

RESOLUTION NO. 29354

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MOMENT FACTORY, IN SUBSTANTIALLY THE FORM ATTACHED, FOR PUBLIC ART DESIGN SERVICES FOR THE WALNUT STREET BRIDGE RENOVATION PROJECT TO INCLUDE CONCEPTUAL DESIGN AND SPECIALTY LIGHTING CONSULTANT SERVICES, IN THE AMOUNT OF THIRTY-EIGHT THOUSAND DOLLARS (\$38,000.00).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor is hereby authorized to execute an agreement with Moment Factory, in substantially the form attached, for Public Art Design services for the Walnut Street Bridge Renovation Project to include conceptual design and specialty lighting consultant services, in the amount of \$38,000.00.

ADOPTED: March 13, 2018

/mem



## CITY OF CHATTANOOGA PUBLIC ART CONCEPTUAL DESIGN DEVELOPMENT AGREEMENT

This AGREEMENT FOR CONCEPTUAL DESIGN DEVELOPMENT (the “Agreement”) is made and entered into by the CITY OF CHATTANOOGA (“Client” and/or “City”) and the artists and artists’ organizations (the “Design Team”) (collectively the “Parties”) as of the date this Agreement is signed by the Client (“Effective Date”).

WHEREAS, Client desires to obtain public art design services (the “Services”) in connection with the development of a conceptual design for artwork (the “Project”) to be installed at a location designated by the City (the “Site”);

WHEREAS, Client seeks to obtain additional information about potential art projects for the designated location and assess the feasibility of those potential art projects; and

WHEREAS, Design Team is in the business of creating original works of art.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Scope of Services.** The Design Team, the members of which are identified in **EXHIBIT A**, attached hereto and incorporated by reference, shall provide design services and deliverables as set forth in **EXHIBIT A**. The Services shall result in deliverables embodying a conceptual design (the “Conceptual Design”) for artwork from which a plan for fabrication and installation (the “Final Design”) can be derived at a later date pursuant to a separate agreement, should Client select Design Team’s Conceptual Design. Design Team may submit the Conceptual Design by the submission deadline via email or regular U.S. Mail (postmarked no later than the submission deadline).

2. **Schedule of Performance.** The Parties agree that time is of the essence. Design Team shall adhere to the meeting schedule as set forth in **EXHIBIT A** and shall provide the Conceptual Design to Client no later than the stated submission deadline.

3. **Extension of Time.** The Client agrees to grant a reasonable extension of time to Design Team in the event that there is a delay caused by the Client, conditions beyond Design Team’s control, or pursuant to those circumstances set out in the section entitled “Force Majeure.” Extensions of time shall be agreed to by both Parties in writing and executed as an amendment to this Agreement.

4. **Compensation.** Client agrees to pay Design Team the agreed upon fee for the Conceptual Design. The payment terms are set forth in **EXHIBIT B**, attached hereto and incorporated herein by reference. Design Team is responsible for paying all taxes incurred as a result of payment under this Agreement.

5. **Invoicing.** Invoices for Services shall be submitted to the party responsible for receiving notice and communications on behalf of the Client. Payment as set forth under this Agreement will be made payable to members of Design Team and will be remitted by check to

the address indicated for receipt of communication. Client will reimburse Design Team within thirty (30) calendar days of Client's approval of invoice from Design Team.

**6. Representations and Warranties.** Design Team represents and warrants that the Services rendered pursuant to this Agreement shall result in an original design that, to the best of Design Team's knowledge, does not infringe on any third party intellectual property rights.

Client shall make available for Design Team's examination and use all information regarding the Site and Project, including but not limited to, plans, specifications, reports, narratives, publications, statistics, records and other information pertinent to Design Team's performance under this Agreement and represents and warrants the accuracy and completeness of the same.

The Design Team represents it maintains appropriate general liability insurance coverage as set forth in **EXHIBIT C**. In the event the City enters into a contract for artwork creation, the Design Team represents that it will maintain all required insurance, including professional liability, as set forth in **EXHIBIT C** of this Agreement.

**7. Approval Process.** Client shall make every effort to timely notify Design Team as to how Client wishes to proceed with regard to Design Team's Conceptual Design.

Client may:

a. Request additional development of the Conceptual Design prior to determining whether Client will be selected to complete the Final Design.

b. Select Design Team's Conceptual Design for development into a Final Design, subject to approval by Council or other designated public art approval body. The Parties shall enter into a separate agreement for the Final Design and Creation of the Artwork.

