



Spokane Park Board Riverfront Park Committee

4pm p.m. Monday, May 8, 2023
Pavilion Conference Room/WebEx virtual meeting
Dial in: 408-418-9388
Access code: 2485 236 0637
Jonathan Moog – Riverfront Park Director

Committee members:

Gerry Sperling – Chair
Christina VerHeul
Hannah Kitz
Kevin Brownlee

The Riverfront Park Committee meeting will be held in the Pavilion Conference Room with virtual access via WebEx teleconferencing at 4 p.m. Monday, May 8. The public will be able to listen to the meeting by calling 408-418-9388 and entering the access code 2485 236 0637, when prompted.

Written public comment may be submitted via email or mail. Comments must be received no later than noon on May 8 by email to spokaneparks@spokanecity.org or mail to: Spokane Park Board, 5th floor City Hall, 808 West Spokane Falls Blvd., Spokane, Washington 99201. Submitted public comments will be presented to committee members prior to the meeting.

Agenda

Call to order

Public comment

Action items

- A. [KPFF Consulting Engineers contract / Riverfront Park South Suspension Bridge construction engineering support \(\\$74,626.72, non-taxable service\)](#) – Nick Hamad
- B. [Levy Premium Foodservice contract / Spokane Pavilion concessions and park-wide catering services](#)– Amy Lindsey

Informational items

- A. Olympia ice resurfacer replacement – Jonathan Moog
- B. Exclusive Sponsorship Sales – Pavilion Naming Rights RFP – Amy Lindsey

Standing report items

- C. April 2023 operations report – Jonathan Moog

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or dmoos@spokanecity.org. Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.



City of Spokane
Parks and Recreation Department
CONSULTANT AGREEMENT
Title: ENGINEERING CONSTRUCTION
SUPPORT FOR RIVERFRONT PARK
SUSPENSION BRIDGE

This Consultant Agreement is made and entered into by and between the **CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT** as (“City”), a Washington municipal corporation, and **KPFF CONSULTING ENGINEERS, INC.**, whose address is 1601 Fifth Avenue, Suite 1600, Seattle, Washington 98101 as (“Consultant”), individually hereafter referenced as a “party”, and together as the “parties”.

WHEREAS, the purpose of this Agreement is to provide Engineering Construction Support for the Riverfront Park Suspension Bridge Renovation; and

WHEREAS, the Consultant was selected through the MRSC A&E Roster.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance of the Scope of Work contained herein, the City and Consultant mutually agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement begins on April 26, 2023, and ends on July 1, 2024, unless amended by written agreement or terminated earlier under the provisions.

2. TIME OF BEGINNING AND COMPLETION.

The Consultant shall begin the work outlined in the “Scope of Work” (“Work”) upon execution of this contract. The City will acknowledge in writing when the Work is complete. Time limits established under this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for the City’s convenience or conditions beyond the Consultant’s control.

3. SCOPE OF WORK.

The General Scope of Work for this Agreement is described in Consultant’s April 25, 2023 Scope of Work and Fee Summary which is attached as Exhibit B and made a part of this Agreement. In the event of a conflict or discrepancy in the contract documents, this City Agreement controls.

The Work is subject to City review and approval. The Consultant shall confer with the City periodically, and prepare and present information and materials (e.g. detailed outline of completed Work) requested by the City to determine the adequacy of the Work or Consultant’s progress.

4. COMPENSATION.

Compensation under this time and materials Agreement shall not exceed **SEVENTY-FOUR THOUSAND SIX HUNDRED TWENTY-SIX AND 72/100 DOLLARS (\$74,626.72)**, excluding applicable tax, in accordance with Consultant's Fee Summary in Exhibit B, unless modified by a written amendment to this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Agreement.

ARTICLE I - DEPARTMENT OF THE INTERIOR STANDARD TERMS AND CONDITIONS (Page 8 of 39)

- Recipients must also adhere to the Department of the Interior Standard Terms and Conditions located at <https://www.doi.gov/grants/doi-standard-terms-and-conditions> (version effective December 19, 2019-revised June 19, 2020), except the provision related to the Davis-Bacon Act in Section VII.

5. PAYMENT.

The Company shall submit its applications for payment to City of Spokane Parks and Recreation Department, 808 West Spokane Falls Boulevard, 5th Floor, Spokane, Washington 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

6. REIMBURSABLES

The reimbursables under this Agreement are to be included, and considered part of the maximum amount not to exceed (above), and require the Consultant's submittal of appropriate documentation and actual itemized receipts, the following limitations apply.

- A. City will reimburse the Consultant at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses or include a markup. Other direct charges may include, but are not limited to the following types of items: travel, printing, cell phone, supplies, materials, computer charges, and fees of subconsultants.
- B. The billing for third party direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant paid invoices, and other supporting documents used by the Consultant to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.
- C. The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in accordance with the City of Spokane Travel Policy, details of which can be provided upon request.
- D. **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- E. **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate for the city in which the work is performed. *Receipts are not required as documentation.* The invoice shall state "the meals are being billed at the Federal Per Diem daily meal rate", and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.

- F. **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published General Services Administration (GSA) Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
- G. **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred. Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
- H. **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
- I. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- J. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a mark up. Receipts are required for all miscellaneous expenses that are billed.

Subconsultant: Subconsultant expenses will be reimbursed at the actual cost incurred and a four percent (4%) markup. Copies of all Subconsultant invoices that are rebilled to the City are required

7. TAXES, FEES AND LICENSES.

- A. Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Consultant's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. Where required by state statute, ordinance or regulation, Consultant shall pay and maintain in current status all taxes necessary for performance. Consultant shall not charge the City for federal excise taxes. The City will furnish Consultant an exemption certificate where appropriate.
- C. The Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.
- D. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

8. CITY OF SPOKANE BUSINESS LICENSE.

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Consultant shall be responsible for contacting the State of Washington Business License Services at www.dor.wa.gov or 360-705-6741 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

9. SOCIAL EQUITY REQUIREMENTS.

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this

Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. Consultant agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Consultant. Consultant shall seek inclusion of woman and minority business for subcontracting. A woman or minority business is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington.

10. INDEMNIFICATION.

The Consultant shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Consultant's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Consultant to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Consultant's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Consultant, its agents or employees. The Consultant specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Consultant's own employees against the City and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Consultant recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

11. INSURANCE.

During the period of the Agreement, the Consultant shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW Title 48;

A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;

B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Consultant's services to be provided under this Agreement; and

C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

D. Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Consultant shall furnish acceptable Certificates Of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Consultant's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

12. DEBARMENT AND SUSPENSION.

The Consultant has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

13. AUDIT.

Upon request, the Consultant shall permit the City and any other governmental agency ("Agency") involved in the funding of the Work to inspect and audit all pertinent books and records. This includes work of the Consultant, any subconsultant, or any other person or entity that performed connected or related Work. Such books and records shall be made available upon reasonable notice of a request by the City, including up to three (3) years after final payment or release of withheld amounts. Such inspection and audit shall occur in Spokane County, Washington, or other reasonable locations mutually agreed to by the parties. The Consultant shall permit the City to copy such books and records at its own expense. The Consultant shall ensure that inspection, audit and copying rights of the City is a condition of any subcontract, agreement or other arrangement under which any other persons or entity may perform Work under this Agreement.

14. INDEPENDENT CONSULTANT.

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.
- B. If the City needs the Consultant to Work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose.
- C. If the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant and not a City employee. The Consultant will notify the City Project Manager if s/he or any other Workers are within ninety (90) days of a consecutive 36-month placement on City property. If the City determines using City premises or equipment is unnecessary to complete the Work, the Consultant will be required to work from its own office space or in the field. The City may negotiate a reduction in Consultant fees or charge a rental fee based on the actual costs to the City, for City premises or equipment.

15. KEY PERSONS.

The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Work, nor shall those key persons, or employees of Consultant identified as to be involved in the Project Work be replaced, removed or withdrawn from the Work without the express written consent of the City, which shall not be unreasonably withheld. If any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval does not release the Consultant from its obligations under this Agreement.

