

RESOLUTION NO. 29618

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH THE TRUST FOR PUBLIC LAND, IN SUBSTANTIALLY THE FORM ATTACHED, FOR A TERM OF ONE (1) YEAR, FROM JULY 1, 2018 THROUGH JUNE 30, 2019, FOR AN AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) TO BE PAID IN FOUR (4) QUARTERLY INSTALLMENTS OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a professional services agreement with The Trust for Public Land, in substantially the form attached, for a term of one (1) year, from July 1, 2018 through June 30, 2019, for an amount not to exceed \$100,000.00 to be paid in four (4) quarterly installments of \$25,000.00 each.

ADOPTED: September 11, 2018

/mem

CONSERVATION SERVICES AGREEMENT 2018-2019

This Agreement is made and entered into this ____day of _____, 2018 by and between the City of Chattanooga, (hereinafter "City") and The Trust for Public Land, (hereinafter "TPL"), a non-profit California public benefit corporation (collectively, the "Parties").

WITNESSETH:

For the acknowledged consideration, City enters into this Agreement with TPL 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 TPL, and TPL 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 TPL shall carry out land protection and implementation of the Chattanooga Greenways Program.

2. GENERAL TERMS.

(a) The address and telephone number of TPL is 202 Tremont Street, Chattanooga, TN 37405, (423) 265-5229, Facsimile: (423) 265-6681.

(b) The address and telephone number for the City is Department of Economic and Community Development, 101. 11th Street, 2nd Floor, Chattanooga, TN 37404, (423) 643-6886, Facsimile: (423) 265-6681.

(c) The City's primary liaison with TPL shall be the Department of Economic and Community Development, and the TPL employee responsible for administering this Agreement shall be Jenny Park, Tennessee State Director, provided that the City and TPL reserve the right to substitute personnel at any time. It is agreed that TPL 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. TPL agrees to provide certificates of insurance to the City evidencing that TPL maintains worker's compensation insurance for its employees.

(d) The term of this Agreement shall be from July 1, 2018 through June 30, 2019.

(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 TPL the sum of One Hundred Thousand Dollars and 00/100 Cents (\$100,000.00), TPL agrees to carry out all services described in **Exhibit A**, Scope of Services, attached hereto and made a part hereof.

The City agrees to furnish tax parcel maps, aerial photographs, or other public information concerning the greenways that are available for reproduction and at its disposal. TPL 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 TPL promptly for use in connection with the performance of the Services.

TPL represents and warrants that the Services rendered under this Agreement will be of the highest professional quality. At TPL's election, TPL may subcontract for any of the Services to be performed hereunder. All Services will be completed within one (1) year after the effective date hereof, unless the performance by TPL of the Services are delayed as a result of forces beyond the control of TPL. However, TPL 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 TPL, as professional fees, the sum of One Hundred Thousand Dollars and 00/100 Cents (\$100,000.00) payable in equal installments of Twenty-five Thousand Dollars and 00/100 Cents (\$25,000.00) per quarter. Payments shall be due on the first day of each quarter. TPL will provide a quarterly invoice to the City. In the event that this Agreement is terminated by either party, TPL shall be entitled only to a pro rata share of the professional fees earned prior to the termination of the Agreement. In no event shall the City's liability under this Agreement exceed One Hundred Thousand Dollars and 00/100 Cents (\$100,000.00) without prior written approval by the City.

(b) Reimbursements. City agrees to reimburse TPL for all expenses incurred by TPL to obtain appraisals, surveys, and other due diligence work from third parties. TPL 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 TPL's invoice to the City.

5. INSURANCE.

TPL 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 TPL, its agents, servants, employees or subcontractors, or anyone directly employed by any of them for his acts any of them may be liable. TPL shall conduct its activities on the premises subject to this Agreement so as not to endanger any persons or property therein. TPL 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 TPL, 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 TPL 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 TPL's use of the premises. TPL shall, at TPL'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 TPL 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 Economic and Community Development at the address set forth in Section 2(b) of this Agreement before execution of this Agreement. TPL 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 Economic and Community Development 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 TPL 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 TPL 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 TPL, and is intended solely to establish the relationship of Contractor and Client.

7. OTHER TERMS.

(a) TPL shall operate as an independent contractor, and the City shall not be responsible for any of TPL's acts or omissions. TPL 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 TPL in connection with the performance of its obligations under this Agreement.

(b) TPL 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. TPL understands that neither federal, nor state, nor payroll tax of any kind, shall be withheld or paid by the City on behalf of TPL or the employees of TPL. TPL further understands and agrees that TPL is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

(c) TPL 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. TPL 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 TPL for any expenses paid or incurred by TPL unless otherwise agreed in writing, except as provided herein.

