

**AMENDED AND RESTATED LEASE AGREEMENT**

(Jacksonville Arboretum and Gardens)

**THIS AMENDED AND RESTATED LEASE AGREEMENT** (the “**Agreement**”) is entered into this \_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”), by and between the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “**City**”) and **JACKSONVILLE ARBORETUM & BOTANICAL GARDENS, INC.**, a Florida not-for-profit corporation (“**Arboretum**”), whose address is 1445 Millcoe Road, Jacksonville, Florida 32225.

**RECITALS**

**WHEREAS**, pursuant to that certain Lease Agreement dated as of June 26, 2006, as amended by that certain First Amendment to Lease Agreement dated as of May 14, 2014 (collectively, the “**Lease**”), the City leased certain property located at 1445 Millcoe Road in Jacksonville, Florida, and lying adjacent to and contiguous with Millcoe Road and Merrill Road (the “**Property**”), to Arboretum for a twenty (20) year term expiring on April 30, 2026; and

**WHEREAS**, Arboretum has developed and operated the Property as a public garden and arboretum to promote the conservation, selection and use of native and non-invasive, non-native plants of north Florida; to acquire, evaluate, and promote new and adapted landscape plant materials; to promote diversity of plants in the landscape; to serve as an educational facility for elementary, secondary and post-secondary schools, the nursery and landscape industry; to provide an aesthetic and educational environment for visitors and citizens of Duval County; and to further the horticultural interests of residents of Duval County, Florida; and

**WHEREAS**, Arboretum has requested an extension of the Lease term by an additional twenty-five (25) years so that it might continue to provide these opportunities and services to the community and to be in a position to more readily qualify for grants and other funding opportunities that require long-term site control as a requirement for eligibility; and

**WHEREAS**, the City is amenable to this extension and believes that the activities of Arboretum are, and will continue to be, beneficial to the citizens of Jacksonville, Duval County, Florida and the surrounding areas; and, among other things, promote the welfare, health and interests of area residents and provide economic benefits to Jacksonville, Duval County, and surrounding areas, and

**WHEREAS**, the City and Arboretum agree it is in their mutual best interests to amend and restate the Lease in its entirety on the terms and conditions set forth in this Agreement, understanding this Agreement is only a modification and restatement of the Lease, to be effective as of the Effective Date of this Agreement, and does not serve as a termination of the Lease; and

**WHEREAS**, the rights and obligations of the City and Arboretum for the period prior to the Effective Date of this Agreement are as set forth in the Lease, and on and after the Effective Date, those rights and obligations are modified prospectively in accordance with the terms of this Agreement; and

**WHEREAS**, pursuant to Ordinance 2021-\_\_-E, the City is hereby authorized to enter into this Agreement on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **Recitals and Exhibits; Incorporation by Reference.** The recitals set forth above are true and correct and are incorporated herein by this reference. Any exhibits or attachments referred to in this Agreement are, by this reference, made a part of and incorporated into this Agreement.

2. **Definitions.** As used in this Agreement, the words defined immediately below shall have the meaning stated next to same. Words imparting the singular number include the plural number and *vice versa*, the male gender shall include the female gender and *vice versa*, unless the context clearly requires otherwise.

(a) ***“Arboretum”*** means Jacksonville Arboretum & Botanical Gardens, Inc., a not-for-profit corporation established under and existing in good standing in the State of Florida as a Florida corporation, to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended from time to time.

(b) ***“Governmental Requirement”*** means any permit, law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, franchise, condition, certificate, license, authorization, building code; including, without limitation, the provisions of Title III of the Americans with Disabilities Act of 1990, or other direction or requirement of any governmental and/or regulatory national, state or local entity with jurisdiction over the City, Arboretum, the Property and/or the improvements; including; but not limited to; all provisions, conditions, terms and use restrictions imposed upon the Property by the United States Environmental Protection Agency. Governmental Requirements shall include all applicable, relevant, or appropriate Florida Statutes and City ordinances; including, without limitation, any regulation found in Florida Administrative Codes or regulations, all Florida Statutes, City of Jacksonville Ordinances and Ordinance Code and all regulations or rules now existing or in the future enacted, promulgated, adopted, entered, or issued, both with and outside present contemplation of the respective parties to this transaction.

(c) ***“Hazardous Materials”*** means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, asbestos, radon, petroleum products, hazardous or toxic substances or related materials; including, without limitation, those defined in:

- i. the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*);
- ii. the Hazardous Materials Transportation Act, as amended (42 U.S.C. § 1808 *et seq.*);
- iii. the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6901 *et seq.*);

- iv. the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §§ 136 *et seq.*);
- v. the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601, *et seq.*);
- vi. regulations adopted and publications promulgated pursuant to the foregoing;
- vii. any other Governmental Requirement; and
- viii. any other material, of which its use, release, disposal, or presence may result in liability under any Government Requirement or common law action.

(d) “**City**” means the City of Jacksonville, Florida, a consolidated political subdivision and municipal corporation established by and existing under Chapter 67-1320, Laws of Florida, as amended and supplemented, and other provisions of law, including any representative or agent of the City with respect to the Property.

(e) “**Agreement**” means collectively this Amended and Restated Lease Agreement and any and all exhibits thereto, including any amendments or addendums which may supplement, modify or amend same.

(f) “**Agreement Term**” or “**Term**” means the term of this Agreement, which is a period commencing on the Effective Date and terminating on April 30, 2051, together with any renewal periods hereunder.

(g) “**Property**” means the City of Jacksonville real property more specifically described on **Exhibit A** and all existing improvements located thereon and all improvements constructed or installed thereon by the City or Arboretum during the Agreement Term.

(h) “**Section**” shall mean the numerical sections of this Agreement and the respective subsections thereof. Each respective Section begins with a number and a capitalized heading of the Section which is underlined to indicate the subject matter thereof.

(i) “**Sponsorship**” or “**Sponsor**” means a profit or not-for-profit corporation, general or limited partnership, joint venture, sole proprietorship, association, person, or entity which contributes services, goods or funds in support of any one or more activities at the Property, or in support of an organization (including, but not limited to, Arboretum) which contracts for, promotes or otherwise sponsors, in whole or in part, any one or more activities at the Property.

**3. Representations, Warranties, Validity and Binding Effect.** Arboretum represents, warrants and agrees as follows:

(a) Arboretum is a Florida not-for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Florida, with full legal right, power and authority to conduct its operations substantially as presently conducted, and to execute, deliver and perform its obligations under this Agreement.

(b) After a duly-called meeting of its board of directors, at which a quorum was present and acting throughout, Arboretum authorized the execution and delivery of this Agreement, and such corporate authorization remains in full force and effect and has not been revoked or modified in any respect whatsoever.

(c) This Agreement is a legal, valid and binding obligation of Arboretum, enforceable against Arboretum, in accordance with its covenants, conditions and terms, except as enforceability may be limited by equitable principles or bankruptcy, insolvency, reorganization, moratorium, or other similar laws effecting the enforcement of creditors' rights generally.

(d) The execution and delivery of this Agreement and compliance with the covenants, conditions and terms hereof will not conflict with or constitute a breach of or a default under the provisions of any applicable federal, state or local law, court or administrative regulation, judgment, decree or order, or any agreement, indenture, or other instrument to which Arboretum is a party.

(e) Arboretum is not in breach of or in default under any applicable federal, state or local law, ordinance, court or administrative regulation, decree or order or any agreement, indenture or other instrument to which Arboretum is a party and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a breach or default, which breach or default would affect the validity or enforceability of this Agreement or would affect materially or adversely the financial condition, operation or properties of Arboretum to perform its obligations hereunder.

(f) There is no action, suit, proceeding, inquiry or investigation, in equity or at law, before or by any court, governmental agency, public board or body to which Arboretum is a party pending or, to the best of its knowledge, threatened against or affecting it: (i) contesting its corporate existence, tax exempt status, powers, or the titles of its officers to their respective offices; (ii) contesting the validity or the power of Arboretum to execute and deliver, or affecting the enforceability of, this Agreement, (iii) contesting or affecting the power of Arboretum to consummate the transactions contemplated by this Agreement, or (iv) wherein an unfavorable court decision, ruling or finding would materially affect the financial position of Arboretum.

#### **4. Lease.**

(a) In consideration of the representations, warranties, agreements and covenants contained herein, the City hereby leases to Arboretum for the Agreement Term the Property in accordance with all of the provisions, covenants, conditions and terms herein. The Property is provided to Arboretum in its "AS IS" condition and without representation or warranty by the City as to the suitability or condition of the Property for Arboretum's use.

