

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

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A SUPPLEMENTAL DONATION AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, ANY RELATED DOCUMENTS, AND A QUITCLAIM DEED BETWEEN THE CITY OF CHATTANOOGA AND NIPPON PAINT AUTOMOTIVE AMERICAS, INC. FOR THE PROPERTY IDENTIFIED AS LOT ONE (1) OF HARRIET TUBMAN SUBDIVISION AND KNOWN AS TAX PARCEL NUMBER 136E-A-005 TO PROVIDE FOR THE ACQUISITION OF APPROXIMATELY AN ADDITIONAL TWENTY-SIX THOUSAND (26,000) SQUARE FEET OF LAND DUE TO LOSS OF USE RELATED TO THE LOCATION OF THE TUBMAN SEWER RELOCATION PERMANENT EASEMENT.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to enter into a Supplemental Donation Agreement, in substantially the form attached, any related documents, and a Quitclaim Deed between the City of Chattanooga and Nippon Paint Automotive Americas, Inc. for the property identified as Lot One (1) of Harriet Tubman Subdivision and known as Tax Parcel Number 136E-A-005 to provide for the acquisition of approximately an additional 26,000 square feet of land due to loss of use related to the location of the Tubman sewer relocation permanent easement.

ADOPTED: \_\_\_\_\_, 2020

/mem



# CITY OF CHATTANOOGA

## RESOLUTION/ORDINANCE REQUEST FORM

Date Prepared: 02/11/2020  
 Department: Economic & Community Development  
 Agenda Date: February 25, 2020

Preparer: Charita Allen

CONSENT DECREE No

PUBLIC HEARING REQUIRED No

DISTRICT NO. Byrd- 8

**Brief Description of Purpose for Resolution/Ordinance:**

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A SUPPLEMENTAL DONATION AGREEMENT  
 IN SUBSTANTIALLY THE FORM ATTACHED, ANY RELATED DOCUMENTS, AND A QUITCLAIM DEED  
 BETWEEN THE CITY OF CHATTANOOGA AND NIPPON PAINT AUTOMOTIVE AMERICAS, INC. FOR THE PROPERTY  
 IDENTIFIED AS LOT ONE (1) OF HARRIET TUBMAN SUBDIVISION AND KNOWN AS TAX PARCEL NUMBER 136E-A-005  
 TO PROVIDE FOR THE ACQUISITION OF APPROXIMATELY AN ADDITIONAL 26,000 SQUARE FEET OF LAND  
 DUE TO LOSS OF USE RELATED TO THE LOCATION OF THE TUBMAN SEWER RELOCATION PERMANENT EASEMENT

Name of Vendor/Contractor/Grant, etc.	<u>N/A</u>	New Contract/Project? (Yes or No)	<u>Yes</u>
Total Project Cost	<u>\$ N/A</u>	Funds Budgeted? (Yes or No)	<u>N/A</u>
Total City of Chattanooga Portion	<u>\$ N/A</u>	Fund Name	<u>N/A</u>
City Amount Funded	<u>\$ N/A</u>	Project Description	<u>N/A</u>
New City Funding Required	<u>\$ N/A</u>	Fund No.	<u>N/A</u>
City's Match Percentage	<u>% N/A</u>	Cost Center	<u>N/A</u>
		Proposed Funding Source if not budgeted	<u>N/A</u>
		Grant Period (if applicable)	<u>N/A</u>

**List all other funding sources and amount for each contributor.**

<u>Amount(s)</u>	<u>Grantor(s)</u>
\$ _____	_____
\$ _____	_____
\$ _____	_____
Agency Grant Number _____	_____
CFDA Number if known _____	_____

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

Reviewed by: FINANCE OFFICE Approved by: \_\_\_\_\_ DESIGNATED OFFICIAL/ADMINISTRATOR

