

LUTHER BURBANK HOME & GARDENS MANAGEMENT AND OPERATIONS AGREEMENT

This Agreement ("Agreement") is made as of this _____ day of _____, 2022 by and between the City of Santa Rosa, a municipal corporation ("CITY"), and Luther Burbank Home & Gardens Association, a California nonprofit public benefit corporation ("CONTRACTOR").

CITY and CONTRACTOR are sometimes hereinafter referred to individually as "Party" and collectively as the "Parties."

RECITALS

A. Luther Burbank, renowned and distinguished horticulturalist, was for many years a resident of Santa Rosa, and it was here that he accomplished much of his life's work developing new and improved varieties of vegetables, fruits, trees, and flowers. Through the kindness of Luther Burbank and his wife, Elizabeth Waters Burbank, CITY is the owner of the Luther Burbank Home, its grounds, carriage house, and other related buildings, and the Luther Burbank Gardens, all of which are located at 204 Santa Rosa Avenue (APN:009-265-028 and APN:009-265-015), the boundary of which is identified by a picket fence, and known collectively as Luther Burbank Home & Gardens (the "Premises").

B. CITY is also the owner of a collection of Luther Burbank's books, papers, pictures, furnishings, personal effects, and other memorabilia (the "Collection") which are primarily, but not exclusively, located in the home and the carriage house at the Premises.

C. CITY desires to enter into an Agreement with CONTRACTOR in order to: help the CITY preserve the home and gardens of Luther Burbank; share and interpret the legacy of Luther Burbank's life, ideals and contributions to the field of horticulture with the public; preserve, display, and enhance the artifacts, plants, structures, and site; serve the needs of Luther Burbank scholars; conduct programs; and, engage in fund-raising efforts that provide financial support for the on-going operational and infrastructure costs of the Collection and the Premises.

D. CITY is willing to allow CONTRACTOR to occupy, use and operate the home, carriage house, greenhouse, interpretive gardens, and demonstration beds (collectively, the "Program Facilities").

E. CONTRACTOR represents that CONTRACTOR has an exceptional capacity to organize and engage volunteers, and is uniquely qualified to manage,

operate, and interpret the Program Facilities, and desires to assist CITY with preserving the Premises in accordance with the terms and conditions of this Agreement hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into the Agreement as though fully set forth below, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and CONTRACTOR hereby agree as follows:

AGREEMENT

ARTICLE I - CONTRACTOR'S DUTIES

1.1 Agreement to Manage and Operate Luther Burbank Home & Gardens

CITY hereby appoints and retains CONTRACTOR, and CONTRACTOR hereby accepts such appointment and retention, as the manager and operator of the Program Facilities during the Term, as defined in Article IV below, and any extensions thereof, with full power and authority to carry out the duties and responsibilities specified herein, upon the terms and subject to conditions set forth in this Agreement.

1.2 Fiduciary Duty. Standards of Performance. Business Plan

CONTRACTOR acknowledges that there is a relationship of trust and confidence between CONTRACTOR and CITY, and that CONTRACTOR has a fiduciary duty to CITY pursuant to this Agreement. CONTRACTOR shall use skill and judgment in performing the duties and obligations hereunder, and shall at all times provide such management, operation, interpretation, and preservation in a manner which maintains the good name of CITY; shall perform the duties and obligations under this Agreement in an efficient, expeditious, prudent and economical manner, consistent with the best interests of CITY, in accordance with generally approved practices and standards followed for similar historical and horticultural property in California.

The foregoing notwithstanding, CONTRACTOR shall be responsible for operating, managing, and interpreting the Program Facilities and Collection in accordance with this Agreement and an Annual Plan and Goals (the "Annual Plan") reasonably appropriate for such operations, as approved by CITY, which

approval shall not be unreasonably withheld. The Annual Plan shall follow a calendar year, and is initially set forth in Attachment One to this Agreement.

CONTRACTOR shall submit a proposed update to the Annual Plan, no later than February 20th of each calendar year during the Term and any extensions thereof, for review and approval by the Director of Recreation and Parks ("Director") or designee. The Director or the Director's designee shall respond to CONTRACTOR within thirty (30) days of receipt of the proposed update. Failure by the Director or designee to timely respond shall in no event constitute a waiver of the CITY's right to approve the same. In the event that the Director or designee fails to respond to the proposed update to the Annual Plan prior to the commencement of the next year of the Term, or any extension thereof, CONTRACTOR may proceed pursuant to the Annual Plan as proposed, provided, however, that CITY shall in any event continue to have the right to approve the Annual Plan.

CITY has the right to conduct performance reviews of the management and operation of the Program Facilities and the use and care of the Collection.

ARTICLE II - CONTRACTOR'S DUTIES AND OBLIGATIONS

2.1 General Duties and Obligations

Throughout the Term, and any extension thereof, subject to any restrictions or limitations set forth elsewhere in this Agreement and CITY's approval of the Annual Plan, CONTRACTOR shall, at a minimum, do the following:

- a. Fully comply with all Legal Requirements.
- b. Apply for, obtain and maintain in full force and effect, at CONTRACTOR's expense, all permits, licenses and authorizations required, whether by CITY or by any Governmental Authority, that are necessary or appropriate for the management, operation, interpretation, and preservation of the Programs and Program Facilities. All such permits and licenses (with the exception of business licenses or other licenses applicable solely to CONTRACTOR) shall be the property of CITY.
- c. Fully cooperate with and provide any necessary or appropriate documents, materials and information to CITY, any financial institution, lender or any other third party designated by CITY, and consent to the assignment by CITY of this Agreement to any financial institution or lender as security for any loan made by such financial institution or lender to CITY.
- d. Obtain and maintain in full force and effect all insurance that is required to be maintained by CONTRACTOR pursuant to this Agreement.

e. Maintain its existence as a California nonprofit public benefit corporation, operating and meeting the requirements of Section 501(c)(3) of the Internal Revenue Code during the term of this Agreement, and shall not dissolve, sell or otherwise dispose of all or substantially all of its assets or become an affiliate with, or consolidate with or merge into another person or entity without the prior written approval of CITY.