16. ASSIGNMENT AND SUBCONTRACTING.

The Consultant shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Consultant shall incorporate by reference this Agreement, except as otherwise provided. The Consultant shall require that all subconsultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the consultant from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

17. CITY ETHICS CODE.

- A. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
- B. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two (2) years.
- C. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to a City employee if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

18. NO CONFLICT OF INTEREST.

Consultant confirms that the Consultant or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's work. As used in this Section, the term Consultant includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term "close family relationship" refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

19. ERRORS AND OMISSIONS, CORRECTIONS.

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement in the delivery of a final work product. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed

by professional engineers or Consultants performing the same or similar services at the time said services are performed. The Final Work Product is defined as a stamped, signed work product. Consultant, without additional compensation, shall correct or revise errors or mistakes in designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

20. INTELLECTUAL PROPERTY RIGHTS.

- A. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
- B. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.
- C. The City may make and retain copies of such documents for its information and reference with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project, and the City releases the Consultant from liability for any unauthorized reuse of such documents.

21. CONFIDENTIALITY/PUBLIC RECORDS.

Notwithstanding anything to the contrary, City will maintain the confidentiality of Company's materials and information only to the extent that is legally allowed in the State of Washington. City is bound by the State Public Records Act, RCW Ch. 42.56. That law presumptively makes all records in the possession of the City public records which are freely available upon request by anyone. In the event that City gets a valid public records request for Company's materials or information and the City determines there are exemptions only the Company can assert, City will endeavor to give Company notice. Company will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Company does not get a timely injunction preventing the release of the records, the City will comply with the Public Records Act and release the records.

22. DISPUTES.

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant's performance, shall first be through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager. It shall be referred to the Director and the Consultant's senior executive(s). If such officials do not agree upon a decision within a

reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to mediation, arbitration and/or alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the Agreement. Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require the Consultant to correct such work prior to the City payment. The City will provide to the Consultant an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant provides no sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed. Waiver of any of these rights is not deemed a future waiver of any such right or remedy available at law, contract or equity.

23. TERMINATION.

- A. For Cause: The City or Consultant may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the other party's reasonable satisfaction in a timely manner. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than sixty (60) business days prior to the effective date of termination.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than sixty (60) business days prior to the effective date of termination.
- C. For Convenience: Either party may terminate this Agreement without cause, upon sixty (60) days written notice to the other party.
- D. Actions upon Termination: if termination occurs based on no the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to the actual termination date, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- E. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant's work product.

24. EXPANSION FOR NEW WORK.

This Agreement scope may be expanded for new work. Any expansion for New Work (work not specified within the original Scope of Work Section of this Agreement, and/or not specified in the original RFP as intended work for the Agreement) must comply with all the following limitations and requirements: (a) the New Work is not reasonable to solicit separately; (b) the New Work is for reasonable purpose; (c) the New Work was not reasonably known either the City or Consultant at time of contract or else was mentioned as a possibility in the solicitation (such as future phases of work, or a change in law); (d) the New Work is not significant enough to be

reasonably regarded as an independent body of work; (e) the New Work would not have attracted a different field of competition; and (f) the change does not vary the essential identified or main purposes of the Agreement. The City may make exceptions for immaterial changes, emergency or sole source conditions, or other situations required in City opinion. Certain changes are not New Work subject to these limitations, such as additional phases of Work anticipated at the time of solicitation, time extensions, Work Orders issued on an On-Call contract, and similar. New Work must be mutually agreed and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

25. MISCELLANEOUS PROVISIONS.

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
- C. Americans with Disabilities Act (ADA): Specific attention by the designer is required in association with the Americans with Disabilities Act (ADA) 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611, its requirements, regulations, standards and guidelines, which were updated in 2010 and are effective and mandatory for all State and local government facilities and places of public accommodation for construction projects including alteration of existing facilities, as of March 15, 2012. The City advises that the requirements for accessibility under the ADA, may contain provisions that differ substantively from accessibility provisions in applicable State and City codes, and if the provisions of the ADA impose a greater or equal protection for the rights of individuals with disabilities or individuals associated with them than the adopted local codes, the ADA prevail unless approval for an exception is obtained by a formal documented process. Where local codes provide exceptions from accessibility requirements that differ from the ADA Standards; such exceptions may not be permitted for publicly owned facilities subject to Title II requirements unless the same exception exists in the Title II regulations. It is the responsibility of the designer to determine the code provisions.
- D. The Consultant, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.
- E. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in the Superior Court of Spokane County.
- F. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- G. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- H. Severability: If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- I. Waiver: No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

- J. Additional Provisions: This Agreement may be modified by additional terms and conditions (“Special Conditions”) which shall be attached to this Agreement as an exhibit. . The parties agree that the Special Conditions shall supplement the terms and conditions of the Agreement, and in the event of ambiguity or conflict with the terms and conditions of the Agreement, these Special Conditions shall govern.
- K. Entire Agreement: This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Consultant. If conflict occurs between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.
- L. Negotiated Agreement: The parties acknowledge this is a negotiated agreement, that they have had this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party’s draftsmanship.
- M. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

KPFF CONSULTING ENGINEERS, INC.

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments: Exhibit A – Certificate Regarding Debarment
Exhibit B – Consultant’s April 25, 2023 Scope of Work and Fee Summary

EXHIBIT A

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
 - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

 1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

 2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.

4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

EXHIBIT B

**April 25, 2023
Exhibit A-1
Scope of Work**

**Riverfront Park Suspension Bridge Renovation
Construction Support Services**

PROJECT DESCRIPTION

Avista Corporation (Avista) on behalf of the City of Spokane (City) had previously contracted KPFF Consulting Engineers (KPFF) to perform the design of repairs and renovations to the Riverfront Park Bridge North and South Suspension Pedestrian Bridges. The project consists of repairs to the South Suspension bridge including concrete deck replacement, steel repairs, bridge railing retrofits, drainage improvements, lighting upgrades, and concrete vault lid replacement.

The project will be advertised for construction in late 2022 or early 2023 with Contractor mobilization expected in Fall 2022 or early Summer 2023. The project construction is expected to be complete by Fall 2023.

It is anticipated that this project shall be billed on a Time and Materials Basis Not to Exceed the total fees estimated.

PROJECT OBJECTIVES

This scope of work is to provide the following:

- Construction Management and Administration

PROJECT TEAM

The project team includes:

Owner & Construction Manager	City of Spokane
Prime Consultant	KPFF Consulting Engineers (KPFF)
Structural Engineering	KPFF
Civil Engineering	KPFF
Electrical & Lighting Design	Trindera/Century West Engineering

SCOPE OF WORK

TASK NO. 1.0 – CONSTRUCTION SUPPORT SERVICES

Task No. 1.1 – Coordination with City

KPFF and Trindera/Century West will coordinate with the City during the construction phase to discuss project issues, schedule, and progress as needed. The City will collect and disseminate information, submittals, RFIs and contractor requests for the team and coordinate schedules and inspections for the design team staff.

Task 1.2 – Submittal Review & Response

KPFF and Trindera/Century West will review and respond to submittals received during construction. Below is a list of submittals of anticipated structural submittals that will be reviewed by KPFF:

1. Demolition Plan
 - a. Type 2E Working Drawings
 - i. Demolition procedures
 - ii. Work Platform
 - iii. Containment
 - b. Type 1 Working Drawings
 - i. Steel Cleaning
2. Concrete Class 4000D
 - a. Mix Design
 - b. Formwork/Falsework
 - c. Request for Approval of Materials (RAM) – Aggregate, Cement, Compliance Certifications, Material Test Certs
3. Rebar
 - a. Shop Drawings
 - b. RAMs – Compliance Certs, Mill Certs
4. Stay-In-Place Forms
 - a. Shop Drawings
 - b. RAM – Steel certs, galvanizing
5. Steel Repairs
 - a. Shop Drawings
 - b. RAMS – welder certs, mill certs
6. Deck Drains
 - a. RAM – drain type
7. Pedestrian Railing Retrofit
 - a. Shop Drawings
 - b. RAMs – Compliance Certs, Mill Certs, Welder Quals, Cable Components
8. Expansion Joints

- a. Shop Drawings (Steel & Expansion Joint)
 - b. RAMs – Compliance Certs, Mill Certs, Welder Quals
9. Vault Lids (Uplight Bracket, Tower Collar, Edge Beam, Manhole)
 - a. Shop Drawings
 - b. RAMs – Compliance Certs, Mill Certs
10. Resin Bonded Anchors
 - a. RAM – Epoxy, Anchor Material Certs
11. Bridge Supported Utilities
 - a. Shop Drawings
 - b. RAMs – Fiberglass Conduit, hanger components
12. Tower Repair Grout
 - a. RAMs – Grout, Bolt mill certs, epoxy resin
13. Bridge Closure Gate
 - a. Shop Drawing
 - b. RAMs – Fence fabric, tension wire assembly, paint, mill certs, compliance certs
14. Drainage Scupper & Trench Drains
 - a. Shop Drawings incl. Coring
 - b. RAMs

Trindera/Century West will review up to eight (8) electrical and/or lighting related submittals.