PLEASE SEND COMPLETED FORM TO: @BUDGET; DAISY MADISON; AND COUNCILAGENDA@CHATTANOOGA.GOV

## SUPPLEMENTAL DONATION AGREEMENT

**THIS SUPPLEMENTAL DONATION AGREEMENT** (the “Agreement”) is made this \_\_\_\_ day of February, 2020 (the “Effective Date”), by and between the **CITY OF CHATTANOOGA**, a Tennessee municipal corporation, having an address of 101 E. 11<sup>th</sup> Street, City Hall, Chattanooga, Tennessee 37402 (“Donor”) and **NIPPON PAINT AUTOMOTIVE AMERICAS, INC.**, a Delaware corporation having its principal address as 400 Frank W. Burr Blvd., Teaneck, NJ 07666, Attn: Mr. Robert Angart (“Donee”).

### RECITALS:

- A. Donor is the fee simple owner of a certain parcel of real property located in Chattanooga, Hamilton County, Tennessee, bearing tax parcel I.D. No. 136E A 005.02 and being more particularly described on **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”).
- B. Donor and Donee previously entered into a certain Donation Agreement dated as of October 18, 2019, as amended by that certain letter agreement dated October 18, 2019 (collectively, the “2019 Donation Agreement”) pursuant to which Donor donated to Donee certain real property adjacent to the Property, as more particularly described in the 2019 Donation Agreement (the “Original Property”).
- C. Following the donation of the Original Property, the parties determined that additional real property was required in order for Donee to construct the Facility (defined below). The parties have agreed to enter into this Agreement in order to convey to Donee the additional real property necessary to construct the Facility.
- D. Sections 9 and 14 of this Agreement are intended solely to confirm Donee’s existing obligations under the 2019 Donation Agreement in connection with Donor’s donation of the additional Donated Property (described below) and are in no way intended to operate as additional obligations or as an expansion of Donee’s obligations beyond what the parties agreed to in the 2019 Donation Agreement.
- E. Donor desires to donate the Donated Property to Donee for the purpose of Donee constructing a LEED certified manufacturing facility that will create one hundred fifty (150) new jobs, and Donee desires to accept such donation from Donor.
- F. The parties desire to set forth the terms and conditions of the donation in this Agreement.

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

1. **Donation.**

(a) For and in consideration of the mutual covenants and promises contained in this Agreement, and in acknowledgment of Donee’s material reliance on this Agreement, Donor agrees to grant and convey to Donee a portion of the Property described on **Exhibit “B”** (the “Donated Property”). Donee shall not be obligated to accept the Donated Property if (a) the

donation of the Donated Property is not consummated under this Agreement because of Donor's failure, refusal or inability to perform any of its obligations under this Agreement; (b) Donee elects to terminate this Agreement because any of Donor's representations cease to be true prior to Closing (hereinafter defined); (c) Donee elects to terminate this Agreement because Donor is unable to remove a title exception objected to by Donee; or (d) Donee elects not to close by reason of damage to the Donated Property in accordance with Paragraph 13 of this Agreement.

(b) The parties agree that a reasonable estimate of the value of the Donated Property is TWENTY-FOUR THOUSAND FOUR HUNDRED DOLLARS (\$24,400.00) based upon the Appraisal Report prepared by Thomas R. Carter, Certified General Real Estate Appraiser, dated December 5, 2018.

2. **Closing.** The donation of the Donated Property by Donor (the "Closing") shall take place on the earlier of (a) ten (10) days after the completion of the Sewer Relocation (defined below) and (b) August 27, 2020, provided that Donee has not elected to extend or terminate this Agreement pursuant to the terms hereof. Donee's obligation to accept title to the Donated Property shall be contingent on Donor's performance of all of its duties and obligations hereunder.

3. **Title; No Warranty.**

(a) Donor shall convey the Donated Property to Donee by executing and delivering to Donee a quitclaim deed (the "Deed"). Donee shall be under no obligation to accept the Deed from Donor if Donee, in its examination of title to the Donated Property, determines that it is subject to liens, encumbrances or other matters of title other than (i) the lien of ad valorem property taxes for the year in which the Closing occurs, which taxes are not yet due and payable; (ii) exceptions listed on a title commitment (the "Title Commitment") issued by a national title insurance company, which exceptions are accepted by Donee in writing; and (iii) any other matters approved by Donee in writing.

