

RESOLUTION NO. 29239

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, 2017 THROUGH JUNE 30, 2018, 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) EACH.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor is hereby authorized 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, 2017 through June 30, 2018, for an amount not to exceed \$100,000.00 to be paid in four (4) quarterly installments of \$25,000.00 each.

ADOPTED: November 14, 2017

/mem

## **PROFESSIONAL SERVICES AGREEMENT - FY2018**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 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 authorize TPL to carry out parks and open spaces project work for the City of Chattanooga.

#### 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 Office of Economic and Community Development, Attn: Deputy Administrator, 101 E. 11th Street, Suite 200, Chattanooga, TN 37402, (423) 643-7321, rbeeland@chattanooga.gov.

(c) The City's primary liaison with TPL shall be the Deputy Administrator for the Department of Economic and Community Development, and the TPL employee responsible for administering this Agreement shall be the 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, 2017 through June 30, 2018.

(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) or (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 (hereinafter referred to as the "Services").

TPL shall furnish all equipment, supplies and materials necessary for the performance of the Services. The City agrees to make all reasonable efforts to provide project background information, documents and guidelines 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 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.

TPL, along with any subcontractors, shall perform project phases and tasks in accordance with Economic and Community Development standards and guidelines. All subsequent scope of work documents, project plans, phases, processes and schedules shall be approved by the Office of the City Attorney prior to project initiation.

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 providing an invoice and supporting

documentation 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 its 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, with minimum requirements as set forth in 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 Office of Economic and Community Development - Real Property 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 Deputy Administrator of the Department of Economic and Community Development and the Office of the City Attorney at least ten (10) 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 the Services unless otherwise agreed in writing.

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

(g) The Department of Economic and Community Development shall coordinate projects and provide decision making guidance to the TPL that reflects the priorities of the Mayor of Chattanooga. TPL will provide recommendations and advice necessary to maintain and expand a connected parks and trails system for the City of Chattanooga.

(h) The Project list and scope of work shall reflect mutual priorities of TPL and the City of Chattanooga.

(i) Projects may include, but are not limited to: Develop policies or initiatives, perform research and analyses, leverage public investment by securing grants or private funding, public land protection through easements or acquisitions, community engagement driven planning and design processes with intent to oversee construction

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. If the attention of 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. Any cause of action shall be brought in a court of competent jurisdiction in Hamilton County, Tennessee under the laws of the state of Tennessee.

10. NON-DISCRIMINATION PROVISION.

TPL agrees to comply with all federal, state and local nondiscrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state or local law when utilizing this City premises. 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.

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, timesheets, 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
Andy Berke, Mayor
Date:

THE TRUST FOR PUBLIC LAND
George Dusenbury IV, GA/Tennessee State Director
Date: