

**STATE OF TEXAS**

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**CONTRACT FOR SERVICES**

**COUNTY OF DALLAS**

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This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2014 by and between the Town of Addison, Texas (the “City”) and the Addison Arbor Foundation (the “Arbor Foundation”).

**WITNESSETH:**

**WHEREAS**, the Arbor Foundation is a private, non-profit corporation established under the laws of the State of Texas for the purposes of, among other things, engaging in, conducting and promoting charitable, educational, social and public welfare activities for the benefit of the public parks systems and the parks and recreation programs of the City, including but not limited to the following: accepting and improving land for parks, environmental easements and other public uses, development of public park facilities, restoration and beautification of parks, greenbelts and other public land, enhancement of the City’s landscape and public buildings with gifts of visual art, development of public cultural, social and educational resources, improvement of opportunities for the visual and performing arts, and strengthening of the delivery of public park and recreation services; and

**WHEREAS**, the Arbor Foundation’s efforts have resulted in, among other things, the development of a community garden, enhancement of Super Bowl XLV festivities by planting forty-five trees in Les Lacs Park, and provision of quarterly educational events on horticultural topics; and

**WHEREAS**, the City is a home rule city and has full power of local self government pursuant to article 11, section 5 of the Texas Constitution and its Home Rule Charter, and among other things may acquire, hold, manage and control such property as its interests may require, may lay out, establish, open, grade, care for, supervise, maintain and improve parks and public places, and may establish, provide, acquire, maintain, construct, equip, operate and supervise recreational facilities; and

**WHEREAS**, it is the City’s desire to encourage and promote the continued development of its parks, public places, and recreational facilities.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Arbor Foundation do hereby contract and agree as follows:

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2014 through the 30th day of September, 2015, except as otherwise provided for herein, and subject to the earlier termination of this Contract.

## II. SERVICES

The Arbor Foundation shall provide the following services to the City (collectively, the “Services”) (all monetary amounts identified in this Section II below are approximate amounts to be expended by the Arbor Foundation in accomplishing the Services):

- (a) Purchase and installation of one or two public art pieces along the North/South Quorum corridor. (Art work, \$25,000; Pad preparation \$10,000).
- (b) Continued refresh of Town of Addison park spaces by updating/replacement of overgrown and mature plantings (Plants and trees, \$9,000; Boulders and mulch, \$3,500).
- (c) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Arbor Foundation with the revenues received pursuant to this Contract.

In satisfaction hereof and as determined by the City, the Services may be provided directly by the Arbor Foundation or funding of the Services may be provided to the City by the Arbor Foundation. Services will be provided upon the prior approval by the City. Design for any of the Services provided by the Arbor Foundation is subject to the City’s approval prior to installation thereof.

## III. COMPENSATION

For the provision of the Services of the Arbor Foundation as described herein, the City shall pay the Arbor Foundation the sum of Forty-Seven Thousand Five Hundred and No/100 Dollars (\$47,500.00). Such sum shall be paid on or before January 1, 2015, provided the Arbor Foundation is not then in default of this Contract.

## IV. RESPONSIBILITY; INDEMNIFICATION

(a) THE ARBOR FOUNDATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ARBOR FOUNDATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(b) ***INDEMNITY OWED BY THE ARBOR FOUNDATION.*** The Arbor Foundation covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected and appointed officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected and appointed officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an “Addison”

**Person**” and collectively the **“Addison Persons”**), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon or incurred by any Addison Person, whether directly or indirectly, (the “Claims”), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by the Arbor Foundation under this Contract; and/or (3) any other act or omission under or in performance of this Contract by the Arbor Foundation, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for the Arbor Foundation, or any other person or entity for whom the Arbor Foundation is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. **SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

The Arbor Foundation shall promptly advise the City in writing of any claim or demand against any Addison Person or the Arbor Foundation related to or arising out of the Arbor Foundation’s activities under this Contract and shall see to the investigation and defense of such claim or demand at the Arbor Foundation’s sole cost and expense. The Addison Persons shall have the right, at the Addison Persons’ option and at own expense, to participate in such defense without relieving the Arbor Foundation of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration of this Contract.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if the Arbor Foundation has failed at the time of such cancellation and termination to provide all of the Services set forth herein, the Arbor Foundation shall refund to the City that portion of funds paid to the Arbor Foundation under the terms of this Contract (and identified in Section II, above) allocable to the Services that have not been provided at the time of cancellation and termination.

