

RESOLUTION NO. 31121

A RESOLUTION AUTHORIZING THE INTERIM ADMINISTRATOR FOR THE DEPARTMENT OF ECONOMIC DEVELOPMENT TO ENTER INTO AN AGREEMENT WITH THE ARTIST TEAM WOWHAUS (SCOTT CONSTABLE AND ENE OSTERAAS-CONSTABLE), IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE EAST LAKE PARK INTERACTIVE AND FUNCTIONAL ARTISTIC SEATING PROJECT, IN THE AMOUNT OF ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Interim Administrator for the Department of Economic Development to enter into an agreement with the artist team Wowhaus (Scott Constable and Ene Osteraas-Constable), in substantially the form attached, for the East Lake Park Interactive and Functional Artistic Seating Project, in the amount of \$150,000.00.

ADOPTED: May 24, 2022

/mem

SELECT: **TEMPORARY INSTALLATION**
 PERMANENT INSTALLATION

CITY OF CHATTANOOGA
PUBLIC ART STANDARD FORM AGREEMENT

This PUBLIC ART STANDARD FORM AGREEMENT (“Agreement”) governs the purchase, creation and installation of temporary and permanent works of art (“Artwork”) on property owned and/or operated by the City of Chattanooga (“City”), a Tennessee Municipal Corporation.

In consideration of the mutual promises and covenants contained herein, the City and Artist(s) (“Artist”), as further defined herein in **EXHIBIT B**, (collectively “Parties”) agree as follows:

1. Effective Date.

This Agreement is effective as of the date signed by the City.

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. City Purchase Order Standard Terms and Conditions (**EXHIBIT A**)
- b. Scope of Work/Specifications and Compensation Schedule (**EXHIBIT B**)
- c. Conservation Record and Maintenance Form (**EXHIBIT C**)
- d. Artwork Site Diagram/Drawing (**EXHIBIT D**)

3. City Purchase Order Standard Terms.

In the event of a conflict between the terms set forth in this Agreement and the City Purchase Order Standard Terms and Conditions (“City Standard Terms”), the City Standard Terms shall prevail, unless specifically noted otherwise and agreed to by the parties in writing.

4. Term.

For TEMPORARY EXHIBITS, the term of the Agreement shall be for a period of two years from the Effective Date said Agreement may be renewed for three (3) additional one (1) year terms on mutual agreement by Parties. For PERMANENT EXHIBITS, the terms of the Agreement shall terminate thirty (30) days after the City’s written acceptance of the installed 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 provisions governing Indemnification and Hold Harmless, Insurance, ID Rights and Waivers, Representations and Warranties, and Licensing.

5. 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 (conceptual design, final design/structural design, fabrication and installation)
- b. Project milestones and deadline for completion of each milestone
- c. Proposed site visits/meetings
- d. Costs associated with all work and expenses and an applicable payment schedule.

6. 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 appropriate City public art director. In the event so designated in the public art guidelines, the change may be approved by the public art governing body, board or committee (“Approval Body”). Any responsibilities of the City related to the design, fabrication or installation must be specifically set forth in **EXHIBIT B**, in a section entitled “City Responsibilities.”

7. Approval.

The Public Art Director or City designated Approval Body shall review and approve the Artwork at the designated project phases. The City’s approval, through its Public Art Division or through a designated Approval Body, 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.

The Parties acknowledge that certain elements of the Artwork are to be fabricated at locations away from the designated City property (“Site”). The City reserves the right to inspect each of the elements prior to transporting to the Site and prior to installation.

8. Transportation and Installation.

Artist is responsible for arranging transportation and installation of the Artwork on the designated Site in consultation with the appropriate City Public Art and Public Works personnel. Artist is responsible for any costs associated with storing the Artwork in advance of the scheduled installation date.

9. Licenses and Permits.

Artist shall secure and purchase any and all required licenses, permits and similar legal authorizations necessary for the installation of the Artwork on the Site.

10. 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.

11. 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 two years after acceptance of the Artwork, City observes any breach of warranty that is curable by Artist, Artist shall, at the request of the City, promptly cure any breach to the satisfaction of the City and consistent with professional conservation standards, at no cost or expense to the City. City agrees to provide reasonably prompt notice to the Artist of any breach.

