. Expenses.

Contractor agrees that any and all expenses that may be incurred by Contractor in connection with the provision of services under this Agreement shall be the sole and exclusive obligation of Contractor.

9. Acknowledgements.

(a) Contractor and Contracting Party acknowledge and agree that Contractor will act as an independent contractor in the performance of the services described in this Agreement, and that in conjunction therewith, the Contracting Party is under no obligation to withhold taxes on the payments to the Contractor provided hereunder. All taxes applicable to any amounts paid by Contracting Party to Contractor under this Agreement shall be Contractor's liability and Contracting Party shall not withhold or pay any amounts for federal, state or municipal income tax, Social Security taxes, or unemployment or worker's compensation taxes. Contractor hereby acknowledges his personal liability for the self-employment tax imposed by the Internal Revenue Code, and the payment, when applicable, of estimated quarterly taxes and the filing, when applicable, of quarterly Internal Revenue Service Forms for the declaration of estimated tax by individuals. Upon request by Contracting Party, Contractor agrees that he will provide documentation evidencing compliance with all applicable federal, state and municipal tax laws, rules and regulations.

(b) Contractor further acknowledges and agrees that in executing this Agreement he is not relying nor has he relied upon any other representation or statement made by Contracting Party or by any of the Contracting Party's directors, officers, employees or agents with regard to the subject matter hereof. Contractor has carefully read and fully understands all of the provisions of this Agreement and is voluntarily entering into this Agreement. Nothing herein shall be construed or relied upon as advice or opinion by or on behalf of Contracting Party regarding the tax treatment of the amounts payable hereunder, and Contractor hereby expressly

acknowledges that he will rely solely on his own accountant, attorney or advisor for such advice or opinion.

10. Indemnification by Contractor.

Contractor hereby agrees to indemnify Contracting Party, its successors, assigns, and affiliates, and their respective directors, officers, employees and agents from and against: (a) all liabilities of any nature of Contractor or Contractor's directors, officers, employees, contractors or agents (as the case may be), whether accrued, absolute, contingent or otherwise existing as of the date of this Agreement; (b) all liabilities and attorney's fees arising out of the conduct of Contractor's business, including, but not limited to, any action, inaction, misrepresentation, omission, conduct, misconduct, or violation of the terms of this Agreement; any law, rule or regulation of any regulatory authorities, or otherwise; or any federal, state or municipal tax law, rule or regulation, by Contractor or Contractor's directors, officers, employees, contractors or agents (as the case may be); and, (c) all actions, suits, proceedings, demands, assessments, judgments, costs and expenses incident to any of the foregoing.

11. Indemnification by Contracting Party.

Contracting Party hereby indemnifies and agrees to defend and hold harmless Contractor and its directors, officers, employees, contractors or agents (as the case may be) from and against any and all claims, actions, costs, damages and losses incurred by or asserted against said indemnified parties or any of them as a direct result of any violation of the terms of this Agreement by Contracting Party.

12. Continuing Nature of Indemnification.

Contractor agrees that the indemnification provisions of this Agreement which require Contractor to indemnify Contracting Party shall continue following the termination of this Agreement. The indemnification provisions of this Agreement which require Contracting Party to indemnify Contractor shall terminate upon the termination of this Agreement as described in Paragraph 1. The effectiveness or extent of the provisions contained in this Paragraph 12 shall not be diminished or extinguished by any prior or subsequent agreement between the parties hereto.

13. Ownership of Intellectual Property.

Contractor acknowledges and agrees that all materials and information provided to Contractor by the Contracting Party or obtained by Contractor during the term of the relationship with Contracting Party are the sole property of Contracting Party and agrees that such materials and information may only be used by Contractor during the term of this Agreement and that any such written information, in whatever tangible form, shall be returned to

the Contracting Party upon termination of this Agreement. Furthermore, Contractor acknowledges Contractor's work under this Agreement shall be work made for hire by Contracting Party and all intellectual property, including the copyright for the composition comprising the Project, or which intellectual property: (i) is related to the business or activities of the Contracting Party or (ii) results from or arises out of any duties performed by Contractor or assigned to Contractor or information to which Contractor is given access, by, for, or on behalf of the Contracting Party shall be the sole and exclusive property of the Contracting Party and Contractor hereby assigns to Contracting Party all of Contractor's rights, title and interest therein. Contractor agrees to execute assignments to Contracting Party or its assigns, nominees, or successors of all Contractor rights, title, or interest in and to any and all intellectual property as described above.

14. Confidentiality and Competition.

The Contractor agrees to keep the trade secrets and confidential information of the Contracting Party confidential pursuant to the terms of this Agreement. This Agreement in no way prohibits Contractor from performing services for entities other than Contracting Party as long as such services do not conflict with Contracting Party's interests and do not involve the use of any trade secrets or confidential information Contractor may acquire or may have acquired while performing services for Contracting Party.

15. Notices.

Any notice or other communications required or permitted hereunder shall be sufficiently given if delivered in person or sent electronically or by registered or certified mail, postage prepaid, addressed as follows:

If to Contractor:

Dr. Steven Lewis
45 Vantage Way, Apt. 4208
Nashville, TN 37228
Email: swl5nw@virginia.edu

If to Contracting Party:

Eric Atkins
2705 Riverside Drive
Chattanooga, TN 37406
Email: eatkins04@gmail.com

With a copy to:

Rebecca Underwood
Community Foundation of Greater Chattanooga, Inc.
1400 Williams Street
Chattanooga, TN 37405
Email: runderwood@cfgc.org

Any such notice or communication shall be deemed to have been given as of the date so delivered or mailed.

16. **Governing Law.**

This Agreement is made and entered into in the State of Tennessee, and shall in all respects be interpreted, enforced, and governed under the laws of that state.

17. **Severability.**

Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

18. **Entire Agreement.**

This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between them pertaining to the subject matter hereof. It is agreed that this Agreement may be modified only by written agreement, executed by both parties.

19. **Assignability.**

The services contracted for hereunder are dependent upon the qualifications of Contractor and may not be assigned by Contractor without the express consent of the Contracting Party in writing. The Contracting Party may assign its rights or obligations hereunder, provided, however, that any such assignment or delegation shall not act to relieve the Contracting Party of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CONTRACTING PARTY

Community Foundation of Greater Chattanooga,
Inc.

Maeghan Jones

Maeghan Jones, President

CONTRACTOR

St. Lewis

Dr. Steven Lewis, Historian and Curator

ED JOHNSON MEMORIAL
PROJECT BUDGET

Design Development	\$45,000.00
Artwork Contract with Jerome Meadows	\$264,300.00
Memorial Construction Services (Meadows/Ross Fowler)	\$36,500.00
Pointe Construction	\$370,676.00
Pointe Construction Change Order	\$7,190.07
Stone for Construction	\$51,910.50
Existing Wall-Walnut Bridge: Pre-Design	\$11,040.00
Story Wall Content Composition	\$7,000.00
Simple Focus Wall Design	\$30,000.00
Story Wall Fabrication	\$35,033.07
Site Work Reimbursement to City	\$262,790.00
Insured Artwork Value	\$1,121,439.64

Exhibit B

Artwork Informational Sheet and Supporting Documents

**Exhibit B to Artwork Transfer and Donation Agreement
Artwork Informational Sheet**



**CITY OF CHATTANOOGA
PUBLIC ART
Informational Sheet for Artwork Donated to City**

Title of the Artwork: Ed Johnson Memorial	
Date Artwork Transferred to City Ownership (i.e. "Donation Date")	
Donor Information	Name: The Community Foundation of Greater Chattanooga, Inc.
	Contact Person: Maeghan Jones
	Address: 1400 Williams Street
	City/State/Zip: Chattanooga, TN 37408
	Telephone Number: (423) 265-0586
	Email Address: mjones@cfgc.org or kgilliland@cfgc.org
Artist Information	Name: Jerome B. Meadows
	Contact Person: N/A
	Address: 915 Waters Avenue
	City/State/Zip: Savannah, GA 31404
	Telephone Number: (202) 213-0036
	Email Address: meadowspark@aol.com
For Chattanooga Public Art Staff Use ONLY	
Date Artwork Donation Approved by Chattanooga Public Art Commission	Meeting Date: _____ *Please see attached copy of meeting minutes.
Date Artwork Donation Approved by Chattanooga City Council	Meeting Date: _____ Resolution No.: _____

Please provide the following information about the above named Artwork.

Please type your responses on a separate sheet of paper and attach the information to this document. The responses should be numbered to correspond with the requests below.

All supporting documents, photographs, etc. must be attached hereto and clearly labeled.

1. Artist's name, biographical information, samples of past artwork, and resume.
2. A written description and images of the Artwork.
3. Artist's statement about the Artwork.
4. A certified formal appraisal of the Artwork provided by a qualified art appraiser.
5. Information about the origin, derivation, history, and past ownership of the Artwork.
6. A warranty of originality of the Artwork.
7. Information about the condition of the Artwork provided by a qualified visual arts conservator.
8. A maintenance plan for routine care and long-term conservation, including estimated costs.
9. Information about and images of the proposed Artwork site.
10. Information about the methods used for collecting community feedback about the Artwork and the outcome.
11. A written recommendation from the Director of the City department and relevant advisory board(s) responsible for operating and maintaining the Artwork's site.

Verification Statement	
By my signature below, I <u>L. Maeghan Jones</u> (please print name), attest that the information provided in this Artwork Informational Sheet is true and accurate to the best of my knowledge, and that I have provided all requested supporting documents, photographs, etc.	
Signature:	<u>L. Maeghan Jones</u>
Title:	<u>President</u>
Date:	<u>11/23/21</u>



Exhibit B.1:
Artist's name, biographical information,
samples of past artwork, and resume.

Jerome B. Meadows

915 Waters Ave
Savannah, GA 31404
202/213-0036
meadowspark@aol.com

EDUCATION/ TRAINING

Hotchkiss School, Lakeville, Conn.; summers, 1966 – 69
BFA Rhode Island School of Design, Prov., RI; 1969 – 73
Haystack School for Crafts, Deere Isle, Maine; 1974
MFA University of Maryland, College Park, MD; 1979 – 81

WORK EXPERIENCE

- 2015 – present **Executive Producer Art Talks/Art Matters**
Arts focused television programming
Indigo Sky Community Gallery, Savannah, GA
- 2013 – present **Director Blank Page Poetry – Words & Shadows**
Multi media, site specific, traveling poetry performance event
Based in Savannah, GA
- 1992 – present **Founder/Artist/Director**
MeadowLark Studio; Savannah, GA
- 2012 **PROJECT COORDINATOR/ARTIST** (6 months)
Chatham-Savannah Citizen Advocacy
- VISITING ARTIST** (Winter – Spring Quarter)
Savannah College of Art & Design; Savannah, GA
- 2005 – present **Founder/Director**
Indigo Sky Community Gallery; Savannah, GA
- 2005 – 2006 **Visiting Artist/Professor**
Studio Art Department
College of Charleston; Charleston, SC

SELECT PUBLIC ART COMMISSIONS

2017 (in progress)

RICHLAND LIBRARY SOUTHEAST PUBLIC ART PROJECT

Columbia, SC \$31,000

Design and fabrication of a sculptural grouping consisting of 3 larger than life size, stylized figures to be located along the entry way to the newly renovated library; materials consist of bronze with etched text and treated wood.

2009 – 2015

PORTSMOUTH AFRICAN BURYING GROUND PROJECT

Portsmouth, NH \$1.2 million

Design & fabrication of numerous sculptural components in bronze, cast colored concrete, mosaic and tiles; design of site layout within an inner city residential neighborhood.

2007

BLUE BALL DAIRY BARN PROJECT

Wilmington, DE \$135,000

Design & fabrication of free standing sculpture comprised of granite, cast colored concrete, mosaic tiles; collaborated with landscape architect on design of walkway system; design & fabrication of hand made ceramic tiles set into walkway.

2006

YAMACRAW VILLAGE PUBLIC ART PROJECT

Savannah, GA \$250,000

Site design for area approximately 13,000 square feet including fountain, lighting, walkways, benches and plantings; design & fabrication of 3 life size bronze children, two welded bronze banner supports, photo-etched metal plates.

1995

TRUTHS THAT RISE FROM THE ROOTS REMEMBERED

Alexandria, VA \$200,000

Collaboration with EDAW Architects on the location of various sculptural components within an 8 acre park including wetlands and an abandoned African American cemetery dating back to the Civil War; design & fabrication of sculptures comprised of cast colored concrete, welded bronze with surface etched historical information and photo-etched bronze plates.

Client: Norfolk South Railway; Manager: EDAW

1994

TO CREATE THE BELOVED COMMUNITY

Albuquerque, NM \$300,000

Site design for downtown location approximately 5,000 square feet, including ADA sensitive walkways, banco display walls, plantings, lighting and water feature; design & fabrication of cast bronze relief portrait, welded bronze trees and photo-etched bronze panels.

Client: Albuquerque Percent for the Arts Program

01. **Portsmouth African Burying Ground** – 2015; Portsmouth, NH; Budget: 1.2 million

The city of Portsmouth, having confirmed the existence of an African Burying ground lying beneath in inner city street dating back to 1645, commissioned me to work with city agents and a committee of select citizens to design and create a 7,500 square foot memorial park in honor of the estimated 200 individuals believed to have been buried there. This commission provided me the opportunity to design the over all layout of the site including the design and creation of a number of artistic and informational components as listed below. While my site design called for closing the street to through traffic out of respect, allowance had to be made for limited vehicular access.

Scope of Services:

1. Entry Sculptures (images and details to follow.)
2. Petition Line – a flowing granite paving element running the length of the memorial and containing excerpts from a petition for freedom put forth to the State of NH in 1779 by a group of 20 enslaved individuals (granted posthumously in 2015.)
This design element helps to tie the site together, as well the past with the present.
3. An Information Marker (image and details to follow.)
4. Paving & Seating - large, irregular bluestone pavers throughout along with curved granite seating components creating a total of 4 major planting beds; planting material was determined in consultation with a local landscape architect assigned to the project. Light fixtures were designed into the granite seating throughout the site.
5. Burial Vault (image and details to follow.)
6. Community Plaza of Remembrance (image and details to follow.)
7. Community Plaza Retaining Railing (image and details to follow.)
8. Vehicular Access - driveway consisting of gravel adhered to substrate facilitating draining and allowing for traffic while keeping the street in character with the memorial.