Example: This Contract is terminated on May 1, 2015. At the time of termination, the Arbor Foundation has provided the Services identified in subsections (a) and (b) of Section II, above, is 50% of the way (as agreed upon by the parties) through providing the Services identified in subsection (c) of Section II, and has not provided the Services identifies in subsections (d), (e), or (f). The Arbor Foundation must refund to the City the following amount: (i) \$4,000.00 (50% of the amount set forth in subsection (c) of Section II), (ii)

\$5,250.00 (the full amount set forth in subsection (d) of Section II), (iii) \$1,600.00 (the full amount set forth in subsection (e) of Section II), and (e) \$1,400.00 (the full amount set forth in subsection (f) of Section II), or \$12,250.00.

Upon payment or tender of any refund amount, all of the obligations of the Arbor Foundation and the City under this Contract shall be discharged and terminated (except as otherwise provided herein, e.g., except for obligations and responsibilities as may survive termination or cancellation of this Contract as provided for in this Contract) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the Services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Arbor Foundation shall have any financial interest, direct or indirect, in this Contract or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, the Arbor Foundation shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and the Arbor Foundation shall make such periodic reports to the City, as provided for herein, listing the expenditures made by the Arbor Foundation from the funds provided by the City. The approval of the Arbor Foundation's annual budget creates a fiduciary duty in the Arbor Foundation with respect to the funds provided by the City under this Contract.

The funds paid to the Arbor Foundation pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

The Arbor Foundation shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2014, with the last quarter ending September 30, 2015), the Arbor Foundation shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by the Arbor Foundation of the funds paid to the Arbor Foundation under this Contract; and (b) a year-to-date report of the expenditures made by the Arbor Foundation of the funds paid to the Arbor Foundation under this Contract (and if this Contract is terminated prior to its expiration, the Arbor Foundation shall provide such reports as set forth above for the period prior to

the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, the Arbor Foundation shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of the Arbor Foundation's fiscal year, the Arbor Foundation shall provide the City with a financial statement signed by the Chairman of the Arbor Foundation's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth the Arbor Foundation's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in writing (e.g., a hard-copy, non-electronic format).

### **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and the Arbor Foundation is that of independent contractor, and the City and the Arbor Foundation by the execution of this Contract do not change the independent status of the Arbor Foundation. The Arbor Foundation is an independent contractor, and no term or provision of this Contract or action by the Arbor Foundation in the performance of this Contract is intended nor shall be construed as making the Arbor Foundation the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Arbor Foundation performs the services which are described in this Contract.

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

The Arbor Foundation may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and the Arbor Foundation are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

### **XI. NON-DISCRIMINATION**

During the term of this Contract, the Arbor Foundation agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

## **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

The Arbor Foundation shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

## **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

## **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

## **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

## **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Arbor Foundation agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Matthew McCombs

The Arbor Foundation's address:

Mary Jo Cater

Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Addison Arbor Foundation  
PO Box 1649  
Addison, TX 75001

**XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

**XVIII. AUTHORITY TO EXECUTE CONTRACT**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

**XIX. ENTIRE AGREEMENT**

This Contract represents the entire and integrated contract and agreement between the City and the Arbor Foundation and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and the Arbor Foundation.

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**ADDISON ARBOR FOUNDATION**

By: \_\_\_\_\_  
Lea Dunn, City Manager

By: \_\_\_\_\_  
Dr. Jay M. Ihrig, President