

JIMMY BROWN JOHNSON
Attorney
City of Knoxville

Document No. C-25-0099

AGREEMENT

THIS AGREEMENT is made by and between the **CITY OF KNOXVILLE**, a municipal corporation organized and existing under the laws of the State of Tennessee (“**CITY**”), and **KNOXVILLE BOTANICAL GARDEN AND ARBORETUM (“KBGA”)**, 2743 Wimpole Avenue, Knoxville, TN 37914 (“**CONTRACTOR**”).

WITNESSETH:

WHEREAS, the Knoxville Botanical Garden and Arboretum is located on 47 acres of former Howell Nurseries, featuring walking trails, display gardens, unique and historic horticulture and over two miles of distinctive stone walls and timeless buildings; and

WHEREAS, KBGA is not only the connection to a new greenway, but this funding will help it continue to operate, as it serves and provides programs for East Knoxvillians and the community at large; and

WHEREAS, the City wishes to enter into an agreement with KBGA regarding said funding for its administrative costs; and

WHEREAS, this agreement for KBGA will continue the same level of support provided annually by the City for the past three years.

NOW, THEREFORE, the City and the Contractor, for the mutual considerations stated herein, agree as follows:

ARTICLE 1. STATEMENT OF SERVICES

The Contractor shall:

- Provide an annual report listing and summarizing programs and services (due in January of each year of the agreement)

ARTICLE 2. BASIC AGREEMENTS

- 2.1 The executed Contract Documents will consist of the following:
- (A) This Agreement;
- 2.2 TERM. Agreement shall be for a period of one (1) year, unless earlier terminated pursuant to the provisions of this Agreement, beginning July 1, 2025 and continue through June 30, 2026. This One-year Agreement may be extended to two (2) additional one-year renewals under the same provisions with the written approval of the City and KBGA.
- 2.3 CONSIDERATION. For the satisfactory performance of the work performed, in accordance with the provisions of this Agreement, the City will pay the Contractor an amount not to exceed FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00). The Contractor shall submit an invoice for the services rendered to the City which shall be in a form approved by the City, shall indicate the time period during which the services were provided, and shall be signed and certified by the Contractor as to its accuracy. The City will pay all undisputed invoices within thirty (30) days of receipt. Payment for services rendered does not indicate the City's acceptance of such services as being fully in accord with all the provisions of this Agreement.
- 2.4 CHANGES IN CONTRACT PRICE. The contract price may be changed only by a Change Order. The value of any work covered by a Change Order of any claim for increase or decrease in the contract price shall be determined by the actual cost for the materials, supplies, equipment, profit and other services necessary to complete the work.
- 2.5 CHANGE IN SCOPE OF WORK. The City may at any time, if the need arises, order changes within the scope of the work without invalidating this Agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for the performance of the work, an equitable adjustment shall be authorized by Change Order. All Change Orders must be approved by the City and the Contractor.
- 2.6 NOTICES. Invoices, notices and communications concerning this Agreement will be directed to the following representatives:

City of Knoxville
Penny Owens, Purchasing Agent
P.O. Box 1631

Knoxville Botanical Garden & Arboretum
Sharon Moore, Executive Director
2743 Wimpole Avenue

Knoxville, TN 37901
(865) 215-2070

Knoxville, TN 37914
(865) 862-8719
sharon@knoxgarden.org

cc: Sheryl Ely, Parks and Recreation Director
5930 Lyons View Pike
Knoxville, TN 37919
(865) 215-4311

Notices shall be in writing and shall be effective when actually delivered in person, received via facsimile transmission, or private carrier with signature confirmation, or when received in the U.S. Mail, certified with return receipt requested, postage pre-paid and addressed to the party as stated above.

ARTICLE 3. TERMINATION

The City may terminate this Agreement at any time, with or without cause, by written notice of termination to the Contractor. If the City terminates this Agreement, and such termination is not a result of a default by the Contractor, the Contractor shall be entitled to receive as its sole and exclusive remedy the following amounts from the City, and the City shall have no further or other obligations to the Contractor: (a) The amount due to the Contractor for work executed through the date of termination, not including any future fees, profits, or other compensation or payments which the Contractor would have been entitled to receive if the Project had not been terminated; and (b) the direct out-of-pocket costs incurred by the Contractor for demobilization of the Project following receipt of the notice of termination, not to exceed the amount reasonably and actually required to demobilize the Project.

The City may, by written notice of default to the Contractor, terminate the whole or any part of this contract if the Contractor fails to make delivery of the supplies or to perform the services wherein the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Purchasing Agent may authorize in writing) after receipt of notice from the Purchasing Agent specifying such failure.

If the contract is terminated in whole or in part for default, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies of services similar to those so terminated.

If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of

the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of the City.

The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 4. HOLD HARMLESS AND INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of Contractor in performance of this Agreement or from Contractor's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees.

Contractor shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and Contractor shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. Contractor will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Contractor may request. Contractor will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Contractor shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City alleging liability referenced above.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

ARTICLE 5. INSURANCE.

Contractor shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better.