If Client does not select Design Team's Conceptual Design, Client may not use any part of Design Team's Conceptual Design for future development without the specific written approval of Design Team.

**8. Further Approvals.** In the event that further approvals or reviews are necessary for Client to select Design Team's design for Final Design and Creation, Design Team, as part of this Agreement and for no further compensation except for reimbursable expenses, shall prepare the necessary materials for and be available to personally present the same to the appropriate public art approval body to proceed with the Final Design of the artwork. Client will give Design Team no fewer than ten (10) days' notice of the scope of materials needed and time and location of the meeting.

**9. Intellectual Property.** Notwithstanding anything to the contrary herein, Design Team retains all copyrights and other intellectual property interests in the Conceptual Design and in any plans, drawings, renderings, schematics, design studies and models and the like prepared by Design Team in connection with this Agreement. The Design Team is responsible, at his/her option, for registering any copyrightable material in his or her name with the U.S. Register of Copyrights at no additional cost to Client. It is specifically understood that given the Design Team's retention of all intellectual property rights, in the event Client elects not to proceed with

Design Team in the further development of the Conceptual Design, Client does not have the right to take the Conceptual Design to a third party for further development, including but not limited to, fabrication and/or installation.

10. **Transfer of Title.** Simultaneous with Design Team's receipt of the final payment under this Agreement, Design Team shall transfer title to the deliverables to Client.

11. **Death or Incapacity of Design Team.** Should the Design Team become ill, disabled, injured, or otherwise incapacitated at any time between the execution of this Agreement and the date of completion, the Design Team or one of its representatives will notify Client promptly. In the event of Design Team's physical incapacity or death prior to the completion of the Agreement, all payments made up to the point of incapacity or death will be retained by Design Team or Design Team's estate and all work performed to date of incapacity or death will be compensated. If the Conceptual Design is substantially completed and it is feasible for the work to be fully completed without undue delay, Client may elect to proceed under the terms of this Agreement with the written consent of Design Team's estate. In the event that Client elects to proceed with the completion of the Conceptual Design, all remaining work to be completed in accordance with this Agreement will be delegated to Design Team's studio personnel.

12. **City Standard Terms and Conditions.** This Agreement incorporates the Client's Purchase Order Standard Terms and Conditions ("City's Terms"). Said terms can be located at <http://www.chattanooga.gov/purchasing/standard-terms-and-conditions> and are attached hereto as **EXHIBIT C** and incorporated herein by reference. By entering into this Agreement, the Design Team agrees to be bound by all the terms set forth therein. Notwithstanding, the professional liability insurance requirements shall apply in the event that the Design Team's artwork is commissioned for creation. To the extent of a conflict between the terms set forth in this Agreement and the City Standard Terms, the City's Terms shall prevail.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements in this matter. There are no other written or oral agreements, representations or understandings with respect to the subject matter of this Agreement. This Agreement and its terms may be amended, modified, or waived only by written agreement, signed by both parties.

14. **Non-waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

15. **Execution by Counterpart and Facsimile.** This Agreement may be executed in counterpart and by facsimile.

[SIGNATURE PAGE TO FOLLOW]

The terms set forth herein are accepted and agreed to by the signatories below. The signatories affirm they understand the terms and are authorized representatives with the capacity to enter into this legally binding agreement.

**CLIENT**

By:

Title:

Date:

**DESIGN TEAM**

By:

Title:

Date:

By:

Title:

Date:

**EXHIBIT A**  
**CONCEPTUAL DESIGN: SCOPE OF SERVICES**

1. Walnut Street Bridge Lighting Design
  
2. Walnut Street Bridge (“Site”) (to include a drawing of the Project Site attached as **Exhibit D**)

4. Design Team:  
Les Studios Moment Factory Inc.  
6250 Avenue Du Parc  
Montreal (Quebec) H2V 4H8

Mikael Charpin, Producer  
[mikaelc@momentfactory.com](mailto:mikaelc@momentfactory.com)  
514-668-5326

Gregory Fine, Creative Director  
[gregoryf@momentfactory.com](mailto:gregoryf@momentfactory.com)  
514-843-8433

3. Project Scope.  
The scope of conceptual design and specialty lighting consultant services for the Walnut Street Bridge Lighting Project shall include: Creative direction and establishment of design parameters (including descriptive narrative); production of sketches revealing preliminary lighting fixture layouts; illustrations and renderings to enhance the preliminary design/layout intent; preliminary quantities and technical specifications for the proposed RBG lighting system equipment (lighting fixtures, lighting controllers, network nodes, and network media converters, etc.); a narrative describing the interactive and participative control principles; preliminary cost breakdown of equipment (lighting fixtures, lighting controllers, network components, installation, etc.); and general installation guidelines. All efforts shall be performed in collaboration with the Engineer of Record for the renovation project.

