

RESOLUTION NO. 32134

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A PLANNING AND DESIGN SERVICES AGREEMENT FOR 2024-2025 WITH THE CHATTANOOGA DESIGN STUDIO, IN SUBSTANTIALLY THE FORM ATTACHED, FOR A TERM OF ONE (1) YEAR, FROM JULY 1, 2024, THROUGH JUNE 30, 2025, WITH SEVENTY THOUSAND DOLLARS (\$70,000.00) TO BE PAID FOR GENERAL PARK SYSTEM PLANNING IN FOUR (4) QUARTERLY INSTALLMENTS OF SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), PLUS INVOICE REIMBURSEMENT UP TO NINE HUNDRED THOUSAND DOLLARS (\$900,000.00) FOR ELIGIBLE EXPENSES RELATED TO THE CREATION OF CONSTRUCTION DRAWINGS AND PLANS FOR MONTAGUE PARK, FOR AN AMOUNT NOT TO EXCEED NINE HUNDRED SEVENTY THOUSAND DOLLARS (\$970,000.00).

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 Planning and Design Services Agreement for 2024-2025 with the Chattanooga Design Studio, in substantially the form attached, for a term of one (1) year, from July 1, 2024, through June 30, 2025, with \$70,000.00 to be paid for General Park System Planning in four (4) quarterly installments of \$17,500.00, plus invoice reimbursement up to \$900,000.00 for eligible expenses related to the creation of construction drawings and plans for Montague Park, for an amount not to exceed \$970,000.00.

ADOPTED: June 18, 2024

/mem

URBAN DESIGN SERVICES AGREEMENT 2024-2025

This Agreement is made and entered into this ____ day of _____, 2024, by and between the City of Chattanooga, (hereinafter "City") and The Chattanooga Design Studio, (hereinafter "CDS"), a 501C3 [edit as needed for correct non-profit description].

WITNESSETH:

For the acknowledged consideration, City enters into this Agreement with CDS as follows:

1. **PURPOSE.**

For the purpose and subject to the terms and conditions hereinafter set forth and in consideration of the payments and covenants set forth herein, the City hereby contracts for the services of CDS, and CDS agrees to provide the services to the City in accordance with the terms of this Agreement. The purpose of this Agreement is to implement the intent of the parties that CDS shall carry out urban design and implementation related to the priorities and recommendations of the adopted Parks and Outdoors Plan.

2. **GENERAL TERMS.**

(a) The address and telephone number of CDS: [INSERT CORRECT INFO].

(b) The address and telephone number for the City is Department of Parks and Outdoors, Outdoor Chattanooga, 200 River Street, (423) 643-6888.

(c) The City's primary liaison with CDS shall be the Department of Parks and Outdoors (DPO), and the CDS employee responsible for administering this Agreement shall be Eric Myers, Executive Director, provided that the City and CDS reserve the right to substitute personnel at any time. It is agreed that CDS is solely responsible for the payment of unemployment insurance, social security, income, and any other taxes on payments made under this Agreement to employees and subcontractors, as provided by law. CDS agrees to provide certificates of insurance to the City evidencing that CDS maintains worker's compensation insurance for its employees.

(d) The term of this Agreement shall be from July 1, 2024 through June 30, 2025.

(e) Either party shall have the right to terminate this Agreement with or without cause upon thirty (30) days' written notice to the address set forth in Sections 2(a) and (b) of this Agreement.

3. SERVICES.

In consideration of the agreement by the City to pay CDS the sum of [INSERT AMOUNT] Dollars and 00/100 Cents (\$XX,XXX), CDS agrees to carry out all services described in **Exhibit A**, Memorandum of Understanding, attached hereto and made a part hereof.

The City agrees to furnish tax parcel maps, aerial photographs, or other public information concerning the parks and outdoor resources that are available for reproduction and at its disposal. CDS shall furnish all other equipment, supplies and materials necessary for the performance of the services described in **Exhibit A** of this Agreement (the "Services.") The City agrees to make all reasonable efforts to provide information and documents to CDS promptly for use in connection with the performance of the Services.

CDS represents and warrants that the Services rendered under this Agreement will be of the highest professional quality. At CDS's election, CDS may subcontract for any of the Services to be performed hereunder. All Services will be completed within the Contract Term unless the performance by CDS of the Services are delayed as a result of forces beyond the control of CDS. However, CDS does not warrant or represent that its efforts to complete all aspects of the scope of Services will be successful, as they do not always represent tangible deliverables, but does represent it will make a good faith effort to do so.