(e) TPL 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) TPL 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.

TPL 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 TPL is called to any such violation on the part of TPL or of any person employed by or admitted to said premises by TPL, TPL will immediately desist from and correct such violation. TPL covenants to comply with State laws and City laws and ordinances in regard to nuisances insofar as the premises are concerned and that TPL 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 TPL 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.

TPL 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. TPL agrees not to discriminate against any participant on the basis of race, color, religion, sex, age or national origin. TPL 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 TPL or TPL's Subcontractors. The City may further audit any TPL or TPL 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.

The TPL 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 TPL pursuant to this Agreement. Documents shall be maintained by the TPL necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The TPL 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 TPL and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the TPL'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. TPL 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 TPL 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 ECONOMIC AND
COMMUNITY DEVELOPMENT

THE TRUST FOR PUBLIC LAND

By: _____
Name: _____

By: _____
Jenny Park,
Tennessee State Director

Exhibit A - Scope of Fiscal Year 2019 (rev. 7/17/2018)

The Trust for Public Land's mission is to create parks and protect land for people. We are an independent, private, non-profit that is the nation's only nonprofit focused on providing urban parks and connecting people to public space. The Trust for Public Land is a national organization with over 40 years of experience in public park planning and development.

The Trust for Public Land (TPL) will provide general support to the Department of Economic and Community Development through our park planning expertise and our network of park experts, advising on policies, best practices and various initiatives in park/land management. TPL will serve as a technical resource in regards to finance measures and economic benefit analysis. TPL will help leverage public investment with private sector fundraising, to accomplish the shared objective of public acquisition and protection of parks, trails and open space property within the City of Chattanooga.

TPL commits to communicating with the City early and often, and will adhere to the City's guidelines for park development and land evaluation on shared priorities.

The following list reflects the mutual priorities of TPL and the City and addresses how the two organizations will work together. These priorities have been identified in the City's 5-Year Capital Improvement Program and TPL's Chattanooga Parks for People Five-Year Vision. Throughout the year, there will be collaboration between TPL and ECD to confirm these priorities, add priorities or change priorities due to unforeseen circumstances. Through this scope of services we intend to provide the City of Chattanooga recommendations and advice necessary to continue building a robust and connected park and greenway system. More specifically, TPL will:

1. Lead the effort to complete the entirety of the South Chickamauga Creek Greenway
 - a. TPL will lead design, fundraising, and construction of the Cromwell section of the South Chickamauga Creek Greenway. This 1-mile segment begins near the Lightfoot Mill Road Trailhead and ends near Caine Lane behind the Cromwell Hills apartments.
 - b. TPL will seek further funding from public and private sources for the completion of the full greenway from Camp Jordan to the Riverwalk.
2. Lead the process to develop a conceptual design for Lynnbrook Park
 - a. TPL will use NEA Our Town grant funds to engage residents, organizations and institutions within a half mile of the proposed park and develop a conceptual park design.
 - b. TPL will attempt to obtain additional funding from public and private sources.
3. Lead the development process for the privately-funded Phase 1 implementation of the Park Master Plan for Sterchi Farm Trailhead
 - a. TPL will compensate the design consultant for all services rendered and compensate general contractor for grading, utilities and hardscapes for Phase I of the Master Plan.
 - b. TPL will continue its efforts to design and construct a rustic pavilion.
 - c. TPL will serve as a key stakeholder and advisor for future phases of development at the park
4. Assist with pre-planning efforts for an urban skate park feasibility study by collecting and compiling relevant data and information, after the City initiates this activity.
5. Maintain and update the Healthy Connected Chattanooga mapping platform that assists the City with its park planning and evaluation process
 - a. TPL will provide training opportunities for City officials, staff and stakeholders for use of the tool
 - b. TPL will continue to make recommendations to the City for locations of critical park investments where multiple benefits can be created.
6. Assist with search for property suitable to City criteria as an equivalent replacement for Ridgedale Park
7. Serve on committees and working groups related to parks, greenways, trails and connectivity as mutually agreed upon by the City and TPL
8. TPL will continue to coordinate with the departments of Economic and Community Development, Transportation and Public Works as needed and as issues arise related to bicycle/pedestrian connectivity, greenways and parks.

The Trust for Public Land will continue to work independently of the City to accomplish the priorities of its national board of directors. TPL may work on those projects independently and will not be part of this contract unless an amendment or a new contract is mutually agreed upon by both parties.