4. Project Phases.  
Phase 1: Site Report  
Phase 2: Schematic Design  
Phase 3: Preliminary Lighting and Control Components  
Phase 4: Preliminary Budget

5. Schedule and Milestones.

<b>Responsible Party</b>	<b>Description of milestone</b>	<b>Completion Date</b>
Moment Factory	Delivery of Site Report & Executed Contract	March 14, 2018
Moment Factory	Site Visit & Presentation	April 9, 2018
Moment Factory	Final Concept Submittal	April 13, 2018

6. Place of Performance.

Work for site visit and presentation will be performed on site. Volkert, the City Public Art Division, and City Engineering Division will be responsible for coordinating schedules of necessary team members for Design Team's on site work. The Design Team's work will take place remotely in preparing the Concept Design Package.

**EXHIBIT B**

**CONCEPTUAL DESIGN: FEES AND PAYMENT SCHEDULE**

The total compensation to be paid for services rendered in connection with completing a Conceptual Design shall not exceed:

[\$38,000]

In the event the Design Team fails to submit a Conceptual Design by the deadline, the Design Team shall return the full payment of any and all funds and shall be required to pay any legal fees incurred by the Client to recover said funds.

**1. Payment Schedule (to be completed by Client)**

<b>Payment Amount</b>	<b>Upon completion of</b>
<b>\$19,000</b>	Submission of Site Report and Scheduled Site Visit
<b>\$19,000</b>	Final Concept Design Submittal

In the event the Design Team fails to submit a Conceptual Design by the deadline, the Design Team shall return the full payment of any and all funds and shall be required to pay any legal fees incurred by the Client to recover said funds.



**City of Chattanooga**  
**Purchase Order Standard Terms and Conditions**  
**Exhibit C**

1. **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.

2. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Tennessee and the Codes of the City of Chattanooga ("City").

3. **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.

4. **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.

5. **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.

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.

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
  - c) Worker's Compensation Insurance and Employer's Liability Insurance
  - d) Professional Liability Insurance
- 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.** Contractor 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. 11<sup>th</sup> 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.

**CHATTANOOGA PURCHASING DIVISION  
SOLE SOURCE JUSTIFICATION FORM**

Sole source purchases are goods and services available from only one supplier, and cannot be procured through the competitive bidding process because of the existence of a single source of supply, or other reason below. Justification for this basis must be provided, per purchase order.

Description of item/service, its function and cost estimate \$ 38,000

This is a sole source vendor because:

- Sole provider of proprietary rights, and/or is a licensed or patented good or service.
- Sole provider of items that are repair parts of or upgrades to existing equipment/systems.
- Sole provider of factory-authorized warranty service.
- Sole provider with specialized facilities or technical competence.
- Sole provider of unique equipment or products not offered by others.

What steps were taken to verify that these features are not available elsewhere?  
(Attach any additional explanation)

Other brands/manufacturers were examined (List specific company names, phone numbers and contact names, and explain why there were not suitable)

Other vendors were contacted (List specific company names, phone numbers and contact names, and explain why these were not suitable).

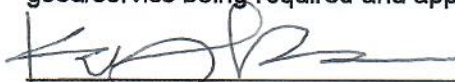
What specific feature makes this item unique and why is this feature needed for your project?

Please attach the suggested vendor's letter stating the reasons that it is considered a sole source for the product/service, if applicable,

Suggested Vendor Moment Factory

Department Public Art Contact: Katelyn Kirnie

My department's recommendation for sole source is based upon an objective review of the good/service being required and appears to be in the best interest of the City.