(b) Donee may obtain at its expense either a title report or a Title Commitment from a national title insurance company (the "Title Company") reflecting good and marketable fee simple title to the Donated Property in Donor. If obtained, Donee may examine the title report/Title Commitment and shall furnish to Donor at least ten (10) days prior to the Closing a written statement of any objections to matters of title. Matters reflected by the survey of the Donated Property obtained by Donee pursuant to Paragraph 4 below may be treated as title defects and referenced in the above-referenced title objection letter. Donor may, but shall not be obligated to, cure any such title or survey objections.

(c) Following Donee's initial title examination, Donee shall have until the time of Closing to re-examine title to the Donated Property and to give Donor notice of any additional objections disclosed by such re-examination, which were not filed and indexed of record on the date of Donee's initial examination. If all of the stated title and survey objections are not cured or satisfied by the date set for Closing, Donee may, at its option:

- (i) waive the title objections and proceed to Closing;
- (ii) terminate this Agreement, and, except as may expressly be provided

herein to the contrary, Donor and Donee shall have no further rights or obligations under this Agreement.

(d) Donor agrees to provide to Donee and the title insurer all routine or otherwise available documents necessary or desirable to confirm Donor's title to and authorization to convey the Donated Property, and to permit Donee to obtain an ALTA Owner's Policy (2006 Form), as amended, at Donee's sole cost and expense with respect to the Donated Property.

(e) At Closing, Donor shall deliver to Title Company an owner's affidavit in form reasonably acceptable to the Title Company and sufficient to permit the Title Company to delete the so-called "standard exceptions" from Donee's title policy.

(f) **No Warranty - Acceptance of the Donated Property in its AS-IS Condition.** Donee acknowledges that Donor makes no guarantee, representation or warranty regarding the physical or environmental condition of the Donated Property, and Donor expressly disclaims any and all obligation and liability to Donee regarding any defects or structural damage which presently exists on the Donated Property. Donee hereby agrees to accept the Donated Property in its **AS-IS-WHERE-IS, WITH ALL FAULTS** condition, and Donee assumes all risks associated with the physical and environmental condition of the Donated Property, regardless of the cause or date of origin of such condition, and releases all rights or claims against Donor relating to such condition or for any costs of remediation or cure of any physical or environmental condition.

4. **Survey.** No later than ten (10) days prior to Closing, Donor, at its expense, will have the Property replatted and will obtain a boundary survey of the Donated Property, signed and sealed by a Tennessee registered surveyor, certified to Donee, prepared according to state standards. The legal description drawn from any such survey shall serve as the legal description for the Donated Property, as set forth in the Deed.

5. **Donor's Representations.** Donor represents as follows:

(a) To the best of Donor's knowledge, but without conducting an investigation, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Donated Property or any portion thereof, or pending or threatened against Donor, which could affect Donor's title to the Donated Property or any portion thereof, affect the value of the Donated Property or any portion thereof, affect Donor's duties and obligations under this Agreement or subject an owner of the Donated Property, or any portion thereof, to liability; and

(b) Donor has the legal power, right and authority to enter into this Agreement and to execute and deliver the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

6. **Donee's Representations and Warranties.** In addition to Donee's representations and warranties made elsewhere herein, Donee represents and warrants to Donor the following:

(a) Donee is accepting the Donated Property solely in reliance on its own information and/or findings and not on any information, representation or warranty provided or to be provided by Donor, its officials, representatives, agents, employees, or assigns; and

(b) Neither Donor, nor its officials, representatives, agents, employees, or assigns have made any representations or warranties, implied or expressed, relating to the condition of the Donated Property or the contents thereof.

(c) Environmental Responsibility: Donee shall comply in all material respects with all applicable regulations established by the Environmental Protection Agency (EPA) and the Tennessee Department of Environment & Conservation (TDEC). All chemical waste shall be disposed of at a licensed offsite waste disposal facility.