4. PROFESSIONAL FEES.

(a) Fees. City agrees to pay to CDS, as professional fees, the sum of [INSERT AMOUNT] Dollars and 00/100 Cents (\$XX,XXX) payable in equal installments of [INSERT AMOUNT] and 00/100 Cents (\$XX,XXX) per quarter, in addition to reimbursements. Payments shall be due on the first day of each quarter. CDS will provide a quarterly invoice to the City. If this Agreement is terminated by either party, CDS shall be entitled only to a pro rata share of the professional fees earned prior to the termination of the Agreement. Except as provided for in Subsection (b) below, in no event shall the City's liability under this Agreement exceed [INSERT AMOUNT] (\$XX,XXX) without prior written approval by the City.

(b) Reimbursements. City agrees to reimburse CDS for all expenses incurred by CDS to obtain appraisals, surveys, and other due diligence work from third parties, inclusive of additional design contracts held by CDS. CDS shall obtain permission from the City prior to incurring any said expenses. All reimbursements will be made by the City within thirty (30) days of the date of CDS's invoice to the City.

5. INSURANCE.

CDS agrees to hold the City, its officers, agents, employees, successors, and assigns, harmless and to indemnify them against any and all losses, penalties, damages, injuries, settlements, costs, charges, professional fees (including automatic fees and reasonable attorney's fees), or other expenses or liabilities of every kind and character arising out of or relating to any claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with the performance of the Services provided by CDS, its agents, servants,

employees or subcontractors, or anyone directly employed by any of them for his acts any of them may be liable. CDS shall conduct its activities on the premises subject to this Agreement so as not to endanger any persons or property therein. CDS shall indemnify, save, and hold harmless, and defend the City, and all of its officers, agents, and employees from any and all claims resulting from losses, injuries, damages, and liabilities to persons or properties resulting, wholly or in part, from acts or omissions of the CDS, including acts or omissions of its agents, officers, employees, guests, and/or patrons, to the full extent of its insurance coverage provided within this section. This section further requires CDS to indemnify, save and hold harmless, and defend the City, and all of its officers, agents, and employees, from any and all claims for injuries or damages resulting from CDS's use of the premises. CDS shall, at CDS's expense, purchase and maintain, for the benefit of the City, a policy or policies of public liability and property damage insurance, issued in the name of CDS and naming the City of Chattanooga as an additional named insured, with limits not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and/or death of any single person in a single occurrence, and not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and death of more than one person in a single occurrence and not less than One Million and 00/100 (\$1,000,000 .00) Dollars for damage to property in a single occurrence. Said insurance policy shall include contractual liability coverage which shall recognize and include the indemnification provisions of this Agreement. Said policy shall be approved by the City Attorney, which approval shall not be unreasonably withheld. The insurance policy or policies shall be filed with the Department of Parks and Outdoors at the address set forth in Section 2(b) of this Agreement before execution of this Agreement. CDS shall, after securing approval by the City Attorney, file with the City Risk Manager a list of all insurance policies to be carried. Said insurance coverage must be maintained during the entire term of this Agreement, plus any extension, and any insurance policy shall contain a clause whereby the insurance company shall give written notice to the Administrator of the Department of Parks and Outdoors or Mayor at least thirty (30) days prior to any cancellation or alteration of said policy. Any notice of cancellation or alteration of insurance policies during the term of this Agreement shall be considered as a default. Following notice of cancellation or alteration of any said insurance policy during the term of this Agreement and the failure of CDS to cure such default, the City may, upon the date of cancellation or alteration of said insurance policy, without further notice, terminate this Agreement, and CDS shall immediately cease the provisions of Services. This indemnification shall survive the expiration or sooner termination of this Agreement.

6. NO PARTNERSHIP RELATIONSHIP.

This Agreement does not create any partnership relationship between the City and CDS and is intended solely to establish the relationship of Contractor and Client.

7. OTHER TERMS.

(a) CDS shall operate as an independent contractor, and the City shall not be responsible for any of CDS's acts or omissions. CDS agrees to hold the City harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of CDS in connection with the performance of its obligations under this Agreement.

(b) CDS shall not be treated as an employee with respect to the Services performed hereunder for federal or state tax, unemployment, or worker's compensation purposes. CDS understands that neither federal, nor state, nor payroll tax of any kind, shall be withheld or paid by the City on behalf of CDS or the employees of CDS. CDS further understands and agrees that CDS is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

(c) CDS agrees that it is familiar with the IRS regulations and laws pertaining to independent contractor status and that it is providing the Services as an independent contractor. CDS shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation of, any employee pensions, health, or other fringe benefit plan of the City.

(d) The City shall not be liable to CDS for any expenses paid or incurred by CDS unless otherwise agreed in writing, except as provided herein.

(e) CDS shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide c the Services unless otherwise agreed in writing.

(f) CDS declares that it shall comply with all federal, state, and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement.

8. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.

