

RESOLUTION NO. 30871

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A FIRST AMENDMENT TO DONATION AGREEMENT AND SUPPLEMENTAL DONATION AGREEMENT WITH NIPPON PAINT AUTOMOTIVE AMERICAS, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR ONE-YEAR EXTENSIONS OF THE PROJECT COMPLETION DATE TO DECEMBER 31, 2025, PROJECT END DATE TO DECEMBER 31, 2027, CURE PERIOD FOR FAILURE TO COMPLY WITH THE COMPLETION REQUIREMENT TO JUNE 30, 2026, CURE PERIOD FOR FAILURE TO COMPLY WITH THE CAPITAL INVESTMENT REQUIREMENT TO JUNE 30, 2026, AND THE ROAD CONSTRUCTION COMPLETION DATE TO JUNE 30, 2023.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a First Amendment to Donation Agreement and Supplemental Donation Agreement with Nippon Paint Automotive Americas, Inc., in substantially the form attached, for one-year extensions of the project completion date to December 31, 2025, project end date to December 31, 2027, cure period for failure to comply with the completion requirement to June 30, 2026, cure period for failure to comply with the capital investment requirement to June 30, 2026, and the road construction completion date to June 30, 2023.

ADOPTED: August 24, 2021

/mem

**FIRST AMENDMENT TO DONATION AGREEMENT AND
SUPPLEMENTAL DONATION AGREEMENT**

This FIRST AMENDMENT TO DONATION AGREEMENT AND SUPPLEMENTAL DONATION AGREEMENT (this “Amendment”) is entered into as of _____, 2021, by and between the CITY OF CHATTANOOGA, a Tennessee municipal corporation (“Donor”), and NIPPON PAINT AUTOMOTIVE AMERICAS, INC., a Delaware corporation (“Donee”).

RECITALS

- A. Donor and Donee entered into (a) that certain Donation Agreement dated October 18, 2019 and (b) that certain Supplemental Donation Agreement dated March 17, 2020 (collectively, the “Agreement”), pursuant to which, inter alia, Donor agreed to donate to Donee certain property located in Chattanooga, Tennessee, as more particularly described in the Agreement and Donee agree to perform certain obligations as consideration for such donation.
- B. Donor and Donee desire to modify the certain terms and provisions of the Agreement as set forth below.

AGREEMENT

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

- 1. Unless specifically defined herein, all capitalized terms used in this Amendment shall have the meaning assigned to them in the Agreement.
- 2. Notwithstanding anything in the Agreement to the contrary, the Completion Date shall be extended to December 31, 2025. As a result of such extension, the following provisions of the Agreement shall be modified:
 - a. Section 14 – The End Date shall be extended to December 31, 2027.
 - b. Section 14(d)(i) - If Donee fails to comply with the Completion Requirement, the Repayment Amount (if applicable) shall be due no later than July 1, 2026; and the cure period for failure to comply with the Completion Requirement shall be extended to June 30, 2026.
 - c. Section 14(d)(iv) - If Donee fails to comply with the Capital Investment Requirement by the Completion Date, the Repayment Amount (if applicable) shall be due no later than July 1, 2026; and the cure period for failure to comply with the Capital Investment Requirement shall be extended to June 30, 2026.
- 3. Section 8 of the Agreement shall extend the new road construction completion date from June 30, 2022 to June 30, 2023.
- 4. This Amendment shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- 5. In the event of a conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall control.

6. Except as expressly amended or modified herein, all of the terms, covenants and conditions of the Agreement, including and incorporating those as amended herein, shall remain unchanged and in full force and effect; and the Agreement, as herein amended and modified, is hereby ratified and confirmed.
7. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. The execution of this Amendment by facsimile or other electronic form (e.g., PDF) of signature shall be binding and enforceable as an original.

[Signatures appear on following page]

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

DONOR:

CITY OF CHATTANOOGA, a Tennessee municipal corporation

By: _____

Name: _____

Title: _____

DONEE:

NIPPON PAINT AUTOMOTIVE AMERICAS, INC., a Delaware corporation

By: _____

Name: _____

Title: _____