2.2 Use, Operation and Management Duties and Obligations

Throughout the Term, and any extension thereof, CONTRACTOR shall, subject to any restrictions or limitations set forth elsewhere in this Agreement, perform or cause to be performed the tasks necessary or appropriate to the ongoing use, operation, management, and interpretation of the Program Facilities and the Collection. In performing such tasks, CONTRACTOR shall, at a minimum, do each of the following:

a. Recruit, select, hire, train, schedule, manage and supervise CONTRACTOR's personnel, whether staff or volunteers, necessary to properly fulfill CONTRACTOR's requirements under this Agreement.

b. Provide, at its own cost, all labor, materials and supplies required to prepare, promote, and implement public tours, museum displays, educational activities, special events, plant propagation for the purpose of sale, plant sales, facility rentals, and fund-raising campaigns and events, and for the display, care, and management of the interpretive gardens, demonstration beds, and gift shop (collectively, the "Programs").

c. Establish, implement, and publish schedules and fees for the Programs. The authority to establish and impose fees for general public admission to the outdoor property (the "Grounds") is retained solely by CITY.

d. Enforce appropriate conduct and etiquette by CONTRACTOR'S personnel and participants under rules and guidelines established in consultation with CITY.

e. Establish prices for merchandise available through the gift shop. All merchandise for the gift shop shall be purchased and owned by CONTRACTOR at CONTRACTOR's sole cost and expense.

f. Use, occupy and operate the Program Facilities in a safe, neat and orderly manner. The Director or designee shall have the right to make reasonable objections to the appearance and condition of the Program Facilities and to the level and quality of service provided by CONTRACTOR's personnel. CONTRACTOR shall promptly meet and confer with the Director or designee regarding any such objections upon notification by the Director or designee.

g. Deposit all garbage, trash, debris, and recycling, resulting from the Programs and the occupancy and use of the Program Facilities, in proper receptacles.

h. Provide archival and curatorial services for the Collection: prepare and maintain a detailed inventory and condition assessment of each artifact, acquire items that complement the Collection, protect the Collection through proper handling and storage, and respond to requests for access to, study of, and loan of artifacts under rules and guidelines established in consultation with CITY. CONTRACTOR shall submit items recommended for de-accession to CITY prior to sale or disposal for CITY'S approval. All transactions shall be conducted in accordance with American Association of Museums standards and ethics, and under rules and guidelines established in consultation with CITY.

i. Provide printed and electronic format information to the public.

j. Respond to customer complaints in a timely manner and attend to and accommodate customer needs to the best of CONTRACTOR's ability.

k. Comply with all agreements and instruments governing or affecting the Program Facilities now or in the future, including, without limitation, regulatory agreements, mortgages, deeds of trust and similar documents, copies of which, if applicable, shall be provided to CONTRACTOR upon execution of this Agreement, or promptly after any such documents become effective.

l. Prepare and allow inspection by CITY of the plans, books, records and other materials specified below, including any current or subsequent Annual Plan, CONTRACTOR's books of accounts, Monthly and Annual Operating Reports per Article V, and all supporting documentation thereof, including bank statements and deposit slips, cash receipts and disbursement records, paid invoices, supporting documentation for payroll, payroll taxes and employee benefits, and daily, weekly, monthly or other reports maintained by CONTRACTOR in connection with CONTRACTOR's ongoing operation, management, and interpretation of the Programs and Program Facilities, as well as all contracts that relate to CONTRACTOR's management, operation, and interpretation of the Program Facilities.

m. Negotiate, prepare, review, and, subject to the restrictions set forth herein, execute and maintain in full force and effect all agreements necessary or appropriate for the management, operation, and interpretation of the Programs and Program Facilities ("Operating Contracts"), and assure that any such contracts (1) may be terminated without cause or penalty upon not more than a thirty (30) day notice; and (2) include adequate indemnification and insurance coverage requirements on behalf of CITY, as an indemnitee and additional insured thereunder.

n. Diligently pursue the collection of all fees and other sums due and owing to CONTRACTOR or CITY relating to the Programs and Program Facilities. Ensure that activity and event contracts are fully executed, and all required payments due to CONTRACTOR for services rendered are received prior to or on the day of activities and events.

o. Acknowledge contributions of significant donated funds and services with memorial placards under rules and guidelines established in conjunction with CITY. The authority to bestow naming rights on any portion of the Premises is retained solely by the CITY.

p. Obtain releases from all of CONTRACTOR's volunteers in substantially the same form as Attachment Two to this Agreement. Each release shall be obtained prior to the commencement of any volunteer activities at the Program Facilities by the respective volunteer. Each release shall be signed by the releasor and certified by CONTRACTOR'S authorized representative. CONTRACTOR shall retain each signed and certified release for not less than four (4) years from the date each release is executed.

2.3 Trademarks, Artifacts, Equipment, Supplies, Storage, Parking

a. CITY is the owner of the domain name, copyrights, trademarks, national, state and city historical registrations, both existing and future, and the Collection. CITY will bear the cost of updating and renewing its trademarks and registrations. The possession, custody and use of all such property is the responsibility of the CONTRACTOR upon execution of this Agreement and shall continue uninterrupted until the termination of the Agreement.

b. Equipment

(1) CITY's Equipment. An inventory of equipment supplied by CITY and available to CONTRACTOR for the performance of this Agreement ("Equipment"), is set forth in Attachment Three to this Agreement. Attachment Three may be updated from time to time in writing by the Director or designee. The lease, purchase or disposition of Equipment is at the sole discretion of CITY. CITY agrees to provide CONTRACTOR with the use of a leased copier and bear the cost of maintenance as specified in the lease agreement, not including consumable supplies. All Equipment listed in Attachment Three is and shall remain the property of CITY.

(2) CONTRACTOR's Equipment. CONTRACTOR shall, by the Effective Date, supply CITY with a list of furniture, fixtures and equipment ("FF&E") owned or leased by CONTRACTOR that will be used at the Program Facilities by CONTRACTOR. CONTRACTOR shall be responsible for the replacement of FF&E including, but not limited to, office furniture, chairs, tables, decor, personal computers, printers, cash registers, televisions, audio/visual systems, closed circuit surveillance cameras, refrigerators, microwaves, and the like as they become worn or inoperable.

(3) Equipment and FF&E Maintenance and Repair. CONTRACTOR shall maintain and keep all Equipment and FF&E in good condition throughout the useful life of the Equipment and FF&E in accordance with manufacturers' specifications and recommendations, except for reasonable wear and tear.