7. **Sewer Relocation.** Donor agrees, no later than August 27, 2020, to relocate an existing sewer line from its current location on the Donated Property to the southern boundary of the Original Property, as depicted on **Exhibit “C”**, attached hereto, and in accordance with the requirement imposed by the State of Tennessee Site Development Grant for Site Certification to allow for an industrial use on the Original Property and the Donated Property (the “Sewer Relocation”). Between the Effective Date and completion of such relocation, Donor shall reasonably coordinate with Donee with respect to such relocation activities so as not to unreasonably interfere with Donee’s development of the Donated Property as contemplated by the 2019 Donation Agreement. If Donor fails to complete the sewer relocation contemplated by this Section 7 herein by August 27, 2020, Donee shall have the right (but not the obligation) to complete, or cause to be completed, the Sewer Relocation. In such event, Donor shall reimburse Donee upon demand for all expenses incurred by Donee in performing such Sewer Relocation plus interest from the date such expenses were incurred equal to the lesser of: (i) twelve percent (12%), or (ii) the maximum amount allowable per applicable law.

8. **New Road Construction.** No later than sixty (60) days after the Closing, Donee shall secure the services of a professional civil engineering firm to develop a site plan in coordination with Donor and the Chattanooga Department of Transportation to determine the location and design of a new public right-of-way to be constructed by Donor along the eastern boundary of the Donated Property connecting Roanoke Avenue as an extension of Hardy Street, with a construction completion date of no later than June 30, 2022.

9. **Workforce Development; Hiring Consideration.** Donor shall, through its Department of Labor & Workforce Development, assist Donee in the recruitment and screening of potential employees for the Facility. In compliance with Tennessee state law, Donee must report new hires to the Tennessee Department of Human Services. Additionally, Donee must report wage earnings on a quarterly basis to the Tennessee Department of Labor & Workforce Development. In hiring new employees for the Facility, Donee will give due consideration to applicants who are residents of the City of Chattanooga, in particular residents of the neighborhoods surrounding the Facility, in accordance with its standard hiring policies and procedures.

10. **Remedies upon Default.** In the event Donor defaults in the performance of any of Donor’s obligations under this Agreement, Donee’s sole remedy shall be the right of specific performance against Donor. In the event Donee defaults in the performance of any of its

obligations under this Agreement, Donor shall have the right to any remedy provided in this Agreement or by law or equity.

11. **Right to Inspect the Donated Property.** Donee, through its employees and agents, may enter upon the Donated Property in order to conduct such survey, appraisal, environmental, physical, engineering, feasibility studies and other inspections and investigations (collectively, “Inspections”) as Donee deems appropriate in an effort to determine whether or not to proceed with the Closing. Donee hereby agrees to indemnify Donor, its officials, officers, agents, and employees and save it harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury and/or damage to property, including civil rights actions, to any person or for any cause whatsoever caused wholly or in part by any act or omission of Donee, its agents, employees, invitees, contractors or assigns in connection with any Inspections being conducted upon the Donated Property. Donee further agrees to defend, pay all costs of defense, including reasonable attorney’s fees and court costs, and/or any judgment or cost for any claim or suit brought against Donor as a result of any claim brought against Donee, its agents, employees, invitees, contractors, or assignees as a result of Donee’s temporary use of the Donated Property for conducting any Inspections. This indemnification obligation shall survive the Closing and the delivery of the instruments of conveyance.

12. **Cooperation.** Donor and Donee will cooperate with each other in order to resolve any traffic, parking, trash removal or public safety issues which may arise in connection with the construction of the Facility, including, but not limited to, any problems which may arise with respect to traffic at the intersections where access drives on the Donated Property meet roadways or streets owned by the Donor.

13. **Risk of Loss.** In the event the Donated Property is destroyed or damaged prior to Closing, such that the Donated Property is, in the sole discretion of Donee, no longer suitable for Donee’s purposes, Donee shall have the right, exercisable by delivering written notice to Donor, to terminate this Agreement, and, except as may be provided expressly to the contrary herein, Donor and Donee shall have no further rights, obligations or duties under this Agreement.