(b) No Warranty by City. Pursuant to Section 122.428(h), *Ordinance Code*, nothing contained in this Agreement shall constitute a warranty or representation by the City as to the feasibility of Arboretum's use of the Property or the current or ongoing quality or conditions of the Property or their suitability for Arboretum's purposes, the competence or

qualifications of any third party furnishing services, labor or materials whether or not the City has approved the contract for third party activities, or any other form of warranty or indemnity, including an indemnity for attorney's fees. By executing this Agreement, Arboretum acknowledges and agrees that Arboretum has not relied and will not rely upon any experience, awareness or expertise of the City, or the City's employees, agents or contractors and acknowledges that the City's only responsibility under the provisions of this Agreement is to provide quiet enjoyment. The City shall not be liable to Arboretum for any damages arising from Arboretum's use of the Property, whether economic or noneconomic, general or special, incidental or consequential, statutory, or otherwise, arising out of the presence or operation of Arboretum's activities on City-owned real property.

**5. Rent.** Arboretum agrees to pay to the City annually during the Agreement Term without notice or demand, at the City's address referenced herein, the rent of One U.S. Dollar (\$1.00) per year, together with all applicable tax payable and due thereon. Said rent shall be payable on the 1st day of May of each year beginning May 1, 2022 and shall continue on the same date for each consecutive year of the Agreement Term thereafter unless otherwise terminated as described herein.

**6. Taxes and Other Charges.** Arboretum shall bear, pay and discharge, on or before the last day on which payment may be made without penalty or interest all taxes, including but not limited to sales taxes, personal property taxes and ad valorem real estate taxes, if any, which shall, or may during the Agreement Term, be charged, laid, levied, assessed, imposed, become payable and due, become liens upon, or arise in connection with the use, occupancy or possession of the Property or any part thereof. The real estate taxes, if any, for the calendar year in which the Agreement Term begins and ends shall be paid in full by Arboretum (whether or not the tax bill has been issued at the date of termination) and shall not be pro-rated between the respective parties. It is expressly understood between the parties that the City shall not be obligated to expend any funds on maintenance, repairs, utilities, improvements or other costs for the Property. Arboretum has sole responsibility for all costs and expenses in connection with the Property except as expressly provided in this Agreement.

**7. Use of Property.** Arboretum shall use the Property for the purpose of developing, constructing, maintaining and operating an arboretum and gardens for the general public, together with related improvements, structures, facilities and buildings. No other use of the Property is permitted without the prior written consent of the City, which consent may be withheld in its sole and absolute discretion. Arboretum will allow use of the Property by the City and community organizations when the use of the Property is not required by Arboretum and such use of the Property is consistent with the preservation, maintenance, operation and security of same; such use of the Property shall not be unreasonably withheld by Arboretum. Notwithstanding any contrary provision in this Agreement, the City shall pay no fee or charge for its use of the Property. Arboretum acknowledges and agrees that the Property is subject to certain provisions, conditions, terms and use restrictions which are imposed upon the Property by the United States Environmental Protection Agency. Arboretum agrees to be in compliance at all times and to comply with all Governmental Requirements imposed upon the Property and shall not in any way subject the City to liability or exposure for failure to adhere to same. Arboretum is exempt from the requirements outlined in the Special Events chapter of the City's Ordinance Code (Chapter 191, *Ordinance Code*). In addition, both in hosting its own events at the Property

and also in renting sites on the Property to third parties, Arboretum is also exempt from the permitting requirements of the Department of Parks, Recreation and Community Services.

**8. Improvements to Property.**

(a) Arboretum shall develop a Master Development Plan for the Property at Arboretum's sole cost and expense and shall submit the same to the City within twelve (12) months of the Effective Date of this Agreement for review and approval. The Master Development Plan shall consist of:

- i. Narrative explaining the vision and conceptual plans for the Property;
- ii. Drawings showing trails and future improvements; and
- iii. Cost estimates.

The Director of the Parks, Recreation and Community Services Department shall have the right to review and approve the proposed Master Development Plan, and any subsequent modifications or changes, on behalf of the City. In the event the City should disapprove of any aspect of the Master Development Plan, Arboretum shall promptly make the required adjustment(s) or change(s) and resubmit the Master Development Plan to the City for approval. Once the Master Development Plan is approved, any changes or modifications to the Master Development Plan shall require the prior written consent of the City, which consent may be withheld in the sole discretion of the City. Arboretum shall be responsible for all costs of planning, design and construction of the improvements identified in the approved Master Development Plan.

(b) Prior to beginning of construction of any improvements to the Property, Arboretum shall prepare plans and specifications for the improvements. These plans and specifications shall, at a minimum, consist of:

- i. Working drawings;
- ii. Technical specifications;
- iii. Bid documents, if applicable, for construction;
- iv. Schedule for completion of improvements; and
- v. Cost estimates.

Arboretum shall submit all the foregoing items to the City for review and approval by the Director of the Parks, Recreation and Community Services Department prior to obtaining a building permit and the commencement of construction of any improvements, which approval shall not be unreasonably withheld or delayed. Design and construction of any improvements to the Property shall be in accordance with the terms of this Agreement and at Arboretum's sole cost and expense.

In the event the City should disapprove Arboretum's plans or project costs thereof, Arboretum shall promptly make the required adjustment(s) or change(s) and resubmit its plans and project costs to the City for approval.

The parties acknowledge and agree that time is of the essence in this Agreement, and that all construction, improvements, equipment and landscaping must be made in accordance with the requirements stated herein and in conformity with applicable Governmental Requirements. Approvals given by the City shall not constitute a representation or warranty as to such conformity; responsibility for compliance with all legal requirements, therefore, shall at all times remain with Arboretum.

(b) Before starting and until the completion of the construction of any improvements with construction costs or values in excess of \$10,000.00, Arboretum shall require its contractor(s) to procure and maintain insurance of the types and in the minimum amounts required by the City's Division of Risk Management. Before Arboretum hires any contractor to prosecute any work and/or to construct improvements on the Property, the contractor(s) must first be approved by the City as provided herein with the appropriate insurance requirements to be determined by the City's Division of Risk Management at that time.

(c) It is the intent of the parties that the City shall be an intended beneficiary of all warranties relating to the construction of any improvements, and Arboretum shall require all warranties to so designate the City to the extent practicable. Prior to substantial completion, Arboretum shall require all contractors to give reasonable notice to the City in order that the City may participate in final walk-through and punch list inspection. Prior to completion and close-out of the construction work, Arboretum shall require its contractors to give reasonable notice to the City of all close-out training including, but not limited to start-up of equipment and operations and maintenance procedures in order that the City may participate. Arboretum shall cause the contractors to deliver to the City all warranties upon completion of the construction work.

(d) Arboretum shall require any contractor or contractors performing work valued over \$50,000.00 at the Property to furnish a Construction 100% Performance and Payment Bond in an amount not less than the full amount of the contract price for completing the build-out of any improvements, as surety for the faithful performance of the contract by the contractor, and for the payment of all persons performing labor and furnishing materials in connection with the work. Arboretum shall, before the commencement of any construction, furnish the City with evidence of the Construction Bond as outlined herein. If at any time during the continuance of the contract, a surety on the contractor's bond or bonds becomes irresponsible, the City shall have the right to request additional and sufficient sureties, which Arboretum shall require the contractor to furnish within ten (10) days after receipt of written notice from the City to do so.

(e) In the event Arboretum fails to complete the construction of any improvements, the City shall have the right, but not the obligation, to complete the construction of the improvements at the sole cost and expense of Arboretum.

(f) Arboretum shall obtain, at its own expense, any applicable permits, changes to existing permits, any architectural approvals and zoning approvals as may be required by federal, state and local laws and regulations for the construction of any improvements and/or that are required for Arboretum's use of the Property.

(g) It is understood and agreed between the parties that all improvements constructed by or on behalf of Arboretum shall become the property of the City free and clear of all construction or other liens. Arboretum shall deliver to the City contractor(s)' affidavits and waivers of lien from all those who supplied labor, material or services in connection with the construction of the improvements together with satisfactory proof of full payment of such.

(h) Arboretum agrees to comply, and to require any contractor, subcontractor, materialman or supplier to comply with all applicable federal, state and local laws, rules, ordinances and regulations.

(i) Subject to the provisions and limitations of Section 768.28, Florida Statutes, the City shall be responsible for contaminated media or Hazardous Materials that were in or on the Property before Arboretum's entering into the Lease and shall defend and hold harmless the Arboretum for any costs, losses, and damages (including all attorney fees and court costs) arising out of or resulting from any contaminated media or Hazardous Materials that were in or on the Property before the Lease. If, because of the construction of any improvements, any federal, state or local regulatory or grant authority requires remediation of contaminated media or Hazardous Materials that were in or on the Property on the beginning date of the Lease term, then the City shall be responsible for proper removal, handling and disposal or other lawful remediation of such contaminated media or Hazardous Materials which requires removal because of the construction of improvements. Arboretum shall provide the City immediate written notice of any communication from regulatory or grant authorities concerning contamination, or remediation requirements. Notwithstanding any contrary provision of this Agreement, the City shall not be liable to Arboretum for any delays incurred by Arboretum in the construction of improvements due to remediation of contaminated media or Hazardous Materials.