Assumptions

- The City will collect and distribute submittals and responses to/from the Contractor.

Deliverables

- Review and response of submittals (PDF)

Task 1.3 – Request for Information (RFI) Review & Response

KPFF and Trindera/Century West will review and respond to RFIs received during construction. Below is the total number of RFIs to be reviewed by each firm:

- KPFF – 15
- Trindera/Century West – 5

Assumptions

- The City will collect and distribute RFIs and responses to/from the Contractor

Deliverables

- Review and response to RFIs (PDF)

Task 1.4 – Meetings, Site Visits & Punchlist Walkthroughs

KPFF and Trindera/Century West will attend meetings, perform site visits (as needed) and participate in punchlist walkthroughs during the construction phase of the project. Below is the total number of assumed meetings, site visits and punchlist walkthroughs:

Meetings:

- KPFF – 10
- Trindera/Century West – 4

Site Visits:

- KPFF – 6
- Trindera/Century West – 4

Punchlist Walkthroughs:

- KPFF – 2
- Trindera/Century West – 2

Assumptions

- The City will coordinate and schedule meetings with the design team and the Contractor.
- Meetings are assumed to last one (1) hour and will occur via teleconference or phone.
- Site visits will occur on an as-needed basis and will be coordinated by the City. Travel for KPFF Seattle engineers is included for up to four (4) site visits. All other site visits will be performed by KPFF Spokane engineers.
- Assume one (1) weekly meeting for the 1st project construction month and one (1) meeting per month thereafter. Total duration is seven months.

Deliverables

- Attendance to meetings, site visits and punchlist walkthroughs.
- Punchlist items (PDF)

Task 1.5 – Special Structural Inspection

KPFF bridge engineers will inspect the South Bridge following the removal of the bridge deck and existing conduits. The purpose of the inspection is to determine the extent of the structural deterioration and provide specific direction to the Contractor in terms of the extent and type of steel repairs. If necessary, KPFF will provide updated repair details to supplement those already contained within the design drawings. These repair details will be stamped and sealed by the KPFF EOR.

Results of the inspection and recommended repairs will be summarized in a brief technical memo which will be provided to the City.

Deliverables

- Special structural inspection
- Technical memo summarizing inspection findings
- Additional repair details, as needed. (PDF)

Task No. 1.6 – Record Drawings

As-built redlines will be provided to KPFF and Trindera/Century West from the City and Contractor after completion of construction. These redlines will be used to create Record Drawings. The Record Drawings will be prepared in accordance with the City's requirements and will not contain the stamp and seal of the engineer.

Assumptions

- The City will compile a complete red-line set of the Contractor's record drawings and distribute to the design team

Deliverables

- Draft Record Drawings (PDF)
- Final Record Drawings (PDF)

Exhibit D-1

KPFF Consulting Engineers

Consultant Fee Summary

Cost Plus Fixed Fee Consultant Agreement

Riverfront Park Bridge Renovation - Construction Support Services

Classification	Total Hours	X	Rate	=	Cost
Principal	0.00	X	\$ 76.93	=	\$ -
Project Manager	78.00	X	\$ 64.62	=	\$ 5,040.36
Senior Engineer	184.00	X	\$ 60.99	=	\$ 11,222.16
Design Engineer	94.00	X	\$ 38.00	=	\$ 3,572.00
CADD Technician	16.00	X	\$ 54.00	=	\$ 864.00
Admin	0.00	X	\$ 36.35	=	\$ -
Title 7	0.00	X	\$ -	=	\$ -
Title 8	0.00	X	\$ -	=	\$ -
Title 9	0.00	X	\$ -	=	\$ -
Title 10	0.00	X	\$ -	=	\$ -
Title 11	0.00	X	\$ -	=	\$ -
Title 12	0.00	X	\$ -	=	\$ -
Title 13	0.00	X	\$ -	=	\$ -
Title 14	0.00	X	\$ -	=	\$ -
Title 15	0.00	X	\$ -	=	\$ -
Title 16	0.00	X	\$ -	=	\$ -
Title 17	0.00	X	\$ -	=	\$ -
Title 18	0.00	X	\$ -	=	\$ -
Title 19	0.00	X	\$ -	=	\$ -
Title 20	0.00	X	\$ -	=	\$ -
<i>Total Direct Labor</i>					\$ 20,698.52
Overhead (OH) Cost					
OH Rate x DSC of	144.97%	X	\$20,698.52	=	\$ 30,006.64
Fixed Fee (FF)					
FF Rate x DSC of	30.00%	X	\$20,698.52	=	\$ 6,209.56
<i>Direct Labor Subtotal</i>					\$ 56,914.72
Reimbursable Items					
Mileage	(## Miles x \$0.585/mile)			\$	-
Airfare	8 trips @ \$400 per trip			\$	3,200.00
Per Diem	(Hotel + Meals @ \$265 x 4 trips)			\$	1,060.00
Subcontract	(Sub Name & Task)			\$	-
(Blank)	(Allowance)			\$	-
<i>Subtotal</i>					\$ 4,260.00
Subconsultant Total:					\$13,452.00
GRAND TOTAL:					\$74,626.72

April 26, 2023		KPFF Consulting Engineers						KPFF	
Riverfront Park Bridge Renovation - Construction Support Services		Principal	Project Manager	Senior Engineer	Design Engineer	CADD Technician	Admin	Title 20	
Item	SCOPE OF WORK	\$76.93	\$64.62	\$60.99	\$38.00	\$54.00	\$36.35	\$0.00	2.7497
Reimbursables:									
1	CONSTRUCTION SUPPORT SERVICES								
1.10	Coordination With City		8	8					\$2,763
1.20	Submittal Review & Response		4	50	36				\$12,858
1.30	Request for Information (RFI) Review & Response		4	60	28	8			\$14,887
1.40	Meetings, Site Visits & Punchlist Walkthroughs		60	20					\$14,015
1.50	Special Structural Inspection			38	30				\$9,507
1.60	Record Drawings		2	8		8			\$2,885
Labor Subtotal:		0	78	184	94	16	0	0	\$56,915
Reimbursables:								\$3,060	
Labor Sum:		0	78	184	94	16	0	0	\$56,915
Reimbursable Sum:								\$3,060	
TOTAL:								\$59,975	

Exhibit D-1

Century West

Consultant Fee Summary

Cost Plus Fixed Fee Consultant Agreement

Riverfront Park Bridge Renovation - Construction Support Services

Classification	Total Hours	X	Rate	=	Cost
SR ENG	60.00	X	\$ 174.00	=	\$ 10,440.00
SR DFT	22.00	X	\$ 127.00	=	\$ 2,794.00
PC/ADMIN	2.00	X	\$ 109.00	=	\$ 218.00
Title 4	0.00	X	\$ -	=	\$ -
Title 5	0.00	X	\$ -	=	\$ -
Title 6	0.00	X	\$ -	=	\$ -
Title 7	0.00	X	\$ -	=	\$ -
Title 8	0.00	X	\$ -	=	\$ -
Title 9	0.00	X	\$ -	=	\$ -
Title 10	0.00	X	\$ -	=	\$ -
Title 11	0.00	X	\$ -	=	\$ -
Title 12	0.00	X	\$ -	=	\$ -
Title 13	0.00	X	\$ -	=	\$ -
Title 14	0.00	X	\$ -	=	\$ -
Title 15	0.00	X	\$ -	=	\$ -
Title 16	0.00	X	\$ -	=	\$ -
Title 17	0.00	X	\$ -	=	\$ -
Title 18	0.00	X	\$ -	=	\$ -
Title 19	0.00	X	\$ -	=	\$ -
Title 20	0.00	X	\$ -	=	\$ -
<i>Total Direct Labor</i>					\$ 13,452.00
Overhead (OH) Cost					
OH Rate x DSC of	0.00%	X	\$13,452.00	=	\$ -
Fixed Fee (FF)					
FF Rate x DSC of	0.00%	X	\$13,452.00	=	\$ -
<i>Direct Labor Subtotal</i>					\$ 13,452.00
Reimbursable Items					
Mileage	(## Miles x \$0.585/mile)			\$	-
Airfare	(Allowance)			\$	-
Per Diem	(Hotel + Meals @ \$#.## x # trips)			\$	-
Subcontract	(Sub Name & Task)			\$	-
(Blank)	(Allowance)			\$	-
<i>Subtotal</i>					\$ -