02. **Male Entry Figure** – cast bronze; life size figure positioned against a granite wall measuring 4 feet wide by 8 feet tall x 9 inches thick. This figure, standing at ground level, represents the first enslaved person brought into Portsmouth in 1645. His gaze directs you onto the memorial.

03. **Female Entry Figure** – cast bronze; life size figure positioned on the aforementioned granite wall opposite the Male Figure. This female figure, also approachable at street level, represents Mother Africa in acknowledgement of the mass, continental displacement which the slave trade produced.

04. **Separation / Rejoining** – As further expression of the personal levels of suffering incurred as a result of enslavement, one hand of each of the Entry Figures reaches around the 9” wide edge of the wall to within an inch or so of each other; the male hand conveys strength and acceptance in light of his circumstance, while the female hand expresses resistance to the separation. In this way, they speak not only of being pulled apart but perhaps of being rejoined at some point.

05. **The Flower Ritual** – Since the dedication of the memorial in May of 2015, the figure of Mother Africa has been regularly provided, by persons unknown, with a bouquet of flowers regardless of the season - at times shared with the male figure. I intentionally rendered the hand across her abdomen in an open gesture to allow for public interaction (see image #03.)

06. **Community Plaza** – This plaza effectively closes off Chestnut Street to through traffic and serves as an end point for one’s experience within the memorial. Pictured are the **Community Figures** consisting of 8 life size, stylized figures fabricated from bronze sheet and cast, colored concrete. The forward facing surface of each figure is etched with a line from the poem which I composed in honor of those forgotten. Visitors are encouraged to take rubbings from these etched lines. The gathering of semi circular

figures represents the contemporaneous community finally paying homage to and embodying an awareness of those buried beneath. Up-lighting is provided for these figures at night. In addition, directly in front of the Community Figures is the **Bench of Remembrance** which allows for a reflective view of the memorial while contemplating its meaning. Additionally, from the location of the bench, one can view the adjacent burial vault as shown in image #07.

07. **Reburial Vault** – Upon discovery of the Burying Ground the remains of 8 individuals were disinterred for purposes of research with plans that these remains would eventually be reburied. With that in mind, I designed a vault at the location from which these remains were removed. At the completion of the reburial ceremony (see image #10) the vault was permanently sealed with a lid of my design, utilizing a large traditional Adinkra symbol rendered in ceramic and glass mosaic tiles. The symbol which I selected for this purpose is known as Sankofa, meaning “*go back and fetch it.*”

08. **Information Marker** – This sculptural form, located along the aforementioned Petition Line, and fabricated from welded bronze and granite, provides visitors with a brief description of the various components contained within the memorial; Included also is the poem which I composed in honor of those buried.

09. **Community Plaza Railing** – The site of the memorial has a severe slope from the location of the Entry Figures down to the Community Plaza. The need to level the plaza created a significant drop along its outer edge, necessitating a protective railing. To address this risk management issue, while remaining in keeping with the conceptual objective of the memorial, I looked at traditional Kinte cloth patterns for a motif to utilize in designing the railing. The one that I selected also made reference to boat paddles, thereby associating it with Portsmouth’s seafaring tradition. To further relate this artistic railing to the community and the meaning of the memorial I held several hands-on workshops in a local middle school during which students learned of the little

known history of enslavement in their city while creating relevant designs consisting of Adinkra and Kinte symbols. Their designs were then transferred onto ceramic tiles as a permanent feature of the memorial.

10. **Memorial Dedication Ceremony** – On a bright and somewhat chilly day in May, 2015 approximately 500 people were in attendance for the hours long dedication ceremony which later in day concluded with the reburial of the remains and the sealing of the vault.



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AFRICAN BURYING GROUND
MEMORIAL











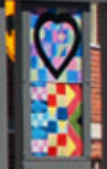




DARCI
CREATIVE

our love of
freedom

PI





ED JOHNSON MEMORIAL

This Memorial is dedicated to the memory of Ed Johnson, to the brilliant and courageous attorneys Styles Hutchins and Noah Parden who risked their lives and careers to appeal Ed Johnson's case, and to all who stand for equal justice.

A Sculpture of Ed Johnson

B Sculpture of Attorney Styles Hutchins

C Sculpture of Attorney Noah Parden

D "Those As Yet Unsung" Sculptures, representative of other Hamilton County lynching victims

E "Listen To My Story And Everything Will Come Out True"
BESSIE SMITH

F "Speaking Truth To Power"
ANONYMOUS

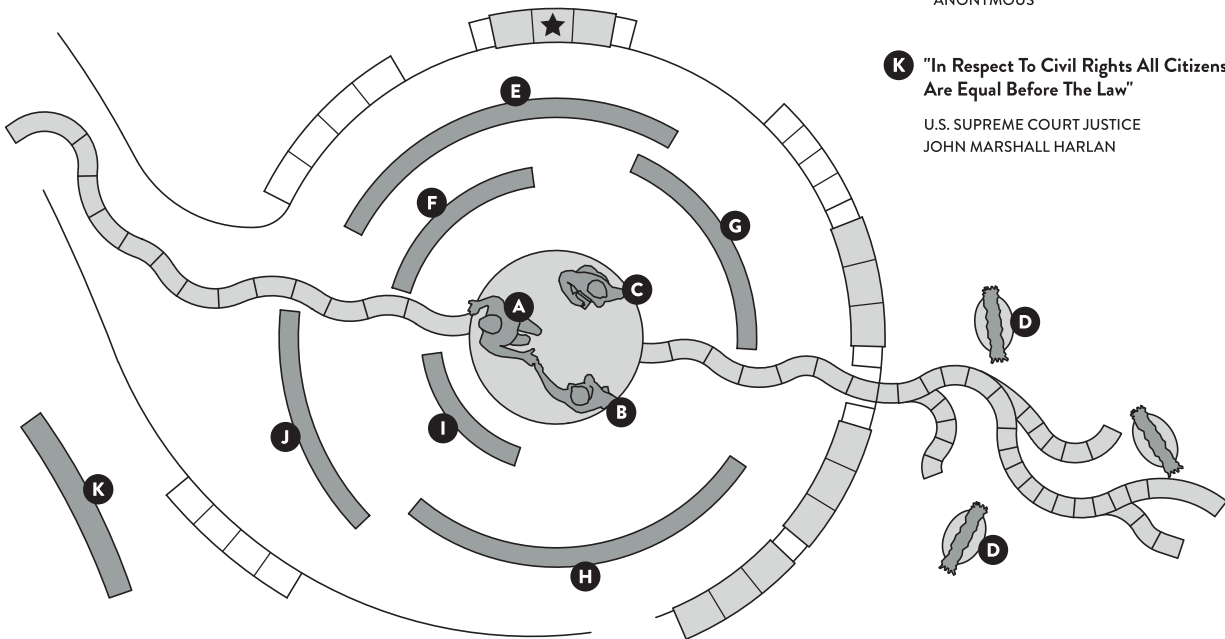
G "Justice The Guardian of Liberty"
ENSHRINED ON THE U.S. SUPREME COURT

H "I Wasn't There To Care Then But I Am Here To Care Now"
CHATTANOOGA RESIDENT

I "I Am A Innocent Man"
THE EPITAPH ON ED JOHNSON'S TOMBSTONE

J "Courage In The Face of Violence"
ANONYMOUS

K "In Respect To Civil Rights All Citizens Are Equal Before The Law"
U.S. SUPREME COURT JUSTICE JOHN MARSHALL HARLAN



The Ed Johnson Project extends sincere thanks to everyone who made this memorial possible.

The student poems included here were part of a project in the local public schools.





Exhibit B.3:
Artist's statement about the Artwork

SCULPTURAL COMPONENTS

Primary Representational Sculptures:

Three full size, cast bronze figures are located within the center of the primary plaza of the Memorial (that is to say the level area directly adjacent to the terminus of the Walnut Street Bridge). These figures, standing at ground level, represent Ed Johnson at the apex of a triangular configuration flanked from behind by the two attorneys – Noah Parden and Styles Hutchens - who fought fearlessly to overcome the severe injustice that Mr. Johnson, as well as the community of Chattanooga, endured at the hands of mob violence. Their relative placement with regards to one another is such that the public is encouraged to walk among them and take up positions within the grouping to identify with the experiences and importance of each individual and in acknowledgement of their roles within this important story. These three figures are depicted as outstanding and heroic members of the Chattanooga community.

Those As Yet Unsung:

The occurrence of lynchings was comparatively limited in the city of Chattanooga, with only 3 known cases listed in addition to Ed Johnson – Alfred Blount, Charles Brown, and Charles Williams. Indeed, Alfred Blount had been lynched from the first span of the Walnut Street Bridge 13 years prior to Ed. Johnson. In recognition of these additional individuals, 3 semi-abstract sculptures containing figurative references are located along the severe slope leading down to the Chattanooga River just beyond the northern boundary of the Memorial Plaza. They are also cast in bronze, with a design elements suggestive of vines and branches which articulate the outline of human forms. These 3 sculptures compliment the grouping of 3 representational figures while increasing the conceptual and artistic experience of the Memorial for the public.

INFORMATIONAL / EDUCATIONAL COMPONENTS

Title of the Memorial:

The Memorial wall which faces directly onto the Walnut Street Plaza along the Memorial's southern boundary contains the wording of the title: ***Ed Johnson Memorial – Remembrance, Reconciliation, Unity***. This text is etched onto an embedded stone panel. In addition, a lowered section of the same wall contains a quote from Supreme Court Justice John Marshall Harland which reads: ***“In Respect of Civil Rights, All Citizens Are Equal Before The Law”***. Justice Marshall's inclusion here is an important acknowledgment of his official support of Ed Johnson's cause. Taken together, the title and text are designed to put forth the historic importance of the Memorial and its ongoing relevance to the pursuit of equality and justice and to do so within this highly visited public environment.

Story Telling Walls:

Integrated into the circular boundary of the Memorial are 4 Story Telling Walls providing a total running surface of 24'. These Story Telling Walls consist of angled stone surfaces containing bronze panels embellished with text, photographic images and other elements designed to showcase various aspects of the Ed Johnson story. Included as well is an original poem written by Jerome Meadows about Ed Johnson and work(s) that were selected from poetry workshops involving younger members of the Chattanooga community.

Text Bearing Pavers:

Five large, curved paving components are dispersed within the circular area of the Memorial Plaza. The text etched onto these paving elements further expresses the over all theme of the Memorial and its relevance to the Chattanooga community. As such, these components have a

direct connection with the aforementioned quote by Justice Harlan. Two of the quotes sourced locally are: *“Listen to my story and everything will come out true”*; and *“I wasn’t there to care then but I am here to care now”*. The first by the renowned Ms. Bessie Smith, the second by an unknown city resident. A third paver contains the last words of Ed Johnson: *“May God Bless You All I Am A Innocent Man”*.

OVER ALL SITE DESIGN

Stone Walls:

The primary, circular area of the Memorial is defined by stone walls consisting of seating and the aforementioned Story Telling Walls. The circular motif, bounded by these walls, provides a comfortable and engaging space - separate from the Walnut Street Plaza - in which to experience the objective of the Memorial both as an individual and along with others. The use of stone makes reference to the Walnut Street Bridge both in character and as the remaining existent feature tracing back to the era of the lynching. In addition, the use of stone alludes to Ed Johnson’s profession as a stone mason.

Stream of Time / The Flow of History:

The siting of the Memorial in relationship to the bridge is underscored by an axial paving component consisting of curvilinear stones referred to as the Stream of Time. This element dissects the circular plaza, running directly underneath the location of the 3 representational figures, and lines up with the second span on the bridge from which Ed Johnson was lynched. At the northern boundary of the Memorial the Stream passes through an opening in the wall with a sculptural barrier derived from the 3 aforementioned semi-abstract works. Beyond this point the Stream extends for a distance down the slope, dividing and now referred to as the ***Flow of History***.

EXHIBIT B.5

Information about the origin, derivation, history, and past ownership of the Artwork.

In April 2017 the Ed Johnson Project released a Request for Qualifications to develop site-specific design concepts for the development of a public space adjacent to the Walnut Street Bridge in downtown Chattanooga in order to commemorate events associated with the lynching of Ed Johnson, honor the courageous work of his attorneys, and recognize the resulting United States Supreme Court case that changed civil rights law in America.

The Memorial Selection Committee reviewed applications on the basis of:

- Artistic excellence and professional experience of the artist and team
- Expressed sensitivity to the site and context of this significant historical project
- Ability to complete the project
- Demonstrated ability of the team to work collaboratively with professionals
- Demonstrated ability to successfully execute a project of this scale under the criteria developed and within the budget set forth
- Experience with and expressed desire to work collaboratively with a team to create an integrated artwork/ landscape for and in the public realm
- Past experience and demonstrated ability to participate in a community engagement process
- Consideration of historic space and surrounding developments

Jerome Meadows was selected as the artist (see resume and past work samples provided in Exhibit B.1) and completed the project in September 2021. The artwork has been owned by the Community Foundation of Greater Chattanooga which is currently seeking to donate the artwork to the City of Chattanooga as originally agreed to in the Public Art Donation Offer Acknowledgement signed in June 2019 between the City of Chattanooga, the Community Foundation of Greater Chattanooga, and Jerome Meadows.

Exhibit B.6

Warranty of Originality of the Artwork

I, Jerome Meadows, the Artist for the referenced artwork, attest that:

1. I have full power and authority to enter into this Agreement
2. The Artwork is solely the result of my own artistic effort and that I am the sole creator of the Artwork.
3. The Artwork is my own unique and original creation that has not been previously created or sold in any form (except as related to the procurement forming the basis of this Agreement).
4. The Artwork is my own exclusive work.
5. The Artwork is free and clear of all liens.
6. The Artwork, or duplicate thereof, has not been accepted for sale elsewhere.
7. The Artwork is not in the public domain
8. The Artwork does not infringe on the proprietary right at common law or intellectual property rights of any third party.