If within one year after acceptance of the Artwork City observes any breach of warranty described in this section that is either not curable by Artist or not timely cured by Artist, Artist is responsible for reimbursing the City for all damages, expenses, and loss incurred by City as a result of the breach.

12. Indemnification and Hold Harmless.

Artist, its employees, officers, contractors, and subcontractors shall indemnify (including attorney's fees) and hold harmless the City, 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.**

13. Site Appearance.

Artist shall be responsible for maintaining the Site in a neat manner. Artist shall be responsible for any clean-up of the Site made necessary by the installation of the Artwork, including removal of equipment, materials and the repair of any portion of the Site or surrounding area damaged by the installation of the Artwork.

14. 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 and produce a Certificate of Insurance with insurance coverage levels as set forth in the City Standard Terms, **EXHIBIT A**.

15. Acceptance.

City shall require written notice of final acceptance of the Artwork by the City. 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.

16. Final Inspection.

Final inspection of the Artwork shall be conducted by the City within thirty (30) days of receiving written notice from the Artist of the completed installation.

17. 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.

18. 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 City 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 City against any award of damages and costs made against City 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.

City 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.

City 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 City unless approved by the City consistent with the requirements set forth in Chattanooga City Code. **The provisions of this section shall survive termination of this Agreement.**

19. License.

Artist grants a perpetual license to the City for the use of the Artwork for educational, community, and other non-commercial uses. In the event the City wishes to use the Artwork for commercial purposes, the Artist agrees to negotiate in good faith to enter into a separate agreement governing the use of the Artwork for commercial purposes.

20. Intellectual Property: Rights and Waivers.

a. Ownership.

Any artwork created for permanent installation under this Agreement shall be the property of the City. Ownership of the Artwork shall be transferred from the Artist to the City upon written final acceptance by the City. City shall retain all documentation regarding the Artwork. Upon final acceptance, City shall have a right to all plans, drawings, sketches, designs, and other work of the Artist pertaining to the Artwork for maintenance, repair and historical documentation purposes only, unless otherwise specified herein.

b. Copyright.

Artist retains all copyrights not otherwise granted to the City 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 City.

c. Reproductions.

Artist shall not create or display three-dimensional reproductions of the Artwork at any location other than the City Site, nor shall Artist grant permission for others to create or display three-dimensional reproductions, except with written permission of the City.

d. Exclusive License for Non-Commercial Reproductions.

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

e. Publicity.

City 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.

f. Credits.

Artist agrees that any reproduction made by Artist for publicity purposes shall refer to City of Chattanooga Public Art." City 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 City permission to use his or her likeness in photograph, video or digital reproduction, for purposes of promoting the Artwork.

21. Maintenance, Repair or Restoration.

The Artist acknowledges that the Artwork must be durable, with due consideration given to the outdoor nature of the Artwork and its subsequent exposure to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that the Artwork's maintenance requirements will be reasonable in terms of time and expense.

With respect to any cleaning, maintenance, repair or restoration of the Artwork, Artist shall be consulted if possible if the need for repair or restoration arises. City will send written notice to the Artist at least thirty (30) days prior to the commencement of any repair and restoration work.

Artist understands that the Artist's participation shall be at no cost to the City. The nature of the repair shall not significantly alter the original appearance of the Artwork and shall be consistent with the Artist's repair instructions. The Artist shall not be responsible for bearing any costs associated with the maintenance, repair or restoration of the Artwork for damage or deterioration to the Artwork that occurs at a point after the City's final written acceptance of the Artwork.

The City shall maintain the Artwork pursuant to the instructions provided by Artist and submitted by Artist on the Conservation Record and Maintenance Form attached hereto as **EXHIBIT C** and incorporated herein by reference.

Artist shall take reasonable measures to protect or preserve the integrity of the Artwork, such as the application of protective or anti-graffiti coatings.

Artist warrants the foreseeable exposure to the elements and general wear and tear will not cause the Artwork to fall below an acceptable standard of public display.

Prior to receipt of final payment, Artist shall provide a maintenance manual with a description of all materials, products and fabrication methods used in the Artwork and the required care and upkeep involved, including: (i) product data sheets for any material or finish used; (ii) the names and contact information of relevant manufacturers or producers; and, (iii) to the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties. Artist warrants the responsible maintenance of the Artwork will not require procedures substantially in excess of those described in the recommended maintenance manual.

