

GENERAL DANIEL "CHAPPIE" JAMES, JR.
MEMORIAL PLAZA STEWARDSHIP AGREEMENT

THIS STEWARDSHIP AGREEMENT, hereinafter "Agreement" is made and entered into this 31st day of January, 2024, by and between the **CITY OF PENSACOLA**, a municipal corporation of the State of Florida, hereinafter referred to as the "City," whose address is 222 W. Main Street, Pensacola, FL 32501, and the **GENERAL DANIEL "CHAPPIE" JAMES, JR. MEMORIAL FOUNDATION, INC.**, a Florida Not-For-Profit Corporation, whose current address is 1725 Whaley Avenue, Pensacola FL 32503, hereinafter referred to as the "Foundation."

WHEREAS, the City is the owner of the Wayside Park located immediately adjacent to the southeast landing of Gen. Daniel "Chappie" James, Jr. Bridge, hereinafter the "Bridge" and

WHEREAS, the Foundation intends to build the Gen. Daniel "Chappie" James, Jr. Memorial Plaza, hereinafter the "Plaza" on a portion of the Wayside Park property, and

WHEREAS, the Plaza will include significant memorials in honor of Gen. James, including, but not limited to, a static display of a demilitarized F-4C Phantom II fighter jet, a statue of the General on a pedestal, a Memorial Plaque on stone, and a flagpole with the flag of the United States, and any other City-approved memorials, hereinafter the "Associated Installations", and

WHEREAS, the Foundation has been incorporated as a non-profit corporation for the purposes of funding, constructing and maintaining the Plaza, and

WHEREAS, the City and the Foundation recognize the significance of the Plaza to honor the service and sacrifice of Gen. James, a Pensacola native who served the Nation through three wars, and

WHEREAS, the City and the Foundation intend to have the Plaza serve as a tourist destination and as a special place for reflection and remembrance, and

~~2023~~
2024
WHEREAS, the City Council approved this Agreement on the 18th day of JANUARY,

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual benefits and obligations hereinafter set forth, to be kept and performed by the parties hereto, and other good and valuable consideration, the sufficiency of which is hereby expressly acknowledged, the City and the Foundation agree as follows:

1. The City grants the Foundation the exclusive right to construct the Plaza and

Associated Installations on the portion of Wayside Park bounded by the 17th Avenue Bridge exit ramp to the south, 17th Avenue to the west, the entrance road to Wayside Park to the north, and the parking roundabout to the east (the "Subject Property). If, upon progression or completion of approved construction and improvements by the Foundation, the parties mutually agree to expand or decrease the above-expressed boundaries, such adjustment shall be documented in writing via an amendment to this Agreement.

2. This Agreement shall automatically terminate on June 30, 2025, unless the Foundation has provided documentation in a form acceptable to the City evidencing the full funding required for construction of the Plaza and Associated Installations described herein or as revised with prior City approval, plus sufficient additional funding to support a minimum of the first three years (3 years) of anticipated maintenance, repair and upkeep as required under Paragraph 6 herein below.

3. The Foundation shall not make any improvements to the subject property unless expressly authorized in writing by the Mayor or designee. In issuing such authorization, the City may inquire as to the Foundation's ability to fund the work being permitted and the City may, in its sole discretion, withhold authorization until such time as adequate funding is verified.

4. The Foundation shall not be required to pay an annual license fee to the City. The Foundation shall be permitted to host its own proprietary events at the Plaza ("Foundation Events") with no less than ninety (90) days' written notice to the City Special Events Office, and upon review and approval, receive a special event permit with permit fees normally charged by the City waived. The Foundation shall coordinate with the City's Special Events Office to avoid scheduling conflicts and to ensure compliance with all applicable rules, regulations and laws. The Foundation shall be solely responsible for all legal and regulatory compliance with regard to Foundation Events and will be solely responsible for payment of any fees or charges associated with legal and regulatory compliance. The Foundation is not authorized to approve or deny any non-Foundation Events or functions at the Plaza and all non-Foundation Events will require approval through the City's Special Event permitting process.

5. The Foundation shall be responsible for the construction, maintenance and repair of the Plaza and Associated Installations. Prior to construction, the Foundation must obtain all necessary permits and, once obtained, a formal Notice to Proceed must be issued by the City. All local, state and federal standards must be met throughout the construction phase. The City will designate a construction inspector to coordinate construction efforts between the contractor and the City. At the time of substantial completion, the city's designated construction inspector must

agree that substantial completion has been met and concur with all punch list items to be satisfied prior to project completion and acceptance. Once all substantial completion items are satisfied, a final walk-through must be scheduled prior to the City formally accepting the project from the contractor. The City will issue a construction acceptance letter once construction is deemed complete.

6. As to its maintenance and repair responsibilities, the Foundation shall maintain the Plaza and the Associated Installations, including but not necessarily limited to all marble, stone, concrete, brick, aluminum, steel, brass, graphite, granite, bronze, glass, etchings, carvings, engravings, wood, rubber, and the like, in a general state of good condition and repair befitting such a memorial. All regular maintenance shall be performed by the Foundation in accordance with manufacturer recommendations and specifications. All repairs to the Plaza and the Associated Installations shall also be the responsibility of the Foundation unless expressly agreed otherwise by the Parties in writing. General upkeep of the Plaza, adjacent landscaping, and the surrounding grounds shall be performed by the City by the same processes and in the same fashion as it undertakes for the general upkeep of all City parks. This shall include regular grounds clean up, trash, litter and refuse collection and disposal, grass cutting, edging and other landscape maintenance, etc. but does not include any repair or manufacturer-recommended maintenance of the Plaza or the Associated Installations unless expressly agreed otherwise by the Parties in writing.

