

ARBORIST AND LANDSCAPE CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made as of the 1st day of July, 2019, by and between the CITY OF SMYRNA, GEORGIA, a municipal corporation (hereinafter the "City") and Boutte Tree, Inc., a Georgia corporation (hereinafter "Contractor" or "Company").

WITNESSETH:

WHEREAS, the City issued Request for Quotation ("RFQ") 13-007-B to solicit bids to provide Arborist and Landscaping Consulting Services on a project basis for the City; and

WHEREAS, Contractor submitted a bid under RFQ 13-007-B on October 2, 2012, and after evaluation of all submitted bids, the City awarded Contractor the contract for said services; and

WHEREAS, City, as a municipality and in accordance with its responsibilities as such, reviews certain landscape design plans (the "Landscape Plans") that are submitted to it, from time to time, to determine if such Landscape Plans comply with the City's ordinances (which are currently in effect) and reflect good landscape design;

WHEREAS, City wishes to engage Contractor, as an independent consultant, to review and consult with the City on the Landscaping Plans which may be submitted to the City from time to time during the Term Period, and upon the terms and conditions specified in this Agreement;

WHEREAS, Contractor wishes to perform such services for the City through the Term Period upon the terms and conditions specified in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreement set forth herein and for other good and valuable consideration contained herein and effective the first day of July 2019, the City and Contractor agree as follows:

1. Term.

The initial term of this Agreement shall be one year from July 1, 2019, (the "Commencement Date"), to July 1, 2020. Upon mutual consent, the parties may extend, in writing, the contract for two (2) subsequent terms of up to two (2) years each.

2. Services.

Services: The services to be provided by Contractor hereunder shall be those set forth in Appendix A, Scope of Services.

3. Point of contact and reports.

All dealings and contacts between the Contractor and the City shall be directed by the Contractor to the City Community Development Director with a copy to his written designee.

4. Rates.

Compensation payable by the City to the Contractor for services rendered shall be set forth in Appendix "B" Pricing, hereto, or in RFQ 13-007, which is hereby incorporated herein by this reference.

5. Indemnity.

Contractor shall indemnify and hold harmless the City, its officers, employees, engineers, associates, agents, subcontractors and representatives from and against any and all claims, damages, suits, fees, judgements, costs, expenses (including reasonable attorneys' fees), liability or payment arising out of, or through, injury to any person or persons including death and loss of services, or damage to the property, suffered through any negligent or intentional wrongful act by Contractor in the work involved in the contract and to defend on their behalf any suit brought against them arising from such cause.

6. Insurance.

a. Insurance: During the term of this Agreement, Contractor shall maintain in full force and effect the policy of insurance coverage described below. Each such policy shall contain an endorsement that in the event of a change or cancellation, thirty (30) days prior written notice must be sent by mail to the City. In each case, prior to starting work hereunder, the Contractor shall furnish to the City a Certificate of Insurance describing the coverage and containing the appropriate wording to the effect that the policies cover the Contractor's operations under this Agreement. The certificate shall be signed and dated by an authorized representative of the insurance carrier(s), and the City shall be named as an additional insured (without limitation other than the express limitations of the policies) on all insurance coverage's and policies required to be provided. All policies shall be on an occurrence basis and shall be written by insurance companies reasonably satisfactory to the City.

b. The minimum insurance requirements are as follows:

Professional Liability – Minimum coverage of \$100,000 per claim/\$100,000 annual aggregate.

7. Force majeure.

From and after the Commencement Date, the Contractor's performance hereunder may be suspended and its obligations excused in the event and during the period that such performance is prevented by an Act of God or other such cause or causes beyond the reasonable control of the Contractor unless such cause or causes are a result or action or nonaction by Contractor.

8. Permits, licenses and taxes.

The Contractor shall obtain at its own expense all permits and licenses required by law or ordinance and maintain the same in full force and effect. The Contractor shall promptly pay all taxes required by local, state and federal laws.