14. **Performance Requirements; Right of Reversion; Repayment Amount.**

For purposes of this Agreement:

“Facility” means a LEED-certified manufacturing facility comprised of multiple buildings located on the Donated Property and the Original Property.

“Force Majeure” means any of the following events that directly impact Donee’s ability to meet the Performance Requirements: flood, earthquake, storm, lightning, fire, or other Acts of God; sabotage or terrorism.

“Job” means a new, full-time position that is created and filled during the period beginning on the date of this Agreement (the “Start Date”) and ending on December 31, 2026 (the “End Date”) and that is held by a Donee employee. Unless otherwise stated in this Agreement, all Jobs must be created and filled at the Facility, as defined herein.

“Repayment Amount” means the amount of ONE MILLION ONE HUNDRED FIFTY SEVEN THOUSAND AND SIX HUNDRED DOLLARS (\$1,157,600), which amount represents the estimated value of the Original Property as of December 5, 2018.

“Reversion Right” means Donor’s right of reversion in the Donated Property and all improvements and fixtures located thereon. For the avoidance of doubt, Donor may only exercise the Reversion Right if it simultaneously exercises its right of reversion in the Original Property pursuant to the 2019 Donation Agreement.

“Substantial Operations” means maintaining at least one hundred thirty- five (135) Jobs at the Facility.

(a) **Performance Requirements.** As consideration for the donation of the Donated Property and the Original Property, and other valuable consideration, Donee represents and warrants that it will (i) construct the Facility and obtain a Certificate of Occupancy for the Facility by December 31, 2024 (the “Completion Date”) (the “Completion Requirement”), (ii) fill one hundred fifty (150) Jobs between the Start Date and End Date (the “Job Creation Requirement”), maintain Substantial Operations at the Facility until January 1, 2030 (the “Maintenance Date”) (the “Job Maintenance Requirement”) and invest Fifty Nine Million and No/100 Dollars (\$59,000,000.00) in real and personal property subject to City ad valorem taxes and Two Million and No/100 Dollars in soft costs, including, but not limited to, capitalized labor costs, and attorneys’ fees (collectively, the “Capital Investment Requirement”) all in accordance with Section 14(b), (c) and (d) hereof. The Completion Requirement, the Job Creation Requirement, the Job Maintenance Requirement, and the Capital Investment Requirement are collectively referred to herein as the “Performance Requirements.”

(b) **Force Majeure.** Donor may, in its reasonable discretion, by written notice to Donee extend the Completion Date and/or the End Date, and/or move the Maintenance Date to an earlier calendar date/year, due to an event of Force Majeure.

(c) **Compliance with the Performance Requirements.** Donee shall be deemed to be in compliance with the Completion Requirement if Donee has completed the Facility and obtained Certificates of Occupancy by the Completion Date. Donee shall be deemed to be in compliance with the Job Creation Requirement if it has created at least one hundred fifty (150) Jobs at the Facility by the End Date. Donee shall be deemed to be in compliance with the Job Maintenance Requirement if it has at least one hundred thirty-five (135) Jobs at the Facility as of the Maintenance Date. Donee shall be deemed to be in compliance with the Capital Investment Requirement if it has invested Fifty Nine Million and No/100 Dollars (\$59,000,000.00) in real and personal investment for property subject to City ad valorem taxes by the Completion Date. Notwithstanding any of the foregoing to the contrary, if Donee’s failure to be in compliance with any of the Completion Requirement, the Job Creation Requirement, Job Maintenance Requirement or the Capital Investment Requirement is due to the act or omission of Donor (including without limitation Donor’s failure to complete the sewer relocation described in Section 7 or to construct the public right-of-way described in Section 8), such non-performance by Donee shall not be considered as non-compliance with the applicable Performance Requirement(s) under this Agreement.