7. During the construction of the Plaza and installation of the F-4C Phantom II, pedestal, statue and the flagpole, the Foundation agrees to purchase and maintain in full force and effect, liability insurance coverage with limits of at least \$1,000,000 combined single limits of liability per occurrence for bodily injury, including death and property damage with the City of Pensacola named as an additional insured, with such coverage to be in addition to Contractor's Liability Insurance which shall be required for all contractors and subcontractors on the project at coverage levels and limits set by the City. The Foundation will provide the City with a Certificate of Insurance, hereinafter "COI," evidencing the existence of such insurance. The COI will provide that the City shall be notified at least thirty (30) days in advance of cancellation, non-renewal, adverse change, or restriction in coverage. Any wording in a COI, which would make notification of cancellation, non-renewal, adverse change, or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The Certificate holder shall be listed as follows: City of Pensacola, Department of Risk Management, P.O. Box 12910, Pensacola, FL. 32521-0063.

8. The Foundation shall indemnify and hold harmless the City from and against any and all third party (3rd) party claims arising out of this Agreement including but not limited to bodily injury and property damage to the extent caused solely by the Foundation's negligent acts or omissions. Indemnification includes providing a legal defense for the City. Insurance of the Foundation in section 6 shall be primary and non-contributory. The Foundation retains control over its employees, agents, servants, and subcontractors, as well as control over its invitees and its activities on and about the subject premises. Both Parties agree the Foundation is not an agent of the City. The Foundation shall make special effort to detect hazards and take prompt action where loss control/safety measures should reasonably be taken. Nothing contained in this Agreement shall be construed as a waiver of the City's sovereign immunity or limitations promulgated under Florida Statute 768.28.

9. Inasmuch as the Plaza and Associated Installations will be located in a City Park, the Subject Property shall remain the property of the City. When the City has acknowledged in writing its satisfaction therewith, the aforementioned liability insurance for construction and installation will be canceled. The insurance requirement for the Foundation itself will remain in effect. Due to the potential long-term nature of this Agreement, the City may periodically, but no more than once per calendar year increase the minimum insurance limits for the Foundation's required liability insurance.

10. The Foundation shall be required to prepare and submit to the City an Annual Report of its activities. This Annual Report shall be submitted in writing to the Mayor or designee annually within 30 calendar days of the anniversary date of this Agreement. The Annual Report should include, but not necessarily be limited to, a message from the Foundation Chair, a listing of the Foundation's then-current officers and directors, a recitation of the Foundation's activities and achievements during the prior year, and a copy of the Foundation's most recent year-ending financial statements, which must be audited only if required under the rules of the United States Internal Revenue Service or the laws of the State of Florida. The City reserves the right to inspect or audit the Foundation's financial records at any time upon reasonable written request and the Foundation agrees to fully cooperate with the City in such case.

11. This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the City.

12. This Agreement may be terminated by the City for cause. Cause shall be defined as the Foundation's failure to perform in accordance with the provisions of this agreement, the Foundation's inability to complete full construction of the Plaza and Associated Installations as

approved by the City, or the Foundation's inability to sustain adequate funding to meet its ongoing maintenance and repair obligations as specified herein. In such case, the City shall provide the Foundation with written notice of intent to cancel no less than 120 days in advance. During the 120-day notice period, the Foundation may remedy the failure or seek to negotiate revised performance terms agreeable to the City to facilitate the Foundation's continued stewardship of the Plaza and Associated Installations as existing at the time.

13. Venue for any claim, action, or proceeding arising out of this Stewardship Agreement shall be Escambia County, Florida.


14. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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IN WITNESS WHEREOF, this Agreement is executed by the authorized representatives of the CITY OF PENSACOLA and GENERAL DANIEL "CHAPPIE" JAMES, JR. MEMORIAL FOUNDATION, INC. on the day and year first written herein.

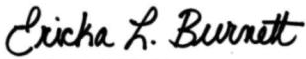
CITY:

CITY OF PENSACOLA,
a Florida municipal corporation

By: 
1/30/2024 1:06:02 PM

D.C. Reeves, Mayor

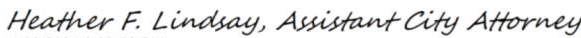
Attest:


1/31/2024 2:28:27 PM

Ericka Burnett, City Clerk




Approved as to form


1/29/2024 3:33:30 PM

Assistant City Attorney


FOUNDATION:

GENERAL DANIEL "CHAPPIE" JAMES JR.
MEMORIAL FOUNDATION, INC.
a Florida not-for-profit corporation

By: 
CRISTOV DOSEV, CHAIRMAN

(print name) (print title)

Witnessed:



Corporate Secretary
WILHELM A. HANSEN, JR.

Affix Corporate Seal Here