9. Default; termination.

The City may, on thirty (30) days' notice to Contractor, terminate the Contract, without prejudice to any other remedy it may have, when the Contractor materially defaults in the performance of any provision of this Agreement or materially fails to carry out the work in accordance with the provisions of the Contract. Default by the Contractor will include, but is not limited to, the following:

- a. Failure to provide service in accordance with all specifications;
- b. Fail to perform service during an on-going project for three (3) consecutive business days, if applicable, during the term hereof for reasons other than a force majeure event.
- c. Insolvency or filing of a voluntary or involuntary petition for bankruptcy by the Contractor.

- d. Failure of Contactor to pay taxes or fees or failure to maintain all necessary licenses and permits.
- e. Failure of Contractor to cure any breach or default in the performance of its duties or obligations set forth in this Contract within five (5) days of receipt by the Contractor of written notice of such breach or default.

The City may terminate the Contract, for convenience purposes, upon sixty (60) days' written notice. Upon termination of the Contract, the Contactor shall, unless notified in writing otherwise, take all reasonable precautions to complete the work in progress and to minimize the expenses of the City incident to such termination and the completion of the work. Thereafter, the Contractor shall promptly discontinue the work. The City shall pay the Contractor all monies owed for work completed.

10. Exclusive contract.

The Contractor shall have the sole and exclusive franchise license and privilege to provide services for and on behalf of the City.

11. Ownership of Documents.

All documents prepared or furnished by Contractor pursuant to this Agreement are instruments of Contractor's professional service, and the Contract shall retain an ownership and property interest therein. Contractor grants the City a license to use instruments of Contactor's professional service for the purpose of constructing, occupying, and maintaining project. Reuse or modification of any such document by City, without Contractor's written permission, shall be at the City's sole risk, and City agrees to indemnify and hold Contractor harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by the City or by others acting through the City.

12. Use of Electronic Media.

Copies of documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by Contractor. Files in electronic media format or text, data, graphic or other types that are furnished by Contractor to the City are only for the convenience of the City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Contractor makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Contractor at the beginning of this assignment.

13. Opinions of Cost.

When included in Consultant's scope of services, opinions or estimates of probable construction costs are prepared on the basis of Contractor's experience and qualifications and represent Contractor's judgement as a professional generally familiar with the industry. However, since Contractor has no control over cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices or over competitive bidding or market conditions, Contractor cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from Contractor's opinions of probable construction costs.

14. Compliance with laws.

The Contractor shall conduct operations under this Contract in compliance with all applicable laws, provided, however, that the terms of this Contract shall govern the obligations of the Contractor where conflicting ordinances exist.

15. General Provisions.

All understandings and agreements between the parties are merged in this Agreement, including any Exhibits, and incorporating all the terms and provisions of RFQ 13-007 and addenda, which alone fully and completely expresses their agreement. This Agreement is entered into after full investigation, neither party relying upon any statements or representations made by the other not embodied in this Agreement. This Agreement may not be changed orally, but only by an agreement in writing, signed by the parties. It is expressly agreed and understood by the parties hereto that neither party is the agent, partner or joint venture partner of the other. **THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA. ANY JUDICIAL PROCEEDINGS REGARDING THIS AGREEMENT SHALL BE PROSECUTED IN THE COURTS OF COBB COUNTY, GEORGIA AND THE PARTIES SUBMIT TO THE JURISDICTION AND VENUE OF SAID COURTS. THE PARTY PREVAILING IN ANY JUDICIAL ACTION OR OTHER PROCEEDING RELATING TO THIS AGREEMENT SHALL BE PAID ALL COSTS AND REASONABLE ATTORNEY'S FEES BY THE OTHER PARTY.** Time is of the essence of this Agreement. However, if any action is required to be taken on a Sunday, or legal holiday, the action shall be deemed timely if it is taken on the next regular business day. No consent or waiver, express or implied, by City or Contractor to or of any breach or default by the other party in the performance by such other party of the obligations thereof under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party under this Agreement. Failure on the part of either City or Contractor to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. If any provision of this Agreement or the application thereof to any part or circumstances should be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to any other party or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Agreement constitutes the entire agreement between parties hereto and neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. This Agreement shall inure to the benefit of and be binding upon City and Contractor and their respective successors and permitted assigns. This Agreement may be executed in counterparts, and the signature of any person required by this Agreement shall be effective if signed on any or all counterparts. All counterparts together shall be considered one and the same Agreement.