(4) Supplies. CONTRACTOR shall, at CONTRACTOR's sole expense, purchase all supplies necessary for the management, operation, and interpretation of the Collection, Program Facilities, and Programs, including but not limited to: consumable goods, uniforms, nametags, office and gift shop supplies, paper, toner, register tape, merchandise, hand tools, shovels, rakes, brooms, hoses, hose carts, wheelbarrows, carts, garden soil, compost, seeds, plants, containers, fertilizers, herbicides, fungicides, grub control materials, drip tubing, drip emitters, furniture and floor cleaners and polishes, shelves and storage bins. This is not intended as a complete list of supplies; CONTRACTOR is required to purchase supplies where necessary and appropriate, whether or not specifically mentioned above. Supplies purchased by CONTRACTOR are the property of CONTRACTOR, with the exception of supplies and repair parts that have been applied to or affixed to the Premises or installed in or on the Program Facilities, Equipment or artifacts in the Collection.

c. Storage. CONTRACTOR is hereby permitted to use Room 5010 at CITY's City Hall, or a storage area equivalent in size and proximity as identified by CITY, and an area within CITY's municipal services center warehouse, or a storage area equivalent in size and proximity as identified by CITY, to store supplies and FF&E for the use and operation of Program Facilities and Programs. CONTRACTOR shall keep the storage areas in a safe, clean, and orderly condition. Any damage to said storage areas due to negligence or misuse by CONTRACTOR, or CONTRACTOR's employees, contractors, or agents shall be promptly repaired by CONTRACTOR at CONTRACTOR's sole expense.

d. Permanent Records/Offsite Archival Storage. CONTRACTOR and CITY shall collaborate in the pursuit of identifying and implementing appropriate storage solution for sensitive items in the Collection, to be located off Premises only if the CITY desires to utilize offsite Archival storage.

- e. Parking Permits. CITY will provide CONTRACTOR, at no charge, with parking space permits for the south side of Sonoma Avenue between Santa Rosa Avenue and the D Street crosswalk.
- f. Mailing Address. CITY will provide CONTRACTOR with a postal and physical mailing address at 100 Santa Rosa Avenue, Room #10 where both mail and packages may be delivered. CITY agrees to receive packages at said address during CITY's regular business hours.

2.4 Additional Maintenance, Repairs and Improvements

CONTRACTOR agrees to promptly notify CITY of maintenance needs or problems with the Program Facilities and Premises.

CITY agrees to provide weekly janitorial services for the carriage house downstairs restroom and upstairs office. CONTRACTOR, at CONTRACTOR'S expense, may augment the frequency and scope of the janitorial services to support the Programs.

CONTRACTOR shall, at CONTRACTOR's expense, clean and maintain in good condition the interior of the home, carriage house (both downstairs gift shop and upstairs' office), and greenhouse, including interior fixtures, cabinets, signs, locks, latches, light bulbs, floors, and doors.

In the event that CITY notices deficiencies in the custodial care or maintenance of the building interiors and Program Facilities that are CONTRACTOR's responsibility, CITY may send written notice to CONTRACTOR and CONTRACTOR shall promptly cause repair or maintenance of the same.

CITY agrees to clean, maintain and repair in good condition and working order, the interior and exterior of the public restroom. The restroom will be cleaned and stocked daily, and fixtures will be repaired as needed.

CITY agrees to maintain and repair the maintenance building, storage shed, and maintenance yard fence ("Maintenance Areas"). CONTRACTOR's personnel will be provided shared access and use of the Maintenance Areas and are expected to assist with providing safe, clean and orderly areas, and to return tools and supplies to proper storage spaces and containers after use.

CONTRACTOR agrees to clean, maintain, and repair the small greenhouse.

CITY agrees to maintain and repair in good condition and working order the Grounds, including turf, irrigation systems, pathways, drinking fountains, retaining walls, trees, fountains, general landscaping and plant materials, fences, and the CITY property located outside of the picket fence.

CONTRACTOR agrees to update signs and marquee, including signs outside of the picket fence pertaining to the Premises.

CITY agrees to maintain and repair in good condition and working order, the exterior of the home, carriage house, and greenhouse, including exterior walls, exterior doors, window frames and glass, roofs, gutters and downspouts, heating, ventilation, and air conditioning systems, wiring and plumbing within the walls and floors. CITY shall have the right of access to Premises and Program Facilities at all reasonable times to perform CITY maintenance, repairs, and improvements. To the extent possible, CITY shall provide CONTRACTOR with notice no less than thirty (30) days before commencement of any substantial repair or improvement to the Premises and Program Facilities, which would, or might, impair CONTRACTOR's operations.

CITY is responsible for all major capital repairs to irrigation mainlines, electrical systems (including, but not limited to, lighting for pathways), water and sewer systems.

Attachment Four provides a list of assets associated with the Premises and Grounds and an indicator of responsibility for repair primarily by either the CITY or CONTRACTOR, due to CONTRACTOR's Programs and its use, occupancy and operation of Program Facilities.

By entering into this Agreement, CONTRACTOR has indicated a willingness to fund-raise, contribute monies and share in the cost of infrastructure repairs and capital improvements for the Program Facilities and Premises. CONTRACTOR agrees to identify CONTRACTOR's goals for capital improvement donations in the Annual Plan and to work with Director or Director's designee to prioritize needs and potential projects. The aforementioned notwithstanding, the decision to make major capital improvements at the Program Facilities and Premises shall be at the sole discretion of CITY.

2.5 Utilities, Security.

CITY agrees to pay the cost of water, sewer, gas, electricity, telephone, and refuse collection services to the Program Facilities and Premises; these utility accounts shall be held by CITY in CITY's name.

Internet, cable television and satellite service, and other similar communication utilities and services used for Programs or at Program

Facilities shall be at the sole cost and expense of CONTRACTOR; these utility accounts shall be in CONTRACTOR'S name and paid in full by CONTRACTOR as and when due.

CITY shall pay for security and fire alarm monitoring services at the carriage house and home. CONTRACTOR shall provide its personnel contact list to the monitoring service providers and CITY, and CONTRACTOR is responsible for responding to alarm notices.

CITY agrees to pay the cost of a security patrol or staff to open and close the picket fence gates and public restrooms, as related to access by the general public to the Grounds, and to pay the cost of a security patrol for nightly checks of the Premises.

2.6 Alterations and Fixtures

CONTRACTOR may install display cases and other fixtures reasonably necessary for the proper operation of the Programs and Program Facilities. Before making any such improvements, CONTRACTOR shall submit plans and designs for the improvements to CITY for its approval, which shall not be unreasonably withheld. CONTRACTOR shall maintain a list of all improvements made, and shall furnish a copy thereof to CITY each time CONTRACTOR requests the CITY's consent to any improvement. All such fixtures, alterations and improvements shall become the property of CITY. CONTRACTOR shall defend, indemnify and hold CITY harmless from any and all claims by laborers, material suppliers or contractors in connection with any work done on, or goods or materials incorporated into, the Program Facilities, and shall perform all other acts as may be necessary or appropriate to preserve and maintain the Program Facilities free and clear of any and all liens and free and clear of any and all stop notice rights.