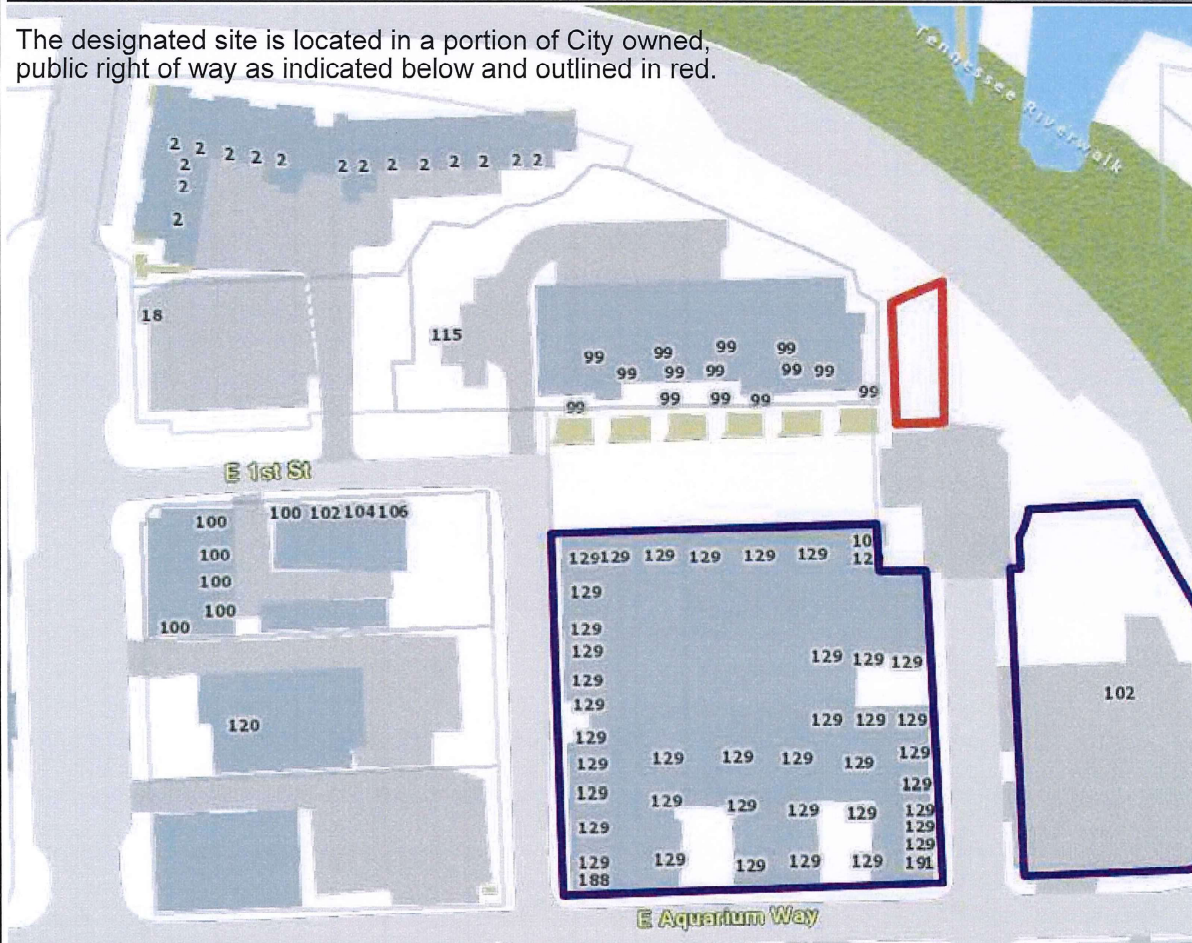
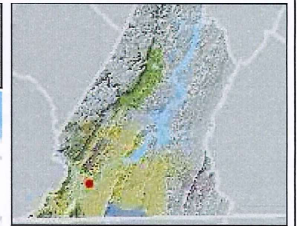
Jerome Meadows

10.12.2021

Jerome Meadows

GISMO 5

The designated site is located in a portion of City owned, public right of way as indicated below and outlined in red.



- Legend**
- Parcels
 - Addressing <1200
 - County Boundary
 - ♻️ Recycling Centers
 - 🏥 Healthcare Facilities
 - Emergency Services Locations**
 - FIRE
 - MEDIC
 - POLICE
 - ☠️ Comotorics
 - ⛪ Religious Facilities
 - 🎓 Schools
 - 🏠 Building Footprints
 - 🏠 Miscellaneous Structures
 - 🚗 Driveways
 - 🅅 Parking
 - 💧 Water Bodies
 - 💧 Other Water Bodies
 - 🌳 Recreational Areas
 - ⬜ Surrounding
 - ⬜ Hamilton

0 100.00 200.0 Feet

NAD_1983_StatePlane_Tennessee_FIPS_4100_Feet
© Latitude Geographics Group Ltd.



Disclaimer: This map is to be used for reference only, and no other use or reliance on the same is authorized. This map was automatically generated using HCGIS Mapping System. Parcel lines are shown for reference only and are not intended for conveyances, nor is it intended to substitute for a legal survey or property abstract.





EXHIBIT B.10

Information about the methods used for collecting community feedback about the Artwork and the outcome

The Chattanooga community was included in the artwork selection process as follows:

A Memorial Selection Committee comprised of community members, arts experts, city and business representatives chose the three finalists from over 40 submissions. The three finalists presented their ideas in public forums at the Bessie Smith Cultural Center and the Camp House. Everyone was invited to attend and could ask questions of the artists during their presentations. They were given the option to provide written feedback of the finalists and select their preference. Information about the finalists was also provided on the Ed Johnson Project website and social media sites. The Memorial Selection Committee made the final selection based on community feedback and their own input. The entire process was overseen by Chattanooga Public Art and the Ed Johnson Project.



City of Chattanooga Department Parks & Outdoors
Parks Maintenance Division
1503 Middle St
Chattanooga, TN 37408
423-643-6122

November 22, 2021

Ms. Kat Wright
Director, Public Art
101 E 11th St
Chattanooga, TN 37402

Re: "Ed Johnson Memorial" Maintenance Plan

Ms. Wright,

After reviewing the "Ed Johnson Memorial" Maintenance Plan provided by Jerome B. Meadows in conjunction with the Conservation Assessment provided by LucinArts, it has been determined that Park Maintenance staff can perform the following items as recommended:

Cleaning

- Litter removal weekly
- Check for graffiti, trash, chewing gum, etc. weekly
- Pressure wash pavers and stone surfaces as needed

Landscape

- Mulching annually
- Weed removal weekly
- Fertilization treatment spring and fall for acidic plants
- Pruning (winter and spring dependant on each plant for the overall health)
- Pruning as needed for plants (remove dead material, any plant that impedes the walkway, etc.)

Irrigation

- Inspect monthly, repairs as needed
- Winterization and Dewinterization
- Biennial audits to make sure system is properly working
- Adjust sprinkler heads as needed so water does not spray onto the bronze elements.

Lighting

- Maintenance staff will do routine lighting checks
- Change bulbs & light fixtures as needed
- Minor repairs on the electrical system will be corrected by Parks Maintenance mechanics. Repairs beyond the skill set of Parks Maintenance will be contracted out to licensed electricians, under the direction of Parks Maintenance, and funded by Public Art.

Maintenance items recommended by the Maintenance Plan and the Conservation Assessment but not listed above will need to be performed by a conservation specialist under the direction and funding of Public Art. Additionally any major repairs to the sculpture and components may need to be performed by the artist, conservation specialist, and/or contractor under the direction and funding of Public Art or others.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Bergdoll".

James Bergdoll, CSFM, CPRP
Director Parks Maintenance
City of Chattanooga Parks & Outdoors

Exhibit C

Documents Related to Maintenance of the Ed Johnson Memorial

EXHIBIT B.8
CONSERVATION FORM AND MAINTENANCE RECORD

This form should be completed by the ARTIST. The information provided by the ARTIST will be used for the artwork's permanent catalogue record as well as for the future care of the artwork.

GENERAL INFORMATION

1. Artist: Jerome B. Meadows
2. Address 915 Waters Avenue, Savannah, Georgia 31404
3. Phone 202-213-0036

4. Email meadowspark@aol.com
5. Title of artwork Ed Johnson Memorial
6. Description of artwork: A circular plaza bounded by stone walls including seating, Story Walls, paving designs with engraved quotation. Three life size bronze figures of Ed Johnson, Styles Hutchins and Noah Parden. Three stylized bronze sculptures extending the memorial beyond the circular plaza honoring other victims of lynching
7. Date and place executed: MeadowLark Studio, 2019
8. Installation date: September 19, 2021
9. Project Name and address: Ed Johnson Memorial
10. Location of artwork/site: Walnut Street Bridge, South entrance
11. Medium: Cast bronze
12. Dimensions: Height: varies Width: varies Depth: varies
13. Approx Weight: unknown
14. Location and description of copyright mark (if it occurs): none
15. Fabricator, if other than artist (name, address, telephone)
Bronze casting through: *Inferno Art Foundry, 5072 Sunset Strip, Union City, GA, 30291*
770-964-6621
16. Exhibitions and Collection (pertaining to the above work): n/a
17. Reproductions and Periodicals (pertaining to the above work): n/a

TECHNICAL AND MAINTENANCE INFORMATION

18. Construction technique: hand rendered using armature, clay, wax, lost wax casting process
19. Foundation structure (include bolt/pin size, and grout as well as any underground anchoring systems) 7/8" stainless all thread pins anchored with industrial epoxy (3 life size sculptures.) 1/2" stainless all thread pins anchoring 1/2" stainless steel plates oval cast concrete footing coupled with 1.5" stainless square tubing anchored into concrete footing with industrial epoxy (3 sculptures along the slope.)
20. Material(s) (types, sizes, manufacturers) see above
21. Material(s) thickness: see above
22. Welding or jointing method: Stainless steel 1.5 square tubing welded to one side of the sculptures along the slope
23. Welding rod alloy or joint material:
24. Material finish (glaze, paint, color and type, sanding grit, tool pattern, patina, surface sealer etc) standard patina; lighter on the Ed Johnson figure than on the other two.
25. What is your intention relating to the work over time? (patina etc.) Should the work reflect the impact of the environment? Should the work be cleaned? The 3 representational figures are to be maintained with the initial patina; the sculptures along the slope, with a patina differing from the representational forms, are to be cleaned less regularly to allow for environmental impact. See supplemental document.
26. Suggested routine maintenance: See supplemental document
27. To your knowledge, can the Agency cleaning staff be responsible for this routine maintenance?

28. Yearly maintenance and care of artwork (cleaning agent and procedure): See supplemental document.
29. Can the Agency Staff at the site be responsible for these procedures? No doubt in keeping with the city's maintenance of other outdoor bronze works.

Artist's Signature: _____ Date: _____.

**ED JOHNSON MEMORIAL
SCULPTURE MAINTENANCE PLAN
JEROME MEADOWS**

The sculptural components of the Ed Johnson Memorial consists of the following:

1. Three life size renderings of Ed Johnson, Styles Hutchins and Noah Parden. These are positioned in a triangular format on a 9' diameter "medallion stone" centered within the circular plaza of the memorial.

MATERIAL – hollow cast bronze with a brown patina (note that the Ed Johnson figure is intentionally lighter in color than the other two.)

MAINTENANCE – an annual schedule by which the surface sealer currently on the figures is replenished by way of the following process: on a warm day washing the surfaces with Dawn dish detergent using a soft bristle brush and then rinsed; this to be followed the next warm day by applying **Staples 211 Carnauba Paste Wax, Clear with a soft, lint free cloth.** (The warmth facilitates penetration of the wax into the pores of the metal.)

2. The Barrier Pass Through is positioned where the **The Stream of Time** bisects the memorial plaza and transitions towards **The Stream Of History** and serves to close off the opening between the two adjoining Story Walls.

MATERIAL - this element consists of numerous intertwined solid cast bronze "branches".

MAINTENANCE – as above.

3. Three 8' tall semi-abstract figurative sculptures comprise the grouping titled **Those As Yet Unsung** and are positioned amidst **The Stream of History**. This placement extends the memorial along the slope leading down to the river.

MATERIAL – as with #2 above along with stainless steel square tubing welded in place from top to bottom (suggestive of a house) for additional support.

MAINTENANCE – a two year schedule* by which the surface sealer currently on the sculptures is replenished by way of the following process: on a warm day washing the surfaces with **Dawn dish detergent** using a soft bristle brush and then rinsed; this to be followed the next warm day by applying **Staples 211 Carnauba Paste Wax, Clear with a soft, lint free cloth.** (The warmth facilitates penetration of the wax into the pores of the metal.)

*The patina on these forms was selected to harmonize with the various plantings in this area and as such will be allowed to gradually oxidize over time.

EXHIBIT "A"
CONSERVATION FORM AND MAINTENANCE RECORD

This form should be completed by the ARTIST. The information provided by the ARTIST will be used for the artwork's permanent catalogue record as well as for the future care of the artwork.

