

3/26/13

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE COMMUNITY FOUNDATION TO ESTABLISH AN ACCOUNT FOR RECEIPT OF DONATIONS FROM INTERESTED PARTIES TO SUPPORT AND MAINTAIN PUBLIC ART.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor be and is hereby authorized to enter into an agreement with the Community Foundation to establish an account for receipt of donations from interested parties to support and maintain public art.

ADOPTED: \_\_\_\_\_, 2013.

/mms

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: February 12, 2013

Preparer: Wanda Eckstein

Department: Parks & Recreation

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # \_\_\_\_\_ Council District # \_\_\_\_\_

A Resolution is needed authorizing the Mayor to enter into an Agreement with the Community Foundation to establish an account for receipt of donations from interested parties to support and maintain public art.

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

New Contract/Project? (Yes or No) \_\_\_\_\_  
Funds Budgeted? (YES or NO) \_\_\_\_\_  
Provide Fund \_\_\_\_\_  
Provide Cost Center \_\_\_\_\_  
Proposed Funding Source if not budgeted \_\_\_\_\_  
Grant Period (if applicable) \_\_\_\_\_

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
\$ _____	_____
\$ _____	_____
\$ _____	_____

Agency Grant Number \_\_\_\_\_

CFDA Number if known \_\_\_\_\_

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

Approved by: \_\_\_\_\_

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

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

Revised: 1/26/09

1404

AGREEMENT

THIS AGREEMENT has been made on the \_\_\_ day of \_\_\_\_\_, 2013, between THE COMMUNITY FOUNDATION OF GREATER CHATTANOOGA, INC. (the "Community Foundation") and CITY OF CHATTANOOGA, ("City").

WHEREAS, City plans to partner with the Community Foundation to solicit gifts from the community to be contributed to the Community Foundation to be managed under the name of the City of Chattanooga Public Art Maintenance Fund (the "Fund"); and

WHEREAS, City acknowledges that it is desirable for administrative convenience and economy for the contributed assets that will comprise the Fund to be managed by the Community Foundation for the fees set forth herein; and

WHEREAS, the Community Foundation is willing to accept the assets comprising the Fund, invest and manage such assets, and make charitable grants from the income and/or principal of the Fund as set out in this Agreement all in furtherance of the Community Foundation's exempt purposes.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. City does hereby transfer, assign and convey to the Community Foundation, and the Community Foundation hereby accepts, all right, title and interest in the assets to comprise the Fund, and all additional monies received and receivable by the Fund, to be held, managed and administered by the Community Foundation in furtherance of its exempt purposes. The parties acknowledge that the Community Foundation shall be deemed the fee owner of the assets comprising the Fund and that the Community Foundation has the ultimate authority and control over the assets comprising the Fund and the income derived from such assets subject only to the Community Foundation's governing instruments and the terms of this Agreement. The parties intend that the Fund shall be deemed a component part of the Community Foundation and not subject to any material restriction or condition in accordance with Treasury Regulations Section 1.170A-9(f)(11) and that this Agreement should be construed accordingly.

2. The assets so managed and administered by Community Foundation shall be known as the City of Chattanooga Public Art Maintenance Fund. The Community Foundation shall have the power to perform all acts and enter into and perform all contracts and other undertakings which it may deem necessary, advisable or incidental to the management and administration of the Fund, including, but not limited to the power to:

(a) select, purchase, hold, sell, transfer, exchange and otherwise acquire and dispose of domestic or foreign securities and other investments, and otherwise deal in and exercise all rights and powers and incidents of ownership or possession under such terms and conditions as it determines acceptable with respect to all assets comprising the Fund;

(b) invest on an interim basis in U.S. Treasury obligations, money market funds or similar liquid vehicles, domestic or foreign, pending further investment decisions;

(c) open, maintain and close brokerage accounts;

(d) open, maintain and close bank accounts and draw checks or other orders for the payment of moneys.