Repairs and restoration of the Artwork, if any, are to be distinguished from maintenance of the Artwork, as addressed above. City shall determine when and how repairs and restoration to the Artwork will be made. However, at no cost to City whatsoever, and to the extent practicable, Artist will have the opportunity to comment on and participate in all repairs and restoration that are made during the Artist's lifetime. City will give written notice to the Artist prior to undertaking repairs or restoration of the Artwork, and Artist will have 30 days from the date that the notice is sent by City to advise City, as specified in the notice, of Artist's wish to so comment and/or participate. Notice will only be sent by City to the address provided by Artist. Artist is responsible for keeping City advised of Artist's current mailing address. Artist understands that City's repairs and restoration of the Artwork will be limited and determined in significant part by funding decisions of the City Council and other officials and departments. **The provisions of this section shall survive termination of this Agreement.**

22. Deaccessioning.

The Artist agrees and acknowledges that should deaccessioning of the Artwork become necessary at any point the City shall proceed with deaccessioning pursuant to the guidelines as may be established by the City's Public Art division or as may be established by an Approval Body.

23. Resiting.

The images in **EXHIBIT D**, which is attached hereto and incorporated herein by reference, depict potential locations within East Lake Park where the Artwork could be located. The exact location of the Artwork will be confirmed during the concept development phase. Once the exact location of the Artwork is determined, the Artwork shall remain at its designated site. However, City reserves the right to relocate the Artwork in its sole discretion.

24. 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.

25. 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 City 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 City.

26. Death or Incapacity of Artist.

In the event of Artist's physical incapacity or death prior to the completion of the Artwork, all payments made 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 City will become the property of City. However, if the Artwork is substantially designed and/or completed and it is feasible for the work to be fully completed without undue delay, City may elect to proceed under the terms of this Agreement and hereby has the consent of the Artist to proceed. In the event the City 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:

Address:

Phone Number:

27. Venue.

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

28. Compensation.

The pricing details are demonstrated in **EXHIBIT B**. Artist shall be paid as work is completed and City is accordingly invoiced based as milestones as set forth in **EXHIBIT B** are completed and approved by City.

There will be no other charges or fees for performance under this Agreement. City will make reasonable efforts to make payments within thirty (30) days of receipt of invoice but in any event shall make payment within sixty (60) days.

29. Taxes.

City 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 City.

30. 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.

31. Termination.

Breach. Should Artist fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if it should violate any of the terms of this Agreement, City shall have the right to immediately terminate the Agreement. Such termination shall not relieve Artist of any Liability to City for damages sustained by virtue of any breach by Artist.

Notice by City. City 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.

Lack of Funding. Should funding for this Artwork be discontinued, City shall have the right to terminate the Agreement immediately upon written notice to Artist.

32. City Property.

Any City property that is in Artist's possession shall be maintained by Artist in good condition and repair, and shall be returned to City by Artist upon termination of the Agreement. All goods, documents, records, and other work product and property produced during the performance to this Agreement are deemed to be City property.

33. Contingent Fees.

Artist hereby represents that Artist has been retained or retained any persons to solicit or secure a City contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of the paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being an Artist or subcontractor Artist under City contracts.

[SIGNATURE PAGE TO FOLLOW]

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.

CITY OF CHATTANOOGA

By: _____

Printed Name: _____

Title: _____

Date: _____

ARTIST

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

CITY OF CHATTANOOGA

Direct all invoices to:
City of Chattanooga
Attn: Accounts Payable
101 E. 11th Street
Chattanooga, TN 37402



PURCHASING OFFICE
101 E. 11th Street, Suite G13
Chattanooga, TN 37402
Phone: 423-643-7230

