

Ordinance No. BL2020 - 506

An ordinance approving an agreement between the Metropolitan Government and Cheekwood Botanical Gardens and Museum of Art ("Cheekwood") concerning the care and maintenance of the garden area in Riverfront Park in downtown Nashville.

WHEREAS, pursuant to the agreement (the "Agreement") attached to this ordinance as Exhibit 1, the Metropolitan Government proposes to coordinate with Cheekwood for the care and maintenance of annuals, perennials, shrubs, bulbs, and other plants; and,

WHEREAS, approval of the Agreement is in the best interest of the citizens of Davidson County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:


Section 1. The Agreement is approved.

Section 2. The Director of Metropolitan Parks and Recreation or his designee is further authorized to execute such documents as are customary and necessary to carry out the intent of this ordinance.

Section 3. Amendments to the Agreement may be approved by resolution of the Metropolitan Council.

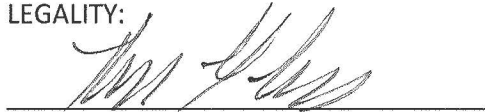
Section 4. This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY  
OF FUNDS:



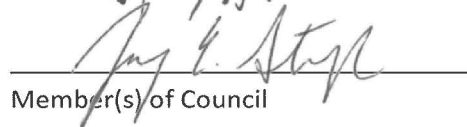
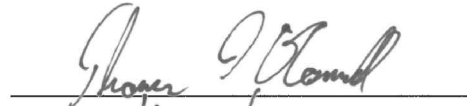
Kevin Crumbo, Finance Director

APPROVED AS TO FORM AND  
LEGALITY:



Assistant Metropolitan Attorney

INTRODUCED BY:



Member(s) of Council

## RIVERVIEW GARDENS AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this 7<sup>th</sup> day of July, 2020 between the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government") and Cheekwood Botanical Gardens and Museum of Art ("Cheekwood").

WHEREAS, the Metropolitan Government owns and operates the Riverfront Park in downtown Nashville in which it proposes to designate the garden area (the "Garden") as shown in Exhibit A, Sheet L105 from landscape plan dated June 13, 2014 and revised August 8, 2014; and

WHEREAS, pursuant to the terms of this Agreement, Cheekwood proposes to assist the Metropolitan Government in its care and maintenance.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings of the parties set forth below, and other good and valuable consideration, the parties agree as follows:

1. Effective Date. This Agreement shall not be binding upon the Metropolitan Government until approved by the Metropolitan Council, fully executed and filed with the Metropolitan Clerk, and shall be effective as of the date ("Effective Date") so filed.
2. Term. The term of this Agreement shall be five years, beginning on the Effective Date and ending on the fifth anniversary thereof. By agreement of the parties, the term may be extended for an additional five years. Any such extension must be approved by resolution of the Metropolitan Council.
3. Cheekwood Services. Cheekwood agrees to assist the Metropolitan Government with maintenance of annuals, perennials, shrubs, bulbs and other plants (with the exception of trees) using dedicated professional staff, students and knowledgeable volunteers working under the direction of professional staff. Services will include the following:
  - (a) Pruning, weeding, deadheading, dividing of perennials or grasses, application of fertilizer, herbicides or other pest control and assist with the application of compost, mulch or other supplements in coordination with Parks.
  - (b) Placement or replacement of annual or bulb planting areas for seasonal interest with the knowledge and approval of Parks and following the intent of the original Garden design parameters.
  - (c) Monitor water levels within the Garden and report to Parks recommended adjustments to the irrigation system.

- (d) Maintaining the plant identification labels to be visible from primary paths, properly installed and accurate in the identification of plant material.
  - (e) Participating in quarterly walk-throughs with representatives of Parks to review the responsibilities of each entity within the Garden.
  - (f) The opportunity to provide educational activities and programs within the Garden for the benefit of the general public. Activities may be promoted jointly by Cheekwood and the Metropolitan Government and should be open to the public. Private events would be subject to the same fees, terms and conditions as other events held within Riverfront Park. Programs shall be coordinated with Parks staff so as not to conflict with scheduled major performances or events in Riverfront Park or the amphitheater.
  - (g) Supplementing the services provided by the Metropolitan Government.
4. Metropolitan Government Services. The Metropolitan Government agrees to provide overall maintenance services within the Garden, including base fertilization, pest control, tree pruning and healthcare, annual mulch application, replacement of dead or damaged plants and irrigation system monitoring and operation (including winterization and startup). The Metropolitan Government shall participate in quarterly walk-throughs with representatives of Cheekwood to review Garden planning, activities and responsibilities. Throughout the term of the Agreement, the Metropolitan Government also shall cooperate with Cheekwood in the development and provision of educational and activity programming in the Garden.
5. Application of Funds. In the event that Cheekwood raises funds through successful grant application or other approved fundraising, it may, with the permission of Parks, use those funds within the Garden to:
- (a) Replace original plant material as necessary after the initial warranty period.
  - (b) Replace identified areas of plant material to promote seasonal interests and alignment with Cheekwood events as approved in advance by Parks.
  - (c) Install temporary public art installations in alignment with Cheekwood events and as approved in advance by Parks. Any temporary installations shall be repaired to original condition once the temporary installation is complete and removed.
6. Sponsorship Identification. Cheekwood shall be entitled to recognition as a sponsor of the Garden with appropriate signage, to be furnished and installed by the Metropolitan Government. Such signage shall be in size and form consistent with sponsorship acknowledgment signage used at the Metropolitan Government's other park facilities and the text and design shall be mutually agreed upon.