GRAND TOTAL:	\$13,452.00
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April 26, 2023		Century West			TD
Riverfront Park Bridge Renovation - Construction Support Services		SR ENG	SR DFT	PC/ADMIN	
Item	SCOPE OF WORK	\$174.00	\$127.00	\$109.00	1.0000
Reimbursables:					
1	CONSTRUCTION SUPPORT SERVICES				
1.10	Coordination With City	3		1	\$631
1.20	Submittal Review & Response	33	2	1	\$6,105
1.30	Request for Information (RFI) Review & Response				
1.40	Meetings, Site Visits & Punchlist Walkthroughs				
1.50	Special Structural Inspection				
1.60	Record Drawings				
Labor Subtotal:		36	2	2	\$6,736
Reimbursables:					
Labor Sum:		36	2	2	\$6,736
Reimbursable Sum:					\$0
TOTAL:					\$6,736

Spokane Park Board

Briefing Paper



Committee	Riverfront Park Committee	Committee meeting date: May 8, 2023
Requester	Amy Lindsey	Phone number: 509-209-6956
Type of agenda item	<input type="radio"/> Consent <input type="radio"/> Discussion <input type="radio"/> Information <input checked="" type="radio"/> Action	
Type of contract/agreement	<input checked="" type="radio"/> New <input type="radio"/> Renewal/ext. <input type="radio"/> Lease <input type="radio"/> Amendment/change order <input type="radio"/> Other	
City Clerks file (OPR or policy #)		
Master Plan Goal, Objective, Strategy (Click HERE for link to adopted plan)	Revenue sources and funding	Master Plan Priority Tier: Partnerships (pg. 171-175)
Item title: (Use exact language noted on the agenda)	Levy Premium Foodservice contract / Spokane Pavilion concessions and park-wide catering services	
Begin/end dates	Begins: 05/11/2023	Ends: 12/31/2028 <input type="checkbox"/> 06/01/2525
Background/history: Pursuant to RFP 5793-22 - Riverfront Park Concessionaire Services, the selection committee elected to award Levy Premium Foodservice the rights to exclusively market, sell and provide food and beverage services at Riverfront Park's Spokane Pavilion and exclusively market, sell and provide catering services for special events in designated event and meeting spaces at the Spokane Pavilion, Numerica Skate Ribbon and Loeff Carrousel. Additionally, Levy will non-exclusively market, sell and provide Catering Services for special events at Riverfront Park outdoor venues.		
Motion wording: Move to approve a new agreement with Levy Premium Foodservice for the Spokane Pavilion concession services and park-wide catering.		
Approvals/signatures outside Parks: <input checked="" type="radio"/> Yes <input type="radio"/> No If so, who/what department, agency or company: Levy Premium Foodservice Name: Rob Ellis Email address: rellis@levyrestaurants.com Phone: 404-456-8456		
Distribution: jmoog@spokanecity.org Parks – Accounting Parks – Sarah Deatrich Requester: Amy Lindsey Grant Management Department/Name:		
Fiscal impact: <input type="radio"/> Expenditure <input checked="" type="radio"/> Revenue Amount: \$800,000 Budget code: 1400-54354-76901-36282		
Vendor: <input type="radio"/> Existing vendor <input checked="" type="radio"/> New vendor		
Supporting documents: <input checked="" type="checkbox"/> Quotes/solicitation (RFP, RFQ, RFB) <input checked="" type="checkbox"/> W-9 (for new contractors/consultants/vendors) <input type="checkbox"/> Contractor is on the City's A&E Roster - City of Spokane <input checked="" type="checkbox"/> ACH Forms (for new contractors/consultants/vendors) <input checked="" type="checkbox"/> UBI: 602-587-692 Business license expiration date: 4/30/24 <input checked="" type="checkbox"/> Insurance Certificate (min. \$1 million in General Liability)		



City of Spokane

REVENUE AGREEMENT

Title: LEVY PREMIUM FOODSERVICE LIMITED PARTNERSHIP - EXCLUSIVE & NON-EXCLUSIVE CONCESSIONAIRE & CATERING SERVICES FOR CITY OF SPOKANE'S RIVERFRONT PARK

This Agreement is made and entered into by and between the **City of Spokane**, a Washington State municipal corporation, whose address is 808 West Spokane Falls Blvd., Spokane, WA, 99201, as ("City") and **Levy Premium Foodservice Limited Partnership**, whose address is 980 N Michigan Avenue, Suite 400, Chicago, IL, 60611, as ("Contractor"), individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the City of Spokane desires to receive Concessionaire & Catering Services in and for its Riverfront Park; and,

WHEREAS, the "Contractor" shall exclusively market, sell, and provide Catering services for special events at the Spokane Pavilion, Looff Carrousel, and Numerica Skate Ribbon in Riverfront Park; and,

WHEREAS, the "Contractor" shall exclusively market, sell, and provide Concession services in Riverfront Parks' Spokane Pavilion; and,

WHEREAS, the "Contractor" shall non-exclusively market, sell and provide Catering Services at Riverfront Park's outdoor venues as approved by City;

-- NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance of the Scope of Work contained herein, the City and Contractor mutually agree as follows:

1. TERM OF AGREEMENT / RENEWAL

The initial term of this Agreement is for Five (5) years to begin upon date of signature and run through December 31, 2027, unless amended by written agreement or terminated earlier under the provisions. For purposes of this Agreement, the term "Contract Year" shall mean the twelve (12) month period commencing on January 1, and expiring on the next ensuing December 31, with exception of the initial contract year, which shall commence on the date of signature and expire on December 31, 2023. After second Contract Year, both parties will reevaluate the terms of the deal and renegotiate the terms,

in good faith, if deemed appropriate. This Agreement may be renewed, upon mutual agreement, for one (1) additional two (2) year term.

2. TIME OF BEGINNING AND COMPLETION

The Contractor shall begin the work outlined in the "Scope of Work" upon the date of signature. The City will acknowledge in writing when the Works are complete. Time limits established under this Agreement shall not be extended because of delays for which the Contractor is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Contractor's control.

3. DEFINITIONS

Catering – Shall mean the provision of food and drink service at fixed or portable stands, operated by the Contractor or third-party providers, for special events requested by private citizens, park event clients and partners.

Concessions – Shall mean the provision of food and drink service at fixed or portable stands operated by the Contractor or third-party providers, whether through fixed or portable stands, including but not limited to, waitperson service, roving vendors, snack bars or other delivery means, excluding vending machines.

4. Fees and Investment

- a. Management Fee. As reimbursement to Contractor for providing the management services described in this Agreement, Contractor shall be reimbursed, and shall retain, **Fifty Thousand and 00/100 Dollars (\$50,000.00)** each Contract Year (the "Management Fee"). The Management Fee shall be reimbursed to, and retained by, Contractor on a month-by-month basis, throughout the duration of the Term. The Management Fee shall increase annually by the increase in the Consumer Price Index Spokane - Urban Wage Earners and Clerical Workers prepared by the Bureau of Labor Statistics for the preceding 12-month period using 2023 as the baseline. The 2023 management fee for Contract Year 1 will be prorated to account for the partial year term.
- b. Incentive Fee. In addition to the Management Fee, Contractor shall retain two percent (2%) of all Gross Receipts (as defined below) if and when Gross Receipts exceed One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000) in any Contract Year ("Incentive Fee"). The Incentive Fee shall be calculated on the increment and is not retroactive to the first dollar.
- c. Capital Investment. Contractor hereby agrees to invest **Seventy-Five Thousand and 00/100 Dollars (\$75,000.00)** in the food and beverage areas including but not limited to the pre-opening costs or transition costs and

to generate incremental revenue at the Pavilion (“Capital Investment”). The Capital Investment will be amortized on a straight line basis over the Term once the Capital Investment is made, and any unamortized portion shall be refunded to Contractor as a pre-condition to the effectiveness of termination of this Agreement for any permissible reason as provided herein. City hereby formally acknowledges and agrees that, except for the Capital Investment, City shall be responsible for delivering to Contractor a “turnkey” facility, and paying all costs, fees and expenses incurred in connection with the development, design, construction, fixturing, equipping and finishing the Pavilion, including, but not limited to, the concession and catering facilities at the Pavilion (collectively, the “City’s Investment”). Contractor will provide City with draft Capital Investment plan for review and pre-approval.