2.7 Compliance with Environmental Laws

a. CONTRACTOR shall comply with, and cause its contractors, agents, employees and volunteers and each tenant and other occupant and user of the Program Facilities, and the contractors, agents, servants and employees of such tenants, occupants and users, to comply with each and every Environmental Law applicable to the Program Facilities. Specifically, but without limitation:

(1) CONTRACTOR shall obtain and maintain, and cause each occupant and user to obtain and maintain, all permits, certificates, licenses and other consents and approvals required by each Environmental Law from time to time applicable to CONTRACTOR, each and every part of the Program Facilities and/or the conduct of any business there at or related thereto;

(2) CONTRACTOR shall not cause any Release on or off the Program Facilities and will not suffer or permit any Release, or the presence of Hazardous Substances on the Program Facilities, except in compliance with all applicable Environmental Laws;

(3) If CONTRACTOR causes a Release on or off the Program Facilities, or if a Release occurs on the Program Facilities during the Term or any extension thereof in violation of any Environmental Laws, and such Release is not caused by CITY or any employees, officers, contractors or agents thereof, CONTRACTOR shall promptly effect the clean-up of any resulting Contamination in accordance with and as required by the provisions of all applicable Environmental Laws; and

(4) Within thirty (30) days after the date that any lien is imposed against the Program Facilities or any part thereof under any Environmental Law, CONTRACTOR shall cause such lien to be discharged or bonded or otherwise secured to the satisfaction of CITY.

b. Refer to Attachment Five for a Master List of Definitions.

ARTICLE 111 - FEES, REVENUE AND REMUNERATION FOR SERVICES

3.1 Fees & Revenue

CONTRACTOR has the right to establish fees for Programs and retain all Gross Revenues earned from its performance of this Agreement.

"Gross Revenue" shall mean gross receipts of every kind and nature from the use and operation of all or any portion of the Program Facilities, whether for cash or credit, including without limitation: tour and instructional fees; facility rental fees; receipts from fund-raising and special events; membership fees; donations; grants; gift shop sales; income or interest derived from cash, securities or other property acquired and held for investment by CONTRACTOR; and, proceeds of any business interruption insurance (net of CONTRACTOR's reasonable cost of settling such claim with the insurance carrier). Sales upon credit and any other sale, with respect to which CONTRACTOR does not immediately receive payment, shall accrue in the period in which the goods or services to which such sales relate are provided.

The authority to establish and impose fees for general admission to the Grounds is retained solely by CITY.

CITY may schedule and use the Grounds for official CITY purposes without compensation to CONTRACTOR. CITY shall coordinate such use with CONTRACTOR in advance so as not to impair CONTRACTOR's operations.

3.2 Remuneration for Services

CITY may, at its sole discretion, provide CONTRACTOR with funds that increase or enhance CONTRACTOR's capacity to preserve the Program Facilities, the Premises, and the Collection. The Annual Plan will be the mechanism for identifying goals and outcomes for CONTRACTOR. CITY will determine the availability and approval of funds through its budget process.

ARTICLE IV - TERM OF AGREEMENT, TERMINATION OF PRIOR AGREEMENT, TERMINATION RIGHTS

The term of this Agreement shall be for a period of one (1) year ("Term"), commencing on July 1, 2022 ("Effective Date"). The Term may be extended for two additional periods of three (3) years each at the discretion of CITY upon the written notice by the Director. The Director shall provide notice of approval or denial of extension of the Term to CONTRACTOR no later than ninety (90) days prior to the end of the Term or any extension term.

Either party may terminate the Agreement by giving a ninety (90) day notice to the other in writing of its intent to terminate the Agreement.

Upon termination under this Article IV or by operation of law, any and all funds acquired by CONTRACTOR from Programs authorized by this Agreement, all fund balances held by the CONTRACTOR, and all gift shop inventory shall be transferred to CITY.

ARTICLE V - FINANCIAL AND REPORTING MATTERS

5.1 Accounting System, Books and Reports

a. Books of Account. Throughout the Term and any extension thereof, CONTRACTOR shall maintain, in accordance with generally accepted accounting principles (GAAP), consistently applied, full and separate books and records for the Programs, with entries supported by documentation sufficient to allow CITY to ascertain the accuracy of such books and records. CONTRACTOR shall maintain and safeguard such books and records in CONTRACTOR's office at the Program Facilities or at such other location as may be agreed upon in writing. CONTRACTOR shall provide legible, complete copies of such books and records to CITY at such times and at such other locations as CITY may request. CONTRACTOR shall ensure the necessary control over accounting and financial transactions as is necessary to protect assets from theft, error or fraudulent activity by CONTRACTOR's agents, employees, volunteers, or customers.

b. Accounting Software/Management System. CONTRACTOR shall provide the necessary equipment for cashiering, tracking financial transactions, and creating reports.

5.2 Reports.

CONTRACTOR shall be responsible for submitting to CITY:

a. Monthly Operating Report. CONTRACTOR shall prepare and submit to Director or designee, on or before the twentieth (20th) day of each calendar month during the Term and any extension thereof, a Monthly Operating Report, which shall include: statements of income and expenses for the Programs for the preceding month; all aging accounts receivables; all deposits held as short term liabilities; cash position; assets, liabilities, and net worth; and, if requested by the Director or designee, an explanation of any variances from the Annual Plan then in effect.

b. Annual Operating Report. CONTRACTOR shall prepare and submit to the Director or designee, no later than thirty (30) days after the end of each calendar year, an Annual Operating Report for the period of January 1 through December 31, which Annual Operating Report shall include: statements of income and expenses for the Programs for the year; all aging accounts receivables; all deposits held as short term liabilities; cash position; assets, liabilities, and net worth; and, if requested by the Director or designee, an explanation of any variances from the Annual Plan then in effect.

c. Federal Tax Return. Upon written request by the Director or designee, CONTRACTOR shall provide a copy of its federal tax return for the year(s) requested by the Director or designee.

5.3 City's Right to Audit.

All books, records and supporting documentation maintained by CONTRACTOR pursuant to this Article V and relating to CONTRACTOR's operation of the Programs and Program Facilities shall be available and accessible for review and inspection by CITY at CITY's request at reasonable times during normal business hours. Books, records and supporting documentation shall be retained by CONTRACTOR for not less than four (4) years from the date of each document. In addition, in connection with independent financial audits performed by CITY, as well as audits by any governmental authority. CITY, or persons appointed by CITY may, during ordinary business hours, examine all books, records and supporting documentation maintained by CONTRACTOR pursuant to this Article V, and all of CONTRACTOR's other documents, records and files relating to the Programs. Should CITY or CITY's employees or representatives discover any errors in record keeping, CONTRACTOR shall correct such discrepancies promptly upon discovery and notification thereof, and make all appropriate

and necessary adjustments, and CONTRACTOR shall inform CITY in writing of the action taken to correct any such audit discrepancies.

5.4 Meetings

CONTRACTOR and CITY, through its Director or designee, shall meet no less than annually to establish the Annual Plan, review CONTRACTOR's annual budget, and review annual financial results from previous calendar year.

CONTRACTOR agrees to provide Director or designee with advance notice and agenda of its Board of Director's regular meetings and allow attendance at regular meetings by Director and Director's designees for the purpose of discussing CONTRACTOR'S Programs, the Program Facilities, and Agreement details relating to the management, operation, interpretation, and preservation of the Program Facilities, the Premises and the Collection.

ARTICLE VI - INDEMNITY

To the fullest extent permitted by law, CITY shall defend, indemnify, and hold CONTRACTOR, its officers, agents, and employees harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the willful or intentional misconduct or negligent acts or omissions of CITY, its officers, employees, or agents.

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, and hold CITY, its City Council, officers, agents, and employees harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the willful or intentional misconduct or negligent acts or omissions of CITY, its officers, employees, or agents.

ARTICLE VII - LIMITATION OF LIABILITY

CITY shall not be liable for any damages arising from any act or neglect of any customer, occupant, or user of the Programs and Program Facilities nor from the failure of CONTRACTOR or Contractor Parties to comply with the provisions of this Agreement. In no event shall CITY be liable to CONTRACTOR for any consequential damages.

ARTICLE VIII - INSURANCE

CONTRACTOR shall maintain, in full force and effect, all of the insurance coverage described in, and in accordance with, Attachment Six, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment Six is a material element of this Agreement and a material part of the consideration provided by CONTRACTOR in exchange for CITY's Agreement prescribed hereunder. Failure by CONTRACTOR to (i) maintain or renew coverage, (ii) provide CITY notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by CITY as a material breach of this Agreement by CONTRACTOR, whereupon CITY shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by CONTRACTOR to maintain required insurance coverage shall not excuse or alleviate CONTRACTOR from any of its other duties or obligations under this Agreement. In the event CONTRACTOR retains or utilizes any subcontractors in the provision of any services under this Agreement, CONTRACTOR shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in the Insurance Requirements in Attachment Six. CONTRACTOR and CITY must be added as additional insureds on the subcontractor's general liability policy.

ARTICLE IX - TERMINATION RIGHTS

9.1 Termination upon Default by Contractor

The occurrence of any of the following shall constitute an "Event of Default" by CONTRACTOR:

a. Any failure by CONTRACTOR to perform any of the terms, conditions or covenants of this Agreement to be observed or performed by CONTRACTOR within fifteen (15) days after written notice from CITY;

b. The filing of a petition of an order of relief under the Federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, that is not dismissed within thirty (30) days;

c. CONTRACTOR makes a general assignment for the benefit of creditors, or makes or suffers any transfer that constitutes a fraudulent or otherwise avoidable transfer under any provision of the federal bankruptcy laws or any applicable state law; The making or entry of any decree or order by a court of competent jurisdiction adjudging CONTRACTOR to be insolvent, or approving as properly filed a petition seeking reorganization of CONTRACTOR, or

d. directing the winding up or liquidation of CONTRACTOR, and the decree or order shall have continued for a period of thirty (30) days;

e. Failure of CONTRACTOR to carry and keep in full force and effect the insurance required by this Agreement;

f. Failure of CONTRACTOR to remit payment to the CITY when due under Article 11, Article III or any other provision calling for payment of money to City; or

g. Any other prohibited activity as set forth in Section 11.1 if not fully ceased by CONTRACTOR within fifteen (15) days following written notice by CITY requesting the same.

Upon the occurrence of any one or more of the "Events of Default," CITY shall have the right to terminate this Agreement. Upon such termination, CONTRACTOR's right to possession of the Program Facilities shall terminate and CONTRACTOR shall surrender possession and vacate the Program Facilities immediately. In such event, CONTRACTOR hereby authorizes CITY to enter upon the Premises or any part thereof, immediately and to take possession of the Collection and the Program Facilities. Election by CITY to terminate this Agreement shall not prejudice any rights or claims CITY may have for sums remaining due it or for damages or pursuing such other remedies as may be available to CITY by law or equity, all remedies of CITY to be cumulative and not alternative.

Any notice given by CITY under this Section 9.1 may also serve as, include or be given concurrently with any and all legal notices required in connection with an unlawful detainer action or any other legal or equitable action or proceeding, it being the intention of the Parties that CITY shall not be required to serve separate or sequential notices in order to satisfy any applicable notice requirements of this Agreement or the notice requirements of applicable law.

9.2 Actions Following Termination

a. Immediately following any termination of this Agreement for any reason whatsoever, CONTRACTOR shall assign, convey, transfer and deliver to CITY, pursuant to an assignment in form and content satisfactory to CITY, all of CONTRACTOR's right, title and interest in and to all Operating Contracts then in effect with respect to the Programs and Program Facilities as requested by CITY, and CONTRACTOR shall transfer to CITY possession of all Equipment and property owned by, purchased by or supplied by CITY, and CONTRACTOR shall transfer any and all funds acquired by CONTRACTOR from Programs authorized by this Agreement, all fund balances held by CONTRACTOR, and all gift shop inventory to CITY.

b. Upon any termination of this Agreement for any reason whatsoever, CONTRACTOR shall, for a period of three (3) months following such termination,

assist and cooperate with CITY to ensure an orderly and efficient transfer of the operations of the Programs and Program Facilities by CONTRACTOR to CITY or to CITY's designee. This covenant of CONTRACTOR contained herein shall survive and remain in full force and effect following any such termination of this Agreement.

c. Upon termination of this Agreement for any reason whatsoever, CONTRACTOR shall surrender the Collection and the Program Facilities in good condition, except for ordinary wear and tear, and in accordance with all other provisions of this Agreement regarding fixtures, alterations and improvements.

ARTICLE X - TRANSFER AND ASSIGNMENT

CONTRACTOR may not, voluntarily or involuntarily, sell, convey, assign, transfer, hypothecate, pledge or otherwise dispose of (or agree to do any of the foregoing) all or any part of its interest, if any, in this Agreement, or any contractual rights or obligations related hereto (including any rights to receive payments from CITY) without the prior written consent of CITY, which consent may be granted or withheld in CITY's sole discretion. Any assignment by CONTRACTOR without CITY's consent shall be considered an Event of Default and the assignment shall be of no force or effect.