(j) Arboretum shall indemnify, defend and hold harmless the City and its officers, employees, agents, invitees, guests and contractors from and against all claims, costs, losses and damages (including, but not limited to, all attorney's fees and all court costs) caused by, arising out of, or resulting from Arboretum's construction of improvements, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property; and (ii) is caused by acts or omissions of Arboretum or any of its contractors, subcontractors, suppliers, or any persons or organizations employed by any of them in the performance of or furnishing of the construction of any such improvements. The provisions of this Subsection 8(j) shall survive the expiration or termination of this Agreement.

(k) Arboretum shall not, during the Agreement Term, without submitting the appropriate plans to the City for review and receiving the prior written approval of the City, which shall not be unreasonably withheld, conditioned or delayed, make any improvements



to the Property, or alter, modify, or make additions or improvements to any improvements now existing or built any time during the Agreement Term.

(l) Arboretum shall be responsible for any and all damages resulting from any improvements Arboretum makes, whether or not the City's consent therefor was obtained. Any and all improvements shall be made: (i) under the supervision of a licensed architect, structural engineer, or contractor, as applicable and depending on the nature of the improvements; (ii) in compliance with all applicable requirements of Chapter 255 and Section 287.055, Florida Statutes, and any other applicable laws, regulations and ordinances; (iii) in accordance with the plans and specifications approved in writing by the City before the commencement of the work; and (iv) in accordance with all necessary government approvals and permits. All contractors and subcontractors utilized by Arboretum shall be subject to the City's prior written approval. Prior to proceeding with any work or improvements, Licensee shall provide the City with at least fifteen (15) days' prior written notice. The City shall have the right to record and/or post a notice of non-responsibility with respect to any such work or improvements pursuant to the laws of the state of Florida. However, the City's failure to, or election not to, record and/or post any such notice shall in no way relieve Arboretum of all obligations with respect to the payment in full for all such work. All work with respect to any improvements must be done in a good and workmanlike manner and diligent prosecuted to completion. Subject to the terms hereof, any work done by Arboretum without the City's consent shall be returned to its original condition at Arboretum's expense upon request by the City.

**9. Maintenance, Repairs and Utilities.** Arboretum shall, at its sole cost and expense, maintain and keep in good repair the Property, including any improvements located thereon, and all other related structures and facilities thereto:

(a) Arboretum shall remove all trash, debris, litter or other deleterious materials from the Property and keep the Property in a safe condition.

(b) Arboretum shall provide maintenance, mowing, litter control and general park supervision for the Property.

(c) Arboretum shall promptly pay and be responsible for gas, water, sewer, garbage, electric, and/or other charges which may become payable and due during the Agreement Term for the gas, water, sewer, garbage, electric and other services used by Arboretum at the Property.

(d) Arboretum shall be responsible for the installation charges for any gas, water, sewer, electric or other services used by Arboretum at the Property.

(e) Arboretum shall be responsible for the installation and maintenance charges for any telephone facilities, computer facilities, or other communication facilities utilized by Arboretum at the Property.

(f) Arboretum shall pay and be responsible for the costs of all maintenance and repair associated with Arboretum's use of the Property and/or the improvements and other related structures and facilities located thereon.

(g) Arboretum shall be responsible for providing security for the Property.

**10. Insurance.** Arboretum shall procure and maintain, at its sole cost and expense, at all times during the Agreement Term, insurance of the types and minimum amounts stated in **Exhibit E**, attached hereto.

**11. Arboretum Indemnification.** In addition to the indemnification obligations set forth in **Exhibit D**, attached hereto, Arboretum shall indemnify, defend and hold harmless the City from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable attorney's fees and costs, by or on behalf of any person or party whatsoever, arising out of:

(a) any failure by Arboretum to perform any of the covenants, agreements, conditions and/or terms of this Agreement on Arboretum's part to be performed;

(b) any accident, injury or damage which shall happen in or about the Property and any matter or thing growing out of the condition, occupation, maintenance, alternation, repair, use or operation of the Property, during the Agreement Term;

(c) Arboretum's failure to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any federal, state, county or city governmental authority;

(d) any construction lien, conditional bill of sale or chattel mortgage filed against the Property, improvements or any equipment therein or any materials thereon used in the construction or alteration of any improvements or other related structures thereto;

(e) any tax attributable to the execution, delivery or recording of this Agreement or any modification thereof;

(f) Arboretum's possession or unauthorized use of the Property;

(g) any negligent or intentional act or omission of Arboretum or any of Arboretum's representatives, employees, licensees, invitees, or agents; or

(h) any Hazardous Materials stored, spilled, or disposed of on the Property by Arboretum or any of Arboretum's representatives, employees, licensees, invitees or agents.

The indemnifications in this Section and as set forth in **Exhibit D** are separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This Section and **Exhibit D** shall survive the termination or expiration of this Agreement.

**12. Compliance with Governmental Requirements.** During the Agreement Term, Arboretum shall comply with all Governmental Requirements as defined herein which govern or affect the Property and the use thereof for any reason. Arboretum shall notify the City of its violation of any Governmental Requirement immediately after Arboretum acquires knowledge thereof, and Arboretum shall diligently and prudently take requisite action to correct any violations of Governmental Requirements as soon as reasonably possible after the discovery of same. Upon request by the City, Arboretum shall assure the City from time to time in written

certifications that Arboretum and the Property are in compliance with Governmental Requirements affecting same.

**13. Background Screenings.** Arboretum, at its sole cost and expense, shall comply with the City's Volunteer Criminal Background Screening Process Policy and Procedure, attached hereto as **Exhibit C**, completing background and security reviews of all Arboretum employees and volunteers who provide or perform services for Arboretum at the Property. Further, Arboretum shall at its sole expense require all staff and/or volunteers who have direct contact with children, with the exception of special events volunteers, to submit to a criminal history records check. Arboretum shall not utilize any volunteer who has not successfully passed such screening. Use or employment of any volunteer who has not successfully passed such background screening and criminal history records check (as applicable) will be deemed a breach of this Agreement and may result in immediate termination of this Agreement.

**14. Title to Property and Improvements.** Title to the Property shall remain vested with the City, subject to the covenants, conditions and terms of this Agreement, and Arboretum shall have no interest in the title to the Property but shall only have a leasehold interest thereto. Arboretum shall accept the Property "as is." Any improvements made on or to the Property, whether pre-existing or made by Arboretum, and the other related structures and facilities thereto, shall be vested with the City which shall have the title thereto, subject to the covenants, conditions and terms of this Agreement; however, no furnishings, furniture, fixtures, equipment or other personal property of Arboretum shall be the City's property, but shall be the property of Arboretum or other appropriate owner thereof. Arboretum shall have control of the Property, subject to the covenants, conditions and terms of this Agreement, but the City shall always remain vested with title to the Property and in control thereof to ensure that neither Arboretum nor any other entity shall have the authority or right to violate Governmental Requirements affecting the Property and the utilization thereof.

**15. Destruction or Damage.** In the event the Property, or any part thereof, is destroyed or damaged from any casualty, Arboretum shall, to the extent of available insurance proceeds, repair the damage and restore the Property to the extent reasonable and practical under the circumstances then existing; provided, however, Arboretum shall not be required to so restore and repair the Property and shall be entitled to terminate this Agreement by giving written notice to the City of its intent to terminate this Agreement and the time frame therefor in the event, in Arboretum's discretion and decision, the Property is damaged or destroyed from any casualty of a type then generally excluded from conventional all risk property insurance and as a result, no insurance proceeds are available.

**16. Management of Property.** In connection with management of the Property, Arboretum agrees to the following:

(a) Arboretum shall make the Property available for use by the public. Arboretum shall administer and operate the Property in accordance with the terms of this Agreement, including but not limited to the requirements set forth in **Exhibit B**, attached hereto. Reasonable rates and charges may be charged by Arboretum to help defray expenses and costs for capital improvements, but not to the extent that such rates or charges exclude a substantial amount of the general public for economic reasons. Arboretum agrees to

submit its proposed fee schedule, if any, on an annual basis on or before December 1 to the Director of the Parks, Recreation and Community Services Department for review and approval. No rates or charges may be imposed by Arboretum unless and until they are approved by the Director of the Parks, Recreation and Community Services Department. No personal property shall be sold, bartered, or exchanged at the Property without the prior consent of the City.

(b) All monies received by Arboretum from its use of the Property, including but not limited to user fees, admission fees, rental fees, programming fees, professional photography fees, and money raised by fundraisers and other events at the Property, shall be utilized by Arboretum solely for the administration, maintenance, operation and development of the Property and/or Arboretum's programs at the Property. Arboretum shall establish and maintain adequate records and accounts of receipts and expenditures.