GENERAL INFORMATION

1. Artist: Simple Focus
2. Address 1216 E Main St, Ste 212, Chattanooga, TN 37408
3. Phone 423-320-2223
4. Email patrick@simplefocus.com
5. Title of artwork Ed Johnson Memorial Storywalls
6. Description of artwork: Twelve etched, bronze plaques including memorial information, the story of Ed Johnson and photographs
7. Date and place executed: September 14, 2021
8. Installation date: September 14, 2021
9. Project Name and address: Ed Johnson Memorial Storywalls
10. Location of artwork/site: the southern end of the Walnut Street Bridge
11. Medium: Bronze
12. Dimensions: 12 pieces, each approximately Height: 18" Width: 22"
Depth: 1/4"
13. Approx Weight: _____
14. Location and description of copyright mark (if it occurs):
N/A
15. Fabricator, if other than artist (name, address, telephone)

16. Exhibitions and Collection (pertaining to the above work):
The Ed Johnson Memorial
17. Reproductions and Periodicals (pertaining to the above work):

TECHNICAL AND MAINTENANCE INFORMATION

18. Construction technique:
19. Foundation structure (include bolt/pin size, and grout as well as any underground anchoring systems)
20. Material(s) (types, sizes, manufacturers)
21. Material(s) thickness:
22. Welding or jointing method:
23. Welding rod alloy or joint material:
24. Material finish (glaze, paint, color and type, sanding grit, tool pattern, patina, surface sealer etc)
25. What is your intention relating to the work over time? (patina etc.) Should the work reflect the impact of the environment? Should the work be cleaned?
Regular cleaning is desired.

26. Suggested routine maintenance: Clean with a mild soap like Dawn using a soft cloth. It is recommended that adding a Carnuba wax applied with a microfiber cloth will help to lengthen the life of the finish. We recommend this be done soon after the installation. Then once or twice a year as needed based on the environment the metal is exposed to. Cleaning and maintaining a waxed surface on your metal graphics provides immediate rewards. The product will continue to look new longer. How long? That will depend on the environment. A waxed surface on top of the clear coat will allow for more effective and complete removal of things like tree sap and bird droppings, mineral rich water from sprinklers and other environmental contaminants.
27. To your knowledge, can the Agency cleaning staff be responsible for this routine maintenance?
28. Yearly maintenance and care of artwork (cleaning agent and procedure):
29. Can the Agency Staff at the site be responsible for these procedures?

Artist's Signature

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Date

11/23/21

:

LANDSCAPE MAINTENANCE MANUAL

ED JOHNSON MEMORIAL
Chattanooga, Tennessee

ROSS/FOWLER, P.C.
5103 Kingston Pike Suite 105
Knoxville, Tennessee 37919
865-637-1100

PROJECT MANUAL FOR
Landscape Maintenance
City of Chattanooga,
Department of Public Works
Chattanooga, Tennessee

Owner:

City of Chattanooga
1250 Market Street
Chattanooga, TN 37402

Landscape Architect:

Ross/Fowler, P.C.
5103 Kingston Pike Suite 105
Knoxville, Tennessee 37919

Date:

October 2021

CONTRACT DOCUMENTS

CONTENTS

SECTION I	TECHNICAL SPECIFICATIONS
SECTION II	DRAWINGS (FOR REFERENCE ONLY)

SECTION II
TECHNICAL SPECIFICATIONS

SECTION 02970 - LANDSCAPE MAINTENANCE

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Maintain the site by weeding, pruning, fertilizing, planting annuals, monitoring and managing the irrigation system and performing all other tasks required or inferred from the specifications to complete the work of this section.

1.02 QUALITY ASSURANCE

- A. The hardscape, including the stone paving, the stone walls, concrete elements, metal handrails, and the stone walkways shall be protected from damage of any kind. Maintenance practices shall not damage, stain, mark or mar the hardscape and paving surfaces in any way. Damaged hardscape shall be replaced by the contractor at no cost to the Owner.
- B. Qualifications:
The Contractor shall have a minimum of five (5) years specialized experience in the maintenance of sites and planting projects of comparable size and quality, one of which shall have been under contract within the last three (3) years. The Contractor shall have a satisfactory record for landscape maintenance performance on said projects. Workmanship shall be of the highest quality.
- C. Applicable Standards:
 - 1. Plant names, where indicated, comply with "Standardized Plant Names" as adopted by the latest edition of the American Joint Committee of Horticultural Nomenclature. Provide stock true to botanical name and legibly tagged. Characteristics of individual plant species shall be as described in "Hortus Third". The character of individual plant varieties not listed shall be as defined in current horticultural literature and practice.
 - 2. Comply with sizing and grading standards of the latest edition of "American Standard for Nursery Stock." A plant shall be dimensioned as it stands in its natural position.
- D. General:
All plants shall be grown in a recognized nursery in accordance with good horticultural practice. Provide healthy stock free of disease, insects, eggs, larvae, and defects.
- E. Analysis and Standards:
Package standard products with manufacturer's certified analysis. For other materials, provide analysis by recognized laboratory made in accordance with methods established by the Association of Official Agriculture Chemists, wherever applicable.
- F. Soil Report:
Optimum plant performance can only be obtained through a program of regularly scheduled soil tests. Contractor shall engage a reputable laboratory to provide testing and analysis of soils representative of planting areas with reference to existing plant materials at the beginning of the contract period and at least once in a twelve-month period sufficient samples should be taken so as to receive at least one recommendation for pH adjustment, nitrogen, phosphate, potash application, and organic matter content of soil for each type of plant on the site.
- G. Approval and Selection of Materials and Work:
The selection of all materials and the execution of all operations required under the specifications and drawings is subject to the approval of the Owner. The Owner or their

duly authorized representative has the right to reject any and all materials and any and all work which, in the opinion of the Owner does not meet the requirements of the Contract Documents at any stage of the operations. The Contractor shall remove rejected work and or materials from job site and replace promptly.

H. Right of Termination

The Owner may terminate the Agreement with the Contractor if the Contractor defaults or neglects to carry out the work in accordance with the contract documents as described in the Agreement.

1.03 SUBMITTALS

A. Landscape Maintenance Schedule:

Submit landscape maintenance schedule showing scheduled dates for each type of landscape maintenance operation in each area of site, within fifteen (15) calendar days following award of contract.

B. Monthly Landscape Maintenance Report:

Submit monthly report of landscape maintenance work performed. Report shall accompany the monthly application for payment.

C. Upon completion of contract, submit to the Owner two (2) bound copies of all monthly reports, soil test reports, maintenance recommendations and any other written communication about the project.

1.04 DELIVERY, STORAGE AND HANDLING

A. Deliver fertilizer materials in original, unopened, and undamaged containers showing weight, analysis, and name of manufacturer. Store in manner to prevent wetting and deterioration.

B. Do not remove container grown stock from containers until planting time.

1.05 PROJECT CONDITIONS

A. Scope of Work:

The entire site shall be maintained as specified herein. The Contractor shall be responsible to maintain all portions of the site including areas which are under the control of the Owner and all property within adjacent rights-of-way as described herein.

B. Site Conditions:

The Contractor, in undertaking the work under this contract, is assumed to have visited the premises and to have taken into consideration all conditions which might affect his or her work. No consideration will be given any claim based on lack of knowledge of existing conditions. The Contractor shall be responsible to maintain the site in the specified manner regardless of site conditions. The Owner shall be notified in writing of any significant changes in site conditions which may occur during the contract period.

C. Protect existing planting, lawns, irrigation system utilities, paving, and other facilities from damage caused by landscape maintenance operations. Promptly repair any and all damage to existing improvements to the Owner's satisfaction.

D. Existing Utilities:

Determine location of underground utilities. Perform work in a manner which will avoid possible damage. All damage to utilities resulting from work covered in these specifications shall be repaired at the Contractor's expense.

- E. Timing of Work:
Perform maintenance operations during suitable weather conditions.

PART 2 - PRODUCTS

2.01 SOIL AMENDMENTS

- A. Fertilizers shall be mixed commercial fertilizers of Grades as recommended by soil tests or specified herein with guaranteed chemical analysis of contents marked on containers or sacks.
- B. Lime:
Ground or pulverized of horticultural grade capable of neutralizing soil acidity and containing not less than 85% of total carbonates. Containers or sacks shall be labeled to show chemical and mechanical analysis.
- C. Peat shall be moss peat. It shall be finely shredded, consist of 90% organic moss peat, be brown in color and suitable for horticultural purposes. Shredded particles shall not exceed 1/4" in diameter. Peat shall be measured in air dry condition, containing not more than 35% moisture by weight. Ash content shall not exceed 10%.
- D. Soil conditioner shall be "Perlite" as manufactured by W. R. Grace and Company, 62 Whittemore Avenue, Cambridge, Massachusetts 02140 or approved equal.

2.02 PLANT MATERIALS

- A. Perennials
 - 1. Provide perennial bulbs, corms and tubers which are fleshy and free of rot and not less than the grade and size recommended by ANSI Z60.1 for the size shown or listed.
 - 2. Provide good perennials in either a dormant condition or actively growing. Actively growing perennials shall be furnished rooted in removable containers or field dug. Field dug perennials shall be in a moist, vigorous condition with no sign of desiccation.
 - 3. Annuals
 - 1. Provide healthy, well-rooted annuals.

2.03 MISCELLANEOUS LANDSCAPE MATERIALS

- A. Water transportation is the sole responsibility of the Contractor.
- B. Mulch: 6-month-old well-rotted shredded native hardwood bark mulch not larger than 4" in length and 1/2" in width, free of woodchips and sawdust.
- C. Pine Bark Mulch: Premium-grade shredded pine bark mulch not larger than 3/8" in any dimension.
- D. Pre-Emergence Herbicide for general use shall be "Ronstar", "Casaron", or approved equal. Apply at the rates, times and manner recommended by the manufacturer.

PART 3 - EXECUTION

3.01 PREPARATION

- A. General
 - 1. Contractor must examine conditions under which landscape maintenance is to be

performed. Review drawings entitled "Niswonger Foundation Offices, Planting Plans" contained herein and be familiar with the site and all improvements.

2. Landscape Maintenance operations are to be performed at such times of the year as appropriate to each respective task. Perform maintenance operations only during periods when weather conditions are suitable.
3. Notify Owner of adverse site conditions. State conditions and submit a proposal for correction including costs. Obtain approval for method of correction in writing prior to continuing work in the affected area.
4. Landscape Maintenance shall be performed only by experienced workmen familiar with maintenance procedures under the supervision of a qualified supervisor.

3.02 GENERAL SITE CLEAN-UP

A. Task Description

1. The site shall be kept neat and free of litter and debris. All litter including paper, plastic, foil, and cigarette butts shall be removed at the beginning of each site visit. Use blowing equipment to clean pavement, bed areas, tree mulch rings, etc. as required.
2. Perform leaf removal as required to keep pavements, turf, and planting bed areas neat and orderly.
3. Monitor condition and appearance of site, lighting, plantings, and signage. Promptly notify Owner of vandalism or damage when repairs are beyond the scope of work described herein.

B. Frequency and Timing

Clean-up and monitoring operations shall occur during every site visit throughout the contract period.

3.03 IRRIGATION SYSTEM

A. Task Description

1. Manage the irrigation system operation for the Owner in accordance with standard industry practices. Start the system up in the spring, set run time schedules based on plant water needs throughout the growing season and winterize the system in the fall.
2. Notify Owner in the event of irrigation equipment damage or failure. Provide statement of problem and submit cost to make needed repairs. Obtain Owner's written approval before beginning irrigation system repairs.

B. Frequency and Timing

1. Perform irrigation system management, startup, and shutdown as appropriate to seasonal conditions and plant needs.

3.04 ANNUALS AND PERENNIALS

A. Task Description

1. Plant annuals up to four times a year as selected by the Owner and the Landscape Maintenance Contractor.
2. Prepare planter bowls by placing a one-inch (1") layer of peat moss and a one inch (1") layer of perlite over bed areas and tilling to 8" depth.
3. Maintain perennials and annuals by removing dead foliage, pruning, removing, and replacing dead or damaged annuals during the season and removing summer annuals before first frost in the fall.

B. Frequency and Timing

1. Plant winter annuals/bulbs before the first frost, when the summer annuals begin to fade.
2. Plant summer annuals after danger of frost is past in the spring. Prepare bed as specified above prior to planting annuals.

3. Provide annual plants as agreed upon by the Owner and Landscape Maintenance Contractor. Provide plant quantities as determined by the Owner. Suggested annual plant mixes for the planter bowls are found on sheet L602, Planting Details.

3.05 FERTILIZATION AND SOIL PH

A. Task Description

Optimum plant performance can only be obtained through a program of regularly scheduled soil tests as described in Quality Assurance Section. Sufficient samples should be taken so as to receive at least one recommendation for each type of plant on the site. Soil pH should be adjusted only on the basis of test recommendations. Minimum fertilization shall be performed as described below. Optimum fertilization shall be performed in accordance with test recommendations. Apply fertilizers in accordance with manufacturer's recommendations and good horticultural practice so as not to damage plants and foliage.

1. Lawn Areas
 - a. Fertilize all turf-type areas with fifteen (15) pounds of 6-12-12 and three (3) pounds of ammonium nitrate per 1000 square feet in April.
 - b. Fertilize all turf-type areas with fifteen (15) pounds of 6-12-12 per 1000 SF in September or October.
2. Trees

Evergreen trees should be fertilized at the rate of two pounds of 19-19-19 for each inch of trunk diameter, measured about four feet above the ground. The fertilizer should be broadcast under the tree on both sides of the drip line.
3. Shrubs

All shrubs should be fertilized using one pound of 15-15-15 per 100 square feet of bed area. Use specially formulated fertilizers for acid loving plants in accordance with manufacturer's instructions.
4. Ground Covers

Fertilize ground cover beds at the rate of two pounds of 15-15-15 for each 1000 square feet of bed area.
5. Annuals and Perennials
 1. Fertilize annuals with 5-10-20 at a rate of one ounce for each sixty (60) square feet of bed area.
 2. Top dress perennials with 5-10-20 at a rate of one ounce for each sixty (60) square feet of bed area.
6. Frequency and Timing
 1. Lawn Areas

Apply fertilizer at times noted in Task Description above.
 2. Trees

Apply fertilizer between March 15 and April 15.
 3. Shrubs

Apply fertilizer between March 15 and April 15.
 4. Ground Covers

Apply fertilizer between March 15 and April 15.
 5. Annuals and Perennials
 - a. Incorporate fertilizer into soil mix prior to planting annuals. Top dress as needed thereafter.
 - b. Top dress perennials with fertilizer between March 1 and March 15.