ARTICLE XI - PROHIBITED ACTIVITIES

11.1 Prohibited Activities

CONTRACTOR shall not do, nor cause nor permit to be done, any of the following, which shall be deemed an Event of Default by CONTRACTOR under Section 9.1:

a. Borrow or lend money, or enter into any other agreement, in the name of CITY.

b. Enter into any agreement, relating directly or indirectly to the Program Facilities and Premises, which cannot be terminated without penalty upon not more than a thirty (30) day prior notice (oral or written).

c. Assign, transfer, pledge, compromise or release any of the claims of or debts of CITY, except upon payment in full.

d. Arbitrate or consent to the arbitration or settlement of any claim of or against CITY or any other dispute or controversy involving CITY.

e. Lease, sell, transfer, assign, convey, pledge, encumber, mortgage, hypothecate or otherwise dispose of the Collection, the Program Facilities, the Premises, or the Equipment provided by CITY, or enter into any contract for such purpose, provided, however, that CONTRACTOR shall have

the right to (i) replace at CONTRACTOR's cost any of the Equipment that is worn, destroyed, or otherwise inoperable, and (ii) enter into service and maintenance contracts for the Equipment, subject to the CITY's prior approval which shall not be unreasonably withheld.

f. Violate any of the Legal Requirements or engage in or permit, suffer or allow the occurrence of, any storage, holding, release, emission, discharge, generation, abatement, disposition, handling or transportation of any Hazardous Substance.

g. Make any modification, alteration or improvement to the Program Facilities and Premises other than as expressly authorized hereunder, or as indicated in the applicable Annual Plan.

h. Transfer or assign all or any part of its interest in this Agreement without prior written consent of CITY.

i. Display, or suffer or permit the display of any commercial advertising or any other postings at the Program Facilities and the Premises that are unrelated to Luther Burbank Home & Gardens without the prior written consent of CITY, in CITY's sole discretion, or display exterior signage that does not comply with City of Santa Rosa signage regulations and standards.

XII - MISCELLANEOUS

12.1 Warranties and Representations

CONTRACTOR hereby represents and warrants that in entering into this Agreement, CONTRACTOR has not relied on any statements from CITY or any representative thereof and has conducted such due diligence and investigations as CONTRACTOR deems appropriate before entering into this Agreement.

12.2 Independent Contractor

CONTRACTOR and CITY hereby acknowledge and agree that CONTRACTOR, in performing under this Agreement, will be and will at all times act as an independent contractor in the performance of its duties and responsibilities set forth herein, and that CONTRACTOR will control CONTRACTOR's work and the manner in which it is performed. CONTRACTOR shall at all times during the Term hereof be free to contract for similar services to be performed for other persons or entities, and CONTRACTOR and CITY agree that CONTRACTOR shall not be considered as an agent or employee of CITY, that CONTRACTOR is not entitled to participate in any pension plan, medical or dental plans, or any other benefit provided by CITY for CITY employees. None of the provisions of this Agreement are intended to nor shall they be interpreted to create a partnership or joint venture between CONTRACTOR and CITY with respect to the

Premises or otherwise, and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement.

12.3 Taxes

a. Sales Taxes. CONTRACTOR shall timely pay all sales taxes attributable to the operation of the Programs and Program Facilities.

b. Employment Taxes and Other Benefits. CONTRACTOR shall timely pay all taxes and impositions and all other benefits required by law and relating to CONTRACTOR's employees.

c. Notice Regarding Property Taxes. CITY hereby notifies CONTRACTOR, pursuant to California Revenue and Taxation Code § 107.6, that this Agreement may create a possessory interest, which may be subject to property taxation. CONTRACTOR shall timely pay all property taxes levied on said possessory interest.

12.4 Non-Waiver

The waiver by either CITY or CONTRACTOR of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by CITY or CONTRACTOR, unless such waiver is in writing signed by the Party against whom such waiver is asserted.

12.5 Entire Agreement

This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between CITY and CONTRACTOR, oral or written, relating to the subject matter of this Agreement. CITY has made no representations, warranties or promises not expressly contained herein. No subsequent alterations, amendments, changes or additions to this Agreement shall be binding upon CITY or CONTRACTOR unless reduced to writing and signed by both of them.

12.6 Notices

Except as otherwise specifically provided in this Agreement, any notice, statement, report or other communications to be given under the terms of this Agreement shall be delivered in a timely fashion, as provided herein, and shall be in writing and delivered personally or sent by mail, by placing first class postage thereon, addressed as:

TO CITY:

City of Santa Rosa
ATTN: Director, Recreation and Parks Department
55 Stony Point Road
Santa Rosa, CA 95401

TO CONTRACTOR:

Luther Burbank Home & Gardens Association
ATTN: President, Board of Directors
100 Santa Rosa Ave. #10
Santa Rosa, CA 95404

or at such other address as from time to time designated by the Party receiving the notice, in accordance with this section. The date of service of such notice shall be the date such notice is delivered to the Party to whom the notice is given.

12.7 Captions and Section Numbers

Captions, section numbers and article numbers appearing in this Agreement are inserted only as a matter of convenience, and in no way define, limit, construe or decide the scope or intent of such section or article, nor in any way affect this Agreement.

12.8 Construction of Agreement

The language in all parts of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either CITY or **CONTRACTOR**.

12.9 Successors and Assigns

Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of CITY and **CONTRACTOR**. Nothing stated in the foregoing sentence shall limit the provisions of Article X of this Agreement entitled "Transfer and Assignment."

12.10 Applicable Law

This Agreement and all provisions hereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws of the State of California. The sole and exclusive venue for any legal action under this Agreement or in any way related to the Premises shall be the Superior Court of California in and for the County of Sonoma, and CITY and **CONTRACTOR** agree to submit to the jurisdiction of such court.

12.11 Savings Clause

Any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any Party hereunder, or substantially increase the burden on any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

12.12 Attorneys' Fees and Expenses

In the event of any dispute or litigation concerning the enforcement, validity or interpretation of this Agreement, or any part hereof, the losing Party shall pay all costs, charges, fees and expenses (including reasonable attorneys' fees and costs) paid or incurred by the prevailing Party, regardless of whether any action or proceeding is initiated relative to such dispute, and regardless of whether any such litigation is prosecuted to judgment. For the purpose of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the Parties hereto (including CITY's staff attorneys), and without limitation, all such fees and expenses incurred with respect to appeals, arbitration and bankruptcy proceedings, and whether or not any actual proceeding is brought with respect to the matter for which said fees or expenses were incurred, and shall include all such fees and expenses incurred or anticipated to be incurred in collecting or enforcing any judgment in connection therewith.