7. Insurance. During the term of this Agreement, Cheekwood shall maintain and keep in force a policy of workers compensation liability insurance, with policy limits of not less than \$500,000, with respect to activities undertaken pursuant to this Agreement. Cheekwood shall furnish evidence of such coverage prior to engaging in any substantive work or activity at the Garden.
8. Venue and Choice of Law. This Agreement shall be governed by the laws of Tennessee, and any action relating to this Agreement shall be brought in the Circuit or Chancery Courts for Davidson County, Tennessee.
9. Assignment. This Agreement may not be assigned without the prior written consent of the Metropolitan Government, which shall not be unreasonably withheld.
10. Notices. All notices, consents, approvals, and other communications given to either party under this Agreement shall be in writing and delivered to such party at the address set forth below:

If to the Metropolitan Government, addressed to:

Director, Metropolitan Board of Parks and Recreation  
511 Oman Street  
Nashville, Tennessee 37203

If to Cheekwood, addressed to:

Cheekwood  
1200 Forest Park Drive  
Nashville, Tennessee 37205

Forrest 

11. Entire Agreement. This Agreement and specifically incorporated documents constitute the entire agreement between the parties pertaining to the subject matter hereof.
12. Waiver. No waiver of any provision of this Agreement shall be binding or effective unless in writing and signed by authorized representatives of both parties.
13. Force Majeure. Neither party shall be liable to the other damages attributable to an event of *force majeure*, including, without limitation, natural disaster, fire, explosion or the like that materially interferes with performance under this Agreement.
14. Termination. Either party may terminate this Agreement on account of a material breach upon 14 days' notice to the other party and 14 days' opportunity to cure

15. such breach. Either party may terminate this Agreement at any time upon 60 days' notice.
16. Changes. No change in the terms of this Agreement shall be binding or effective unless in writing and signed by authorized representatives of both parties.

– Signatures on following page –

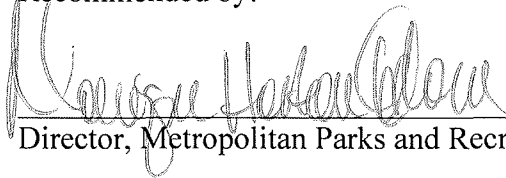
IN WITNESS WHEREOF, the Metropolitan Government and Cheekwood have executed this Agreement as of the day and year shown above:

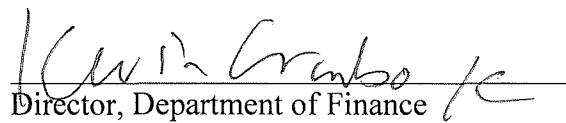
THE METROPOLITAN GOVERNMENT

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

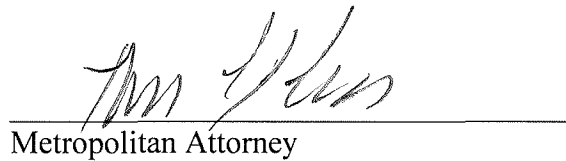
OF NASHVILLE AND DAVIDSON  
COUNTY:

Recommended by:

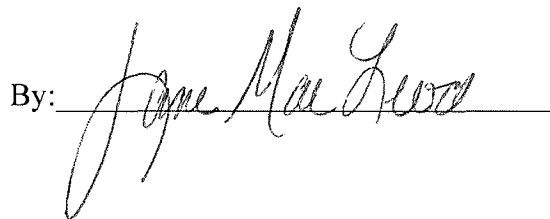
  
\_\_\_\_\_  
Director, Metropolitan Parks and Recreation

  
\_\_\_\_\_  
Director, Department of Finance

Approved as to form and legality:

  
\_\_\_\_\_  
Metropolitan Attorney

CHEEKWOOD BOTANICAL GARDENS  
AND MUSEUM OF ART

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

(N0350499.1)