

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

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A CONTRACT WITH ORANGE GROVE CENTER, INC. FOR RECYCLING AND REFUSE SERVICES FOR FISCAL YEARS 2017 THROUGH 2020 EFFECTIVE JULY 1, 2016, FOR A TOTAL AMOUNT DURING ALL FOUR (4) YEARS, FOR AN AMOUNT NOT TO EXCEED TWO MILLION FIVE HUNDRED SIXTY-EIGHT THOUSAND SIX HUNDRED SIXTY-ONE AND 83/100 DOLLARS (\$2,568,661.83), AS OUTLINED BELOW.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Public Works to enter into a contract with Orange Grove Center, Inc. for recycling and refuse services for Fiscal Years 2017 through 2020 effective July 1, 2016, for a total amount during all four (4) years, for an amount not to exceed \$2,568,661.83, as outlined below:

This contract will provide payment for services as follows:

- 1) Fiscal Year 2017 - \$618,579.68
- 2) Fiscal Year 2018 - \$634,044.18
- 3) Fiscal Year 2019 - \$649,895.29
- 4) Fiscal Year 2020 - \$666,142.68

Total Amount - \$2,568,661.83

ADOPTED: \_\_\_\_\_, 2016

/mem

# City of Chattanooga



## Resolution Request Form

(This form is only required for resolutions requiring expenditure of City funds)

Date: June 21, 2016

Preparer: Jason Silvers

Department: Public Works / City Wide Services

District: \_\_\_\_\_

### Brief Description of Purpose for Resolution:

Resolution Number (if approved by Council): \_\_\_\_\_

A City Council Action is requested to authorize the Administrator of the Department of Public Works to enter into a contract with Orange Grove Center, Inc. for Fiscal Years 2017, 2018, 2019 and 2020, effective July 1, 2016 for recycling and refuse services for a total amount during all four years which shall not exceed 2,429,424.76. This contract will provide payment for services during FY 2017 in the amount of \$618,579.68; FY 2018 in the amount of \$634,044.18; FY 2019 in the amount of \$649,895.29; and FY 2020 in the amount of \$666,142.68.

FOR A TOTAL AMOUNT NOT TO EXCEED \$2,568,661.83.

Name of Vendor/Contractor/Grant, etc.	OGC	New Contract/Project? (Yes or No)	Yes
Total project cost \$	<del>2,429,424.76</del> \$2,568,661.83	Funds Budgeted? (YES or NO)	Yes
Total City of Chattanooga Portion \$	<del>2,429,424.76</del> \$2,568,661.83	Provide Fund	6020
City Amount Funded \$	0	Provide Cost Center	K00901
New City Funding Required \$	0	Proposed Funding Source if not budgeted	
City's Match Percentage %	0	Grant Period (if applicable)	

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

Amount(s)	Grantor(s)
\$	

Agency Grant Number \_\_\_\_\_

CFDA Number if known \_\_\_\_\_

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

Approved by: \_\_\_\_\_

DESIGNATED OFFICIAL/ADMINISTRATOR

Reviewed by: FINANCE OFFICE

Please submit completed form to @budget, City Attorney and City Finance Officer

RESOLUTION NO. 27929

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A CONTRACT WITH ORANGE GROVE CENTER, INC. FOR FISCAL YEARS 2015, 2016, 2017, AND 2018 FOR RECYCLING AND REFUSE SERVICES, FOR A TOTAL AMOUNT DURING ALL FOUR YEARS WHICH SHALL NOT EXCEED TWO MILLION FOUR HUNDRED TWENTY-NINE FOUR HUNDRED TWENTY-FOUR AND 76/100 DOLLARS (\$2,429,424.76).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Public Works to enter into a contract with Orange Grove Center, Inc. for Fiscal Years 2015, 2016, 2017, and 2018 for recycling and refuse services, for a total amount during all four years which shall not exceed \$2,429,424.76. Said contract will provide for payment for services during Fiscal Year 2015 in the amount of \$588,773.04; Fiscal Year 2016 in the amount of \$603,492.37; Fiscal Year 2017 in the amount of \$618,579.68; and Fiscal Year 2018 in the amount of \$618,579.68.