3.06 WEED CONTROL

Chemicals for weed control shall be used in strict conformance with the manufacturer's recommendations and applicable codes and regulations.

A. Task Description

1. Pre-emergence weed chemical (Casaron, Ronstar or Dymid) shall be applied to all mulched areas, except perennial plantings, in accordance with manufacturers recommendations. In areas of perennial plantings, use Dacthal or equal pre-emergence weed chemical in lieu of the chemicals above in accordance with manufacturer's recommendations.
2. Control weeds by limited hand weeding or application of contact herbicides (Roundup, Post, etc.) as required to keep grounds looking attractive and to prevent production of new weed seed.
3. Lawn weed control shall be included in an overall program of fertilization and weed control for lawn areas.
4. Any trees, shrubs, ground covers, perennials or annuals damaged by chemical weed control operations shall be replaced by the Contractor at no cost to the Owner.

B. Frequency and Timing

The large majority of weed seeds will germinate in the early spring. To achieve the most cost-effective weed-free landscape begin pre-emergence weed control measures described above before weeds begin to emerge.

1. Pre-emergence chemical should be applied a minimum of two (2) times per year beginning with one application in the early spring with subsequent applications at intervals as recommended by the manufacturer or no greater than sixty (60) days.
2. Control all weeds by hand weeding or application of contact herbicides as required.

3.07 DISEASE AND INSECT CONTROL

A. Task Description

Chemicals for pest control shall be used in strict conformance with the manufacturer's recommendations and applicable codes and regulations.

1. Perform landscape maintenance procedures to discourage wounding the trunks, stems, and roots of plants, since wounds provide points of entry for pests.
2. Continuously monitor all plantings for pest infestation. Consult local County Agriculture Extension agent or University of Tennessee Entomology and Plant Pathology Extension Service immediately when potential pest damage is observed.
3. Submit to the Owner in writing statement of the pest observed, the procedure to eliminate the pest and the cost to perform pest control work. Obtain Owner's approval prior to beginning pest control work.

B. Frequency and Timing

Perform pest control operations only upon receipt of owner's authorization in writing.

3.08 PRUNING

A. Task Description

1. Trees

- a. All deciduous tree types will require selective pruning periodically. Pruning shall be performed on a regular basis to eliminate undesirable branching and to avoid unnecessarily large pruning wounds. Other than specific requirements listed below, the trees should be left to assume their natural forms.
- b. Prune only to remove dead, damaged or diseased wood or to eliminate undesirable branching.
- c. Prune evergreen trees as required after the spring growth has hardened off. Prune Hollies to maintain symmetrical upright conical heads with matched form.

2. Shrubs

- a. There are two pruning techniques to be used for the shrubs on this site: selective pruning and shearing. The azalea and hydrangea shrubs on this property shall be allowed to grow together into shrub masses and be maintained in a loose natural form and the pruning should reflect this design intent. Shrubs should not be pruned into discrete individual forms.

- b. Delaware Valley White Azaleas should be pruned after the blossoms have faded, but before the new blossom buds have started to form, typically the June month.
 - c. Boxwoods should be allowed to grow together horizontally but should be sheared to maintain rounded shape (or flat shape in the case of the edging boxwood hedges along the walkways).
 - d. Quercifolia Hydrangeas shall be pruned as needed to remove any damaged, diseased, or dead branches, harsh pruning should be avoided. Trimming should be done immediately after flowering stops in summer but no later than August 1st – do not prune in fall, winter, or spring. Tip-pruning maybe used to encourage small flower heads rather than larger.
 - e. Annabelle Hydrangeas shall be pruned by cutting entire plant back branches at nodes at roughly one-half to one-third its total height in early spring.
 - f. Viburnums can be pruned lightly anytime of the year to remove any damaged, diseased, or dead material. Pruning for shaping and size needs to occur after the flowering period but at least a month before any potential cold weather or frost as to not damage any new growth. To rejuvenate weak or unsightly planting remove you can remove up to 1/3 of the plant material at the node terminals.
 - g. Prune Lenten Roses by removing any old or dead leaves in late winter or early spring – this includes any brown or ragged foliage and brown flower heads – prune back to base of plant.
3. Perennials and Groundcovers
- a. Prune daylilies to two inches (2") above grade in late winter. Remove all pruned plant material and re-mulch beds immediately afterward.
 - b. Prune pachysandra to keep it within planting beds. Remove all pruned plant material and re-mulch beds if necessary, immediately afterward.
4. Frequency and Timing
- a. Tree pruning should occur in the late winter or early spring.
 - b. Pruning promotes and encourages new growth which is sensitive to freezing or excessive heat. Therefore, prune shrubs in the mid to late spring or late summer to avoid stimulating new growth immediately prior to the stresses of winter freeze or summer heat.

3.09 MULCH

- A. Replenish hardwood bark mulch twice annually to maintain 2" minimum depth in all mulched areas including tree rings. Re-mulching operations should immediately follow an annual late winter or early spring cleanup of all bed areas. The secondary re-mulching should take place in the period of transition from late summer to early fall. Treat all mulched areas with pre-emergence weed chemical, see Weed Control section of these specifications.
- B. Replenish pine bark mulch after each new installation of annuals.

3.10 CLEAN UP AND PROTECTION

- A. During landscape maintenance work, keep pavements clean and site in an orderly condition.
- B. Upon completion of work, clear grounds of debris, superfluous materials, and all equipment. Remove from site to satisfaction of Owner.
- C. Protect site, plantings, and other improvements from damage due to landscape maintenance operations. Treat, repair, or replace any damage arising from landscape maintenance operations as directed at no additional cost to Owner.

SECTION III

DRAWINGS
(For Reference Only)

L61 Overall Planting Plan (Issue date 10-29-2021)

L62 Planting Details (Issue date 10-21-2021)

ED JOHNSON MEMORIAL
CHATTANOOGA, TENNESSEE

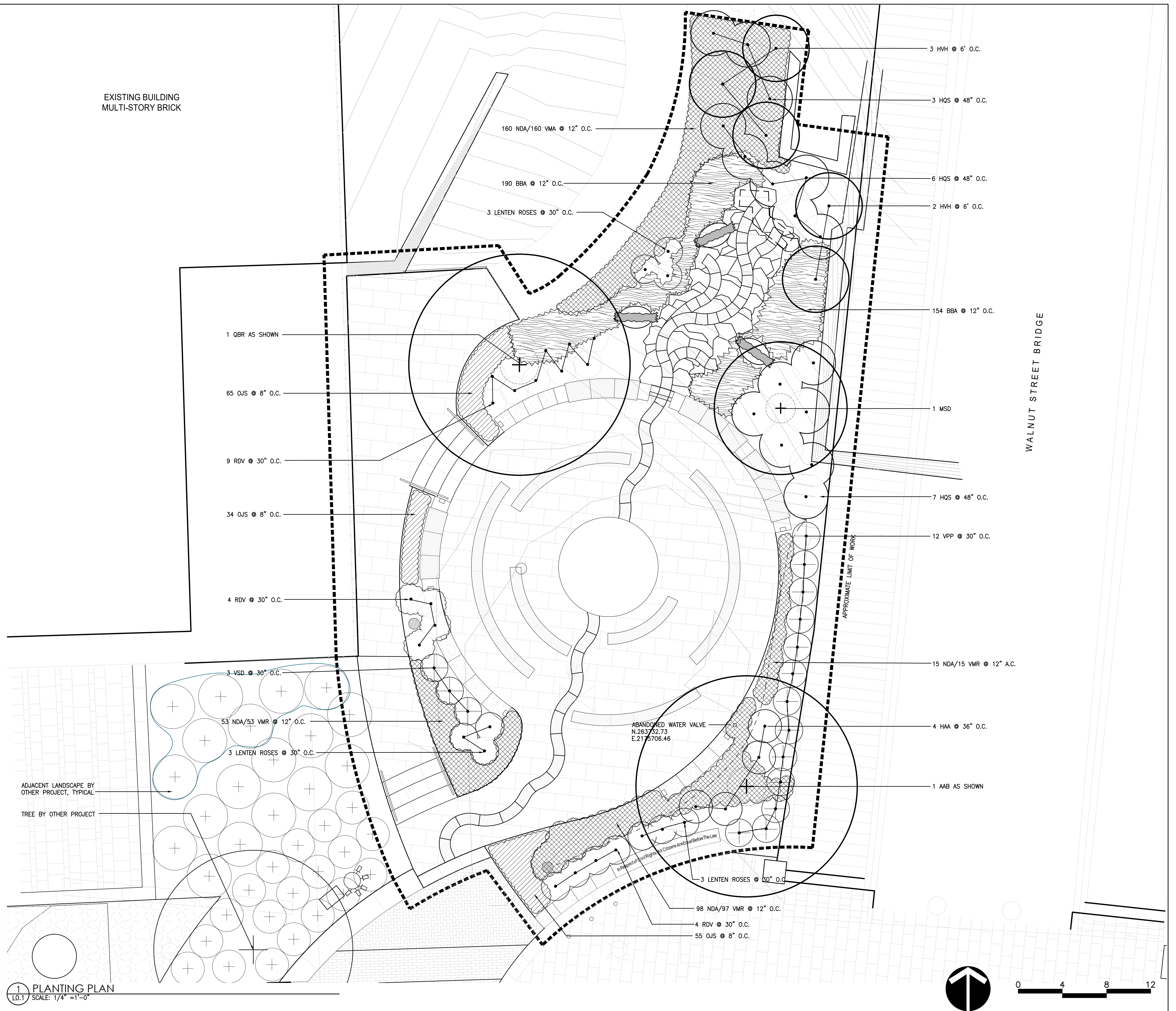
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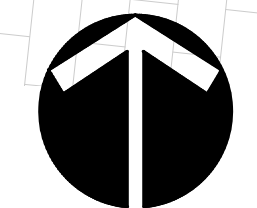
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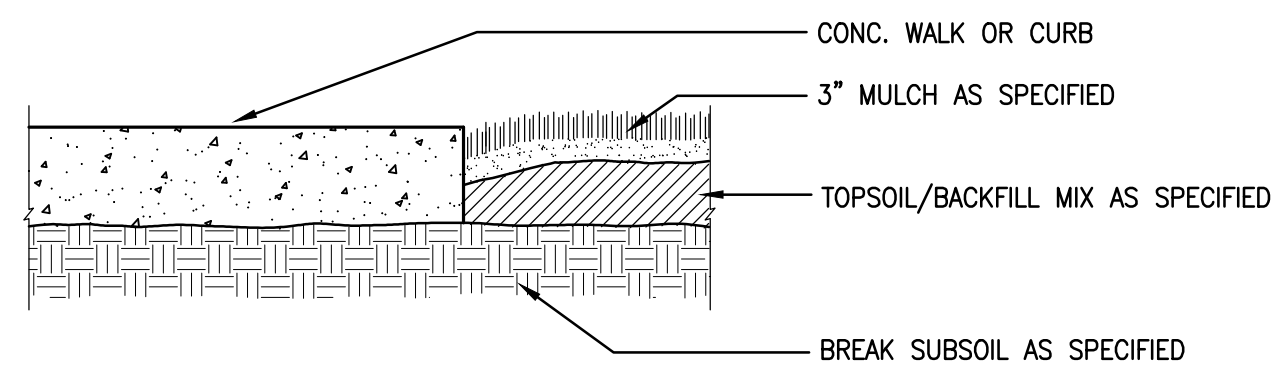
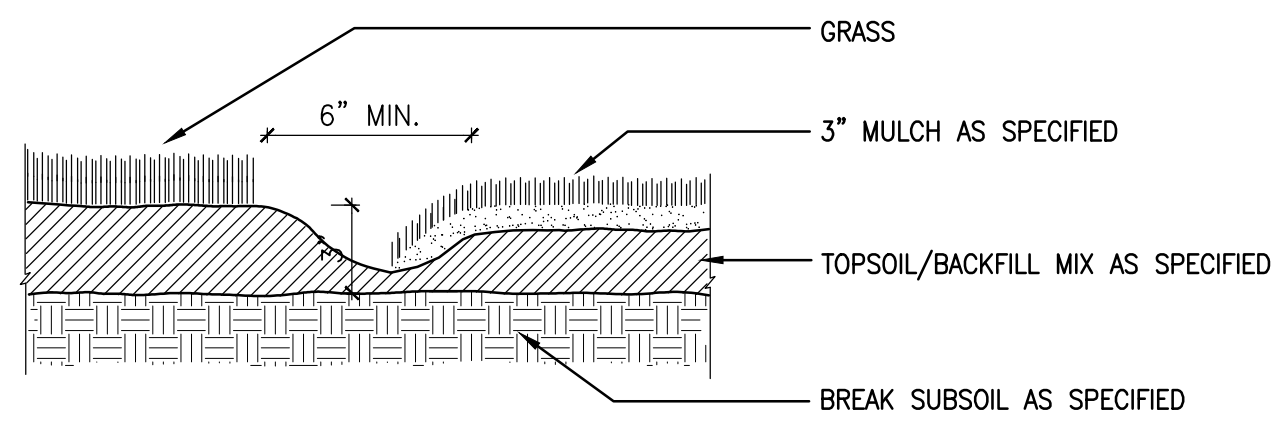
PLANTING PLAN