- d. Pre-Opening Expenses. “Pre-Opening Expenses” means all reasonable City approved pre-opening expenses (“Pre-Opening Expenses”) generated in connection with the opening of the food and beverage areas at Riverfront Park, including, but not limited to, all of the costs, expenses, and fees incurred; (i) to procure all required licenses and permits to conduct the services; (ii) to recruit, hire, relocate, and train employees of the food and beverage areas prior to opening; (iii) to purchase equipment and assets necessary to prepare the food and beverage areas for opening; and (iv) any and all reasonable, mutually agreed upon expenses incurred prior to the date of signature. Any Pre-Opening Expenses not covered by the Capital Investment shall be treated as an Expense of operations. Pre-opening expenses shall be pre-approved in advance of the expense being made with reasonable notice and will become the property of the City.

5. Definition of Gross Receipts and Net Receipts; Split of Net Receipt; Expense Allocation

- a. Definition of Gross Receipts. As used in this Agreement, the term "Gross Receipts" shall mean the total gross revenues actually collected from patrons including service charges in respect of food and beverage sales and services by Contractor at the Riverfront Park, including the net amount received by Contractor from subcontractors; provided, however, Gross Receipts shall not include any city, county, state or federal use, excise or similar tax imposed on the sale or use of the food and beverage items collected and paid to applicable taxing authorities by Contractor, credit card fees, amounts not received from bad debts, discounted sales, and gratuities.
- b. Definition of Net Receipts. As used in this Agreement, the term "Net Receipts" shall mean the Gross Receipts, minus (i) the items specifically identified elsewhere in this Agreement as being “Expenses” or reimbursable out of, or chargeable against, Gross Receipts, and (ii) the items listed below (the items listed below, together with the items referred to in clause (i) of

this subparagraph (b) being hereinafter collectively referred to as the "Expenses"):

(A) The actual cost to prepare and serve all food and beverage items sold in Riverfront Park, together with the actual cost of all serving dishes, serving pieces, containers, plates, silverware, glassware, cooking utensils, napkins, table linens and other similar items relating to the sale of Food and Beverage Items (hereinafter collectively referred to as the "Ancillary Items");

(B) Office and administration expenses including, but not limited to, the cost of office supplies, postage, computer software, network connections, information systems infrastructure, telephone service, accounting and reporting, together with all payroll costs, including reasonable fringe benefits, payroll taxes, employee benefits, payroll administration expenses, worker's compensation, operations-related legal services and costs, recruiting and relocation costs and related costs and expenses pertaining to all of Contractor's and its affiliate's employees engaged in the performance of the operations;

(C) Costs of repairs and maintenance (but not including costs incurred for additions to, or replacements or modifications of) any element of the foodservice facilities;

(D) Costs incurred for pest control, trash removal, janitorial service, cleaning expenses, including, but not limited to, the cost of supplies;

(E) Insurance costs incurred by Contractor in connection with providing the insurance required pursuant to this Agreement;

(F) Any amounts paid by Contractor in respect of claims relating to the operations ("Deductibles Payments"), which claims would have been covered under the insurance policies approved by City but for the deductibles under such policies, whether such Deductibles Payments occur during or after the Term;

(G) Cost of uniforms for all of Contractor's employees and the costs of laundering all such uniforms;

(H) The cost of governmental charges, such as the cost of obtaining and maintaining all necessary or required licenses;

(I) All pre-opening expenses, not covered by the Capital Investment, generated in connection with the opening of the food and beverage areas, including, but not limited to, all of the costs, expenses and fees incurred (i) in the case of Contractor, (ii) to procure all required licenses and permits to

conduct the operations, (iii) to establish and document the relationship between City and Contractor, (iv) if applicable, to establish and document the relationship between Contractor and any union(s) representing the employees that will work in the foodservice facilities, (v) to recruit, hire, relocate and train employees prior to opening, (vi) to market and promote the Riverfront Park, it being understood and agreed that marketing and promotional expenses include, but shall not necessarily be limited to, pre-opening promotional or training events or parties, and (vii) all travel and other reasonable out of pocket expenses to prepare the operations for opening;

(J) Reasonable reserves to cover anticipated funding or cash requirements established by Contractor and approved by City, in City's reasonable discretion;

(K) Payment of installments of the Management Fee pursuant to Section 4.a. above;

(L) Any uncollectible amounts from the operations, including, without limitation, uncollectibles from credit/debit card activity, provided that Contractor agrees to exercise good faith reasonable and diligent collection efforts;

(M) Amortization expense of Contractor's Capital Investment;

(N) Incentive Fee, if any; and

(O) Any other costs actually and reasonably incurred by Manager in connection with the operations.

- c. Operating Deficits. It is expressly understood and agreed that (i) Contractor is only providing management services to and for the City and, accordingly, under no circumstances shall Contractor ever be obligated to fund any portion of any operating deficits or "negative cash flow" from the operations (i.e. the amounts by which Expenses for any period exceed Gross Receipts for such period), and (ii) the term "Expenses" shall not include any payments of principal or interest which City is required to pay on indebtedness relating to the construction, renovation, modification or ownership of Riverfront Park or any portion thereof.
- d. Split of Net Receipts. City and Contractor hereby acknowledge and agree that positive annual Net Receipts from the operations shall be split on the following basis: City shall receive one-hundred (100%) of Net Receipts, and Contractor shall receive zero percent (0%) of Net Receipts. Contractor will provide a detailed profit and loss statement, in a format approved by City, accompanied by the profit split payment within fifteen (15) business days after each calendar month.

6. SCOPE OF WORK

A. CONCESSION SERVICES:

SPOKANE PAVILION:

The Contractor shall provide exclusive Food and Beverage Concession Services for all scheduled events at the Spokane Pavilion, but not less than twelve (12) events, excluding select blackout dates, including move-in and move-out periods as required by park management. Food and beverage Concession services shall include, at a minimum, advance preparation of concession areas; hiring and scheduling of all necessary staff, purchase of food products and both non-alcoholic and alcoholic beverages; operation during the hours specified by the City; ongoing housekeeping services within a 10-foot radius of concession areas during operating hours; and equipment removal, cleanup and restoration of concession areas to the conditions reasonably established by The City. Concession services will be provided on an event-by-event basis and will not exceed thirty (30) consecutive days.

B. CATERING SERVICES:

SPOKANE PAVILION, LOOFF CARROUSEL & NUMERICAN SKATE RIBBON:

1. Contractor will, at its discretion, engage a third party ("Third-Party) to provide services for certain private catered events held at the Pavilion and that all alcohol for such events will be provided by Contractor and sold under Contractor's liquor license.
2. The Contractor shall use commercially reasonable efforts to ensure the Third Party provides Catering services at the Spokane Pavilion, Loeff Carrousel and Numerica Skate Ribbon, including but not limited to advance sales, hiring and scheduling of all required staff; all necessary food and non-alcoholic beverage purchasing, preparation and service operations; delivery of all catered services; and cleanup and restoration of service areas to the conditions reasonably established by The City.
3. The Contractor shall use commercially reasonable efforts to ensure the Third Party manages and operates a Catering program that successfully markets and operates full food and beverage services for meetings, receptions, VIP functions, banquets and related functions. Such services will be branded as Riverfront Spokane.
4. The Contractor shall integrate the Catering program with the Concessions program to the greatest extent commercially practical with innovative offerings of local and fresh products, local/regional/national branded product offerings as appropriate.
5. The Contractor shall use commercially reasonable efforts to ensure the Third Party provides specialized services including but not limited to:
 - a) The provision of food and beverage services to Spokane Pavilion and Riverfront Park meeting rooms and licensed event organizer management offices

used by Riverfront Spokane Customers. Services may range from snacks to elaborate catered meals. These services will require constant attention from the Contractor for re-supply and freshness purposes, and may require immediate removal of services at specific times determined by the Customer and/or The City;

- b) In conjunction with the City sales and event staff, the Contractor shall use commercially reasonable efforts to ensure the Third Party actively sells and markets Catering services to booked and potential Spokane Pavilion and Riverfront Park Customers. The sales and marketing activities shall include developing a menu, selling appropriate food and beverage services, and placing a link to the Contractor's active point-of-sale portal on the City's designated website(s).
- c) Internal meetings that include food, beverages or potlucks for Park & Recreational meetings may be supplied outside of Contractor's exclusivity agreement.