ADOPTED: July 1, 2014

/mem

## Agreement for the Operation, Management, and Marketing of Recyclable Materials and Convenience Centers

THIS AGREEMENT is made and entered into on \_\_\_\_\_ (hereinafter "Effective Date") by and between the CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation, (hereinafter "CITY") and the ORANGE GROVE CENTER, INC. (hereinafter "CONTRACTOR") (hereinafter collectively the "Parties").

### RECITALS:

**WHEREAS**, CITY is a municipal corporation desiring to provide residents continued convenient access and customer service to advance recycling and waste diversion efforts; and

**WHEREAS**, CONTRACTOR provides services necessary for the supervision of Refuse and Recycling Convenience Centers and Single Stream Recycle Sorting and to generate revenues from the sale of recyclable materials for the CITY; and

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, CITY and CONTRACTOR hereby mutually as follows:

**SECTION 1. PURPOSE.** This Agreement identifies and defines the responsibilities of both Parties regarding the management of recyclable materials (hereinafter "MATERIALS") and supervision of the operations of the Refuse and Recycling Convenience Centers (hereinafter "CENTERS") for the CITY. See **EXHIBIT B** for locations of CENTERS.

The basis for this Agreement is (1) to provide residents continued convenient access and customer service to advance recycling and waste diversion efforts of the CITY, (2) generate revenues from the sale of MATERIALS for the CITY, and (3) to provide job training and economic development opportunities to individuals with developmental disabilities as served by the CONTRACTOR. (hereinafter "CLIENTS").

**SECTION 2. STANDARD TERMS AND CONDITIONS.** This Agreement is governed by the CITY's Purchase Order Standard Terms and Conditions attached hereto as **EXHIBIT A** and incorporated herein by reference. To the extent that any term or provision of this Agreement conflicts with the CITY's Standard Terms and Conditions, the CITY's Standard Terms and Conditions shall prevail.

**SECTION 3. TERM.** The CONTRACTOR will provide adequate staffing at the CENTERS for four (4) years from July 1, 2016, until June 30, 2020. This Agreement will automatically be renewed for an additional one (1) year term. Either party may terminate this Agreement by providing the other party an advance of ninety (90) days written notice.

**SECTION 4. COMPENSATION.** For the Supervision of the CENTERS the CITY will pay the CONTRACTOR an amount not to exceed \$618,579.68 for the first year of the contract. An increase of 2.5% will be applied on July 1 at the beginning of the second, third and fourth years during the contract. The CONTRACTOR will operate any additional CENTERS the CITY may wish to create at a comparable compensation for each

additional CENTER. Such additions will require written amendment to this Agreement.

For management and marketing of MATERIALS collected at the CENTERS and from curbside recycle collection (hereinafter "CURBSIDE"), the CITY will pay the CONTRACTOR two thousand dollars (\$2,000.00) per month and an additional fifty percent (50%) of the net MATERIALS sales each month. If the cost to the CONTRACTOR for managing and marketing MATERIALS becomes greater than the revenue in any quarter, the CITY will cover additional costs less .

**SECTION 5. INVOICES.** The CONTRACTOR shall submit an invoice and all documents required by this Agreement to the CITY within twenty (20) days after the end of each calendar month to the Director of City Wide Services, Department of Public Works, 900 E. 11th Street, Chattanooga, TN 37402. The invoice shall be on company letterhead showing amount of payment due and the period for which payment is due. The CITY shall pay each such invoice on or before the 20th day of the calendar month following the month in which the invoice is received.

**Section 6. PAYMENTS.** The CONTRACTOR will make quarterly payments to the CITY for fifty percent (50%) of the net payments for MATERIALS received from the MRF.

**SECTION 7. LAWS, REGULATIONS, PERMITS, & TAXES.** The CONTRACTOR shall have and maintain, at its own expense, all licenses, registrations, permits and authorizations necessary for operations of the CENTERS.

The CONTRACTOR shall perform all of its obligations hereunder in accordance with any and all requirements, including amendments hereto, of the constituted public authorities and with all Federal, State, City, and Local laws and ordinances and the applicable rules, regulations, methods and procedures of all governmental boards, bureaus, offices, commissions and other agencies now or hereafter in effect. The CONTRACTOR shall pay any and all Federal, State, City, and Local taxes, fines, penalties and assessments.

**SECTION 8. INSURANCE.** The CONTRACTOR shall comply with all insurance requirements as set forth in the CITY'S Standard Terms and Conditions attached hereto as **EXHIBIT A**.