City of Chattanooga Purchase Order Standard Terms and Conditions

- ACCEPTANCE-AGREEMENT.** Contractor's commencement of work on the goods/non-professional services subject to the purchase order or shipment/performance of those goods/non-professional services, whichever occurs first, is considered an effective mode of Contractor's acceptance of this purchase order. Any acceptance of the purchase order is limited to acceptance of the express terms contained on the face of the purchase order and these terms and conditions. Any proposal for additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this offer in Contractor's acceptance is objected to and rejected, but any proposals do not operate as a rejection of this offer unless the variances are in the terms of the description, quantity, price or delivery schedule of the goods/non-professional services, but are considered a material alteration, and this offer will be considered accepted by Contractor without additional or different terms. Additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this purchase order are considered material and are objected to and rejected, but the purchase order does not operate as a rejection of the Contractor's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods/non-professional services.
- GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Tennessee and the Codes of the City of Chattanooga ("City").
- COMPENSATION AND PAYMENT TERMS.** For the completion of the Work, City shall pay Contractor the contract sum set forth in the purchase order. Payments may be made in amounts which are consistent with percentage of goods/non-professional services completed and invoiced by the Contractor as set forth in the purchase order.

The City's delivered payment terms are payment within thirty (30) days except where the law provides otherwise. Payment may be sooner where cash discounts are offered for early payment, however, cash discounts offered will not be considered in determining lowest bidder. In no event will payment be made prior to receipt of an original invoice containing invoice and purchase order numbers and receipt of purchased item(s). The City is not liable for delays in payment caused by failure of the Contractor to send invoice to the address referenced herein.

- INSPECTION/TESTING.** Payment for the goods delivered does not constitute acceptance of the goods. City has the right to inspect the goods and to reject any or all of the goods which are in City's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for may be returned to Contractor at its expense and in addition to City's other rights. City may charge Contractor all expenses of unpacking, examining, repacking and reshipping those goods. In the event City receives goods whose defects or nonconformity is not apparent on examination, City reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order will relieve in any way the Contractor from the obligation of testing, inspection and quality control.
- PRICE WARRANTY.** Contractor warrants that the prices for the goods or non-professional services sold City are not less favorable than those currently extended to any other customer for the same or similar goods or non-professional services in similar quantities. In the event Contractor reduces its price for the goods or

non-professional services during the term of this purchase order, Contractor agrees to reduce the prices charged to City correspondingly. Contractor warrants that prices shown on this purchase order are complete, and no additional charges of any type will be added without City's express written consent. Any additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

6. **STANDARD OF CARE.** Contractor shall exercise the same degree of care, skill, and diligence in the performance of services as is ordinarily possessed and exercised by a professional Contractor under similar circumstances in the same area of practice. Contractor makes no warranty or guarantee, either expressed or implied, as part of this agreement.
7. **INDEMNIFICATION.** Contractor must defend, indemnify and hold harmless the City 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 Contractor, its agents, employees or subcontractors. Additionally, Contractor 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 Services or Software, when used within the scope of this Agreement, infringes, violates or misappropriates a valid third party patent, copyright or other proprietary right, provided that Contractor is notified promptly in writing of the action and Contractor is given the option, at its expense, to control the action and all requested reasonable assistance to defend the same.
8. **INSURANCE.** Contractor shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Contractor 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.

Contractor shall not commence work on the goods/non-professional services until a Certificate of Insurance has been submitted to the City showing proof that Contractor has obtained the necessary insurance coverage. If any of the above cited policies expire during the life of this Agreement, it is the Contractor'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. Contractor'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 Contractor under this Agreement.
9. **LIMITATIONS OF RESPONSIBILITY.** In no event is City liable for anticipated profits or for incidental or consequential damages. City's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach of this Agreement will in no case exceed the unit price allocable to the goods or non-professional services which gives rise to the claim. City is not liable for penalties of any description. Any action resulting from any breach of this Agreement by City as to the goods or non-professional services delivered must be commenced within one (1) year after the cause of action has accrued.
10. **PROPRIETARY INFORMATION-CONFIDENTIALITY-ADVERTISING.** Contactor must consider all information furnished by City to be confidential and not disclose any information to any other person, or use the information itself for any purpose other than performing this Agreement, unless Contractor obtains written permission from City to do so. This paragraph applies to drawings, specifications, or other documents prepared by Contractor for City in connection with this Agreement. Contractor must not advertise or publish the fact that City has contracted to purchase goods from Contractor, nor is any information relating to the order to be disclosed without City's written permission. No commercial, financial or technical information disclosed in any manner or at any time by Contractor to City is to be considered secret or confidential, unless otherwise agreed in writing, and Contractor has no rights against City with respect to this information except any rights as may exist under patent laws. Contractor recognizes that City's employees have no authority to accept any information in confidence.
11. **RECORDS RETENTION AND AUDIT.** The term "Contractor" is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with the City (Engineer, Contractor, Licensee, Supplier, Vendor, Contractor, 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 Contractor, or any of the Contractor'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 Contractor and its personnel to perform the obligations of this Agreement, and 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, or its assigns, may audit all financial and related records (including digital) associated with the terms of the contract or agreement, including timesheets, reimbursable out of pocket expenses, materials, goods and equipment claimed by the Contractor. 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. The Contractor shall at all times during the term of the contract or agreement, and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed

pursuant to this contract or agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor, which are necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with general accepted accounting principles. The Contractor 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 the Contractor and any subcontractors or suppliers of goods or non-professional services to the extent that those subcontracts or agreements relate to fulfillment of the Contractor'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. The Contractor 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.

12. **TERMINATION FOR CONVENIENCE.** City 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, Contractor must immediately stop all work and immediately cause any of its suppliers or subcontractors to cease any further work. Contractor 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. Contractor will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. Contractor must not unreasonably anticipate the requirements of this order.

13. **TERMINATION FOR CAUSE.** City 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 Contractor, or if Contractor 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 City, upon request, with adequate assurances of future performance are all causes allowing City to cancel this order for cause. In the event of cancellation for cause, City is not liable to Contractor for any amount, and Contractor is liable to City for any and all damages sustained by reason of the default which gave rise to the cancellation. If it should be determined that City has improperly cancelled this contract for a default, the cancellation is considered a termination for convenience.

14. **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:

- 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 Contractor 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.

15. **DELAY IN PERFORMANCE.** Neither City nor Contractor 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 Contractor 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 Contractor is delayed in the performance of the services for more than three hundred sixty-five (365) calendar days, either by the City or circumstances beyond his control, an equitable adjustment to the contract amount can be made to compensate for additional costs incurred.

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

16. **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 Contractor 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 Contractor also agree that the discovery of unanticipated hazardous materials may make it necessary for the Contractor to take immediate measures to protect health and safety. City agrees to compensate Contractor for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

Contractor 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 Contractor harmless for any and all consequences of disclosures made by Contractor which are required by governing law. In the event the project site is not owned by City, the City agrees to inform the City of the discovery of unanticipated hazardous materials or suspected hazardous materials.

17. **COMMUNICATIONS.** Any notice to the City shall be made in writing to the address specified below:

City of Chattanooga
Attn: Purchasing
101 E. 11th Street, Suite G13
Chattanooga, TN 37402
(423) 643-7230

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and City.

18. **WAIVER.** A waiver by either City or Contractor of any breach of this Agreement shall be in writing. City'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 City's waiver of any breach does not waive any other terms, conditions, or privileges, whether of the same or similar type
19. **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.
20. **INTEGRATION.** This Agreement represents the entire and integrated agreement between City and Contractor. All prior and contemporaneous communications, representations, and agreements by Contractor, 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.
21. **SUCCESSORS AND ASSIGNS.** City and Contractor 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.
22. **ASSIGNMENT.** Neither City nor Contractor 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 Contractor from employing independent Contractors, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event Contractor employs independent Contractors, associates, and subcontractors to assist in performance of the Services, Contractor shall be solely responsible for the negligent performance of the independent Contractors, associates, and subcontractors so employed.
23. **THIRD PARTY RIGHTS.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.
24. **RELATIONSHIP OF PARTIES.** Nothing contained herein shall be construed to hold or to make the City a partner, joint venturer, or associate of Contractor, 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.
25. **NON-DISCLOSURE.** Contractor agrees not to disclose or to permit disclosure of any information designated by the City as confidential, except to the Contractor's employees and independent Contractors, associates, and subcontractors who require such information to perform the services specified in this agreement.
26. **NON-DISCRIMINATION.** Contractor agrees to comply with all federal, state, and local non-discrimination laws and regulations. Contractor agrees not to discriminate against any participant in this Agreement on the basis of race, color, religion, sex, age or national origin. Contractor further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

27. **DRUG FREE WORKFORCE.** Contractor 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.
28. **FEDERAL OR STATE FUNDING.** In the event that the Project is funded in whole or in part by Federal or State grants, Contractor agrees to abide by all applicable Federal and State laws, regulations, grant conditions and procedures.
29. **COMPLIANCE WITH LAWS.** The City has entered into this agreement with Contractor relying on its knowledge and expertise to provide the services contracted for. As part of that reliance, Contractor represents that he knows and understands the relevant and applicable federal and state laws that apply to the services provided through this contract, and agrees to comply with these relevant and applicable federal and state laws.