L6.1

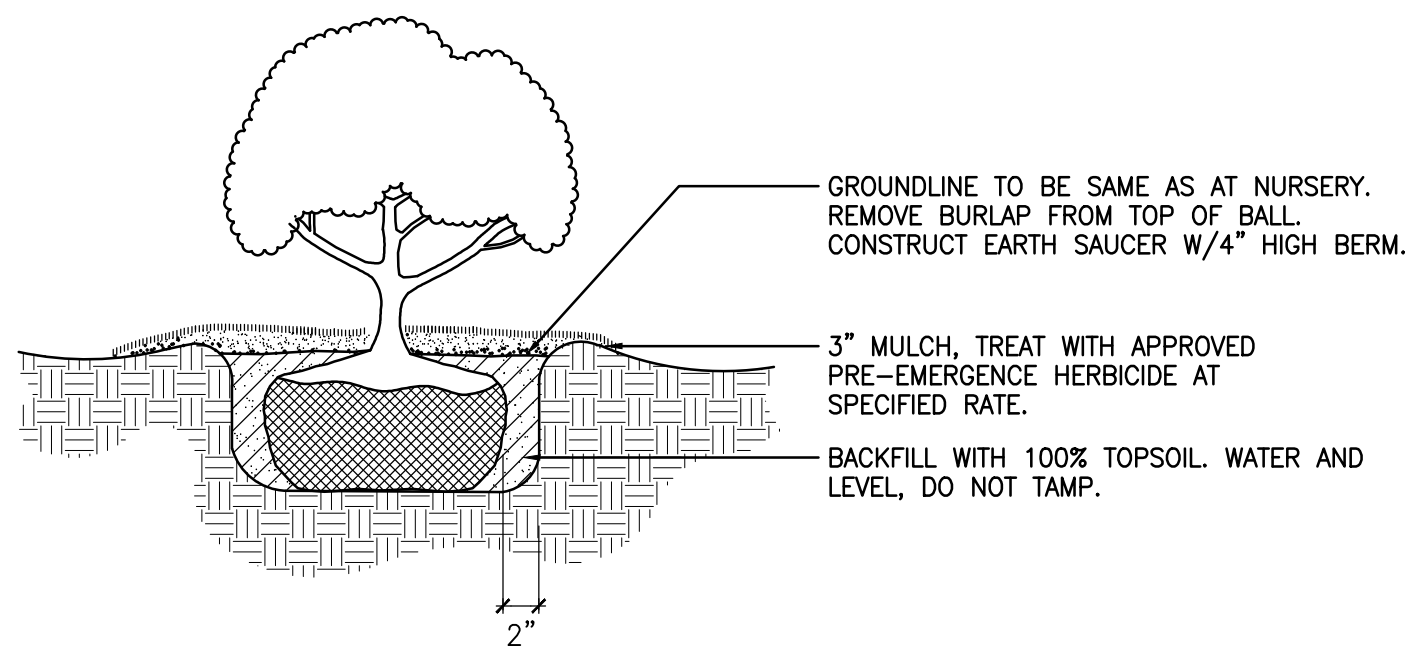


1 PLANTING PLAN
 L6.1 SCALE: 1/4" = 1'-0"

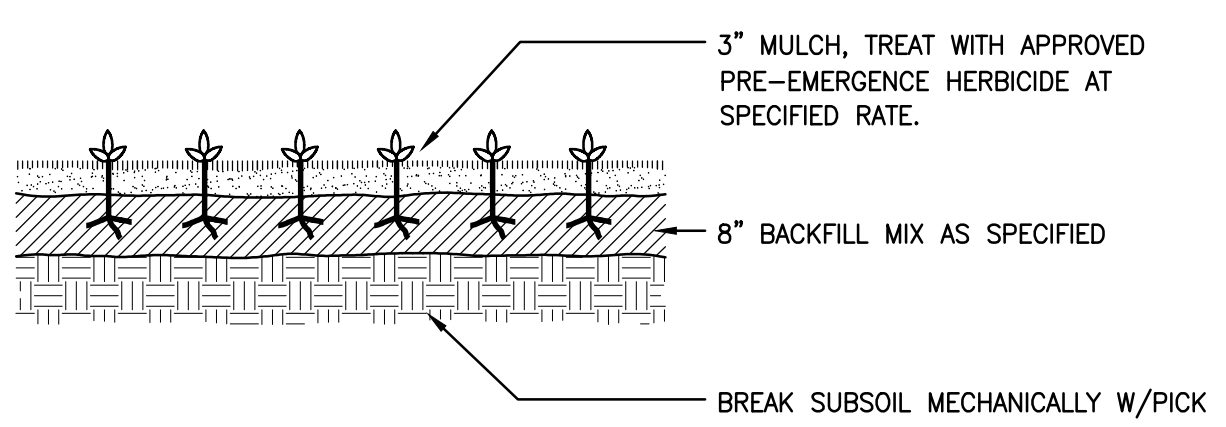




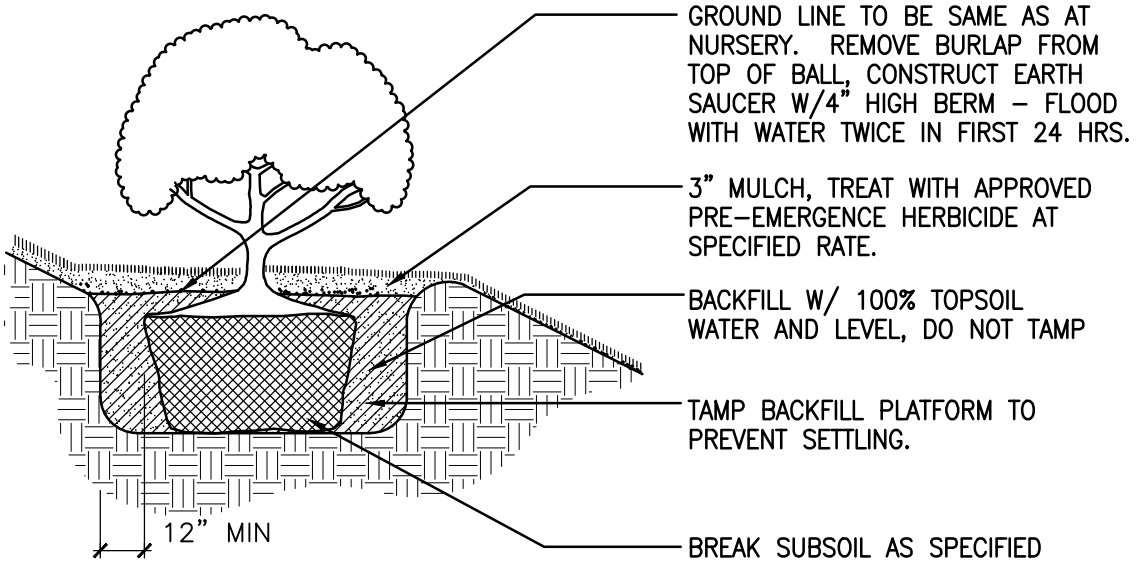
9 BED EDGE DETAIL
L6.2 SCALE: NOT TO SCALE



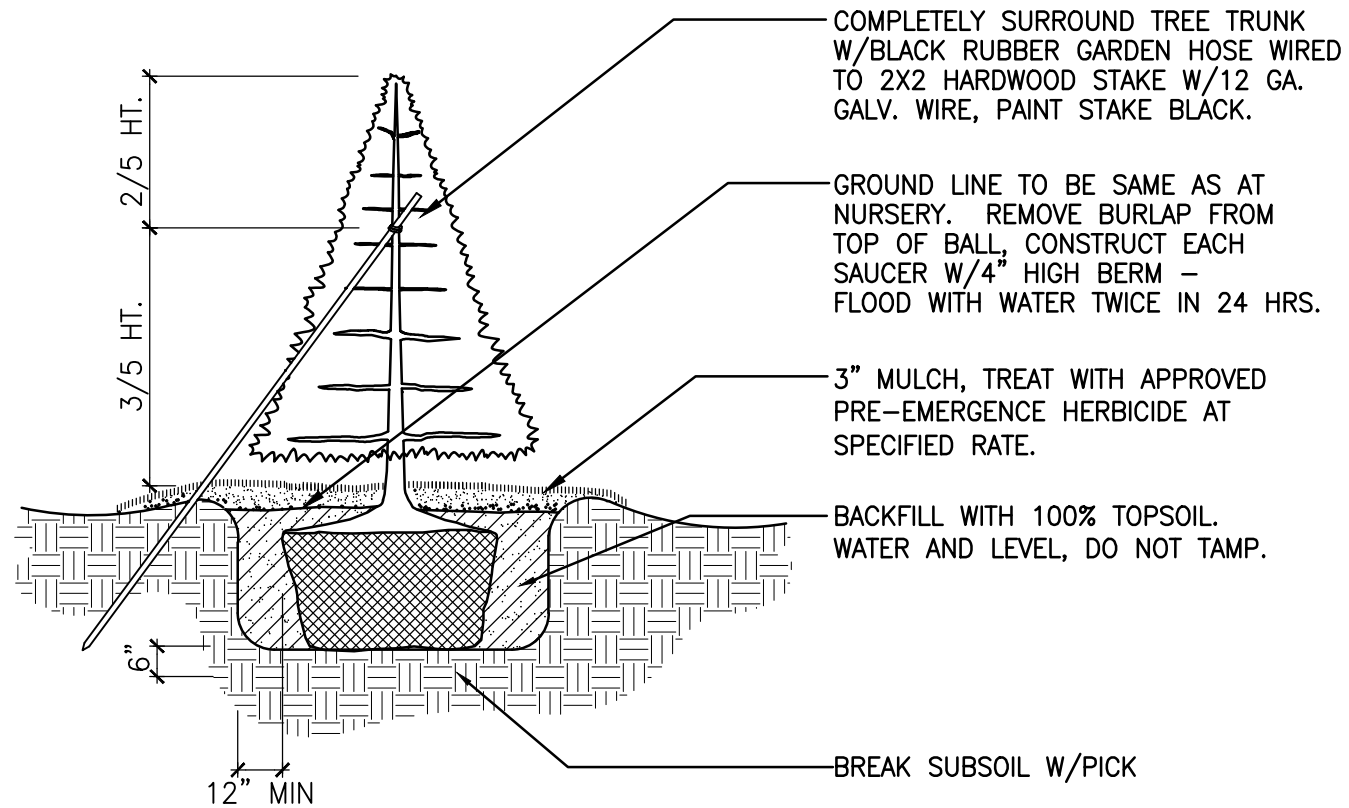
5 SHRUB PLANTING DETAIL
L6.2 SCALE: NOT TO SCALE