The CONTRACTOR shall submit within ten (10) days after execution of this Agreement and within ten (10) days following renewal of or replacement of any policy for approval by the CITY, certificates of insurance or such other evidence as the CITY may require to be verified that the above insurance is in full force and effect. The CONTRACTOR'S insurance policies shall be on an occurrence basis, not a "claims made" basis and shall provide that the CITY be given at least sixty (60) days written notice prior to any change or cancellation of such policies.

**SECTION 9. OPERATION OF THE RECYCLING AND REFUSE CONVENIENCE CENTERS.** While maintaining ownership, the CITY will provide for the use of the CONTRACTOR, the real property and equipment at five (5) Recycling Convenience Centers and three (3) Residential Refuse Collection Centers. The CONTRACTOR is to staff each of the CENTERS with staff members and CLIENTS to ensure the CENTERS are adequately staffed during the hours of operation. The CONTRACTOR will provide quarterly reports detailing the number of hours that its staff and CLIENTS worked at each CENTER, each month.

The CONTRACTOR will operate the CENTERS on Monday through Friday from 10:00 AM to 6:00 PM, Saturday

from 9:00 AM to 6:00 PM, and Sunday 1:00 PM to 5:00 PM. The CENTERS will be closed on New Year's Day, Easter Sunday, Thanksgiving Day, Christmas Eve, and Christmas Day. The CITY may change the hours or days of operation by providing the CONTRACTOR with a thirty (30) day written notice which shall identify and describe any relative change in compensation agreed to by the CITY and the CONTRACTOR.

The CONTRACTOR is required to complete daily activity reports provided by the CITY which will provide information such as vehicle license tags, information from customer's driver's license if necessary to determine residency, and participation on a monthly basis. These reports shall be submitted in written form to the Director of City Wide Services with the monthly invoice.

The CONTRACTOR will monitor MATERIALS delivered to each CENTER and ensure that all items delivered to the CENTERS are properly separated in designated containers. The CONTRACTOR will not accept any items from customers that the CENTERS do not accept. The Director of City Wide Services will define acceptable and non-acceptable materials for each CENTER in a standard operating procedure and provide a method or container for the storage and collection of the MATERIAL. The CONTRACTOR will not undertake any modification or changes to the physical site without prior approval of the CITY.

The CITY will provide and maintain safe, physical facilities at the CENTERS to include fences, compactors, storage containers, gates, buildings, and roll-off containers appropriate for each material. The CITY will be responsible for utilities such as water, sewer, and electricity. The CONTRACTOR is responsible for maintaining telephone service as well as the normal safeguarding of the CENTERS during normal business hours.

The CONTRACTOR acknowledges that it is solely responsible and liable for any accidents, injuries, or other mishaps to their employees occurring within the confines of the CENTER.

The CITY will maintain the real property in its current condition subject to fair wear and tear for the life of this Agreement. The CITY will provide for the transport of MATERIAL collected at the CENTERS once containers are at capacity. The CONTRACTOR will provide a minimum of one (1) day's notice to the CITY's hauling contractor when refuse containers are at capacity and hauling services are required. The CONTRACTOR will pay for hauling services if hauling services are requested by the CONTRACTOR and the containers are not consistently filled to capacity without prior authorization from the CITY.

The CONTRACTOR is to ensure litter is constantly monitored and removed immediately from any parking area, driveway, access road, grounds, or surrounding area. The CONTRACTOR is to protect against environmental contaminations and shall immediately make necessary repairs of routine concerns and notify the CITY of any problems encountered outside of daily operations or acceptance of MATERIAL. The CONTRACTOR is responsible for operating the CENTER in accordance with federal, state, and local guidelines, and the CITY's standard operating procedures. The Director of City Wide Services is responsible for developing and revising the CENTER'S standard operating procedures.

The CONTRACTOR will furnish to the CITY copies of any and all keys for the CENTERS.

The CONTRACTOR will manage and market all MATERIALS collected at the CENTERS and submit a report of revenues with itemized sales by MATERIALS, revenue and tonnage to the CITY each month.

The CITY is responsible for hauling, transferring, and disposal of all refuse, recyclables, and garbage from the CENTERS.