1. ***Commercial General and Umbrella Liability Insurance***; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not

less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

- a. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.
 - b. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - c. At the sole discretion of the City, dedicated limits of liability for this specific project may be required.
2. ***Automobile Liability Insurance;*** including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Contractor.
 3. ***Workers' Compensation Insurance.*** Contractor shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Contractor shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Contractor's workers' compensation insurance coverage.
 4. ***Other Insurance Requirements.*** Contractor shall:
 - a. Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.

- b. Upon the City's request, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) will be required.
- c. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- d. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
- e. If Contractor cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Contractor may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
- f. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Contractor shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.

Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.

Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Contractor for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.

Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability

and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.

ARTICLE 6. NON-DISCRIMINATION

The Contractor hereby agrees that it:

- A. Will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status or national origin;
- B. Will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, age, disability or familial status or national origin;
- C. Will in all solicitations or advertisements for employees placed by or on behalf of itself, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability, familial status or national origin;
- D. Will include these provisions in every subcontract or sublease let by or for it;

ARTICLE 7. ETHICAL STANDARDS

The Contractor hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

- (A) Sec. 2-1048. Conflict of Interest.

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge there is a financial interest possessed by:

- (1) The employee or the employee's immediate family;
- (2) A business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
- (3) Any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

(B) Sec. 2-1049. Receipt of Benefits from City Contracts by Councilmembers, Employees and Officers of the City.

It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

(C) Sec. 2-1050. Gratuities and Kickbacks Prohibited.

Gratuities. It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- (1) An official action taken, or to be taken, or which could be taken;
- (2) A legal duty performed, or to be performed, or which could be performed;
- or
- (3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(D) Sec. 2-1051. Covenant Relating to Contingent Fees.

(a) *Representation of Contractor.* Every person, before being awarded a contract in excess of ten thousand dollars (\$10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) *Intentional violation unlawful.* The intentional violation of the representation specified in subsection (a) of this section is unlawful.

(E) Sec. 2-1052. Restrictions on Employment of Present and Former City Employees.

Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

- (1) Oral or written warnings or reprimands;
- (2) Cancellation of transactions; and
- (3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

ARTICLE 8. ADA COMPLIANCE

With regard to the services performed under this Agreement, Contractor will comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (“ADA”). Contractor agrees that it will defend, indemnify and hold the City harmless against any and all claims, demands, suits or causes of action which arise out of any negligent and/or intentional act or omission by Contractor, its employees, agents or representatives that violates the ADA. Contractor agrees that the City will not be responsible for any costs or expenses arising from Contractor’s failure to comply with the ADA.

ARTICLE 9. MISCELLANEOUS PROVISIONS

- 9.1 INDEPENDENT CONTRACTOR. The Contractor shall perform all obligations under this Agreement as an independent contractor; neither it nor its employees shall be considered employees, partners or agents of the City, nor shall it or its employees be entitled to any benefits, insurance, pension, or workers’ compensation as an employee of the City.
- 9.2 ASSIGNMENT. The Contractor shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of the City.
- 9.3 SUBCONTRACTS TO THE AGREEMENT. The Contractor shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.
- 9.4 WRITTEN AMENDMENTS. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.
- 9.5 REQUIRED APPROVALS. Neither the Contractor nor the City is bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this

Agreement.

- 9.6 ARTICLE CAPTIONS. The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.
- 9.7 SEVERABILITY. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.
- 9.8 FEDERAL, STATE AND LOCAL REQUIREMENTS. The Contractor is responsible for full compliance with all applicable federal, state, and local laws, rules and regulations.
- 9.9 NO BENEFIT FOR THIRD PARTIES. The services to be performed by the Contractor pursuant to this agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on the Contractor's performance of its services hereunder, and no right to assert a claim against the City or the Contractor, its officers, employees, agents or contractors shall accrue to the Contractor or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety or any other third party as a result of this Agreement or the performance or non-performance of the Contractor's services hereunder.
- 9.10 NON-RELIANCE OF PARTIES. Parties explicitly agree that they have **not** relied upon any earlier or outside representations other than what has been included in this Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.
- 9.11 FORCE MAJEURE. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

- 9.12 EEO/AA. The City of Knoxville is an EEO/AA/Title VI/Section 504/ ADA/ADEA Employer.
- 9.13 GOVERNING LAW AND VENUE. This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee. Any action for breach of this Agreement or to enforce or nullify any provision of this agreement shall be instituted only in a court of appropriate jurisdiction in Knox County, Tennessee.
- 9.14 ENTIRE AGREEMENT. This Agreement forms the entire Agreement between the City and the Contractor. Any prior representations, promises, agreements, oral or otherwise, between the parties, which are not embodied in this writing, shall be of no force or effect.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement in two (2) copies as of the below-written date.

APPROVED AS TO FORM:

CITY OF KNOXVILLE

CHARLES W. SWANSON
LAW DIRECTOR

BY: _____
INDYA KINCANNON
MAYOR

DATE: _____

FUNDS CERTIFIED:

**KNOXVILLE BOTANICAL GARDEN
& ARBORETUM (KBGA)**

BOYCE H. EVANS
FINANCE DIRECTOR

BY: _____

TITLE: _____

Required Documents:
Certificate of Insurance

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