C. ALCOHOLIC BEVERAGES

- a) Liquor Law Compliance – The privilege to sell alcoholic beverages shall be subject to the provision of all laws of the State of Washington applicable to the sale for liquor, wine and beer. Contractor will be responsible for obtaining all necessary licenses for the sale of such beverages. The final decision as to whether or not alcoholic beverages may be sold at an event or in any designated area of the Pavilion shall be the sole discretion of the City. The decision to serve or refuse service of alcoholic beverages to any individual shall be the sole responsibility of the Contractor.
- b) The Contractor will be solely responsible for complying with all industry standard food safety procedures and for any health issues arising from the service of food by Contractor or any of its employees or agents.
- c) Contractor, shall be solely responsible for the determination of brands, quantities, pricing, shelving and display for sale of any and all alcoholic beverages that Contractor may buy or sell at the Pavilion. Nothing contained in this Agreement is intended in any way to diminish Contractor's discretion and responsibility relating to the service of alcoholic beverages at the Pavilion, including without limitation, Contractor's sole discretion and sole responsibility for the decision to serve or refuse service of alcoholic beverages to any individual. Contractor acknowledges and agrees that City and its affiliates require all retailers, distributors/wholesalers and distillers/brewers of alcoholic beverages (each an "Industry Member") that City and its affiliates conduct business with, including, but not limited to, Contractor, to strictly comply with all local, state and federal, laws and regulations, which may be applicable to the Contractor and the purchase, marketing, promotion, advertising and sale of alcoholic beverages, including, but not limited to: Title 27 of the Federal Alcohol Administration Act (Title 27 of the United States Code) and Title 27 of the Code of Federal Regulations, and other related provisions governing "intoxicating liquors" (collectively, "Alcohol Laws"). City further agrees that it shall not require as a condition for the continuation of this Agreement or exercise an early termination

rights or failure to renew, Contractor to engage in conduct, which Contractor believes would be in violation of Alcohol Laws. Further, City and its affiliates shall not conduct business with any Industry Member in violation of the Alcohol Laws.

- d) City shall be exclusively responsible for providing adequate security throughout the Pavilion. The Contractor shall be responsible for keeping the Contractor's areas secure. Contractor will provide adequate alcohol service staff as an Expense, while the City will be responsible for providing trained security personnel during the Spokane Pavilion music events that comply with the Washington Liquor and Cannabis board mandatory requirements per attendee. Contractor and City shall meet prior to each event to ensure the appropriate number alcohol service staff and enforcement security are scheduled.

7. BLACK OUT DATES

The City shall have thirteen (13) event days per year for non-exclusive concessionaire use (blackout days) at the Spokane Pavilion in which City or City-approved event organizer may select alternative vendors; food and beverage service providers to include alcohol sales and service as allowed by the Washington State Liquor and Cannabis Board. For avoidance of doubt, the provision of food and beverage services for park events in which an organization or individual rents an outdoor venue for a public community event, or City produced event, is outside the scope of this Agreement. Park event organizer may select alternative food and beverage service providers provided that the event does not take place at the Spokane Pavilion.

8. HOURS OF OPERATION

Contractor recognizes that seasonal changeovers, park construction and other building modifications may impact food and beverage operations. City shall provide reasonable notice to Contractor of any seasonal changeovers, park construction, and other building modifications that may impact food and beverage operations and make best efforts to avoid service interruptions.

8. TRAINING

- a) The Contractor shall train and closely supervise each Contractor employee and use best efforts to ensure Third-Party trains and closely supervises each Third-Party employee so that both Contractor's employees and Third-Party employees know, understand and comply always with the high standards of cleanliness, courtesy and service required by The City.
- b) The Contractor shall ensure that its employees are trained and maintain current certifications (if required) in customer service, alcohol serving and awareness, cashiering, food merchandising, banquet service, workplace safety, First Aid, substance abuse recognition, emergency response, and other disciplines generally required for the provision of food and beverage services. Contractor shall use best

efforts to ensure Third-Party employees are trained and maintain current certifications (if required) in customer service, alcohol serving and awareness, cashiering, food merchandising, banquet service, workplace safety, First Aid, substance abuse recognition, emergency response, and other disciplines generally required for the provision of food and beverage services

- c) The Contractor and Third-Party shall comply and participate in city administrated emergency training and drills.

9. EQUIPMENT AND MAINTENANCE

- a) The City owns and maintains the basic concession equipment permanently located at Riverfront Park. City will provide Contractor use without charge; provided, however, that the City equipment shall remain the property of the City.
- b) Contractor shall provide for the preventative maintenance of city-provided Equipment as required, and per manufacture requirements, for the normal operations of the Contractor (e.g. hood cleaning, condensers, oil filters); the cost of and expense of such maintenance will be considered an Expense.
- c) As it relates to Concessions, the Contractor shall provide janitorial, sanitation and maintenance services in its food and beverage service locations after each use to the reasonable satisfaction of the City. As it relates to Catering, Contractor shall use best efforts to ensure Third-Party provides janitorial, sanitation and maintenance services in its food and beverage service locations after each use to the reasonable satisfaction of the City.
- d) The location of any and all portable concession cart sites and storage spaces shall be approved by Director of Riverfront Park; provided, however, that Contractor shall acquire no rights to the location of such sites or spaces, it being understood by the parties that the City reserves the right to require Contractor to eliminate or relocate such sites and spaces and/or to relocate or remove items and equipment from storage spaces to accommodate event requirements.
- e) The Contractor shall provide the repair and maintenance of all uniforms, smallwares and equipment during the Term of the Contract, the cost of which shall be an Expense. All uniforms will be branded with Riverfront Spokane or Spokane Pavilion logo. If any furniture, fixtures, or equipment needs to be repaired more than twice in any Contract Year, then such item shall be replaced at City's expense.
- f) City owned equipment may not be removed, relocated or discarded without written permission of the City. If Contractor desires to relocate or install additional equipment for use in the food/service areas of the facilities, Contractor shall obtain the prior written approval of the same from the City.
- g) Title to all food service equipment and assets, including such that are purchased pursuant to the Capital Investment, shall be owned and vested in City, except for computers, other proprietary items of Contractor, and such items specifically called out in writing prior to use by Contractor (e.g. chef knives, smallwares, and other Contractor procured cooking or food service accessories) that have not been purchased with Capital Investment outlined in Section 4.

- h) Any signage used to display product information and pricing shall be maintained in good and working order. All signage must be preapproved prior to installation and shall not conflict with any sponsorship arrangement entered into by City and shall be expressly used to advertise a product for sale at the location that the sign is being displayed.
- i) If and when major pieces of equipment need to be replaced, any remaining Capital Investment funds may be used for replacement upon written mutual agreement between the parties. If the Capital Investment funds are exhausted, the replacement of equipment shall be at the City's expense
- j) In the event that Contractor refuses or neglects to make the routine repairs and maintenance, to the extent Contractor is obligated to do so under this Agreement, or if City is required to make any repair necessitated by the negligent acts or omissions of Contractor, its employees, agents, servants, or licensees, City shall have the right to make such repairs on behalf of or for the Contractor. In the event that the City shall make such repairs, such work shall be reimbursed by Contractor.
- k) Contractor will develop recommended footprint for portable concessions equipment/sales in Riverfront Park for City review and approval.
- l) Trash Services – The City will be responsible for emptying of the trash and recycling receptacles. Contractor will be responsible for removal of trash and recycling materials from concession and dining areas within City Facilities and for bringing them to City-designated collection sites. Contractor will also be responsible for grease disposal and routine grease trap cleaning.

10. UTILITIES

- a) The City shall furnish, at no cost for consumption, all electric, gas, internet (as available per infrastructure and City IT regulations), water and drainage utilities necessary for food service operations. Contractor shall make best efforts to practice prudent energy management satisfactory to City management. The Contractor may connect standard household electrical connectors into existing standard electrical wall outlets. City shall pay the appropriate Service Contractor for any temporary service connections required for Food and Beverage Services.
- b) City will provide contractor with telephone service per City rules and regulations.
- c) City shall not be liable or responsible for any failure to furnish utility services, weather occasioned by strike or other work stoppage; federal, state or local government action; breakdown or failure of apparatus, equipment or machinery deployed in supplying the said services; any temporary stoppage for the repairs, improvements or enlargement thereof or any act or conditions beyond its reasonable control. To the extent City is responsible for securing the Pavilion, City shall be responsible for any goods, products or equipment stored at Riverfront Park. However, City will not be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes.