**SECTION 10 . SINGLE STREAM RECYCLE SORTING.**

The CONTRACTOR will manage and market all MATERIALS collected by the CITY from the single stream, curbside recycle program. The recyclables which may be collected in a curbside single stream method will include: all grades of paper, cardboard, aluminum cans, tin cans, and all grades of plastic (excluding styrofoam). The CONTRACTOR must determine a suitable location to deliver MATERIALS Monday through Friday at times compatible with collection schedules Monday through Friday. In the absence of weather, equipment, or other unforeseeable causes, the CITY must have a location to deliver the MATERIALS on the same day they are collected.

Since MRF'S across the region are requiring that glass processing be eliminated, it is agreed that the CITY will establish a plan to remove glass from single stream curbside collection on or before August 1, 2017, in order for the MRF to process and sale recyclables effectively and efficiently.

The CONTRACTOR will manage and market all MATERIALS collected by the CITY or its contractors from the CITY'S CURBSIDE program for the purposes of recycling.

The CITY will use its best efforts to minimize garbage and other non-recyclable waste from entering the processing system and the CONTRACTOR will use its best efforts to acquire the highest net value for the product based upon the value of material and the amount of residue included with the material.

The CITY will not remove or transport any other waste from the MRF after delivering said material.

The CITY shall cause its agents, including but not limited to crews collecting and delivering recyclables, to carry out the curbside collection program in a responsible and efficient manner; however, no guarantee or warranty is made as to levels of participation or compliance with applicable laws by persons from whom the CITY collects recyclables nor as to the effectiveness of the CITY'S enforcement of said laws.

In the absence of weather, equipment or other unforeseeable causes, it is the intent of the CITY to deliver the recyclables to a MRF on the same day they are collected. The CONTRACTOR will make available a location suitable for disposal.

The CONTRACTOR will use all reasonable efforts to provide data that may be required by the CITY to ensure that the MRF is operating and documenting in accordance with State and Local requirements.

The CITY will be responsible for the collection of recyclables with its own workforce and equipment or with those of its other contractors.

**SECTION 11. REPORTING.** The CONTRACTOR shall submit a quarterly report to the CITY with the monthly invoices for services in a specified format containing the following items:

1. Net income obtained once payments are received from the MRF.

2. A breakdown of net revenue that is given to the CONTRACTOR and to the CITY.
3. CENTER data including all reasonably requested records by the CITY.
4. CURBSIDE data including all data requested by the CITY.
5. Revenue and tonnage of MATERIALS collected by the CITY.

**SECTION 14. POTENTIAL FOR EXPANSION.** The CONTRACTOR shall recognize the CITY's interest in expanding the number of items its residents recycle and understands that the CITY may participate in experimental programs to research and develop methods to more efficiently receive, handle, sort, process and market said additional MATERIALS. The CONTRACTOR shall cooperate and impress upon the MRF to cooperate with the CITY and with any third parties with whom the CITY may conduct such programs and impress upon the MRF to provide such assistance and facilities as may reasonably be required.

The proposal or future contract does not make the CONTRACTOR an employee, agent or legal representative of the CITY for any purpose whatsoever, and CONTRACTOR acts as an independent agency and is not granted any right or authority to assume or create any obligation, duty or responsibility, express or implied, on behalf of or in the name of the CITY or to bind the CITY in any manner whatsoever.

**SECTION 12. MAINTENANCE OF RECORDS.** All records shall be retained and made available consistent with the requirements set forth in the CITY'S Standard Terms and Conditions attached as **EXHIBIT A**.

**SECTION 13. INDEMNITY.** All indemnification shall be consistent with the requirements set forth in the CITY'S Standard Terms and Conditions attached as **EXHIBIT A**.

**SECTION 14. NOTICES.** Notices provided for herein shall be sufficient if sent by certified mail, postage prepaid, for the CONTRACTOR, addressed to Executive Director, Orange Grove Center, 615 Derby Street, Chattanooga, Tennessee, 37404 and to Director, City Wide Services, Department of Public Works, 900 E. 11<sup>th</sup> Street, 37402, with a copy to: City of Chattanooga, Office of the City Attorney, 100 East 11th Street, Suite 200, Chattanooga, TN 37402, or to such other respective addresses as the parties may, from time to time, designate to each other in writing.

**SECTION 15. EQUAL EMPLOYMENT OPPORTUNITY.** The CITY is an equal opportunity employer and during the performance of this Agreement, the CONTRACTOR agrees to abide by the equal opportunity goals of the CITY as follows:

The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The CONTRACTOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to

race, color, religion, sex, or national origin.