(c) The City shall have the right to audit the Arboretum's financial books, records and all other documents to the extent they relate to the Property and/or this Agreement.

(d) Arboretum shall present an annual report to the City. Such report shall be presented to the City at a mutually agreed upon time and format, and shall illustrate and explain Arboretum's financial statements, receipts, expenditures, liabilities, assets, revenue, activities, officers' names and addresses, rules and regulations, by-laws, and election date(s). Such annual report shall also provide a current certificate of insurance; a verification of corporate status; a verification of tax-exempt status; a list of members of the board of directors, including names, addresses, and telephone numbers; and a report detailing the number and types of requests to utilize the Property, the date of each request, how and when said request was honored and/or addressed, number of visitors, demographic information and such other information as the City may reasonably require. Such report shall also include a verification that Arboretum is in compliance with the background screening requirements of this Agreement and with the requirements imposed on Florida not-for-profit corporations. Arboretum agrees to maintain all books, documents, papers and other records concerning the annual report and shall make such materials available for inspection by the City at all reasonable times and places upon written request by the Director of the Parks, Recreation and Community Services Department. All such records shall be maintained for a minimum of three (3) years from the date of receipt of the request.

(e) Arboretum shall not discriminate against any person on the basis of race, creed, color, sex, religion, ethnic or national origin, age, marital status, or disability in its use, occupation and operation of the Property.

(f) Arboretum agrees to comply, and be in compliance at all times, with the Governmental Requirements imposed upon the Property and shall not in any way subject the City to liability or exposure for failure to adhere to the same.

(g) The City agrees that Arboretum may impose any reasonable rules and regulations governing types of uses, hours of operation and other similar uses of the Property, provided that such rules and regulations shall first be submitted to the Director of the

Parks, Recreation and Community Services Department for review and approval prior to being implemented.

**17. Hazardous Materials.**

(a) Arboretum intends to use minimal amounts of fertilizers, pesticides, and herbicides within the Property and to use best management practices in connection with such use. Arboretum shall submit its best management practices to the City for review and approval. Once the best management practices have been approved by the City, Arboretum shall submit quarterly progress reports to the City. Arboretum shall not knowingly use, handle, store or permit the use, handling or storage of Hazardous Materials, as defined in Section 2(c), on the Property (other than fertilizers, pesticides and herbicides to be used by persons who are duly authorized to use or administer such substances and in complete compliance with applicable laws). Except as noted above, Arboretum shall not dispose of or permit or allow the disposal, leakage, spillage or discharge on or upon the Property of any Hazardous Material. If any Hazardous Material should be used, handled or stored (except in accordance with this Section) or if any Hazardous Material is disposed of or permitted to leak, spill or discharge on or upon the Property by accident or otherwise, Arboretum shall provide immediate written notice thereof to the City and Arboretum shall immediately commence and diligently pursue the removal of any such Hazardous Material and Arboretum shall remediate, clean and restore the Hazardous Material area in accordance with all applicable Governmental Requirements, and pay all fines, fees, assessments and penalties arising therefrom. Arboretum shall furnish the City periodically at the City's request, certification that Arboretum is in compliance with the provisions of this Section.

(b) Arboretum shall provide written notice to the City within three (3) days of:

- i. receipt of any warning, notice, notice of violation, lawsuit or the like from any governmental agency or regulatory authority relating to environmental compliance;
- ii. receipt of any complaint, claim, or lawsuit filed by any third party relating to environmental compliance; or
- iii. releases, spillage, leakage or disposal of any Hazardous Material at the Property.

(c) Arboretum shall provide written notice to the City prior to any change in Arboretum's utilization and operation of the Property involving the use, handling or storage of Hazardous Materials outside the limited permissions provided in this Section.

(d) If Arboretum shall fail to comply with any of the provisions of this Section, the City shall have the right, but shall not be obligated, to enter into and go upon the Property without thereby causing or constituting a termination of this Agreement, or eviction of Arboretum, either constructive or otherwise, in whole or in part, from all or any portion of the Property, or an interference with Arboretum's possession and use of the Property, and to take such steps and incur such expenses as the City shall deem necessary to correct

Arboretum's default, including, without limitation of the generality of the foregoing, the making of all replacements or repairs for which Arboretum is responsible and Arboretum shall reimburse the City on demand for any expense incurred by the City as a result thereof.

**18. Default.** Each of the following events shall be a default hereunder by the City or Arboretum, as the case may be, and shall constitute a breach of this Agreement:

(a) If Arboretum shall fail to pay the City any rent or any other charge due hereunder as and when the same shall become payable and due and the same remains unpaid for thirty (30) days after the City's written notice for payment; or

(b) If Arboretum shall fail to perform any of the covenants, conditions and terms of this Agreement on Arboretum's part to be performed and such non-performance shall continue for a period of thirty (30) days after written notice thereof by the City to Arboretum; or if Arboretum shall fail to act in good faith to commence and undertake performance within such thirty (30) day period to cure a non-performance which cannot be cured within the initial thirty (30) day period and Arboretum shall designate in writing the reasonable time period to cure such non-performance and its intent to do so, or, Arboretum, having commenced to undertake such performance within the initial thirty (30) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such nonperformance.

(c) If Arboretum shall default under any other agreement with the City or any public body acting on behalf of the City.

(d) If the City shall fail to perform any of the covenants, conditions and terms of this Agreement on the City's part to be performed and such nonperformance shall continue for a period of thirty (30) days after written notice thereof by Arboretum to the City; or if the City shall fail to act in good faith to commence and undertake performance within such thirty (30) day period to cure a non-performance which cannot be cured within the initial thirty (30) day period and the City shall designate in writing the reasonable time period to cure such nonperformance and its intent to do so, or, the City, having commenced to undertake such performance within the initial thirty (30) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such non-performance.

If an event of default by Arboretum shall occur, then the City shall have the right to terminate and cancel this Agreement by giving to Arboretum not less than sixty (60) days' written notice of such termination and cancellation, and upon the expiration of the time fixed in such notice, this Agreement and the Agreement Term hereof shall expire, and the parties shall be released from all obligations under this Agreement which do not specifically survive its termination. The foregoing remedy shall not be the City's exclusive remedy for Arboretum's event of default and the City may exercise any other remedies provided in equity or at law.

If an event of default by the City shall occur, then Arboretum shall, as its sole and exclusive remedy, have the right to: (i) terminate and cancel this Agreement by giving to the City not

less than sixty (60) days' written notice of such termination and cancellation, and upon the expiration of the time fixed in such notice, this Agreement and the Agreement Term hereof shall expire, and the parties shall be released from all obligations under this Agreement which do not specifically survive its termination, or (ii) pursue an action for specific performance. In no event will the City be liable to Arboretum for any damages whatsoever, including but not limited to business, punitive, or consequential damages. The foregoing remedy shall be Arboretum's sole and exclusive remedy for an event of default by the City.

**19. City Termination.** Notwithstanding any contrary provision of this Agreement, if Arboretum fails for any reason, including, without limitation, a lack of city appropriations, to operate the Property as a public garden and arboretum as specified in this Agreement, and such failure continues for a period of ninety (90) days, the City shall have the unconditional and absolute right to terminate this Agreement by providing at least sixty (60) days written notice of such termination to Arboretum. In such event, this Agreement shall terminate and cease as of the effective termination date noted in the City's termination notice and the parties shall be released from all obligations hereunder which do not specifically survive termination.

**20. Arboretum Termination.** Arboretum shall retain an absolute right to terminate this Agreement at any time during the Term in the event Arboretum determines that its financial condition and/or operating funds are not sufficient for Arboretum to maintain and operate the Property as described herein upon giving the City at least one hundred eighty (180) days' written notice of Arboretum's need to terminate this Agreement and designating the termination date. In such event, this Agreement shall terminate and cease as of the effective date of Arboretum's termination and the parties shall be released from all obligations hereunder which do not specifically survive termination; furthermore, all agreements, contracts or other rights between Arboretum and other third parties in existence at the time of such termination shall terminate and cease as of the effective date of Arboretum's termination hereunder.

**21. Licenses, Permits.** Arboretum will be responsible for obtaining, at its sole cost and expense, all licenses, permits, inspections and other approvals necessary for the operation of the Property as a public gardens/arboretum. The City shall cooperate with Arboretum in obtaining all such licenses, permits, inspections and other approvals, including, but not limited to, supplying information and executing applications, forms or other documents necessary for same. Any and all licenses, permits, inspections and other approvals shall be deemed to apply to Arboretum or its use of the Property in accordance with the covenants, conditions and terms of this Agreement.