16. Notices.

Any written notice or other communication required or permitted hereunder shall be deemed to have been sufficiently given hereunder, if said written notice is deposited in the U.S. Mail and sent by certified or registered mail, postage prepaid, or made in person, addressed as follows:

To the City:

City Administrator
2800 King Street
Smyrna, Georgia 30080

To Contractor:

Boutte Tree, Inc.
2144 Bolton Road NW
Atlanta, Georgia 30318

or any other address as may be later designated in writing by the other party and any such written notice or communication shall be deemed to have been given as of the date so mailed.

17. Waivers.

The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

18. Rights and Remedies Cumulative.

The rights and remedies provide by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right not use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

19. Severability.

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties hereto have caused their hands and seals to be set this 1st day of July, 2019.

CITY OF SMYRNA

By: _____
A. Max Bacon, Mayor

BOUTTE TREE, INC.

By: _____
Title: _____
Printed Name: _____

APPENDIX "A"
SCOPE OF SERVICES

GENERAL: The City of Smyrna, as a municipality and in accordance with its responsibility as such, reviews certain landscape design plans that are submitted to it, from time to time, to determine if such Landscape Plans comply with the City's ordinances currently in effect and if the plans reflect good landscape design.

SCOPE: The City of Smyrna has a need to engage an independent Contractor to review and consult with the City on the Landscape Plans which may be submitted to the City. The reviews will consist of such Landscape Plans as identified in an applicable executed Project Addendum. The Contractor will have sole and exclusive responsibility for Basic Services as outlined.

CONTRACTOR'S RESPONSIBILITIES: Basic Services to be provided by the Contractor in connection with each executed Project Addendum shall consist of

- 1) One (1) site review and tree protection fence review with the identified and submitted Landscape Plans
- 2) One (1) Landscape Plan review with red-line comments indicated on plans and a check list
- 3) One (1) meeting with City and with the developer and their landscape architects or designers to review plan requirements
- 4) One (1) final plan review to ascertain whether all red-line comments and check list comments have been adequately addressed in resubmitted plans
- 5) One (1) final site visit, if requested by City

Additional Services beyond the Basic Services may be required in writing with an executed Project Addendum. Additional Services include, without limitation, requests from the City for the Contractor to review submitted landscape plans in connection with applications or requests for rezoning as it relates to Landscape Architecture and preparation of a brief written report to the City Community Development Director with respect to same proposed rezoning reviews; any additional plan reviews; site visits and meetings beyond those included in Basic Services.

Excluded Services which are not part of this work and are the responsibility of others include, but are not limited to, the following: tree surveys, flow tests, civil engineering, irrigation system design and any other services or work not specified as Basic or Additional Services.

Contractor agrees to provide its professional services in accordance with generally accepted standards of its profession.

CITY'S RESPONSIBILITIES: City agrees to provide Contractor with all information, surveys, reports and professional recommendations and any other related items requested by Contractor in order to provide its professional services.

City shall furnish the services of all other consultants and professionals required in connection with any project identified in an executed Project Addendum.

City agrees to advise Contractor of any known or suspected contaminants at the Project site. City shall be solely responsible for all subsurface soil conditions.

APPENDIX "B"
PRICING

Pricing for Services rendered on an as-needed basis are:

Total Hourly Charge for Basic Services:	<u>\$100.00</u> (Written) <u>\$One Hundred Dollars and No Cents</u> (Numbers)
Total Hourly Charge for Additional Services:	<u>\$100.00</u> (Written) <u>\$One Hundred Dollars and No Cents</u> (Numbers)

Hourly Prices are all inclusive of materials, mileage, and other expenses. Hourly charges commence when Boutte Tree, Inc. is engaged by the City and include travel time to and from meetings and project sites.