Prior to the execution of the Agreement, the CONTRACTOR shall provide to the CITY a copy of its affirmative action policy, which shall be filed, with the EEO Director of the CITY.

**SECTION 16. CONTRACTOR DEFAULT.** If the CONTRACTOR shall become or be declared insolvent, or make an assignment for benefit of creditors, or if proceedings are commenced for appointment of a receiver or CONTRACTOR, or of proceedings for arrangement, reorganization, or composition of creditors under any laws be instituted by or against the CONTRACTOR, or if CONTRACTOR refuses or fails to perform any other part or portion of its obligations under the proposed Existing Agreement and does not remedy such breach to the satisfaction and approval of the CITY within ninety (90) days (or twenty-four (24) hours in the event of an emergency as determined by the CITY), after receipt of written notice specifying the nature of such breach, the CITY may, at its option, immediately declare the CONTRACTOR in default.

**SECTION 17. ENTIRETY.** This Agreement contains the entire Agreement between the Parties as to matters contained herein. Any oral representations or modifications concerning the Agreement shall be of no force and effect.

IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED ON THE DATE SET FORTH ABOVE BY THE DULY AUTHORIZED OFFICERS.

ORANGE GROVE CENTER, INC.

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF CHATTANOOGA, DEPARTMENT OF PUBLIC WORKS

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**City of Chattanooga Purchase Order Standard Terms and Conditions**

1. **ACCEPTANCE-AGREEMENT.** Contractor's commencement of work on the goods/services subject to the purchase order or shipment/performance of those goods/services, whichever occurs first, is considered an effective mode of Contractor's acceptance of this purchase order. Any acceptance of the purchase order is limited to acceptance of the express terms contained on the face of the purchase order and these terms and conditions. Any proposal for additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this offer in Contractor's acceptance is objected to and rejected, but any proposals do not operate as a rejection of this offer unless the variances are in the terms of the description, quantity, price or delivery schedule of the goods/services, but are considered a material alteration, and this offer will be considered accepted by Contractor without additional or different terms. Additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this purchase order are considered material and are objected to and rejected, but the purchase order does not operate as a rejection of the Contractor's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods/services.

2. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Tennessee and the Codes of the City of Chattanooga ("City").

3. **COMPENSATION AND PAYMENT TERMS.** For the completion of the Work, City shall pay Contractor the contract sum set forth in the purchase order. Payments may be made in amounts which are consistent with percentage of goods/services completed and invoiced by the Contractor as set forth in the purchase order.

The City's delivered payment terms are payment within thirty (30) days except where the law provides otherwise. Payment may be sooner where cash discounts are offered for early payment, however, cash discounts offered will not be considered in determining lowest bidder. In no event will payment be made prior to receipt of an original invoice containing invoice and purchase order numbers and receipt of purchased item(s). The City is not liable for delays in payment caused by failure of the Contractor to send invoice to the address referenced herein.

4. **INSPECTION/TESTING.** Payment for the goods delivered does not constitute acceptance of the goods. City has the right to inspect the goods and to reject any or all of the goods which are in City's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for may be returned to Contractor at its expense and in addition to City's other rights. City may charge Contractor all expenses of unpacking, examining, repacking and reshipping those goods. In the event City receives goods whose defects or nonconformity is not apparent on examination, City reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order will relieve in any way the Contractor from the obligation of testing, inspection and quality control.

5. **PRICE WARRANTY.** Contractor warrants that the prices for the goods or services sold City are not less favorable than those

currently extended to any other customer for the same or similar goods or services in similar quantities. In the event Contractor reduces its price for the goods or services during the term of this purchase order, Contractor agrees to reduce the prices charged to City correspondingly. Contractor warrants that prices shown on this purchase order are complete, and no additional charges of any type will be added without City's express written consent. Any additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

6. STANDARD OF CARE. Contractor shall exercise the same degree of care, skill, and diligence in the performance of services as is ordinarily possessed and exercised by a professional Contractor under similar circumstances in the same area of practice. Contractor makes no warranty or guarantee, either expressed or implied, as part of this agreement.

7. INDEMNIFICATION. Contractor must defend, indemnify and hold harmless the City against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased, or from any act or omission of Contractor, its agents, employees or subcontractors.