The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1988.

Exhibit B

Scope of Work/Specifications and Fees

NOTE: This EXHIBIT B must be provided to the City Attorney's Risk and Claims Analyst for inclusion of the Artwork under the City's fine art insurance policy

SCOPE OF WORK

The Artist team's scope shall include the creation and installation of a permanent site-specific, community informed interactive/functional artistic public art seating project in Chattanooga's historic East Lake Park. Community members identified permanent public art as a mechanism to connect the diverse neighborhood together in a shared space; while also acknowledging the place's history, and the role that East Lake has had in shaping the city of Chattanooga for more than 130 years. Key artwork priorities include:

- reflect the people and the culture of the East Lake Neighborhood;
- make an inactive space within East Lake Park inviting;
- encourage rest, relaxation, and/or play without distracting from the natural elements and flow of the Park;
- incorporate an interactive element such as sound, movement, shade or light; and
- take into consideration the communities' homeless population.

The artwork must not obstruct pedestrian right of ways and must meet the safety standards of the City of Chattanooga. As this is an intensively used public space, artwork elements must be constructed of durable materials that are highly resistant to theft and vandalism, as well as appropriate for Chattanooga's four season climate. The Artist team shall execute and install the artwork in accordance with the final design proposal to be approved at a later date by project's artwork selection panel and the Chattanooga Public Art Commission.

Project Phases and Deliverables:

CONCEPT DESIGN PROPOSALS

The Artist team agrees to co-create and co-facilitate one community workshop and/or community engagement activity with the project's Creative Strategist, ELLA Library. The workshop/community engagement activity will be conducted during travel to Chattanooga in June/July 2022, which will also include a site visit with key City personnel in attendance to identify possible locations for the seating and provide a sense of the environment. The Artist team will proceed to develop three (3) preliminary concept seating designs based on input from the site and community.

The Artist team will then present the preliminary concept designs virtually to the community and artwork selection panel in September 2022. Please note, due to the rising price index in the fabrication/construction industry and supply shortages imposed by COVID-19 pandemic, care

should be extended during the concept design development phase to ensure that any one of the concepts developed could be selected as the final design and executed within the project budget of \$150,000.

Key Deliverables

Produce (3) preliminary concept artwork packages for community feedback:

- Written Narrative
- Concept Renderings
- Proposed Site Plan
- Materials, Fabrication and Installation Narratives
- Maintenance and Conservation Narratives
- Schedule Outline
- Line item budget not to exceed project total of \$150,000. The project budget is all inclusive and should include all costs related to travel, lodging, design, materials, fabrication, shipping, site preparation security, foundation, lighting (if applicable), equipment for installation, insurance, permits, assistants, installation support, and other relevant costs relating to the production and installation of the artwork/s. No additional funds are available.

Feedback from that presentation will inform up to three (3) final concept designs packages with applicable revisions as needed to the documentation within the preliminary concept design package. The final concept designs will be presented virtually to the artwork selection panel no later than the first week of October 2022.

The artwork selection panel will convene shortly thereafter to select the final design for Public Art staff to present at the Chattanooga Public Art Commission meeting on October 27, 2022 for approval. Key deliverables due by October 19, 2022 include:

FINAL DESIGN / TECHNICAL DRAWINGS

- Final Site Plan, Artwork Plans and Elevation views with Dimensions
- Final Materials, Fabrication and Installation Specs and Technical Drawings required for permits
- Maintenance and Conservation Details
- Final Line Item Budget not to exceed \$150,000
- Final Schedule

Pending an affirmative vote of the Chattanooga Public Art Commission and subsequent pre-submittal plans review meeting with the City's Land Development Office to inform technical drawings needed for permit submission, the Artist Team may proceed into fabrication.

FABRICATION

Artist agrees to fabricate and/or deliver all elements of the artwork as illustrated in the permitted plan set.

Key Deliverables:

- a. 50% progress photos of fabrication
- b. 100% photos of completion

INSTALLATION

Artist agrees to install all elements as illustrated in the permitted design and provide a completed conservation record for ongoing care and maintenance of the artwork as well as photo documentation of the installed work.

Key Deliverables:

- a. Site preparation
- b. Site security
- c. Site repair
- d. Final inspection of Artwork
- e. Photos of completed installation
- f. Exhibit C: completed conservation record

Description of Work

ARTWORK/PROJECT NAME: East Lake Park Interactive/Functional Artistic Seating

ARTWORK INSTALL LOCATION: 3000 E. 34th Street, Chattanooga, TN 37407

ARTIST NAME: WOWHAUS (Scott Constable and Ene Osteraas-Constable)

ARTIST ADDRESS: 885 Jonive Road Sebastopol, CA 95472

ARTIST PHONE: (510) 390-1724

ARTIST EMAIL: studiowowhaus@yahoo.com

CREDIT: WOWHAUS (Scott Constable and Ene Osteraas-Constable)

(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 E

MEDIUM:

DIMENSIONS: TBD (H) (W) (D)

ESTIMATED INSURANCE VALUATION: TBD

Responsible Party	Description of milestone	Completion Date
Public Art Chattanooga	Artist Team Under Contract	May 2022

Public Art Chattanooga, ELLA Chattanooga & Artist Team	In Person Site Visit & Engagement Event/Workshop	June/July 2022
Public Art Chattanooga & Artist Team	Virtual Preliminary Concepts Presentation for Feedback	September 2022
Public Art Chattanooga & Artist Team	Virtual Final Concepts Design Presentation	By first week of October 2022
Public Art Chattanooga	CPAC Final Design Presentation & Vote	October 27, 2022
Artist Team, Public Art Chattanooga and City Land Development Office	Pre-Submittal Plans Review Meeting/ Technical Drawings submitted for Permits	November 2022
Land Development Office & Artist Team	Permits Issued	December 2022/ January 2023
Artist Team	Installation	May/June 2023

COMPENSATION SCHEDULE

City agrees to compensate the Artist team a fixed fee of \$150,000.00, which shall constitute full payment for the Artist team’s fee for design development, creation and installation of site-specific, community informed artwork / seating elements to include all costs related to travel, lodging, design, materials, fabrication, shipping, site preparation security, foundation, lighting (if applicable), equipment for installation, insurance, permits, assistants, installation support, and other relevant costs relating to the production of the artwork/s. The City agrees to hold separate funds equal to 10% of the total value of the artwork for ongoing preventative maintenance. The fixed fee shall be paid in installments as follows:

Total Compensation: \$150,000.00		
Installment	Amount	Deliverable
Installment 1	\$20,000	Contract executed, travel reservations for site visit and invoice submission.
Installment 2	\$80,000	After pre-submittal plans review meeting/technical drawings submitted for permits and invoice submission.
Installment 3	\$20,000	50% progress photos of fabrication and invoice submission.
Installment 4	\$20,000	100% fabrication completion photos and invoice submission.
Installment 5	\$10,000	Installation, final inspection, completed maintenance and conservation record, photo documentation, and invoice submission.

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

EXHIBIT C
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: WOWHAUS (Scott Constable & Ene Osteraas-Constable)
2. Address 885 Jonvine Rd. Sebastopol, CA 95472
3. Phone (510)390-1724
4. Email studiowowhaus@yahoo.com
5. Title of artwork _____
6. Description of artwork: _____
7. Date and place executed: _____
8. Installation date: _____
9. Project Name and address: East Lake Park Interactive/Functional Artistic Seating, 300 E. 34th Street, Chattanooga, TN 37407
10. Location of artwork/site: _____
11. Medium: _____
12. Dimensions: Height: _____ Width: _____ Depth: _____
13. Approx Weight: _____
14. Location and description of copyright mark (if it occurs):

15. Fabricator, if other than artist (name, address, telephone)

16. Exhibitions and Collection (pertaining to the above work):

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?
26. Suggested routine maintenance:
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 _____ Date _____ :

EXHIBIT D
ARTWORK SITE DIAGRAM

In person site visit will confirm artwork location(s)