12.13 Further Assurances

CONTRACTOR and CITY each agree to execute and deliver from time to time, promptly following any reasonable request therefor by the other Party, any and all instruments, agreements and documents, and promptly shall take such other actions as may be necessary or appropriate in the reasonable determination of the other Party, to carry out the transactions described in this Agreement.

12.14 No Third-Party Beneficiaries

This Agreement is not intended and shall not be deemed or construed to convey any rights, powers or privileges on any person, firm, partnership, corporation or other entity not a party hereto.

12.15 Approval by City

In any provision of this Agreement where CITY's approval or consent is required, CITY shall, except to the extent specifically stated to the contrary in such provision, have the right to withhold or refuse its approval or consent, in

CITY's sole and absolute discretion.

12.16 Counterparts

This Agreement may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all such counterparts together shall constitute one and the same agreement.

12.17 Nondiscrimination/Compliance with Laws

a. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy, childbirth or related medical conditions), national origin, ancestry, age, physical disability, mental disability, medical condition, family care status, veteran's status, medical status, sexual orientation or any other characteristic protected by federal, state or local law.

b. CONTRACTOR and its agents and employees, at their sole cost and expense, shall at all times comply with and abide by all pertinent or applicable regulations and ordinances of CITY, the County of Sonoma; and the laws of the State of California and the United States insofar as the same or any of them are applicable, including the Americans with Disabilities Act, and shall obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein. In the event of any conflict between State and Federal law that govern operations of CONTRACTOR, Federal law shall govern.

c. CONTRACTOR agrees that it shall not make any discrimination, distinction, or restriction on account of sex, color, race, religion, ancestry, disability, national origin, sexual orientation, or any other arbitrary basis contrary to the provisions of Section 51 of the California Civil Code which is incorporated herein by reference, or any other state, federal, or CITY ordinance prohibiting discrimination.

d. All provisions of Part 2.6 of Division 3 of Title 2 (sections 12900 through 12996) of the California Government Code (California Fair Employment and Housing Act) are hereby incorporated herein by this reference as though set forth in full.

12.18 Time

Time is of the essence of this Agreement and each provision hereof of which time is an element.

12.19 Extension of Time for Acts on Weekends and Holidays

If the date on which an act or event is to occur under this Agreement falls on a Saturday, Sunday or a holiday, the event may take place on the next day which is not a Saturday, Sunday or a holiday. A "holiday" for purposes of this section is any day that any office (other than a branch office) of the government of the City of Santa Rosa is closed for business for the entire day.

12.20 Incorporation of Attachments and Exhibits

The following attachments are intended to, and shall, be incorporated and made part of this Agreement, subject to terms and provisions herein contained:

- Attachment 1 -Annual Plan and Goals
- Attachment 2 - Form Release
- Attachment 3 - City Owned Equipment
- Attachment 4 - Primary Responsibility for Repair
- Attachment 5 - Master List of Definitions
- Attachment 6 - Insurance Requirements

12.21 Authority

CONTRACTOR hereby represents and warrants to CITY that it has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. CONTRACTOR hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory listed below, shall constitute a valid agreement binding on CONTRACTOR in accordance with the terms hereof

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CONSULTANT:

Name of Firm: Luther Burbank Home & Gardens Association

TYPE OF BUSINESS ENTITY (*check one*):

☐ Individual/Sole Proprietor
☐ Partnership
☐ Corporation
☐ Limited Liability Company
☒ Other (please specify: A California nonprofit public benefit corporation)

Signatures of Authorized Persons:

By: _____

Print Name: Claire Borges

Title: President

By: _____

Print Name: Carol Skold

Title: Secretary

City of Santa Rosa Business Tax Cert. No.
9997037385

CITY OF SANTA ROSA
a Municipal Corporation

By: _____

Print Name: Jason Nutt

Title: Assistant City Manager

APPROVED AS TO FORM:

Office of the City Attorney

LUTHER BURBANK HOME & GARDENS

ANNUAL PLAN AND GOALS

Luther Burbank Home and Gardens Association

**100 Santa Rosa Ave. #10
Santa Rosa, CA 95404**

LBHGA Annual Plan & Goals

2023

Program & Operating

- Explore new sources of prospective Volunteers
- Establish online independent study program for new Volunteers
- Recruit chair for Publicity & Marketing
- Schedule community speaking engagements
- Research grants and sponsorships
- Collaborate with the City to find appropriate storage for sensitive Collection items, i.e. Archives

Fundraising

- Plan and implement Event in 2023
- Form Fundraising Committee
- Form committee to develop a Planned Giving Program

Infrastructure

- Develop and implement water-saving measures
- Redesign NE corner of Gardens to become Garden of Remembrance providing space for memorial plaques
- Repair and repaint SR Ave. entry wooden trim
- Collaborate with City to re-roof Home, Carriage House and Seed Room, including gutter and cupola repairs

Financial Forecast (budget) *See attached*

2022 LBHGA Budget

Income

4000 Contribution	
<i>4100 Unrestricted</i>	
4101 Non-Targeted Donations	12000
4102 Friends	5000
4103 Event Receipts	3000
Mother's Day	[1000]
Holiday Open House	[2000]
4400 In-kind	5000
TOTAL	25000

4200 Directed	
4202 Other	
4204 Sponsored Garden Beds	7500
4205 Audio Tour	600
TOTAL	8100

4500 Investment	
4501 Interest	3000
Community Foundation	0
TOTAL	3000

4600 Program Fees	
4601 Admissions	7000
4602 Group Tours	1500
4603 Children's Tours	1000
4604 Facility Rental	5000
4605 Other services	500
TOTAL	15000

4700 Merchandise Sales	
4701 Gift Shop	35000
4702 Plant Sales	3500
TOTAL	38500

GRANTS	
Grants	5000
TOTAL	5000

TOTAL INCOME \$94,600

5000 Cost of Goods Sold	
5001 Gift Shop Merchandise	14000
TOTAL COST OF GOODS SOLD	14000

GROSS PROFIT \$80,600

Expense

6000 Payroll	75000
TOTAL	75000

6200 Insurance	4100
6300 Postage & Delivery	600
6310 Printing & Reproduction	1500
6320 Dues & Subscriptions	250
TOTAL	6450

Supplies & Equipment	
6330 Administrative	4000
6150 Computer & Software	1500
6960 Gift Shop	350
6900 Garden	2000
TOTAL	7850