(d) **Failure to Comply with Performance Requirements; Right of Reversion; Repayment Amount.**

(i) **Completion Requirement.** In the event that Donee fails to comply with the Completion Requirement, Donor, in its reasonable discretion, shall have the option of (i) exercising its Reversion Right in the Donated Property and all improvements and fixtures located thereon, or (ii) requiring the Repayment Amount to be paid by Donee. Donor shall give prior written notice to Donee of the failure to comply with the Completion Requirement and Donor's election of either the Reversion Right or the Repayment Amount payment. If Donor elects to require the payment of the Repayment Amount, such amount shall be due and payable no later than July 1, 2025. In the event Donee fails to timely remit such payment, Donor shall exercise its Reversion Right in the Donated Property, and the Donated Property and all improvements and fixtures located thereon shall revert to Donor as of the date of such exercise of the Reversion Right.

Notwithstanding any of the foregoing to the contrary, Donee shall have a cure period from its receipt of Donor's written notice of noncompliance and its election of the Reversion Right or Repayment Amount payment until June 30, 2025, during which cure period Donee shall have the right to cure its non-compliance with the Completion Requirement. If Donee fulfills the Completion Requirement by June 30, 2025, Donee shall be deemed in compliance with the Completion Requirement and shall not be subject to the Reversion Right or Repayment Amount requirement under this Section 14(d)(i).

(ii) **Job Creation Requirement.** If Donee fulfills the Completion Requirement but fails to comply with the Job Creation Requirement, upon written notice by the Donor of such non-compliance, Donee shall pay the Repayment Amount to Donor. If Donee is required to make the Repayment Amount, such amount shall be due and payable no later than forty-five (45) days following written notice to Donee by Donor of Donee's non-compliance with the Job Creation Requirement. In the event Donee fails to timely remit the Repayment Amount within forty-five (45) days of such written notice, Donor may exercise its Reversion Right upon written notice to Donee, and the Donated Property and all improvements and fixtures located thereon shall revert to Donor as of the date of such exercise of the Reversion Right.

(iii) **Job Maintenance Requirement.** If Donee fulfills the Completion Requirement and the Job Creation Requirement but ceases Substantial Operations or otherwise relocates its manufacturing facility to a different site than the Property prior to January 1, 2030, Donor, in its sole discretion, shall have the option of requiring Donee to make the Repayment Amount. If Donor elects to require the payment of the Repayment Amount, such Amount shall be due and payable no later than forty-five (45) days following written notice to Donee of Donor's election to require such payment. In the event Donee fails to timely remit such payment, Donor may exercise its Reversion Right upon written notice to Donee, and the Donated Property and all improvements and fixtures located thereon shall revert to Donor as of the date of such exercise of the Reversion Right.

(iv) **Capital Investment Requirement.** If Donee fails to comply with the Capital Investment Requirement by the Completion Date, Donor, in its sole discretion,

shall have the option of requiring Donee to make the Repayment Amount. If Donor elects to require the payment of the Repayment Amount, such amount shall be due and payable no later than July 1, 2025.

Notwithstanding any of the foregoing to the contrary, Donee shall have a cure period from its receipt of Donor's written notice of noncompliance and its election of the Repayment Amount payment until June 30, 2025, during which cure period Donee shall have the right to cure its non-compliance with the Capital Investment Requirement. If Donee fulfills the Capital Investment Requirement by June 30, 2025, Donee shall be deemed in compliance with the Completion Requirement and shall not be subject to the Repayment Amount requirement under this Section 14(d)(iv).

(v) Memorandum of Reversion Right. If Donor elects to exercise its Right of Reversion in accordance with this Section 14, a memorandum declaring such reversion and executed by the Mayor shall be recorded in the Register's Office of Hamilton County, Tennessee and shall constitute conclusive evidence of such reversion; provided, however, that such memorandum shall affirm compliance by Donor and Donee with the respective rights of notice and cure provisions of this Section 14.

The provisions of this Section 14 shall survive the Closing and shall be included in the Deed.