8. INSURANCE. Contractor shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Contractor against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:

- a. Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- b. Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- c. Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- d. Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

If any of the above cited policies expire during the life of this Agreement, it is the Contractor's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. *Certificates must specifically cite the following provisions:*

- i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
  - c) Worker's Compensation Insurance and Employer's Liability Insurance
  - d) Professional Liability Insurance

ii. Contractor's insurance must be primary insurance as respects performance of subject contract.

iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

9. LIMITATIONS OF RESPONSIBILITY. In no event is City liable for anticipated profits or for incidental or consequential damages. City's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach of this Agreement will in no case exceed the unit price allocable to the goods or services which gives rise to the claim. City is not liable for penalties of any description. Any action resulting from any breach of this Agreement by City as to the goods or services delivered must be commenced within one (1) year after the cause of action has accrued.

10. PROPRIETARY INFORMATION-CONFIDENTIALITY-ADVERTISING. Contractor must consider all information furnished by City to be confidential and not disclose any information to any other person, or use the information itself for any purpose other than performing this Agreement, unless Contractor obtains written permission from City to do so. This paragraph applies to drawings, specifications, or other documents prepared by Contractor for City in connection with this Agreement. Contractor must not advertise or publish the fact that City has contracted to purchase goods from Contractor, nor is any information relating to the order to be disclosed without City's written permission. No commercial, financial or technical information disclosed in any manner or at any time by Contractor to City is to be considered secret or confidential, unless otherwise agreed in writing, and Contractor has no rights against City with respect to this information except any rights as may exist under patent laws. Contractor recognizes that City's employees have no authority to accept any information in confidence.

11. RECORDS RETENTION AND AUDIT. The term "Contractor" is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with the City (Engineer, Contractor, Licensee, Supplier, Vendor, Contractor, Grant Recipient, etc.)

a. All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any of the Contractor's independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the City. Additionally, said records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel to perform the obligations of this Agreement, and the records of expenses incurred by the Contractor in its performance under said Agreement. The Contractor shall maintain and protect these records for no less than seven (7) years after the completion of the Project, or for any longer period of time as may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from the Project.

b. The City, or its assigns, may audit all financial and related records (including digital) associated with the terms of the contract or agreement, including timesheets, reimbursable out of pocket expenses, materials, goods and equipment claimed by the Contractor. The City may further audit any of the Contractor'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.

c. The Contractor shall at all times during the term of the contract or 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 contract or agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor, which are necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with general accepted accounting principles. The Contractor 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.

d. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.

e. 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. The Contractor will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

f. 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. **TERMINATION FOR CONVENIENCE.** City reserves the right to terminate this order or any part of this order at its sole convenience with thirty (30) days written notice. In the event of termination, Contractor must immediately stop all work and immediately cause any of its suppliers or subcontractors to cease any further work. Contractor will be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed before the notice of termination, plus actual direct costs resulting from termination. Contractor will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. Contractor must not unreasonably anticipate the requirements of this order.

13. **TERMINATION FOR CAUSE.** City may also cancel this order, or any part of this order, with seven (7) days written notice for cause in the event of any default by Contractor, or if Contractor fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide City, upon request, with adequate assurances of future performance are all causes allowing City to cancel this order for

cause. In the event of cancellation for cause, City is not liable to Contractor for any amount, and Contractor is liable to City for any and all damages sustained by reason of the default which gave rise to the cancellation. If it should be determined that City has improperly cancelled this contract for a default, the cancellation is considered a termination for convenience.

14. DISPUTE RESOLUTION. Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement, or breach thereof, shall be subject to mediation in Chattanooga, Tennessee, in accordance with the following provisions:

a. The mediation shall be conducted by a mediator mutually acceptable to both parties.

b. The parties agree to share equally in the expense of the mediation.

c. Such mediation may include the Contractor or any other person or entity who may be affected by the subject matter of the dispute.

d. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order, or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.

15. DELAY IN PERFORMANCE. Neither City nor Contractor shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage; judicial restraint; discovery of unanticipated hazardous wastes; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Contractor under this Agreement. Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement. If the Contractor is delayed in the performance of the services for more than three hundred sixty-five (365) calendar days, either by the City or circumstances beyond his control, an equitable adjustment to the contract amount can be made to compensate for additional costs incurred.