CDS will comply with all laws of the United States and the State of Tennessee, all ordinances of the City of Chattanooga, all relevant resolutions of Hamilton County, Tennessee, and all rules and regulations of the police and fire departments or other municipal authorities of the City of Chattanooga and Hamilton County, Tennessee, and will obtain and pay for necessary permits and licenses, and will not do or suffer to be done anything on said premises during the term of this License in violation of any such laws, ordinances, rules or requirements, and if the attention of said CDS is called to any such violation on the part of CDS or of any person employed by or admitted to said premises by CDS, CDS will immediately desist from and correct such violation. CDS covenants to comply with State laws and City laws and ordinances in regard to nuisances insofar as the premises are concerned and that CDS will not, by any act of its agents or officers, render the City liable, therefore.

9. BREACH OF CONTRACT.

In the event of a breach of this Agreement, City shall, in addition to all other recourse, have the right to immediately terminate this Agreement, to enter and obtain possession of the entire premises, and to remove and exclude all property of the CDS from property of the City. If it should become necessary for the City to employ an attorney to assist any right or enforce any obligation under this agreement, or any of them, City shall be entitled to recover, in addition to all other costs and expenses, the reasonable costs and charges of such attorney.

10. NON-DISCRIMINATION PROVISION.

CDS agrees to comply with all federal, state, and local non-discrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state, or local law when utilizing this City facility. CDS agrees not to discriminate against any participant on the basis of race, color, religion, sex, age, or national origin. CDS further agrees to comply with all federal, state, and local laws regarding treatment and accommodations for individuals with disabilities.

11. AUDIT PROVISION.

The City or its assign may audit all financial and related records (including digital) associated with the terms of this Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the CDS or CDS's Subcontractors. The City may further audit any CDS or CDS Subcontractor'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. Upon request of a representative of the City, CDS shall provide copies of their most recent IRS Form 990.

The CDS shall at all times during the term of the 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 Agreement including proper records of quotations, contracts, correspondence, invoices, vouchers, timesheet, and other documents that support actions taken by the CDS pursuant to this Agreement. Documents shall be maintained by the CDS necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. CDS 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 CDS and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the CDS's obligations to the City.

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. CDS 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.

12. AGREEMENT.

This Agreement constitutes the entire agreement between CDS and the City pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.

13. WAIVER OF RIGHTS.

Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

14. SEVERABILITY.

If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

15. APPLICABLE LAW.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement on their respective behalf on the date first entered above.

CITY OF CHATTANOOGA, TENNESSEE
DEPARTMENT OF PARKS AND OUTDOORS

The Chattanooga Design Studio

By: _____
SCOTT MARTIN
Administrator

By: _____
ERIC MYERS
Executive Director

Exhibit A - Services

Memorandum of Understanding (MOU)

This is an agreement to create an Urban Design Services Agreement between Chattanooga Parks & Outdoors and Chattanooga Design Studio

OVERVIEW:

Chattanooga Department of Parks and Outdoors (DPO) seeks to increase its capacity to plan, design and implement the Parks and Outdoors Plan (POP) (Adopted, June 2023). Chattanooga Design Studio (CDS) will provide an urban design consultancy role to increase this capacity.

PURPOSE:

This M.O.U. serves as an agreement between Chattanooga Parks & Outdoors and Chattanooga Design Studio which will act as an urban design consultancy for a parks improvement program. This agreement is guided by the prioritized scope of work listed below. The agreement is for an initial trial period beginning within the City's FY 2024, as soon as it can be approved by the City Council. The agreement will have an option to extend into FY 25.

SCOPE OF WORK:

Chattanooga Design Studio will generally contribute staff expertise and resources to accomplish the following projects and their identified tasks / roles.

2024 / 2025 calendar year park project priorities:

- Carver Park (Priority 1- Short Term);
- Montague Park (Priority 4- Long-Term);
- Chattanooga Riverfront Parks (Priority 4- Long-Term);
- Park Design Guidelines (Priority 2 - Short/Medium Term)

Beyond

- Warner Park (Priority 3 - Mid Term)
- Other design for greenways, urban design coordination, and master planning, based on collaborative review in the last quarter of FY24

CDS will:

- Coordinate and manage any outside consultants, landscape architects, etc. as required and as eligible for City reimbursement based on DPO approval
- Compensate its own staff internally;
- Provide a minimum of monthly progress updates to City Staff and leadership.

DPO will:

- Coordinate project schedules and prioritization of projects;
- Compensate Chattanooga Design Studio in a quarterly fashion and through approved reimbursements;
- Provide adequate access to and collaboration with City Staff and leadership.

CONDITIONS AND STIPULATIONS:

- Both parties enter into this agreement as a mutual understanding of the responsibilities of each partner;
- This will serve as the basis for an Independent Contractor Services Standard Form Agreement
- Contract will begin Monday, April 1, 2024.

Chattanooga Design Studio; *Eric Myers* : _____

Title: Executive Director

Date: _____

Chattanooga Parks and Outdoors; *Scott Martin* : _____

Title: Administrator

Date: _____