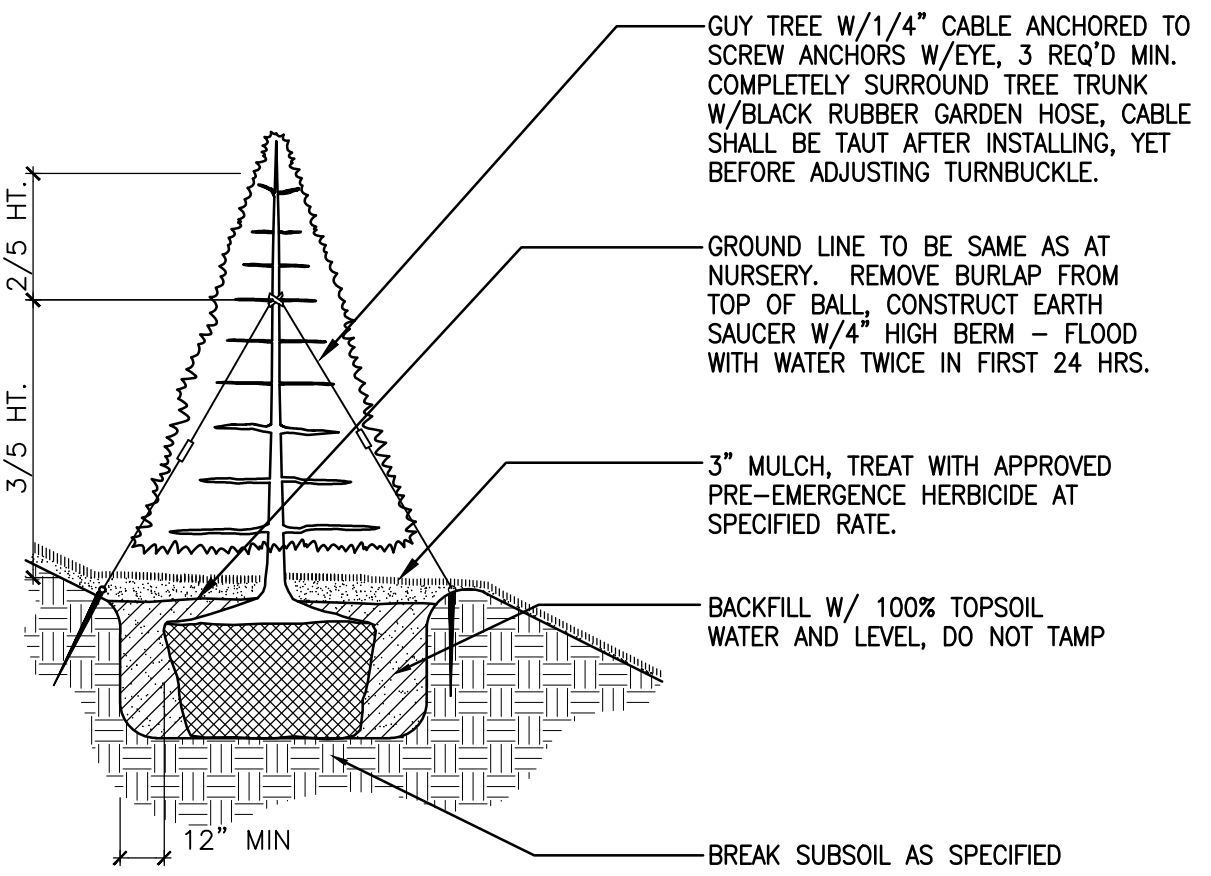
10 GROUND COVER/PERENNIAL PLANTING
L6.2 SCALE: NOT TO SCALE



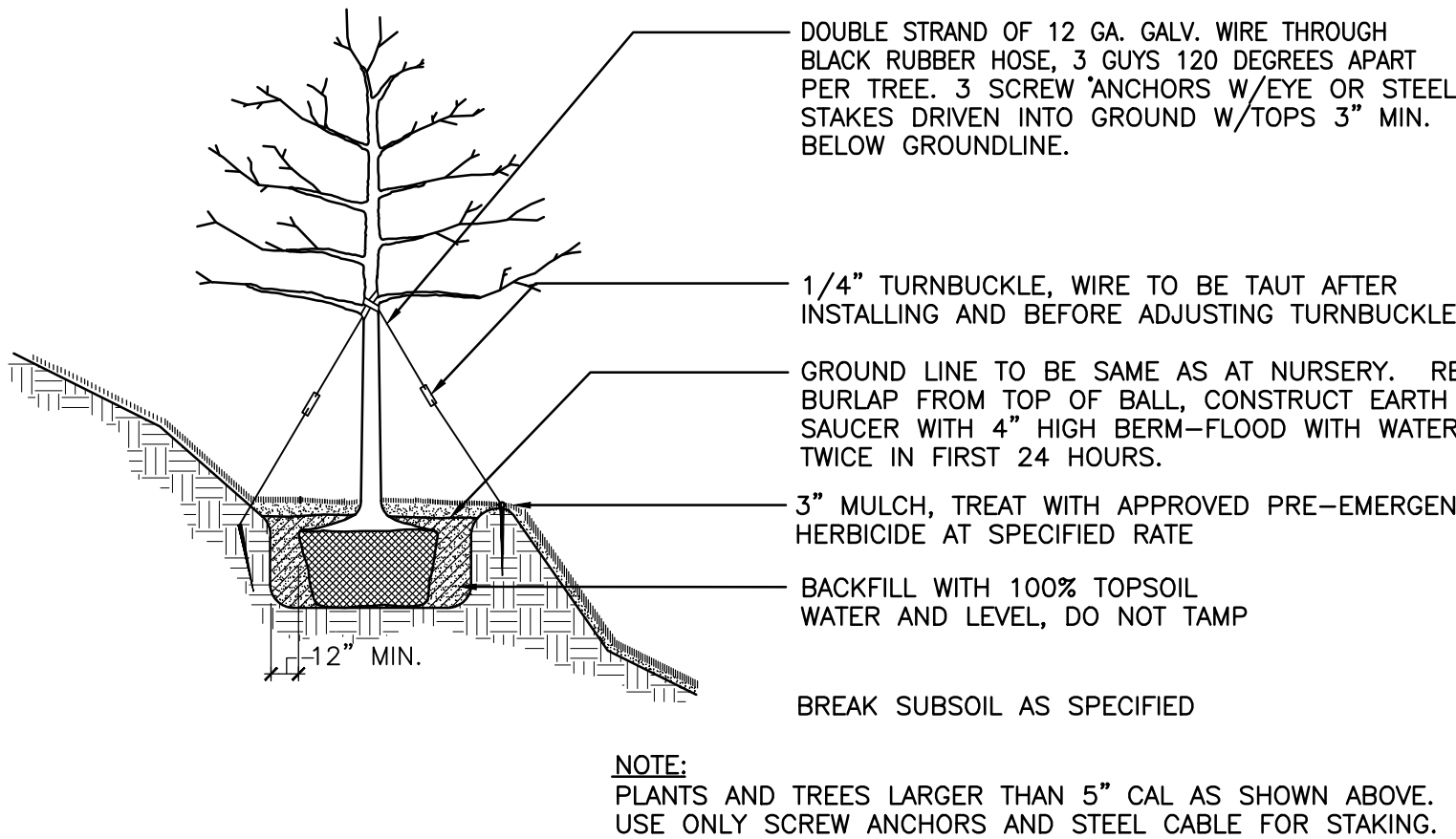
6 SHRUB PLANTING ON SLOPE
L6.2 SCALE: NOT TO SCALE



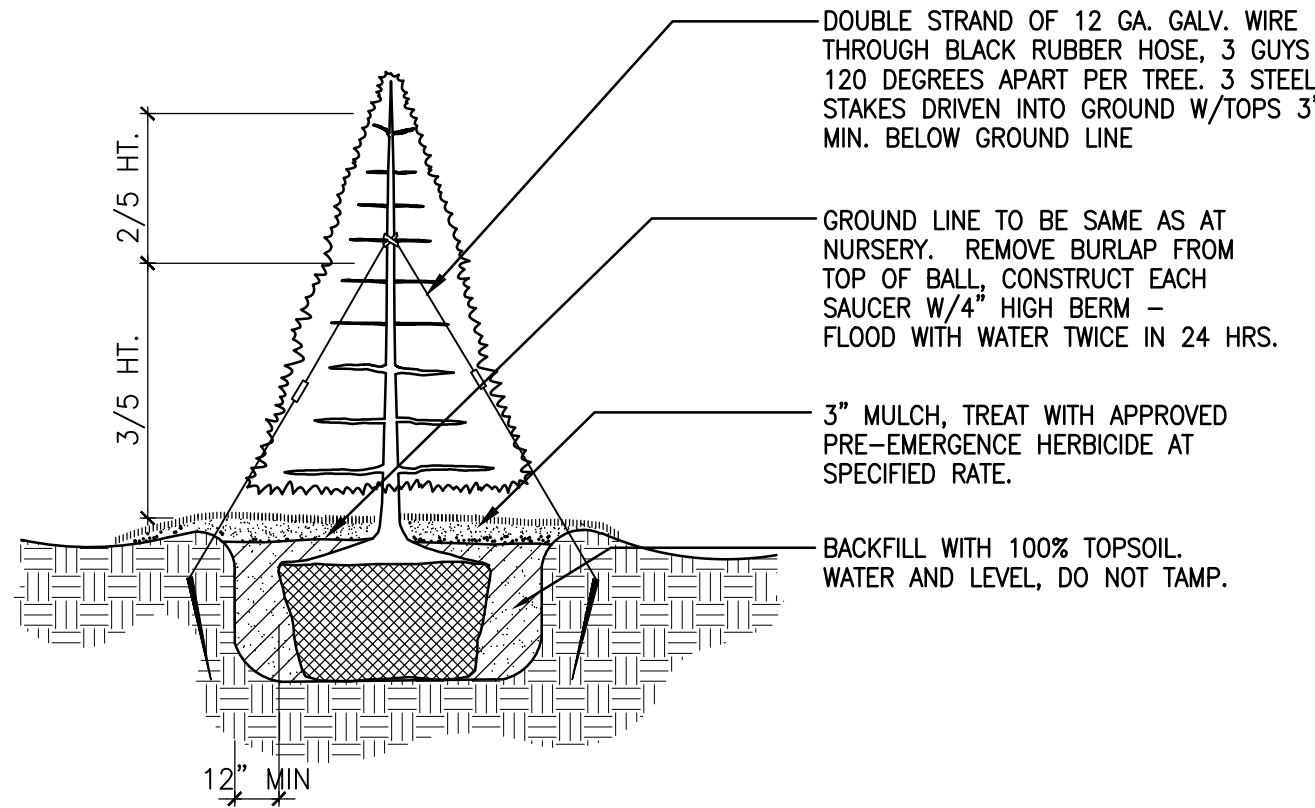
7 EVERGREEN TREE - TO 8' HT.
L6.2 SCALE: NOT TO SCALE



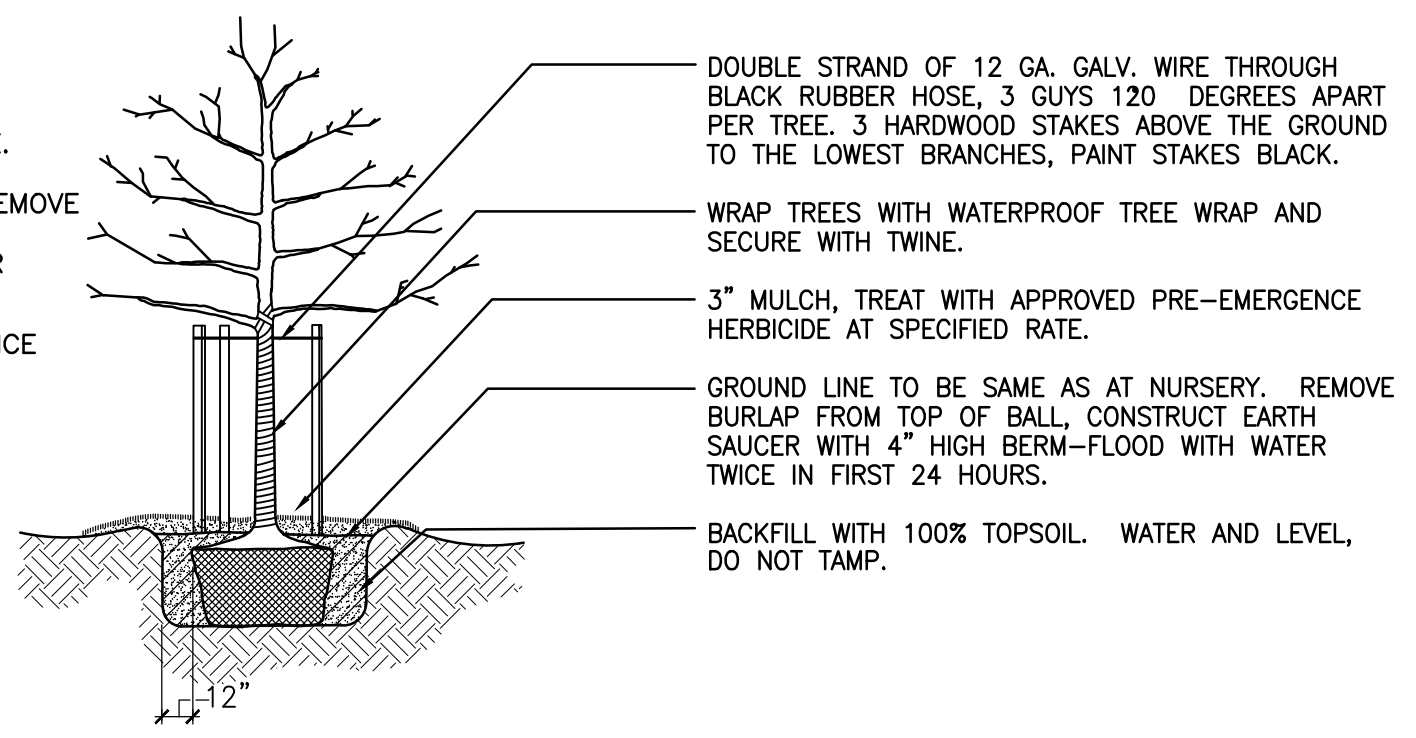
8 EVERGREEN TREE ON 2:1 SLOPE
L6.2 SCALE: NOT TO SCALE



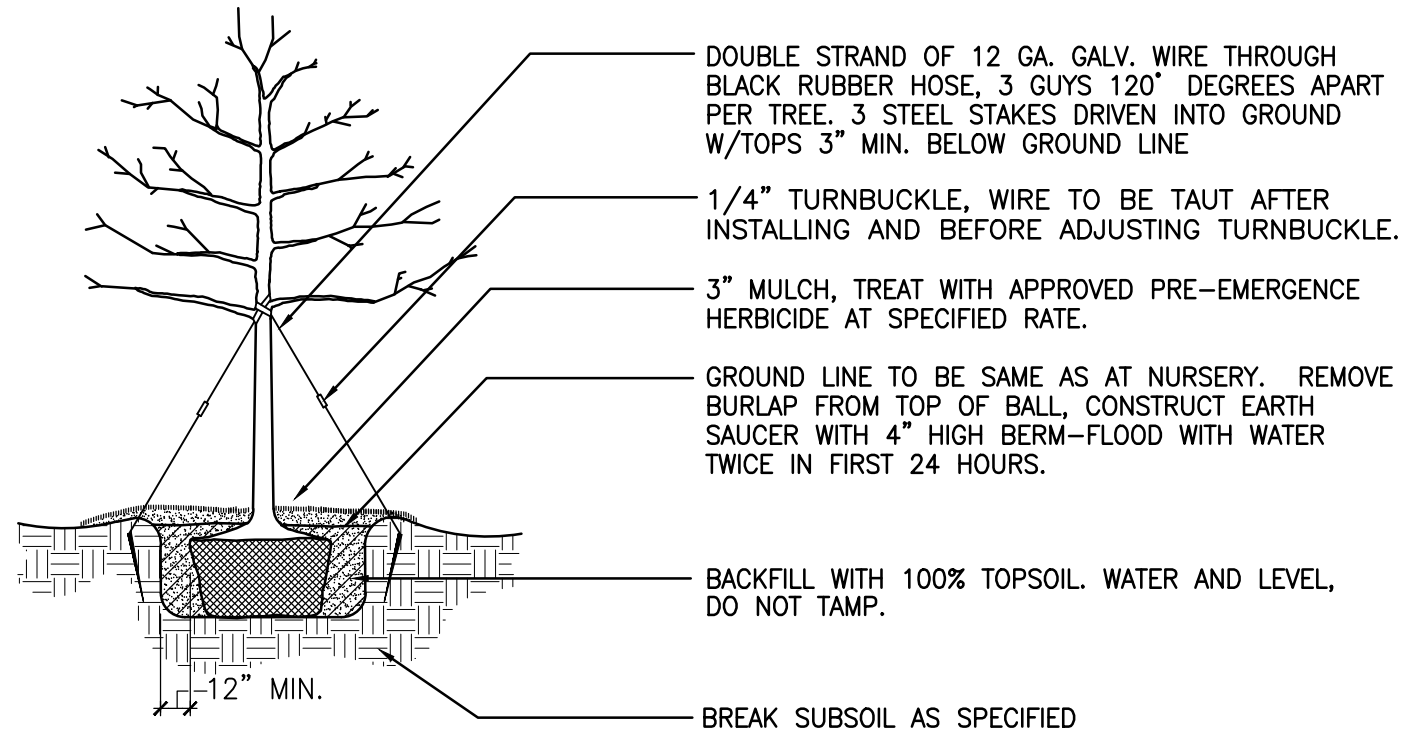
3 TREE PLANTING/GUYING ON 2:1 SLOPE
L6.2 SCALE: NOT TO SCALE



4 EVERGREEN TREE - OVER 8' HT.
L6.2 SCALE: NOT TO SCALE



1 TREE PLANTING & GUYING TO 3\"/>



2 TREE PLANTING & GUYING 3\"/>

PLANT LIST							
TYPE	KEY	BOTANICAL NAME	COMMON NAME	SIZE	ROOT	REMARKS	QUANTITY
TREES	AAB	ACER RUBRUM 'AUTUMN BLAZE'	AUTUMN BLAZE RED MAPLE	3.5\"/>			

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PROJECT NUMBER: 17010
ISSUE DATE: 10-29-2021

PLANTING DETAILS

L6.2

LucinArts

CONSERVATION ASSESSMENT

ED JOHNSON MEMORIAL BY JEROME B. MEADOWS

Prepared for: Rebecca Underwood
Vice President of Finance
Community Foundation of Greater Chattanooga
1400 Williams Street
Miller Plaza
Chattanooga, TN 37408
runderwood@cfgc.org
423-265-0586

Conservator: Lucinda Linderman
1814 S. Holly St.
Chattanooga, TN, 37404
LucinArtsLLC@gmail.com
786-519-8449

Date of Assesment: October 28th-29th, 2021

Date of Report: November 14th, 2021

Artist: Jerome B. Meadows
Object/Title: *Ed Johnson Memorial*
Date: 2021
Materials: sandstone, stone pavers,
cement, bronze, stainless steel,
lighting, landscaping
Signatures or marks No signature, foundry stamp,
or copyright markings on
bronze sculptures
Foundry Inferno Art Foundry, Union
City, Ga.
Dimensions All dimensions provided in the
Engineering Plan
Location: on Walnut Street, southwest
corner of the Walnut Street
Bridge

This conservation assessment outlines the current condition of the Ed Johnson Memorial installed in Chattanooga in September of 2021. It includes baseline photographs of all of the individual elements of the sculpture.