**22. Subletting and Assignment.** Arboretum shall not transfer, hypothecate, mortgage, pledge, assign or convey its interest in this Agreement or sublet the Property or any part thereof, without the prior written consent of the City, which consent may be withheld in the sole discretion of the City. Notwithstanding the preceding sentence, Arboretum is authorized to rent sites on the Property to third parties for events and activities that are in line with the intended use of the Property and in compliance with all requirements of the City for use of the Property.

**23. Expiration of Term.** At the expiration or earlier termination of the Agreement Term, Arboretum shall peaceably return to the City the Property, including all improvements

located thereon, in good condition, ordinary wear and tear excepted. At the request of the City, Arboretum shall, at its sole cost and expense, remove from the Property all or any portion of the vertical improvements installed or constructed on the Property by Arboretum. It is understood and agreed between the City and Arboretum that Arboretum shall have the right to remove from the Property all personal property of Arboretum situate at the Property including, but not limited to all furnishings, furniture, fixtures, machinery, equipment, appurtenances and appliances placed or installed on the Property by same, provided Arboretum restores the Property after the removal therefrom, subject to the City's review and approval of the restoration. Further, Arboretum shall not have encumbered the Property with any mortgage, mechanic's lien, materialmen's lien, or otherwise.

**24. Right of City to Inspect.** The City at all times may enter into and upon the Property for the purpose of inspecting same and/or for any other purpose permitted under this Agreement or deemed necessary by the City. Arboretum shall provide to the City keys to all gates and improvements on the Property.

**25. Sponsor/Donor Recognition, Advertising.** Subject to all Governmental Requirements including, without limitation, Chapter 122 of the Jacksonville *Ordinance Code*, Arboretum may at its option designate the name of the improvements, or certain specific portions thereof, to recognize sponsors and/or donors to the improvements. Such names, and the graphics designating them, shall be appropriate and tasteful in accordance with practices by similar recreational and sports facilities elsewhere in the United States. Such names and the graphics designating them shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed. Notwithstanding anything herein to the contrary, no names, or the graphics designating them, shall promote or advertise alcohol, tobacco or similar products. All signage placed on or about the Property shall be in compliance with all Governmental Requirements.

**26. City Recognition.** All signage, and graphics for same, which advertise, designate or locate the "Jacksonville Arboretum and Gardens" shall further incorporate in their content, either in written type designation or logo designation, a recognition of the City of Jacksonville Department of Parks, Recreation and Community Services in reasonable form. All signage and banners for advertising, Sponsorships and/or donors are excluded from this requirement. No signage making reference to the City of Jacksonville or the City's Parks, Recreation and Community Services Department shall be placed on or about the Property until such signage has been reviewed and approved by the City.

**27. Force Majeure.** If the City or Arboretum shall be delayed in, hindered in, or prevented from the performance of any act required hereunder (other than performance requiring the payment of a sum of money) by reason of pandemic, epidemic, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations or actions, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond such party's reasonable control (excluding the unavailability of funds or financing), then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act as required herein shall be extended for a period equivalent to the period of such delay.



**28. Condemnation.** If any part of the Property is taken by eminent domain or condemnation or voluntarily transferred to such authority under the threat thereof, the City shall provide Arboretum with notice of such taking, and if by reason of such taking of the Property, Arboretum's operation on or access to the Property is substantially and materially impaired, either party may terminate this Agreement by giving written notice to the other party within thirty (30) days after its receipt of notice of the taking or transfer. Arboretum hereby waives any and all rights it may have in all condemnation awards, including without limitation, loss of or damage to its leasehold interest, and hereby assigns said claims to the City, except such awards as are separately and specifically awarded to Arboretum for its separate personal property, moving expenses, and business damages.

**29. Liens.** Arboretum shall immediately after it is filed or claimed have released, by bonding or otherwise, any mechanics', materialman's or other lien filed or claimed against any or all of the Property or any other property owned or leased by the City, by reason of labor or materials provided for Arboretum or any of its contractors or subcontractors, or otherwise arising out of Arboretum's use or occupancy of the Property. Nothing in the provisions of this Agreement shall be deemed in any way to give Arboretum any right, power or authority to contract for or permit to be furnished any service or materials which would give rise to the filing of any mechanics' or materialman's lien against the City's estate or interest in and to the Property, it being expressly agreed that no estate or interest of the City in and to the Property shall be subject to any lien arising in connection with any alteration, addition or improvement made by or on behalf of Arboretum. At the City's request, Arboretum shall execute a written instrument to be recorded for the purpose of providing notice of the existence of the provisions of the preceding sentence in accordance with Section 713.10, Florida Statutes.

**30. Audit.** Arboretum shall provide an annual single audit by an accredited outside auditing firm of Arboretum's choosing if requested to do so by the City. With reasonable notice, the City shall also have the right to audit Arboretum's financial books, records and documents.

**31. Option to Renew.** Provided this Agreement is still in full force and effect and Arboretum is not then in default under this Agreement, Arboretum shall have the right to request from the City the renewal of this Agreement for up to three (3) consecutive additional five (5) year terms on the following terms and conditions:

(a) Arboretum shall notify the City that Arboretum desires to renew the Agreement not less than one hundred twenty (120) days before the expiration of the then-current Term (as same may have been extended).

(b) The renewal term shall be subject to the same terms and conditions set forth herein.

(c) The renewal term shall also be subject to the agreement of the City (which may be withheld in the sole discretion of the City). If consented to by the City, the renewal shall be confirmed by an agreement signed by both parties.

**32. Approval of the Jacksonville City Council.** This Agreement is not effective until the date that the Jacksonville City Council approves it and it is duly executed by the Mayor.

If the Jacksonville City Council does not approve this Agreement, this Agreement shall be void and of no force and effect.

**33. Miscellaneous.**

(a) Notices: Any and all notices which are permitted or required in this Agreement shall be in writing and shall be duly delivered and given when personally served or mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail - return receipt requested. Notice shall be deemed given on the date of personal delivery or mailing and receipt shall be deemed to have occurred on the date of receipt; in the case of receipt of certified or registered mail, the date of receipt shall be evidenced by return receipt documentation. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein.

If to the City:

City of Jacksonville  
Department of Parks, Recreation and Community Services  
214 N. Hogan Street, 4<sup>th</sup> Floor  
Jacksonville, Florida 32202  
Attn: Director

*With a required copy to:*

City of Jacksonville  
Office of General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attn: Corporation Secretary

If to Arboretum:

Jacksonville Arboretum & Botanical Gardens, Inc.  
1445 Millcoe Road  
Jacksonville, Florida 32225  
Attn: Executive Director

or such other address either party from time to time specify in writing to the other.

(b) Legal Representation. Each respective party to this Agreement has been represented by counsel in the negotiation of this Agreement; accordingly, no provision of this Agreement shall be construed against a respective party due to the fact that it or its counsel drafted, dictated or modified this Lease or any covenant, condition or term thereof.

(c) Further Instruments. Each respective party hereto shall, from time to time, execute and deliver such further instruments as any other party or parties or its counsel may reasonably request to effectuate the intent of this Agreement.

(d) Severability of Invalid Provision. If any one or more of the agreements, provisions, covenants, conditions and terms of the Agreement shall be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such agreements, provisions, covenants, conditions or terms shall be null and void with no further force or effect and shall be deemed separable from the remaining agreements, provisions, covenants, conditions and terms of the Lease and shall in no way affect the validity of any of the other provisions hereof.

(e) No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of the City or Arboretum in his or her individual capacity and none of the foregoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(f) No Third Party Beneficiaries. Nothing herein express or implied is intended or shall be construed to confer upon any entity other than the City and Arboretum any right, remedy or claim, equitable or legal, under and by reason of this Agreement or any provision hereof, all provisions, conditions and terms hereof being intended to be and being for the exclusive and sole benefit of the City and Arboretum.

(g) Successors and Assigns. To the extent permitted by Section 22, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(h) Recording. This Agreement may be recorded in the public records of Duval County, Florida.

(i) Survival of Representations and Warranties. The respective indemnifications, representations and warranties of the respective parties to this Agreement shall survive the expiration or termination of the Agreement and remain in effect.

(j) Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the ordinances of the City of Jacksonville. Wherever possible, each provision, condition and term of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision, condition or term of this Agreement, or any documentation executed and delivered hereto, shall be prohibited by or invalid under such applicable law, then such provision, condition or term shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, condition or term or the remaining provisions, conditions and terms of this Agreement or any documentation executed and delivered

pursuant hereto. Venue for any action arising out of or relating to this Agreement shall lie solely and exclusively in the jurisdictional courts of Duval County, Florida.

(k) Section Headings. The section headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision, condition or term hereof.

(l) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same document, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart, and may be delivered in electronic (*e.g.*, pdf) form.