Department Head's Signature

3/5/18

Date





## SOLE SOURCE JUSTIFICATION FORM

**Description of item/service, its function and cost estimate: \$ 38,000**

The Public Art Department seeks to develop an innovative lighting concept as detailed in the attached project scope. The overall project is for a dynamic and interactive lighting design that utilizes publicly available data. This agreement is **Phase 2** to develop the lighting design concept, informed by stakeholder input, to be submitted to TDOT, NEPA and the State Historic Preservation Office (SHPO) for feedback and approval.

**This is a sole source vendor because:**

**X Sole provider of proprietary rights, and/or is a licensed or patented good or service.**

Moment Factory has developed an innovative way of programming lighting effects for bridge structures as well as proprietary tools and codes that facilitate the control of essential components of such effects. This proprietary software was strongly demonstrated in the artwork, "Living Connection" featured on the Jacques Cartier Bridge.

**X Sole provider with specialized facilities or technical competence.**

Moment Factory has extensive experience in lighting and activating large scale public spaces and infrastructure. Their team has a predominant capability to conceptualize, design, produce and provide technical consultancy services and operation support. Furthermore, Moment Factory has proven that its creative direction (including the identification of interactive participatory principles) is unique in the industry. Their past experience and expertise will allow them to create a unique visual language for the Walnut Street Bridge Lighting Project.

**What steps were taken to verify that these features are not available elsewhere?**

(Attach any additional explanation)

The Public Art division worked with the Chattanooga Design Studio, the Public Art Commission and community stakeholders to examine a number of other artists and lighting design firms. They also did broad outreach to artists and firms through [codaworx.com](http://codaworx.com) a network for sourcing artists and designers for collaborative public art projects internationally.

**X Other vendors were contacted.**

This initial phase does not procure any specific products, so the following firms are considered vendors:

1. Domingo Gonzales Associates, 212-608-4800, Elizabeth Marin. Did not respond to attempts to contact.
2. Studio Fink, 004 (0) 2071 484 693, Peter Fink. Did not have data responsive lighting design experience or technical expertise.
3. Philips Lighting Design, No response to inquiry.
4. Vincent Lighting Systems, 859-525-2000, Adam Hayward. Lighting system provider and no data responsive design experience or technical expertise
5. Ljusarkitektur, 46 (0) 70 524 38 37, Daniel Stromberg. No response to inquiry.
6. Brilliant Lighting Design, 305-751-7200, No response to inquiry.
7. The Lighting Practice, 215-238-1644, Al Borden. Did not have data responsive lighting design experience or technical expertise.
8. ACT Lighting, 32 2 340 60 30, Ysabel Vangrudenberg. Did not have data responsive lighting design experience or technical expertise.
9. Leo Villareal, 415-279-9069, Krista Barnes. Experience with dynamic lighting on bridges, but not interactive, public data informed projects. Additionally, would not consider the project due to the budget and timeline.
10. Janet Echelman, 617-566-0770, Melissa Henry. Has not designed lighting for bridges. Additionally, would not consider the project due to the budget and timeline.
11. AF Lighting, 45 38 16 50 88, Franziska Holmsted. Did not have data responsive lighting design experience or technical expertise.
12. Bill Fitzgibbons, 210-723-3048. Did not have data responsive lighting design experience or technical expertise.
13. Matthew Geller, 917-804-0118. Did not have data responsive lighting design experience or technical expertise.
14. Andrea Poll, 718-909-5607. Did not have data responsive lighting design experience or technical expertise.
15. Mulvey & Banani International, 416-751-2122 , Ramneck Dhami. Did not have data responsive lighting design experience or technical expertise.
16. RDG Dahlquist, 515-284-1675, Jennifer Woida, Did not have data responsive lighting design experience or technical expertise.

**X What specific feature makes this item unique and why is this feature needed for your project?**

Moment Factory's data responsive designed lighting effects provide an interactive component to the artistic lighting of this prominent public infrastructure. See Attachment for further details of the unique nature of the public art concept that will be a result of the pre-concept exploration phase.

**X See attached the suggested vendor's letter stating the reasons that it is considered a sole source for the product/service.**

## Walnut Street Bridge Lighting Public Art Project

### **Description:**

The light artist and/or lighting designer shall work collaboratively with City of Chattanooga staff and Volkert, the engineering consultant, to create a lighting concept for the Walnut Street Bridge. The concept for artistic lighting is intended to be a dynamic, data responsive, permanent piece of public art.