For delays in performance by Contractor caused by circumstances which are within its control, such delays shall be documented and presented to the Purchasing Department at the conclusion of Project and acknowledged by both City and Contractor. Completed form shall be retained by City for a period of seven years and reviewed prior to Contractor selection for future City projects. In the event Contractor is delayed in the performance of Services because of delays caused by City, Contractor shall have no claim against City for damages or contract adjustment other than an extension of time.

16. HAZARDOUS MATERIALS. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The City and Contractor agree that the discovery of unanticipated hazardous materials constitutes a changed

condition mandating a renegotiation of the scope of work or termination of services. City and Contractor also agree that the discovery of unanticipated hazardous materials may make it necessary for the Contractor to take immediate measures to protect health and safety. City agrees to compensate Contractor for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

Contractor agrees to notify City when unanticipated hazardous materials or suspected hazardous materials are encountered. City agrees to make any disclosures required by law to the appropriate governing agencies, and agrees to hold Contractor harmless for any and all consequences of disclosures made by Contractor which are required by governing law. In the event the project site is not owned by City, the City agrees to inform the City of the discovery of unanticipated hazardous materials or suspected hazardous materials.

17. COMMUNICATIONS. Any notice to the City shall be made in writing to the address specified below:

For CONTRACTOR: Executive Director, Orange Grove Center, 615 Derby Street, Chattanooga, Tennessee, 37404

FOR CITY: Director, City Wide Services, Department of Public Works, 900 E. 11<sup>th</sup> Street, 37402  
with copies to:

City of Chattanooga, Attn: Purchasing, 101 E. 11th Street, Suite G13, Chattanooga, TN 37402 (423) 643-7230 and  
City of Chattanooga, Office of the City Attorney, 100 East 11th Street, Suite 200, Chattanooga, TN 37402 or to such other  
respective addresses as the Parties may, from time to time, designate to each other in writing.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and City.

18. WAIVER. A waiver by either City or Contractor of any breach of this Agreement shall be in writing. City's failure to insist on performance of any of the terms or conditions of this purchase order or to exercise any right or privilege, or City's waiver of any breach does not waive any other terms, conditions, or privileges, whether of the same or similar type

19. SEVERABILITY. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

20. INTEGRATION. This Agreement represents the entire and integrated agreement between City and Contractor. All prior and contemporaneous communications, representations, and agreements by Contractor, whether oral or written, relating to the subject matter of this Agreement, as set forth in the Purchase Order, are hereby incorporated into and shall become a part of this Agreement.

21. SUCCESSORS AND ASSIGNS. City and Contractor each binds itself and its directors, officers, partners, successors,

executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

22. ASSIGNMENT. Neither City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Contractor from employing independent Contractors, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event Contractor employs independent Contractors, associates, and subcontractors to assist in performance of the Services, Contractor shall be solely responsible for the negligent performance of the independent Contractors, associates, and subcontractors so employed.

23. THIRD PARTY RIGHTS. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.

24. RELATIONSHIP OF PARTIES. Nothing contained herein shall be construed to hold or to make the City a partner, joint venturer, or associate of Contractor, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

25. NON-DISCLOSURE. Contractor agrees not to disclose or to permit disclosure of any information designated by the City as confidential, except to the Contractor's employees and independent Contractors, associates, and subcontractors who require such information to perform the services specified in this agreement.

26. NON-DISCRIMINATION. Contractor agrees to comply with all federal, state, and local non-discrimination laws and regulations. Contractor agrees not to discriminate against any participant in this Agreement on the basis of race, color, religion, sex, age or national origin. Contractor further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

27. DRUG FREE WORKFORCE. Contractor certifies that it will provide a drug-free workplace and agrees to comply with the applicable requirements of the Drug-Free Workplace Act of 1988.

28. FEDERAL OR STATE FUNDING. In the event that the Project is funded in whole or in part by Federal or State grants, Contractor agrees to abide by all applicable Federal and State laws, regulations, grant conditions and procedures.

29. COMPLIANCE WITH LAWS. The City has entered into this agreement with Contractor relying on its knowledge and expertise to provide the services contracted for. As part of that reliance, Contractor represents that he knows and understands the relevant and applicable federal and state laws that apply to the services provided through this contract, and agrees to comply with these relevant and applicable federal and state laws.

The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration

Reform and Control Act of 1986, and the Drug Free Workplace Act of 1988.