This report accompanies and supplements several documents that were written by other entities involved in creating the sculpture. These documents include:

- *Ed Johnson Memorial Engineering plan* provided by March Adams and Associates, Chattanooga, TN.
- Project Manual from *Landscape Maintenance* provided by Landscape Architect Ross/Fowler P.C., Knoxville, TN.

- *Ed Johnson Memorial Sculpture Maintenance Plan* provided by Jerome Meadows, Savannah, GA.
- *Conservation Form and Maintenance Record* provided by The City of Chattanooga Public Art
- Closeout documents to be provided by the contractor in November, 2021

This assessment provides recommendations for conservation of the sculpture in addition to the *Sculpture Maintenance Plan*, conditions expected to occur naturally with age and through interaction of the public, and a general estimate of costs of maintenance for budgetary purposes.

Assessment photos are included in this report. To access the complete baseline documentation of the overall sculpture and the individual elements, please copy and paste the following link into your browser: <https://www.dropbox.com/sh/fj0b08zjaj2cq6h/AAAEqKRdeYflYzc9Sqcc7J9Ya?dl=0>

Description and Condition:

This sculpture installation consists of multiple elements depicting the history surrounding the unjust lynching of Ed Johnson. A large stone plaza sits at the southwest corner of the Walnut Street Bridge. The sculpture installation consists of multiple elements including six (6) bronze sculptures, twelve (12) plaques with historical narrative, three (3) free standing walls, three (3) benches, engraved stone pavers, lighting elements, and landscaping. The sculpture is in excellent condition with minor noted changes occurring since its installation in September of 2021.

The stone plaza is surrounded by three (3) free standing walls. They are approximately 3 feet tall and vary in length. All of the walls are made from concrete cinder blocks filled with concrete and mild steel rebar. The walls were then clad with roughhewn grey rectangular quartzite stones and are capped with smooth gray copings. Gray grout fills the spaces between the clad stones. Small cracks are noted through the grout in several areas. The cracks are approximately $\frac{1}{32}$ " wide and range from $\frac{1}{2}$ " to 3" long. The cracks do not pose any structural issue; however, these are areas where efflorescence will likely occur. If the cracks widen pests may also enter the wall. An accretion, possibly slight efflorescence or salts from the interior rebar was noted on the inward facing area of the entrance wall, near the bottom of the wall. Cotton wicks functioning as a cavity vent were noted along the bottom grout line on each wall. The walls are all in good condition with minor debris and bird droppings noted in several areas.

The entrance wall has a smooth stone in the center engraved with the title. The coping stone is also engraved. The story wall at the back of the memorial is made from two walls that are connected by a decorative bronze gate. The gate is constructed from cast bronze elements welded to a vertical bronze rod on each side. The gate appears to be epoxied on both sides to the walls. The gate is in excellent condition. Some haziness was noted around the bottom and appears to be blached wax or some smeared grout.

Bronze plaques with historical information about Ed Johnson are adhered to the top of the coping stones on two of the walls. The plaques are polished with an oxidized finish and non-dimensional black lettering. A lacquer coat protects the bronze. The plaques are in excellent condition with no losses in the coatings.

The left story wall extends out into a bench. Two additional freestanding benches are on the edges of the plaza. They are all in excellent condition with minor debris, bird droppings, and tannin staining from leaves.

The plaza floor is made from tan colored quartzite and grey quartzite. The grey quartzite sections are engraved with different quotes and curve around the figures. The stones are in good condition. Some cracking was also noted in the grout in-between the stones. Debris is noted collecting in the engraved lettering. Black and brown staining is noted from the oak leaves dropping on to the wet floor. The staining should fade over time. When possible, leaves should be removed from the plaza floor to prevent staining.

Three life size bronze sculptures stand in the center of the plaza. The sculptures are hollow cast bronze. The surface was patinaed using a hot process with ferric nitrate and liver of sulfur. The sculptures were then waxed and buffed; no thermoplastic coating is present on the bronzes. The lighter patinaed figure is a representation of Ed Johnson, with a noose behind his foot. The other two figures are representations of Noah Parden and Styles Hutchins; these two sculptures have an intentionally darker patina. The sculptures are mounted with epoxy onto 7/8" diameter stainless steel threaded rods that extend from the feet down through the stone into the concrete below. The feet all sit directly on the stone. No corrosion is noted around the feet, but slight spots of green corrosion (~1/8" in diameter) are noted on the noose. The edges of the shoes and noose near the stone will be more susceptible to corrosion from moisture dwelling in the stone during rain events. A permeable water proofing agent applied to the stone under the figures would keep excess moisture from dwelling in the areas around the feet.

The installation continues past the plaza to the landscaped hill behind where a path leads down to the river. Three additional bronzes titled *Those Yet Unsung* are installed at various heights along the hill around a stacked stone hardscape (titled *Stream of Time*) that extends partially down the slope. All three bronzes are outlines of figures, representing other unjust lynchings that occurred in Hamilton County. Each sculpture is made from various sized cast bronze bars radiating outward from a vacant figure. The bars are welded onto a stainless-steel tube frame shaped like a house. With two adjacent dissimilar metals, galvanic corrosion may develop along the welds over time. The stainless-steel frame is bolted onto a concrete pad. Each bottom edge of the outline is welded onto a stainless-steel tube which extends through a hole in the concrete pad and into the ground. The assessment was performed right after it had rained. The concrete holes were filled with standing water. This will eventually cause corrosion on the stainless-steel tubes. These tubes appear to be secondary in structure to the stainless frame welded to the sculpture but will compromise the integrity of the sculpture if left to rust. The holes should be filled in if possible. There is a mottled patina on the bronze and stainless elements created using a hot patina process with liver of sulfur and ferric nitrate. The sculptures are in excellent condition. Some litter is seen among the small plantings in the landscape. Green biological growth and mud is noted on the *Stream of Time* hardscape. There is a sprinkler head directly next to the upper bronze outline. All sprinkler heads should be directed away from the sculpture as to not spray water on any of the bronze or stainless elements. As these works sit on a steep hill where a ladder will be unstable, it will be difficult to access the tops for maintenance; an additional person will be needed to stabilize the ladder while cleaning and waxing.

The lighting is placed throughout the sculpture lighting up the site at night. The three figures are lit as well as the plaza walls and plaques. The three bronze outlines are lit from below creating

dramatic lighting on the sculpture and on the wall behind the sculpture. All of the lights are functioning. There are allen head screws in the top of each light fixture that appear to allow someone to remove the cover in order to change the lightbulb.

Condition Photographs:



Detail of cracks in grout.



Detail of possible efflorescence on walls.



Detail of tannin staining on floor pavers.



Detail of staining on stone and of debris collecting in engraving..



Detail of green corrosion on gate.



Detail of green corrosion on noose.



Detail of shrubs against sculpture.





Detail of green biological growth on hardscape.



Detail water standing in concrete bases.



Detail of litter in landscaped area.



Detail of sprinkler head next to the sculpture.

Conditions expected to occur frequently:

- litter found in landscape behind the plaza
- bird and lizard guano on surfaces
- debris found collecting in engraving on floor pavers
- efflorescence coming out of cracks in grout
- biological growth on stone elements
- Staining from fertilizer on sculpture or hard scaping stones

Conditions expected to occur if the sculpture installation is not maintained regularly:

- possible loss of patina on bronze figures from frequent interaction from people; around the shoes, arms, and hands
- green corrosion around shoes and noose of figurative sculptures
- darkening patina on the bronze surfaces as wax coating deteriorates over time
- green cupric staining on sandstone under figures if the wax coating is allowed to deteriorate
- failing clear coat on plaques if not replaced every 2 to 4 years
- galvanic corrosion occurring between stainless and bronze on *Those Yet Unsung*
- stainless tubes rusting where they are exposed to water on *Those Yet Unsung*

- salts coming out of grout in walls from concrete and rebar interior

Maintenance Required:

Frequent Maintenance-at least every 2 months (maintenance staff-1/2 day for 1 person)

- remove trash from the landscaping
- visually inspect lighting at dusk to ensure all bulbs are functional
- visually inspect the stone and plaques for any dark spotting or incised graffiti
- visually inspect bronzes for any spots of green corrosion or dull dry surfaces.
- clean bird poop and lizard guano off of sculptural elements using wooden skewers, distilled water, and soft tooth brushes. (conservation technician - 1/2 day)

Annual maintenance

Annual maintenance should be performed by a conservator working with maintenance staff.

- Document all sides of each sculptural element, benches, walls, floors, bronze sculptures, and hardscape stones. However, to identify any issues occurring with the interaction of the public, a condition report should continue to be made annually by a conservator, a trained conservation technician, or a registrar. The condition report must include any changes to the overall sculpture, documentation of any new damage to sculptural elements, procedures and products used during maintenance, and names of staff performing the biannual and annual maintenance (Conservator – 2 days).
- Apply D/2® Biological solution to the surface of the stones 1 week prior to washing. (maintenance staff-1 day for 1 person)
- Wash the sculptural elements by hand to remove built up dirt and debris and bird and lizard guano. Wash each element with a solution of Vulpex® liquid soap diluted in filtered tap water (~1tablespoon per 5 gallons water) using soft bristle brushes with plastic or taped metal handles. Wooden skewers may be used to remove stuck on guano and other accretions including cupric corrosion. (Conservation technicians or maintenance staff-1 day for 2 people)
- Wipe the bronze elements with Naptha® once dry. Apply one coat of hot wax to the surface after gently heating with a propane torch. The Getty Conservation Institute has formulated the best hot wax to use on outdoor sculptures, this wax is suggested for use on the bronze sculptures every other year or as needed. If hot waxing is not necessary, cold paste wax may be applied (Staples® 211carnuba paste wax (conservator- 1-2 days, conservation technician- 1-2 days)
- Remove efflorescence or mineral build-up from sculpture using a scalpel, this should be performed by a conservator. (conservator- 1/2 day)
- Trim back vegetation around Sculptural elements. This should be done by a maintenance staff member experienced with pruning plants. (maintenance staff- 1/2 day)
- Apply fertilizer as directed by the landscaping manual. Do not allow any fertilizer to come into contact with the sculptural elements. (maintenance staff-1/2 day for 1 person)

Maintenance required every 3-5 years or as needed:

- Remove the lacquer coating from the plaques and apply a new lacquer coating. This must be done at the first sign of any failing or crazing in the clear coat. Wherever the coating fails, the plaques will darken and this will require full conservation of the plaques to repair.

The clearcoat should be 1-2 dry mils thick. (Conservator 3 days, conservation technician 6 days)

Conditional Maintenance:

- Change light bulbs as needed.

Additional Recommendations:

- Move sprinkler heads so water does not get sprayed onto the bronze elements.
- Fill in holes on concrete pads with the appropriate material recommended by the engineering consultants to prevent water standing around stainless steel tubing.
- Apply a permeable, non-visible water repellent on the central stone under the bronze figures.
- Purchase and store replacement fixtures for the sculpture.
- Contractors to repair landscaping, masonry, electrical and lighting should first be contacted from Construction subcontractor list as they will already be familiar with the components of the project.

Cost Estimate:

Frequent Maintenance ~ 6 times per year	maintenance staff-1/2 day for 1 person@ \$96- \$120/day (\$12-\$15/hour)	\$288.00-\$360.00
Annual Maintenance- once per year	conservator- 3 to 5 days at \$680/day (\$85/hr.);	\$2,040.00-\$3,400.00
	conservation technician-4-5 days @ \$240/day (\$30/hour);	\$960.00-\$1200.00
	maintenance staff- 1 days @ \$96- \$120/day (\$12-\$15/hour)	\$96.00-\$120.00
Materials		\$500.00 to \$600.00
Total costs of maintenance per year		\$3,884.00-\$5,560.00

Cost Estimate for recoating plaques:

Recoating plaques every 3-5 years or as needed when crazing, flaking, or incised graffiti occurs	conservator- 3 days at \$680/day (\$85/hr.);	\$2040.00
	conservation technician- 6 days @ \$240/day (\$30/hr.)	\$1440.00
Materials		allow up to \$500.00
Total Costs		\$3,980.00

*Day rates are based on 8 hour days for people employed full time by the city of Chattanooga. Conservator and conservation technician rates are based on an 8 hour day for contract laborers. Estimates for conservation work done by a conservator are valid for 1 year.