15. **Notices.** All notices pertaining to this Agreement shall be in writing, delivered to the parties hereto personally by hand, by United States mail, certified or registered, with return receipt requested, by telecopier (provided a confirmation copy is sent via another mode) or courier service at the addresses set forth below. All notices shall be deemed given when delivered or rejected. The parties may, by notice as provided above, designate a different address to which notice shall be given.

**If to Grantor:** City of Chattanooga  
ATTN: Real Property of ECD  
101 E. 11<sup>th</sup> Street, G-4  
Chattanooga, TN 37402

With a copy to: Office of the City Attorney  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402

**If to Grantee:** Nippon Paint Automotive Americas, Inc.  
400 Frank W. Burr Blvd.  
Teaneck, NJ 07666  
Attn: Mr. Robert Angart

With a copy to: Thompson Hine LLP  
3900 Key Tower, 127 Public Square  
Cleveland, Ohio 44114  
Attn: Cathryn Greenwald, Esq.

Any party may change its address for notices by giving written notice of such change to the other party in accordance with the terms of this paragraph.

16. **Prorations and Fees.** The Donated Property is presently exempt from the payment of real property taxes. From and after the Closing, the Donated Property will be placed on the tax roll, and Donee shall be responsible for the payment of real property taxes. Water quality fees assessed for the year 2020 (regardless of when due and payable) shall be prorated as of the Closing. Special assessments levied prior to the Closing shall be the responsibility of Donor. Any documentary tax or real property transfer tax arising out of the conveyance of the Donated Property, the premium for the title insurance policy, and any other fees and charges shall be paid by Donee, unless this Agreement expressly provides such fee or charge will be paid by Donor. The provisions contained in this paragraph shall survive the Closing and shall not be merged into the Deed.

17. **Broker Fees.** Each of Donor and Donee hereby represents and warrants to the other that, to the extent either has dealt with any real estate broker or agent in connection with this transaction (as applicable, a “Broker”), each party covenants and agrees to pay each party’s own respective Broker, where applicable, any fee or commission to which such Broker may be entitled in connection with the transaction contemplated by this Agreement.

18. **Time of the Essence.** Time is of the essence of this Agreement.

19. **Possession.** Possession of the Donated Property shall be transferred to Donee at Closing.

20. **Binding on Successors; Assignment.** This Agreement shall be binding not only upon the parties hereto but also upon their personal representatives, assigns, and other successors in interest. Donee, with Donor’s prior written consent, which shall not be unreasonably withheld or delayed, may assign its rights under this Agreement to an affiliate prior to Closing, in which case Donee shall be released in full from all duties and obligations hereunder, provided Donee’s assignee agrees in writing to assume such duties and obligations.

21. **Additional Documents.** Donor and Donee agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

22. **Entire Agreement; Modification.** This Agreement, together with the 2019 Donation Agreement, constitute the entire agreement between Donor and Donee pertaining to the subject matter contained in therein and herein and supersede 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.

23. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

24. **No Merger.** The obligations contained in this Agreement, except for those specifically discharged at Closing shall survive the Closing.

25. **Headings; Rules of Construction.** The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed more strictly against the drafter thereof.

26. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument.

27. **No Waiver.** 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. Any party hereto may waive the benefit of any provision, contingency or condition for its benefit contained in this Agreement.

28. **Choice of Law.** The validity, construction, interpretation, and performance of this Agreement shall in all ways be governed and determined in accordance with the laws of the state of Tennessee.

29. **Miscellaneous.** In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days which are not on a Saturday, Sunday or legal holiday.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS** of the foregoing provisions, the Donor, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

**DONOR:**

**CITY OF CHATTANOOGA**

By: \_\_\_\_\_  
ANDY BERKE, Mayor

**IN WITNESS** of the foregoing provisions, the Donee, by its duly authorized signatory, has executed this Agreement under seal as of the last date of signature, as reflected below.