- d) City will provide Contractor password protected WiFi credentials for event operation and POS credit card machines when available.

11. PAVILION CONCERT OPERATIONS

- a) When concert production provider uses Contractor for a private party in which backstage catering is required (e.g. feeding artists, production staff, etc.) at any Music Event, as outlined in City's agreement with concert production provider, Contractor shall provide food and beverage services at cost plus ten percent (10%). If concert production provider chooses to use a different contractor for either of the purposes described in this paragraph, concert production provider shall pay a ten percent (10%) service charge for doing so.
- b) In compliance with Washington laws related to the sale and distribution of alcoholic beverages, only the Contractor may order, service and sell alcoholic beverages.
- c) In the event of changing conditions at the Pavilion (including but not limited to cessation of Pavilion concert operations, attendance changes falling below historical values, or disruption in operation) for reasons outside of Contractor's reasonable control, the parties shall re-negotiate the financial terms of this agreement. If the parties are unable to agree upon alternate financial terms within thirty (30) days, Contractor may terminate this Agreement for cause effective upon 30 days' written notice.

12. MARKETING & SPONSORSHIP

- a. Contractor and the City shall work in cooperation toward a mutually agreed upon purpose of marketing and promotion of event spaces in Riverfront Park at the Spokane Pavilion, Skate Ribbon and Loeff Carrousel facilities.
- b. Marketing efforts shall include on-site promotions, brochures, direct mailings, newsletters, social media, PR, networking and outreach, web and email campaigns, trade show booths and paid advertisements.
- c. Contractor shall brand activities "Riverfront Spokane" or "Spokane Pavilion" to the extent possible that Contractor activity and employees are indistinguishable from City staff.
- d. Sponsorship and Advertising – The City retains all sponsorship and advertising rights in City Facilities. Contractor will support the sale of sponsor-branded products and mutually agreed upon activations as outlined in City sponsorship agreements. Notwithstanding the foregoing, City will ensure that such sponsorship agreements do not impair the quality of the food and beverage items served by Contractor (as compared to comparable items

served at other similar venues in which Contractor or its affiliates provides food and beverage service) or increase the costs for such items (as compared to the Contractor's pricing or what Contractor would normally pay through its own distributors for comparable items of similar size and quality). City and Contractor agree that they will not compromise the quality of the food and beverage Items served in Concessions and Catering in order to secure a sponsorship. In the event City's current sponsorship agreement or if the City decides to enter into a sponsorship agreement (or enters into any other relationship) that increases the costs that Contractor incurs, then Contractor reserves the right to pass along any increased costs to guests through increased menu prices. In order for Contractor to provide City with high quality food and beverage items and in order for Contractor to maintain the high standards of operations that it requires, Contractor shall purchase inventory, equipment, and services from various sellers and vendors selected by Contractor in its sole discretion (each, a "Vendor"). Purchases from Vendors shall be made under such terms Contractor deems acceptable in its sole discretion ("Vendor Terms"). All Vendor Terms are the exclusive obligations and property of Contractor. City does not have any liability under, or any right to benefit from, any Vendor Terms, and no Vendor Terms will reduce or otherwise affect the amount or performance of City's obligations. Contractor covenants that the Vendor Terms will not: (i) impair the quality of the food and beverage items served by Contractor (as compared to comparable items served at other similar venues in which Contractor or its affiliates provides food and beverage service), or (ii) increase the costs for such items (as compared to the Contractor's pricing for comparable items of similar size served at other similar venues in which Contractor or its affiliates provides food and beverage service). The foregoing shall be in accordance with any applicable federal, state, or local statute, law code, regulation, or ordinance.

13. ADDITIONAL SERVICES & DETAILS

- a) The Contractor shall comply with all recycling rules, regulations, policies and procedures of the City and/or appropriate governmental bodies, including the City of Spokane or Riverfront sustainability action plan. The Contractor shall make best efforts to utilize recyclable or compostable disposable plates, cutlery and cups for all Concessions Sales and Services. To the extent possible, Contractor shall also assist City in advancing sustainability goals by educating consumers about waste disposal and properly labeling receptacles.
- b) The Contractor shall identify local products and vendors to utilize throughout Riverfront Park whenever possible.
- c) The Contractor shall present every year for the City's review and approval its written proposal for menu, portions and pricing for the upcoming Fiscal Year, provided,

however (A) City shall not unreasonably withhold, condition or delay its approval of such menus, portions and prices and (B) in the event that City fails to deliver to Contractor within fifteen (15) days after submission of such menus, portions and prices, written approval or denial, such submitted menus, portions and prices shall be deemed approved.

- d) Contractor may use Contractor supplied POS system , the cost of which shall be an Expense.
- e) Operations Observations - City shall have the right to observe any transaction or transactions between Contractor and the public involving any sales authorized hereunder for the purposes of determining the quality and quantities of food, beverages and facilities offered to the public, the prices charged therefor and the accountability of the Gross Receipts received therefrom. City shall also have the right to make any and all examinations, tests, measurements, weighing, etc. as it may desire of all materials, food and supplies in Contractor's possession and to be sold by Contractor, in order to determine their quality and quantity.
- f) Facilities Inspections - City shall have the right at any time and as often as the Director considers necessary to inspect the Locations and places of operation of Contractor and to advise Contractor of the existence of any conditions which the Director determines to be unsafe, unsanitary or detrimental to the public or the operation of the City Venues. Contractor agrees to correct all such conditions promptly after notice. All such conditions will be corrected within at least 24 hours or if conditions cannot be corrected within 24 hours, Contractor shall take reasonable steps towards correcting such conditions with 24 hours from notification.
- g) Right of Entry Reserved - City, through its agents and/or employees, representatives, and contractors, shall have the continual right to enter upon and under all portions of the Riverfront Park to inspect the same, to observe the performance of Contractor of its obligations under this Agreement, to conduct inspections and/or audits, and to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which City may be obligated or has the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of City under this Agreement.
- h) At the request of the City, to the extent permitted by law, Contractor may offer sponsorship giveaways and/or samples to guests shall be limited to 2 oz. liquid and 4 oz. food portions. Exceptions may be made for major event sponsors (e.g. presenting or tour sponsors) upon request by City.

14. RECORD KEEPING AND ACCOUNTABILITY

The Contractor shall submit the following regular accounting reports:

- a) A monthly POS report for each Event, summarizing customer pricing; sales by location; total inventory sales; total register sales; and cash overages and shortages;

- b) A monthly revenue and payment report, in a format approved by the City, for each Accounting Period;
- c) Detailed revenue reports for each Event held in the previous month;
- d) Post event food and beverage sales reports for Music Events in the Spokane Pavilion to be used for artist settlement.
- e) Annual Reports - Contractor shall furnish to City a true and accurate, financial statement of Gross Receipts. The financial statement shall contain and include (without limitation) a breakdown of Gross Receipts. Such statement shall be furnished for every Contract Year in which business was transacted under this Agreement during the whole or any part of the year. At City's sole discretion, and at City's sole cost and expense, City may conduct a review of Contractor's books and records with respect to the financial statements related to Gross Receipts through City's Auditor or by hiring an independent CPA through the City's Auditor or an independent third party agreed to by the parties.

15. TAXES, FEES AND LICENSES

- a) Contractor shall pay and maintain in current status, all necessary licenses, fees, assessments, permits, etc. necessary to conduct the work included under this Agreement. It is the Contractor's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- b) The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be an Expense.
- c) As an independent contractor, Contractor acknowledges that it is solely responsible for payment of any local, state, or federal taxes or fees with respect to Contractor's business activities under this Agreement. Contractor shall pay any applicable taxes related to its use and occupancy of City property, including but not limited to the Leasehold Excise Tax required by RCW 82.29A. The burden is on the Contractor to show that it falls within a legal exemption to this tax. For purposes of this Agreement, the tax shall be 12.84 percent of the Commissions paid to the City by Contractor under this Agreement.