6340 Advertising & Promotions	1200
TOTAL	1200

6400 Audit, Tax, & Accounting	2500
TOTAL	2500

6410 Other Outside Services	0
6160 Audio Tour Service	600
6600 Repairs & Maintenance	2500 (blinds)
TOTAL	3100

6500 Rental	2250
TOTAL	2250

6700 Utilities	250
TOTAL	250

6830 Service Fees	1300
6840 Taxes, License & Fees	1600
TOTAL	2900

Total Expenses \$101,500

Net Income \$-20,900



Luther Burbank Home & Gardens Association
Volunteer Liability Release Form

I, _____, intending to be legally bound hereby, agree and do hereby release from liability and agree to indemnify and hold harmless Luther Burbank Home & Gardens Association, its officers, agents and employees [LBHGA], as well as the City of Santa Rosa, its officers, agents and employees [the City], regarding my volunteer participation. This release is for any and all liability for personal injuries (including death) and property losses or damage and any and all other risks known and unknown, occasioned by, or in connection with any activity relating to my participation as a volunteer, whether caused by the negligence of LBHGA and/or the City or not, (except for gross negligence of LBHGA and/or the City). The undersigned further agrees to abide by all the rules and regulations promulgated by LBHGA and its Volunteer Association. I assure LBHGA that there are no health related reasons or problems which preclude or restrict my participation in this activity. I agree to indemnify and hold LBHGA and the City harmless from any medical costs relating to my participation as a volunteer. I understand that this release means that I am giving up, among other things, my right to sue LBHGA its officers, agents and employees and/or the City of Santa Rosa, its officers, agents and employees for injuries (including death), damages, or losses I may incur relating to my participation as a volunteer.

I have read this entire release. I fully understand it and I agree to be legally bound by it.

Volunteer Signature

Date

Witness Signature

Date

Attachment Three

Inventory of City Owned Equipment at Luther Burbank Home and Gardens

Year	Description of Equipment	City Property Tag #	Projected Equipment Replacement
2014	Copier, Sharp MX-3571	C1757	
unk	Phone system 524-5445	n/a	n/a
unk	Phone system 544-1181	n/a	n/a
unk	Phone 543-3084	n/a	n/a

Primary Repair Responsibilities
Luther Burbank Home & Gardens Management and Operating Agreement

Item		Primarily By:	
		Contractor	City
1.	Picket fence (north, west & south perimeter)		X
2.	Brick & stone pathways		X
3.	Arbors in Rose Garden (4)		X
4.	Benches, memorial/commemorative (23)		X
5.	Split rail fences: Paradox walnut, oak, orchard, etc.		X
6.	Raised beds (wooden structure)		X
7.	Crushed granite pathways between raised beds		X
8.	Signs, interpretive	X	
9.	Fence (east boundary)		X
10.	Restroom building		X
11.	Bicycle rack		X
12.	Drinking fountain (nr restroom)		X
13.	Security lights		X
14.	Maintenance yard fence		X
15.	Plant racks	X	
16.	Storage shed in maintenance yard		X
17.	Maintenance building		X
18.	Sink & counter in maintenance yard		X
19.	Flammable storage locker		X
20.	Little greenhouse	X	
21.	Graphic wall		X
22.	Pictures on graphic wall	X	
23.	Planter Boxes (3) <i>scheduled for removal, replace w/posts</i>		X
24.	Trellis for kiwi vines		X
25.	Memorial Garden fence & trellis		X
26.	Worm box and shade structure	X	
27.	Blackberry posts	X	
28.	Birdbath, stone pathway, bird feeder	X	
29.	Brick structure at Santa Rosa Ave gate		X
30.	Drinking fountain (nr Santa Rosa Ave entry)		X
31.	Garbage receptacles (6)		X
32.	Picnic tables, memorial/commemorative (2)		X
33.	Memorial Garden stone wall & fountain		X
34.	Triangular brick raised bed & lotus sundial		X
35.	Greenhouse		X
36.	Courtyard: brick wall, gates & fountain		X
37.	Brick edging around Copper Beech tree		X
38.	Burbank Home		X

39.	Mailbox	X	
40.	Ramp		X
41.	Doghouse	X	
42.	Courtyard benches (3)	X	
43.	Carriage House		X
44.	Plant racks and plant cart	X	
45.	Potato box	X	
46.	Irrigation system (main)		X
47.	Irrigation in interpretive gardens & demonstration beds		X
48.	Security alarm system (Carriage House & Burbank Home)		X
49.	Donation boxes (2)	X	
50.	Rose Garden fountain		X
51.	Drains		X
52.	Marquee	X	
53.	Landmark sign	X	
54.	Signs, informational @ Tupper & Santa Rosa Ave entries	X	

Luther Burbank Home & Gardens Management and Operations Agreement

Master List of Definitions

The terms defined in this Attachment shall for all purposes hereof have the meanings ascribed to them herein, unless the context clearly requires some other meaning. Other terms shall have the meanings given to them in the Agreement. Words not defined herein or in the Agreement shall be given their common and ordinary meaning.

"Contamination" or "Release" means the presence of any Hazardous Substances in the soil or groundwater in violation of any Environmental Laws or the release of any Hazardous Substances into the environment.

"Environmental Law" means, but shall not be limited to: the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety §§ 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code §§ 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; and all rules and regulations under each of the foregoing; and all other governmental rules relating to the protection of human health and the environment including all governmental rules pertaining to the reporting, licensing, permitting, transportation, storage, disposal, investigation or remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances into the air, surface water, groundwater, land, or other environments or relating to the manufacture, processing, distribution, use, generation, control, treatment, storage, disposal, transportation, handling, removal or recovery of Hazardous Substances.

"Governmental Authority" means any domestic or foreign national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, but excluding the CITY or any political subdivision thereof.

"Hazardous Substances" means any substance: (1) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action or policy; or (2) which is or becomes defined as a "hazardous waste" or "hazardous substance" or "pollutant" or "contaminant" under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any Governmental Authority; or (4) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the Premises or to the health or safety of Persons on or about the Premises; or (5) which contains volatile organic compounds such as gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs) or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or (7) radon gas.

"Legal Requirements" includes all laws, statutes, ordinances, municipal, state, and federal authorities and all judgments, decrees, injunctions, writs and orders of any court, arbitrator or Governmental Authority, and all rules, regulations, orders, written interpretations, directives, licenses and permits of any Governmental Authority applicable to CONTRACTOR or the Premises or in respect of CONTRACTOR'S operations.

ATTACHMENT SIX

INSURANCE REQUIREMENTS LBHGA Management and Operations Agreement

- A. **Insurance Policies:** Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations, contractual liability coverage and may not exclude employment practices liability. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

B. **Endorsements:**

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.
2. Liability policies including Crime shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess

of the Contractor's insurance and shall not contribute with it; and,

- b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy** with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10.

- C. **Verification of Coverage and Certificates of Insurance:** Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All Insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such Insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.