**DONEE:**

**NIPPON PAINT AUTOMOTIVE  
AMERICAS, INC.**

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

**EXHIBIT "A"**

**(Legal Description of the Property)**

**LOT TWO, HARRIET TUBMAN SUBDIVISION**

Land located in the City of Chattanooga, Hamilton County, Tennessee. Being LOT TWO, Harriet Tubman Subdivision, of record in Plat Book 116, Page 121, Register's Office, Hamilton County Tennessee, (ROHC), and being a portion of the property of the City of Chattanooga, Tennessee, is described by Deed Book 10196, Page 426, ROHC, and City of Chattanooga Ordinance 13419, and being more particularly describe as follows:

COMMENCE at an iron rod at the northwest corner of LOT ONE, property of the City of Chattanooga, said point located at Tennessee State Plane Coordinates: N: 266,677.42, E: 2,188,885.93;

Thence South 65 degrees 48 minutes 56 seconds East, along the northern line of aforesaid property, a distance of 774.95 feet to an iron rod, located at Tennessee State Plane Coordinates: N: 266,359.94, E: 2,189,592.86, which is the POINT OF BEGINNING for LOT TWO;

Thence South 65 degrees 48 minutes 56 seconds East, along said northern line, a distance of 214.81 feet to an iron rod;

Thence leaving said northern line, and with property lines of Hamilton County, Tennessee, Board of Education, of record in Deed Book 5117, Page 438, ROHC, the following courses and distances:

South 23 degrees 47 minutes 30 seconds West, a distance of 438.00 feet to an iron rod;

South 65 degrees 48 minutes 56 seconds East, a distance of 397.81 feet to an iron rod in the western Right-of-Way line of Roanoke Avenue;

Thence South 23 degrees 47 minutes 30 seconds West, along said Right-of-Way line, a distance of 880.03 feet to a PK Nail at the intersection of aforesaid Right-of-Way line with the northern Right-of-Way line of Southern Street;

Thence North 65 degrees 48 minutes 56 seconds West, along said northern Right-of-Way line, a distance of 621.66 feet to an iron rod;

Thence North 24 degrees 11 minutes 04 seconds East, along the western line of aforesaid LOT TWO, a distance of 1,318.00 feet to the POINT OF BEGINNING.

LOT TWO, as described herein, contains 14.67 Acres, more or less.

**EXHIBIT "B"**

**(Legal Description of the Donated Property)**

**SURVEYOR'S DESCRIPTION:  
PORTION TO BE CONVEYED  
PART LOT TWO, HARRIET TUBMAN SUBDIVISION  
PART TAX PARCEL 136E A 005.02**

Land located in the City of Chattanooga, Hamilton County, Tennessee. Being the Northwest 20 feet of Lot Two, Harriet Tubman Subdivision, of public record in Plat Book 116, Page 121, Register's Office, Hamilton County Tennessee, (ROHC), and being a portion of the Property of the City of Chattanooga, Tennessee, is described by Deed Book 10196, Page 426, ROHC, and City of Chattanooga Ordinance 13419, and being more particularly describe as follows:

BEGINNING at an Iron Rod (set) at the Northwest Corner of aforesaid LOT TWO as shown on aforesaid Plat Book 116, Page 121, ROHC, said corner located at Tennessee State Plane Coordinates: N: 266,359.94, E: 2,189,592.86;

Thence South 65 degrees 48 minutes 56 seconds East, along the Northeast Line of said LOT TWO, a distance of 20.00 feet;

Thence leaving said Northeast Line, and along a new Boundary Line, South 24 degrees 11 minutes 04 seconds West, a distance of 1,318.00 feet, to a point on the Northeast Right-of-Way Line of Southern Street;

Thence along said Northeast Right-of-Way Line, North 65 degrees 48 minutes 56 seconds West, a distance of 20.00 feet to an Iron Rod Set at the Southwest Corner of aforesaid LOT TWO as shown on aforesaid Plat Book 116, Page 121, ROHC;

Thence along the Northwest Line of aforesaid LOT TWO, North 24 degrees 11 minutes 04 seconds East, a distance of 1,318.00 feet to the POINT OF BEGINNING.

PROPERTY TO BE CONVEYED, as described herein, contains 0.61 Acres, more or less.