16. CITY OF SPOKANE BUSINESS LICENSE

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

Subcontractor: Subcontractor expenses will be reimbursed at the actual cost incurred and may not include a markup. Subcontractors will be required to provide a lien waiver for work performed on City equipment and for any service provided to support Contractor's food and beverage services outlined in this Agreement. It will be

responsibility of the Contractor to collect and record such waivers. Failure to collect waivers will not bind the City and will fall on the Contractor remedy. Copies of all Subcontractor invoices that are rebilled to the City are required.

17. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

18. MUTUAL INDEMNIFICATION

The Contractor shall indemnify, defend and hold the City harmless from and against any and all claims, demands, damages, or expenses, of any nature whatsoever, including attorneys' fees, caused by or arising directly from any negligent or willfully wrongful act, error, or omission of Contractor, or any of its officers, directors, partners, member, Contractors, agents, subcontractors, invitees or employees including volunteers; and/or any occupational injury or illness sustained by an employee, volunteer, or agent of Contractor in furtherance of Contractor's services hereunder, and/or any failure of Contractor to perform its services hereunder in accordance with the highest generally accepted professional standards, and/or any breach of Contractor's representations as set forth herein, and/or any other failure of Contractor to comply with the obligation on its part to be performed hereunder.

The City shall indemnify and hold the Contractor harmless from and against any and all damages or expenses, of any nature whatsoever, including attorneys' fees, caused by or arising directly from any negligent act, error, or omission of the City, or any of its officers, directors, partners, member, agents, subcontractors, or employees; and/or any occupational injury or illness sustained by an employee, volunteer, or agent of the City in furtherance of City's obligations hereunder.

19. INSURANCE

During the Term of the Agreement, the Contractor shall maintain the following insurance coverage:

- a. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;

- b. **General Liability Insurance** with a limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are included as additional insureds but only with respect to the Contractor's services to be provided under this Agreement;
 - i. **Umbrella Liability Insurance** with a minimum of \$1,000,000; and
 - c. **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.
- b) There shall be no cancellation of the insurance coverage(s) without thirty (30) days written notice from the Contractor to the City. As evidence of the insurance coverage(s) required by this Agreement, the Contractor shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall include the City of Spokane as "Additional Insured" specifically for Contractor's services under this Agreement, and the thirty (30) day cancellation provision. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

20. CERTIFICATE REGARDING DEBARMENT AND SUSPENSION. (Attachment A)

The Contractor has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

21. AUDIT

The Contractor and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Contractor and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record related to this Agreement. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

22. KEY PERSONS

The Contractor shall not transfer or reassign any individual designated in this Agreement as essential to the Work, nor shall those key persons, or employees of Contractor identified as to be involved in the Project Work be replaced, removed or withdrawn from the Work without the express written consent of the City, which shall not be unreasonably withheld. If any such individual leaves the Contractor's employment, the Contractor shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld.

The City's approval does not release the Contractor from its obligations under this Agreement.

All Food and Beverage Services employees shall be employees of the Contractor, and not of the City. The Contractor shall be an independent contractor, and the Contract shall not in any way create or form a partnership or joint venture with the City.

23. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Contractor shall incorporate by reference this Agreement, except as otherwise provided. The Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Contractor from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

24. TERMINATION

If any one or more of the following shall occur, the City may at its option terminate this Agreement by sending written notice of termination, by registered or certified mail, to Contractor at its address set forth herein, which notice shall be deemed given when received.

1. Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answering seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or any state thereof.
2. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency laws or statute shall be filed against Contractor and shall not be dismissed or stayed within thirty (30) calendar days after the filing thereof.
3. Interests or rights of Contractor shall be transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with our as a result of any bankruptcy, insolvency, trusteeship or liquidation.
4. Contractor shall become a corporation in dissolution.
5. Contractor shall voluntarily discontinue its operation at Riverfront Park.
6. Contractor loses its liquor license.
7. City shall determine in its sole and absolute discretion that the Riverfront Park shall be closed or abandoned.
8. In the event Contractor shall fail to perform or, improperly performs any of its obligations hereunder ("Non-performance"), then City shall have the right to provide Contractor with a notice of default which shall set forth specifically the Non-

performance. Contractor shall have thirty (30) calendar days from the date of receipt of such notice, except as provided below, within which to correct the Non-performance. Should Contractor cure the Non-performance within the thirty (30) calendar day period, it shall notify City in writing of such cure. In the event the Non-performance is not cured within such thirty (30) calendar day period, City may then terminate this Agreement by giving Contractor fifteen (15) calendar days' written notice of its decision to do so which notice shall specify the exact date of termination. Such termination notice shall not extend further the cure period afforded to Contractor. Notwithstanding the foregoing, if the Non-performance cannot be cured through the exercise of reasonable diligence within the thirty (30) day period, then such thirty (30) day period shall be extended to a time as is reasonable to cure the Non-performance, provided Contractor has proceeded and is continuing to proceed in a diligent and reasonable manner to cure. Contractor shall, if the Non-performance cannot be cured within the thirty (30) day time period through the exercise of reasonable diligence so advise City in writing and also provide its best estimate of when such Non-performance will be cured and shall further advise City of such cure when accomplished.

Notwithstanding the above, either party may terminate the Agreement for convenience upon ninety (90) days' written notice to the other.

Upon termination of this Agreement for any reason whatsoever, City hereby agrees, as a condition precedent to such termination, to pay Contractor, in a single lump sum payment, (i) the unamortized value of the Capital Investment plus, (ii) any undisputed amounts owed to Contractor by the City; (iii) a reasonable price (based upon fair market value) for the value of the equipment and smallwares that may be used by a subsequent foodservice contractor and (iv) an amount equal to the cost of Contractor for all food, beverage, and supply inventory on hand if reasonably priced and usable by the next concessionaire.

25. STANDARD OF PERFORMANCE

The standard of performance applicable to Contractor's services will be the degree of skill and diligence normally employed by professional companies performing the same or similar services at the time the services under this Agreement are performed.

26. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS

Original documents, receipts, reports or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Contractor shall be safeguarded by the Contractor. The Contractor shall make such data, documents and files available to the City upon the City's request. If the City's use of the Contractor's records or data is not related to this project, it shall be without liability or legal exposure to the Contractor.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public

Records Request (PRR).

27. ANTI KICK-BACK.

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

28. INFORMATION TECHNOLOGY SYSTEMS

In connection with the services provided hereunder, Contractor may elect to operate certain information technology systems not owned by City ("**Contractor Systems**"), which may, upon approval of the City, connect to or interface with City's internet access, networks, software, or information technology systems ("**City Systems**"). Contractor will be solely responsible for all Contractor Systems, and assumes the risk and responsibility (including loss, damages, and expenses) when connection is made to the City Systems. The City, pursuant to its discretion, will employ security and privacy protections that are reasonable under the circumstances. If Contractor serves as the merchant-of-record for credit or debit card transactions in connection with the services provided hereunder, Contractor shall be responsible for complying with applicable laws, regulations and payment card (industry data security standards) related to the protection of cardholder data ("**Data Protection Rules**"). If Contractor Systems connect to or interface with City Systems, the City will (following sixty (60) days written notice) implement, at City's expense, changes to the City Systems that Contractor reasonably requests and the Parties believe are necessary or prudent to ensure Contractor's compliance with the Data Protection Rules.

29. MISCELLANEOUS PROVISIONS

- a) **Amendments/Modifications:** This Agreement may only be modified by a written instrument signed by both parties..
- b) The Contractor, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Contractor shall comply with the requirements of this Section.
- c) This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- d) **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- e) **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- f) **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any

preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

- g) **Attorney Fees:** In any action, except for mediation, brought under this Agreement, the prevailing party shall be entitled to recover in addition to any other amounts awarded, its reasonable attorney fees and costs of actions as determined by the court with jurisdiction over the subject matter of the dispute.
- h) **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Contractor. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- i) **Notice:** Any notice required or permitted to be given under this Agreement by either party to the other shall be in writing and delivered in person, by express delivery, or by U.S. Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

City: City of Spokane
808 West Spokane Falls Blvd.
Spokane, WA, 99201
Attn: _____

Contractor: Levy Premium Foodservice Limited Partnership
980 N Michigan Ave.
Chicago, Illinois 60611
Attn: Andrew J. Lansing, CEO

- j) **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**LEVY PREMIUM FOODSERVICE
LIMITED PARTERSHIP**

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date