(m) Entire Agreement. This Agreement contains the entire agreement between the respective parties hereto and supersedes any and all prior agreements and understandings between the respective parties hereto relating to the subject matter hereof. No statement or representation of the respective parties hereto, their agents or employees, made outside of this Agreement, and not contained herein, shall form any part hereof or bind any respective party hereto. This Agreement shall not be supplemented, amended or modified except by written instrument signed by the respective parties hereto.

(n) Time. Time is of the essence of this Agreement. When any time period specified herein falls upon a Saturday, Sunday or legal holiday, the time period shall be extended to 5:00 P.M. on the next ensuing business day.

(o) Waiver of Defaults. The waiver by either party of any breach of this Agreement by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this Lease.

(p) City Representative. Whenever in this Agreement Arboretum is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the City, Arboretum shall deal with the City's authorized representative, and unless or until the City shall give Arboretum written notice as to the contrary, the City's authorized representative shall be the Director of the Department of Parks, Recreation and Community Services.

(q) Funding. Any reference in this Agreement to funding or payment of costs or expenses to be borne to the City shall be contingent upon the availability of lawfully appropriated funds by the City for such purpose.

(r) Reservation of Rights. In accordance with Section 122.428(g), *Ordinance Code*, the City reserves the right to terminate this Agreement under circumstances that threaten the public health or safety, or if this Agreement creates an adverse impact on the City's tax-exempt bond status.

(s) Independent Contractor. Arboretum is an independent contractor of the City. Nothing contained herein shall be deemed to create an employment, agency, joint venture or

partnership relationship between Arboretum and the City or any other legal arrangement that would impose liability upon one party for the act or failure to act of the other party.

(t) Radon Disclosure. The following disclosure is required to be made by the laws of the State of Florida:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**[Remainder of page intentionally left blank. Signature page follows.]**

**IN WITNESS WHEREOF**, the respective parties hereto have hereunto executed this Agreement for the purposes expressed herein on the day and year first above written.

**LANDLORD**

**ATTEST:**

**CITY OF JACKSONVILLE**, a  
*consolidated political subdivision and  
municipal corporation existing under the  
laws of the State of Florida*

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

Dated: \_\_\_\_\_

**FORM APPROVED:**

By: \_\_\_\_\_  
Office of General Counsel

GC-#1420412-v6A-Amended\_Restated\_Lease\_Agreement\_-\_Jax\_Arboretum\_&\_Gardens.doc

**TENANT**

**WITNESSES:**

**JACKSONVILLE ARBORETUM &  
BOTANICAL GARDENS, INC.**, a Florida  
*not-for-profit corporation*

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

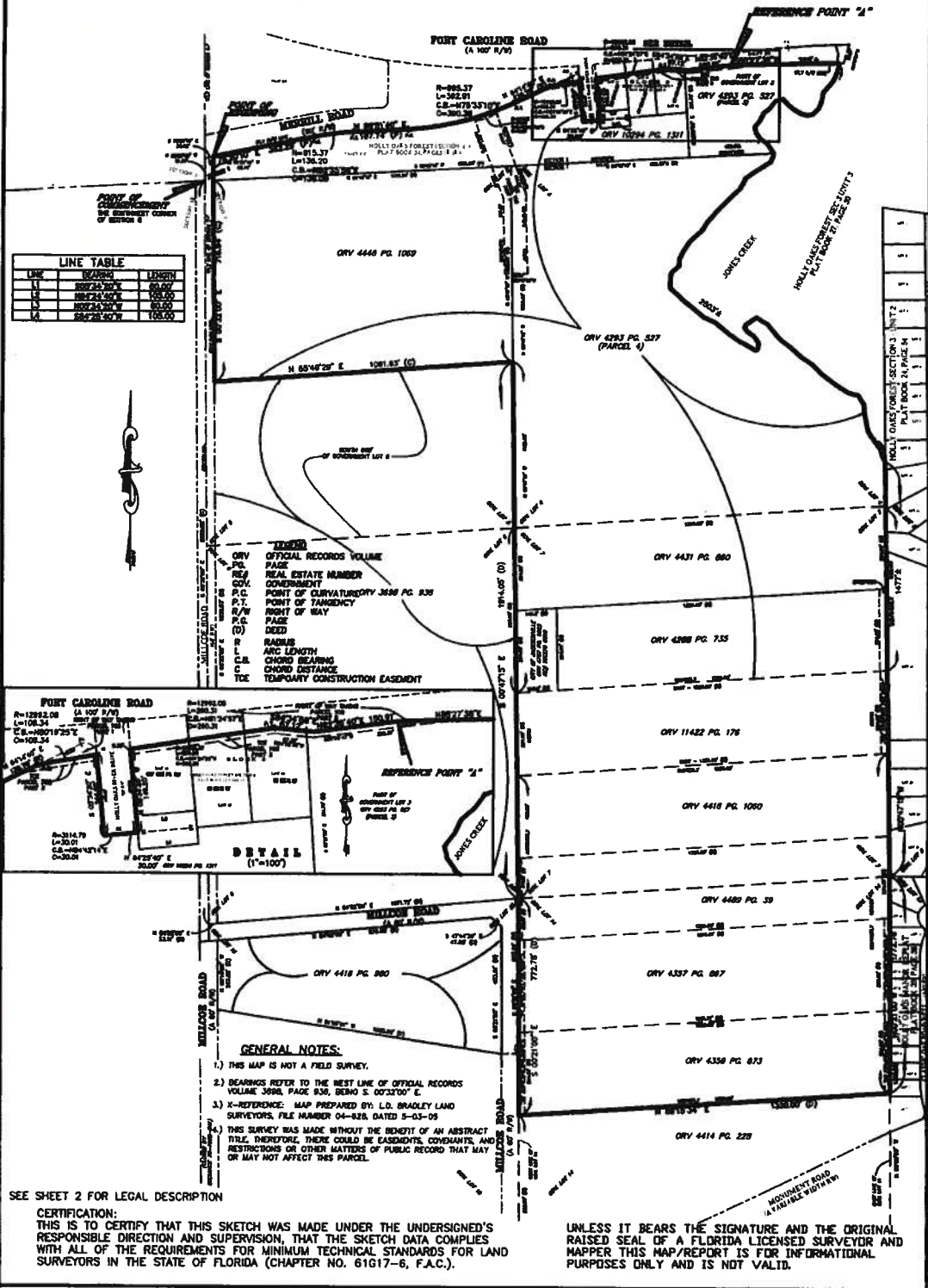
**Exhibit A**

**Property**

[See attached.]

**SKETCH TO ACCOMPANY LEGAL DESCRIPTION OF:**

A PART OF TRACT C-C, HOLLY OAKS FOREST, SECTION 4-A, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 34, PAGE 18 AND 18-A, AND AND A PART OF: LOTS 14, 15 AND 16, BLOCK 3, HOLLY OAKS FOREST SECTION 4, ACCORDING TO PLAT BOOK 22 PAGE 42, ALL OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA AND A PORTION OF GOVERNMENT LOT 3, ALL LYING IN SECTION 6, TOWNSHIP 2 SOUTH, RANGE 28 EAST, DUVAL COUNTY FLORIDA, TOGETHER WITH A PORTION OF GOVERNMENT LOTS 4, 5, 7, AND 14 LYING IN SECTION 7 TOWNSHIP 2 SOUTH, RANGE 28 EAST OF SAID COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



CITY OF JACKSONVILLE, FLORIDA		ENGINEERING DIVISION DEPARTMENT OF PUBLIC WORKS		LEGEND	
 W. MONROE HAZEN, P.L.S. FLORIDA REGISTRATION NUMBER 4252 ROOM 908, 220 E. BAY STREET, 32202 (904)-630-1374		DATE: 04-13-06 FILE NO.: 2006-245		SCALE: NOT TO SCALE JOB NO.: 2006-245	
				SHEET NO. 1 OF 2	