City shall have no right to direct the investment or allocation of assets comprising the Fund and shall have no recourse against the Community Foundation for investment or other management decisions made with respect to the Fund. City acknowledges that the Community Foundation is not engaged in the business of rendering investment supervisory services as defined in Section 202(a)(13) of the Investment Advisors Act of 1940, as amended, and that no portion of the fee hereunder shall be deemed made for such services.

3. It is the intent of City that the income and/or principal of the Fund shall be used to fund the maintenance expense of works of public art in Chattanooga, TN. It is the intent of City that the Fund remain in existence during the continuation of the City. City desires that the Fund be invested in accordance with this intention and that distributions from the Fund be made at a level deemed sustainable to the foregoing goal. In accordance with these objectives, the Community Foundation shall determine and distribute an amount determined on an annual basis to underwrite the public art maintenance of City.

4. An advisory committee (the "Committee") shall be selected to make recommendations to the Community Foundation regarding charitable grants from the Fund. The Administrator of Parks and Recreation, the Public Art Committee chair and the Director of Public Art Chattanooga shall be the members of the Committee. Vacancies on the Committee shall be filled by majority vote of the members remaining on the Committee. Notice of such selection shall be given in writing by the Committee to the Community Foundation. NO ADVISOR SHALL BE A DONOR TO THE FUND.

5. The Community Foundation shall receive, review and consider written recommendations from the Committee concerning grants to support City's charitable activities. The final decision concerning the amount, recipient, timing and conditions of any such grants shall be made by the Community Foundation and City acknowledges that the Community Foundation is not bound by the advice of the Committee and that City has no right or recourse against the Community Foundation in the event the advice of the Committee is not followed.

6. The Community Foundation shall charge a fee from time to time for its services in connection with the Fund. Such fee shall be charged according to a schedule approved by the Board of Directors of the Community Foundation and shall be deducted from the Fund. Fees of outside agents may also be deducted for services rendered to the Community Foundation on behalf of a Fund. The current annual fee schedule is one and one-quarter percent (1.25%) of market value deducted pro rata on a quarterly basis. The fee is designed to reflect

generally the costs of the Community Foundation in the management and administration of the Fund and may be unilaterally adjusted by the Board of Directors of the Community Foundation. City acknowledges that City has no right or recourse against the Community Foundation in the event the fees deducted from the Fund are increased or otherwise changed.

7. In the event that the specific purposes of the Fund cannot be attained, then the Fund shall be used for such purposes most closely related to the charitable activities of the City as set forth herein as the Community Foundation's Board of Directors, in consultation with the Committee, shall determine to be appropriate, proper and legally permissible, consistent with the Community Foundation's exempt purposes.

8. The City or its assign may audit all financial and related records (including digital) associated with the terms of this agreement. The City may further audit any contractor 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. The Community Foundation shall at all times during the term of this agreement and for a period of five (5) years after the end of this agreement, keep and maintain records of the Fund. Documents shall be maintained by the Community Foundation necessary to clearly reflect all receipt of funding and expenditures of the Fund. All such records shall be maintained in accordance with generally accepted accounting principles. The 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. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Community Foundation and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Community Foundation's obligations to the City and the Fund.

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 Community Foundation shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City. 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. This Agreement shall be deemed to continue for so long as the Fund may be in existence and shall not be deemed changed unless a modification is needed so that the Fund may be treated for Federal tax purposes as a component part of the Community Foundation or so that the Community Foundation may continue to qualify as a publicly supported organization.

10. This agreement may be terminated by mutual assent of the parties, upon ninety (90) days written notice for either party or as may be required by law.

11. This Agreement shall be governed by the laws of the State of Tennessee.

12. Signed at Chattanooga, Tennessee, on the first date written above.

CITY OF CHATTANOOGA

By: \_\_\_\_\_

THE COMMUNITY FOUNDATION  
OF GREATER CHATTANOOGA, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_