The City of Chattanooga, Public Art division is seeking to enter into a sole source contract with the artistic lighting design firm, Moment Factory, Inc. Through the use of their proprietary software, Moment Factory creates highly interactive, artistic light shows using publicly available data sources. For example, the lighting effects may respond to weather patterns producing an art display that reflects a snow storm differently than a sunny day. It may connect to social media and produce effects in different colors and moods depending on how the City is engaged on social media. While these examples are not meant to restrict the artist in the creation of this unique design, it highlights the specialized and unique nature of Moment Factory's work. While lighting designers and architects can suggest and design lights that meet minimum safety qualifications and may be aesthetically pleasing and dynamic, Moment Factory creates breathtaking, permanent works of art that marry publicly available data and light to visualize the digital pulse of the City.

The contract with Moment Factory will meet the following specifications:

***Intended purpose:*** As previously stated, the intended purpose of the scope of work is to provide something that only Moment Factory can create -- a digitally connected lighting system and permanent public artwork that reflects a marriage between art and data to be displayed on Chattanooga's most iconic structure, the Walnut Street Bridge.

### ***Detailed Good & Service Requirement:***

Project Service Requirements Overview:

Task 1: Site Visit & Background review.

Task 2: Conceptual design of lighting installation.

Task 3: Preliminary design of preferred lighting option.

Task 4: Permitting and public comment support.

Task 5: Final design.

Task 6: Coordinate with Volkert for Construction administration.

## Task 7: Maintenance plan.

### **Phase 1: Complete**

Moment Factory provided pre-concept exploration to include site visit and workshops to evaluate design criteria and technical constraints of the Walnut Street Bridge Lighting project. Onsite visit to the Walnut Street Bridge with the Bridge Renovation project team and a full day of meeting and workshops with City departments and stakeholders to comprehend existing installation and project context. A site report will be provided upon completion of site visit and workshops. This first phase served not only as a period of deeper public engagement, but also as a test period for feasibility and integration of the Moment Factory product with the construction team.

**Phase 2:** The City would like to move forward with Phase 2. This contract will utilize public art capital funds to develop a concept design that will be submitted for approval. The scope of conceptual design and specialty lighting consultant services for the Walnut Street Bridge Lighting Project shall include: Creative direction and establishment of design parameters (including descriptive narrative); production of sketches revealing preliminary lighting fixture layouts; illustrations and renderings to enhance the preliminary design/layout intent; preliminary quantities and technical specifications for the proposed RBG lighting system equipment (lighting fixtures, lighting controllers, network nodes, and network media converters, etc); a narrative describing the interactive and participative control principles; preliminary cost breakdown of equipment (lighting fixtures, lighting controllers, network components, installation, etc); and general installation guidelines. All efforts shall be performed in collaboration with the Engineer of Record for the renovation project.

**Phase 3:** The third and final phase of design development, construction documents and construction administration will be submitted as a change order by the Public Works department to the existing rehab contract with Volkert. Specific service requirements for Phase 3 to be further defined by the Public Works department and engineer of record for bridge rehab project.

This 3 phase contracting strategy was developed to transparently represent the nature of the project as a public art concept design and to ensure successful alignment with stakeholders and the engineer of record for the bridge rehab project before moving forward to implement the design.

**Compliance:** The concept developed will need to meet all lighting standards required by SHPO, TDOT and the City of Chattanooga.

**Key Deliverables:** The City has listed in the agreement for this engagement a list of deliverables that must be met within the project scope. The most significant is the Phase 2 deliverable: development of an interactive lighting concept that utilizes publicly available data. This concept can only be developed using Moment Factory's proprietary software.

**Phase 2: Concept Design Deliverables:**

Task 2: Conceptual design of lighting installation.

- Creative direction and establishment of design parameters (including descriptive narrative);
- Production of sketches revealing preliminary lighting fixture layouts
- Illustrations and renderings to enhance the preliminary design/layout intent;
- Preliminary quantities and technical specifications for the proposed RGB lighting system equipment (lighting fixtures, lighting controllers, network nodes, and network media converters, etc);
- A narrative describing the interactive and participative control principles;
- Preliminary cost breakdown of equipment (lighting fixtures, lighting controllers, network components, installation, etc);
- General installation guidelines.
- All efforts shall be performed in collaboration with the Engineer of Record for the renovation project.

**Services provided by third parties:** Moment Factory is uniquely positioned to create this concept because they will not be utilizing outside subcontractors to execute this scope of services for the City of Chattanooga.