**SKETCH AND LEGAL DESCRIPTION OF:**

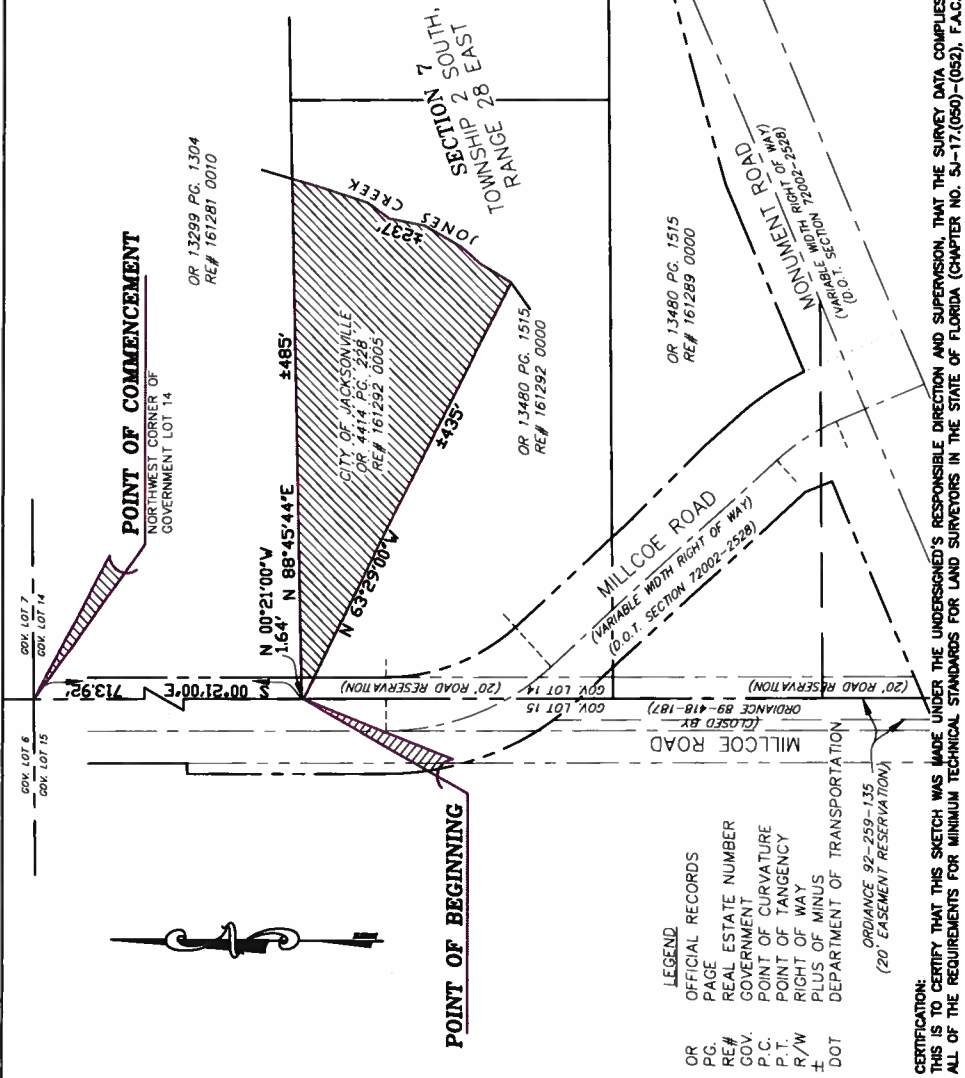
A PORTION OF GOVERNMENT LOT 14, SECTION 7, TOWNSHIP 2 SOUTH, RANGE 28 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE, COMMENCE AT THE NORTH WEST CORNER OF SAID GOVERNMENT LOT 14, SAID POINT ALSO LYING ON THE EASTERLY RIGHT OF WAY LINE OF MILCOE ROAD, (A 60 FOOT RIGHT OF WAY); THENCE SOUTH 00°21'00" EAST, ALONG THE WEST BOUNDARY OF SAID LOT 14 AND SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 713.92 FEET TO THE POINT OF BEGINNING, THENCE REVERSE COURSE, NORTH 00°21'00" WEST, ALONG SAID BOUNDARY AND EASTERLY RIGHT OF WAY LINE A DISTANCE OF 1.64 FEET; THENCE NORTH 88°45'44" EAST, A DISTANCE OF 485 FEET MORE OR LESS TO THE CENTER LINE OF JONES CREEK; THENCE SOUTHWESTERLY ALONG SAID CENTER LINE AND ITS MEANDERINGS THEREOF, A DISTANCE OF 237 FEET MORE OR LESS, TO A POINT LOCATED SOUTH 63°29'00" EAST AND 435 FEET DISTANT FROM THE POINT OF BEGINNING; THENCE NORTH 63°29'00" WEST A DISTANCE OF 435 FEET MORE OR LESS TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 1.13 ACRES MORE OR LESS

OR 6712 PG. 1334  
RE# 161291 0500

**GENERAL NOTES**

1. THIS IS NOT A FIELD SURVEY.
2. A BEARING OF **S 00°21'00"E**, ALONG THE WESTERLY BOUNDARY OF GOVERNMENT LOT 14 WAS TAKEN FROM OFFICIAL RECORDS 4414, PAGE 228 OF THE CURRENT PUBLIC RECORDS, DUVAL COUNTY, FLORIDA.
3. THIS SKETCH WAS MADE WITHOUT THE BENEFIT OF AN ABSTRACT TITLE, THEREFORE, THERE COULD BE EASEMENTS, COVENANTS, AND RESTRICTIONS OR OTHER MATTERS OF PUBLIC RECORD THAT MAY OR MAY NOT AFFECT THIS PARCEL.
4. X-REFERENCE:  
FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAPS, SECTION 72002-2528, LAST REVISED: 2-10-87, ON FILE AT THE CITY OF JACKSONVILLE TOPOGRAPHICAL SECTION.



**LEGEND**

OR OFFICIAL RECORDS  
PG. PAGE  
RE# REAL ESTATE NUMBER  
GOV. GOVERNMENT  
P.C. POINT OF CURVATURE  
P.T. POINT OF TANGENCY  
R/W RIGHT OF WAY  
± PLUS OF MINUS  
DOT DEPARTMENT OF TRANSPORTATION  
(ORDINANCE 92-259-135  
(20' EASEMENT RESERVATION))

CERTIFICATION:  
THIS IS TO CERTIFY THAT THIS SKETCH WAS MADE UNDER THE UNDERSIGNED'S RESPONSIBLE DIRECTION AND SUPERVISION, THAT THE SURVEY DATA COMPLES WITH ALL OF THE REQUIREMENTS FOR MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYORS IN THE STATE OF FLORIDA (CHAPTER NO. 54-17.056)-(052), F.A.C.).

FILE NO.: \_\_\_\_\_ JOB NO.: \_\_\_\_\_ DATE: 12-28-2011 SCALE: NOT TO SCALE  
PROJECT PATH: G:\CAD\PROJECTS\71\DANNY\OUTH ARBORETUM PARCEL

CITY OF JACKSONVILLE, FLORIDA, DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION  
214 N. HOGAN STREET 10th FLOOR JACKSONVILLE, FLORIDA, 32202

SHEET NO. \_\_\_\_\_ OF \_\_\_\_\_

## **Exhibit B**

### **Additional Requirements**

#### **Jacksonville Arboretum & Botanical Gardens, Inc.**

##### Mission Statement

Cultivating a unique environment for recreation, education and inspiration.

##### Goals

###### Conservation:

To provide stewardship of the Arboretum lands by protecting, sustaining, and enhancing biological diversity by means of large tracts of open-space. The Arboretum also provides leadership locally and beyond in conservation matters, such as the eradication of invasive species, water conservation, and the responsible use of chemicals.

###### Teaching:

To provide an outdoor laboratory for use by college faculty and students in Botany, Zoology, Biology, Environmental Studies, and other departments. In both teaching and research, the Arboretum is a unique and valuable academic resource and support facility.

###### Research:

To support and conduct research in a broad range of subjects including ecology, field biology, conservation, and natural history. Arboretum research has and continues to emphasize useful long-term studies.

###### Collection:

To maintain, develop, and interpret well-documented plant collections for teaching, research, and public education and enjoyment.

###### Public Education:

To provide programs and publications about conservation, horticulture, gardening, botany, and natural history which work to enhance public understanding of the natural world and foster an appreciation of the Arboretum's mission.

###### Recreation:

To provide a place where people from the community may enjoy passive recreation and where they may come to learn, reflect, and renew themselves through contact with the natural world. By all the elements of the Arboretum's mission, the Arboretum enhances the quality of life both for northeast Florida and the residents of the community.

**Exhibit C**

**City of Jacksonville  
Volunteer Criminal Background Screening Process Policy and Procedure**

[See attached.]

# **CITY OF JACKSONVILLE**

## **VOLUNTEER CRIMINAL BACKGROUND SCREENING PROCESS POLICY AND PROCEDURE**

### **PURPOSE OF POLICY**

To establish a citywide standardized policy and procedure for criminal background screening of all citizen volunteers pursuing volunteer opportunities with the City of Jacksonville or organizations utilizing volunteers in programs supported by City funding. Formalization of this process will assist the City in appropriately screening volunteers for the protection of children and vulnerable populations.

### **APPLICATION OF POLICY**

This policy applies to all volunteer positions involving direct contact with youth or vulnerable adults with the exception of special event volunteers. For this purpose, a special event volunteer is defined as a volunteer committed to assist on a specific event/project lasting less than two consecutive weeks and where duties are performed under supervision of staff or certified volunteer leadership. Enforcement of this policy is the responsibility of the organization receiving services provided by the volunteer.

### **SCREENING PROCESS**

Volunteer applicants should be advised of guidelines established for determining eligibility prior to the submission of any information to be used in criminal background screening process.

All information received from the Background Check Applications and reports returned from state and federal law enforcement agencies will be used solely for the purpose of determining applicant's eligibility as a volunteer participant with the City of Jacksonville.

- All volunteer applicants as defined above, must agree to and complete a criminal history screening application and need to be digitally fingerprinted.
- Completed applications and fingerprint must be submitted to the volunteer coordinator or other designated person within each organization for background verification prior to the start of the volunteer assignment. Applicants may volunteer only under supervision pending receipt of results.
- Volunteer information on all new volunteers providing services in applicable positions will be submitted in accordance with the Florida Department of Law Enforcement's (FDLE) Volunteer & Employee Criminal History System (VECHS) for processing. (See attached)
- Volunteer applicants shall be notified of results in writing only when results indicate that a volunteer does not meet the City's volunteer eligibility requirements.
- Results of law enforcement reports will be provided in a "pass" or "fail" manner only. Details of report shall not be disclosed to any third party except when authorized by

volunteer applicant's written request for appeal or as required by public records request.

- Central database of "pass" / "fail" results will be maintained by the Office of Volunteer Services. Agencies should contact Volunteer Services prior to processing background check requests on volunteer applicants to prevent duplication of effort.
- Once assigned, volunteers will be required to report any new arrests or convictions related to the above charges to the volunteer coordinator within ten days of either occurrence. Failure to report will result in immediate removal from the volunteer program. Review process applies.
- Volunteers will be required to sign a Statement of Continuous Service annually following the initial VECHS screening provided volunteer service is continuous. A break in service will require the volunteer to repeat the background application process again. (See attached.)

### **SCREENING GUIDELINES**

The City of Jacksonville will use the following guidelines in screening its volunteers. No volunteer will be accepted who has been:

- A. Convicted of or plead "Guilty" or "No Contest" to, any crime involving sexual misconduct.**
- B. Convicted of or plead "Guilty" or "No Contest" to, any type of violent crime.**
- C. Convicted of or plead "Guilty" or "No Contest" to, any crime involving illegal use or possession of illicit drugs or controlled substances.**
- D. Convicted of or plead "Guilty" or "No Contest" to illegal use of possession of a firearm.**
- E. Convicted of or plead "Guilty" or "No Contest" to, child abuse or domestic violence.**
- F. Arrested for any of the above, where disposition is still pending.**
- G. Arrested for any of the above, or any other crime, where disposition is not pending, but evidencing, based on circumstances, a reasonable concern for the safety of youth or vulnerable populations.**

### **REVIEW PERIOD**

Eligibility determinations are based on a nationwide criminal record review of the last ten years. Convictions prior to the ten-year period shall be considered when one or more of the following conditions exists:

- A. The conviction is for sexual misconduct.**
- B. The conviction is for violence against a minor.**
- C. The completion date of the imposed sentence, including probation, parole, etc., falls within the ten-year period under review.**
- D. Conviction for any of the above, or any other crime, where disposition is not pending, but evidencing, based on circumstances, a reasonable concern for the safety of youth or vulnerable populations.**

In such cases, convictions will be examined on a case-by-case basis in order to determine whether the incident is relevant to the volunteer position.

### **ACCURACY OF RECORDS**

The City of Jacksonville is not responsible for the content accuracy of background reports. If a volunteer disputes the accuracy of information provided by the VECHS program, they must address their concerns directly with the law enforcement agency responsible. The volunteer may then provide a copy of the corrected criminal record for further consideration by the City.

### **CONDITIONS FOR APPEAL**

Potential volunteers who fail to meet the minimum standards as defined above, may appeal the decision before a volunteer board of their peers if the following circumstances apply.

- A. Completion date of sentence for conviction under review must have been more than five years ago.**
- B. Volunteer applicant must provide two letters of recommendation from citizens in the community such as current employer and a letter of recommendation from the current program leader.**
- C. Must provide a copy of the report to the review panel.**

### **APPEAL PROCESS**

Once notified of ineligibility, a volunteer has the right to appeal to the organization for which he/she has offered to provide services for reconsideration. If the applicant is eligible for appeal pursuant to conditions listed above,

- The volunteer applicant must submit their request for reconsideration in writing to the department/organization within thirty (30) days of notification. (The notification letter postmark represents day one.) The volunteer applicant must disclose the criminal record in question with the department/organization head or designee.
- The Panel will schedule an appeal hearing with the individual. The panel will make a decision based on the facts presented during the appeal hearing.
- The Panel's decision will be forwarded in writing to the Office of Volunteer Services and the affected department/organization. The volunteer applicant will receive written notification of the final decision, including reasonable explanation for denial.

**No further appeals will be considered, once a decision has been rendered.**

Future laws associated with Volunteer Background Checks could dictate changes in the above policy or process. The City of Jacksonville reserves the right to make changes to its Volunteer Background Check Policy and Selection Criteria without notification and whenever deemed necessary for the safety and protection of all youth and/or vulnerable adults participating in organized activities at City facilities and/or in City sponsored programs.

## Exhibit D

### INDEMNIFICATION

Arboretum (the “Indemnifying Party”) shall hold harmless, indemnify, and defend the City of Jacksonville and the City’s members, officers, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Party that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party’s performance of the Agreement, and operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the services, any product generated by the services, or any part of the services as contemplated in this Agreement, constitute an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the services, any product generated by the services, or any part of the services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Party shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties, a license authorizing the continued use of the disputed part of the service or product. If the Indemnifying Party fails to secure such a license for the Indemnified Parties, then the Indemnifying Party shall replace the disputed service or product with a non-infringing service or product or modify such service or product in a way satisfactory to the City, so that the service or product is non-infringing.

If the Indemnifying Party exercises its obligation under this Agreement, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at its own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

**Exhibit E**

**INSURANCE REQUIREMENTS**

Without limiting its liability under this Agreement, Arboretum shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Arboretum shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

**Insurance Coverages**

<u>Schedule</u>	<u>Limits</u>
<b>Workers' Compensation</b>	Florida Statutory Coverage
<b>Employers' Liability</b>	\$ 1,000,000    Each Accident \$ 1,000,000    Disease Policy Limit \$ 1,000,000    Each Employee/Disease

This insurance shall cover Arboretum (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

If Arboretum is not required to carry Workers' Compensation coverage as defined under Chapter 440, Florida Statutes, the above requirement may be waived. Such waiver shall be reviewed annually by the City's Division of Risk Management. Arboretum shall annually provide the City written confirmation verifying its exemption from the requirement to provide Workers' Compensation coverage on Arboretum's letterhead, certified and signed by an officer or authorized representative of Arboretum. Arboretum will be responsible for any and all workers' compensation benefits payable to an insured employee as defined by Chapter 440, Florida Statutes.

<b>Commercial General Liability</b>	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp.Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.



**Automobile Liability** \$1,000,000 Combined Single Limit  
(Coverage for all automobiles, owned, hired or non-owned used in performance of this Agreement)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement). An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

**Sexual Abuse and Molestation Liability** \$1,000,000 Per Claim  
\$2,000,000 Per Aggregate

Such insurance shall be on a form acceptable to the City and shall cover for those sources of liability arising out abuse and molestation claims. Such coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this Agreement and such claims-made coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(This Sexual Abuse and Molestation Liability insurance requirement will only be applicable in the event programs are provided at the Property that includes children and/or direct supervision of children or vulnerable persons.)

#### **Additional Insurance Provisions**

- A. **Certificates of Insurance.** Arboretum shall deliver to the City certificates of insurance that show the corresponding City Contract or Bid Number in the description, Additional Insureds, Waivers of Subrogation, and Primary and Non-Contributory statement as provided below. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- B. **Additional Insured.** All insurance **except** Workers' Compensation, Professional Liability, AD&D and Crime (if required) shall be endorsed to name the City of Jacksonville and the City's members, officials, officers, employees and agents as additional insured. Additional insured for General Liability shall be in a form no more restrictive than CG2010 and, if products and completed operations are required, CG2037, Automobile Liability CA2048.
- C. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
- D. **Carrier Qualifications.** The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better.
- E. **Arboretum's Insurance Primary.** The insurance provided by Arboretum shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.

- F. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Arboretum. Under no circumstances will the City of Jacksonville and/or its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- G. Arboretum's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of Arboretum or its contractors, subcontractors, employees or agents to the City or others. Any remedy provided to the City or the City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- H. Waiver/Estoppel. Neither approval by the City nor its failure to disapprove the insurance furnished by Arboretum shall relieve Arboretum of Arboretum's full responsibility to provide insurance as required under this Agreement.
- I. Notice. Arboretum shall provide an endorsement issued by the insurer to provide the City thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, Arboretum, as applicable, shall provide said thirty (30) days' written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of Arboretum under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provision. Prior to executing this Agreement, Arboretum shall present this Agreement and **Exhibits D** and **E** to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of this Agreement, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Arboretum.