



Special meeting of the Spokane Park Board Agenda/Meeting Notification

8 a.m. Aug. 27, 2018

City Council Briefing Center, lower level City Hall
808 W. Spokane Falls Blvd, Spokane, Washington

Park Board Members:

Nick Sumner – President
Rick Chase – Vice President
Leroy Eadie – Secretary
Chris Wright
Ted McGregor
Greta Gilman
Sally Lodato
Jennifer Ogden
Gerry Sperling
Jamie SiJohn
Mike Fagan – Council Liaison

Agenda

1. **Roll Call:** *Pamela Clarke*
2. **Action item:**
 - A. [Bernardo | Wills Architects contract/North Bank design consultant \(\\$627,600\)](#) – *Berry Ellison*
3. **Adjournment:**
4. **Meeting Dates:**
 - A. Committee meeting dates:
 - Urban Forestry Committee: 4:15 p.m. Sept. 4, 2018, Woodland Center, Finch Arboretum
 - Land Committee: 3 p.m. Sept. 5, 2018, Manito Park meeting room, Manito Park
 - Recreation Committee: 4 p.m. Sept. 10, 2018, Corbin Senior Center, 827 W. Cleveland Ave.
 - Riverfront Park Committee: 8:05 a.m. Sept. 10, 2018, Loeff Carrousel meeting room
 - Golf Committee: 8 a.m. Sept. 11, 2018, City Council Briefing Center
 - Finance Committee: 3 p.m. Sept. 11, 2018, City Conference Room Lobby – Tribal, first floor City Hall
 - B. Park Board: 3:30 p.m. Sept. 13, 2018, City Council Chambers
 - C. Park Board Study Session: No session scheduled at this time.

Agenda is subject to change

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. The Spokane City Council Briefing Center in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6363, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or jsaxon@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 Clerk's OPR _____



City of Spokane
Parks and Recreation Department
CONSULTANT CONTRACT
 Title: **RIVERFRONT PARK
 NORTH BANK PROJECT**

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 **BERNARDO WILLS ARCHITECTS, PC**, whose address is 153 South Jefferson Street, Spokane, Washington, 99201 as (“Consultant”), individually hereafter referenced as a “party”, and together as the “parties”.

WHEREAS, the purpose of this Agreement is for the Professional Landscape Architecture Services for Riverfront Park, North Bank Regional Playground; and

WHEREAS, the Consultant was selected from RFQ 4472-18.

-- 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 August 27, 2018, and ends on July 1, 2020, 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”) on the beginning date, above. 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 City’s RFQ and Consultant’s Proposal dated August 22, 2018, attached as Exhibit A and made a part of this Agreement. In the event of a conflict or discrepancy in the contract documents, the 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. PAYMENT.

Total compensation for Consultant's services under this Agreement shall not exceed **SIX HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$627,600.00)**, unless modified by a written amendment to this Agreement.

5. COMPENSATION/PAYMENT.

The Company shall submit its applications for payment to City of Spokane Parks and Recreation Department, 808 West Spokane Falls Blvd., 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 reserves the right to only 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 may include 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 <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.

9. SOCIAL EQUITY REQUIREMENTS.

- A. 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.

The Consultant shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement. This Agreement shall be interpreted and construed in accord with the laws of Washington.

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 sixty (60) 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 sixty (60) 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 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.

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 ensure 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.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Spokane are **public records** which are subject to review and copying pursuant to a public records request. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records may be legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW Ch. 42.56) describes those exemptions. Consultant must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Spokane's process for managing records.

The City will try to redact anything that clearly should be redacted under the law, for example, the City will black out (redact) Social Security Numbers before records are made available to a requestor. Consultant may identify any materials Consultant believes to be not subject to release under the Public Records Act. City will not be bound by Consultant's determination of whether any particular record or records are legally exempt from release under the Public Records Act.

If the City receives a public records request for records involving Consultant or Consultant's work product, City will release the records unless City determines that there are obvious exemptions or redactions (which City will make prior to release of the records) or that there are apparent exemptions or redactions that Consultant could assert. In the latter case, Consultant will be notified of the request and pending release of records and Consultant will be given ten days to obtain a Court order preventing the City from releasing the requested records. **If no Court order is procured by Consultant, the City will release the requested 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 thirty (30) 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 thirty (30) business days prior to the effective date of termination.
- C. For City's Convenience: The City may terminate this Agreement without cause and including the City's convenience, upon written notice to the Consultant. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than ninety (90) business days prior to the effective date of termination.
- D. Actions upon Termination: if termination occurs not 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 Exhibit D. 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.

BERNARDO WILLIS ARCHITECTS, PC

CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT

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 – Contractor's August 22, 2018 Proposal
Exhibit B – Debarment Certificate

ATTACHMENT B

**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. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this exhibit, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The undersigned may contact the City for assistance in obtaining a copy of these regulations.

5. 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)

August 22, 2018

Mr. Berry Ellison
City of Spokane Parks & Recreation
808 W Spokane Falls Blvd # 5
Spokane, WA 99201

**Re: Proposal of Professional Landscape Architecture Services for
Riverfront Park, North Bank Regional Playground**

Dear Berry:

Thank you for the opportunity to provide this Proposal of Professional Landscape Architectural Services to provide design and construction phase services for the new North Bank Regional Playground located in Riverfront Park. We look forward to working with you, your team and the park stakeholders to create a playground that will provide a unique and spectacular themed destination. We have organized this proposal into four phases; Understanding of the Project, Scope of Services, Anticipated Schedules, and Professional Fees.

Understanding of the Project

The City of Spokane desires to develop a regional, Ice Age Themed, Inclusive Regional Playground with up to 180 car parking spaces, located on the north bank of the Spokane River within the newly renovated Riverfront Park. The playground is intended to be unique to Spokane, showcasing the regional geology associated with the Glacial Lake Missoula Flood. Stormwater treatment will play an equally important role for interpretation of the City's "Cleaner River Faster Initiative," while exploring the options to use the runoff from the adjacent Sportsplex project to create an opportunity to demonstrate the cataclysmic Missoula Lake Flood as an immersive play feature. The playground site has some encumbrances that include contaminated soils from former industrial activities and historic architectural resources from Expo 74. Portions of the site are located with the Shoreline Jurisdiction Boundary and 20' basalt cliffs line the northern boundary of the Site. The park work will require close coordination with the proposed Sportsplex project located on the north property boundary for construction scheduling, stormwater treatment, and access. Primary pedestrian access to the playground will be from the new Howard Street Promenade on the west side of the playground and is currently under construction. The primary vehicular access will be on the east side of the playground accessed from the Washington Street and North River Drive signaled intersection. Architectural Renovations will be made to the existing Expo 74 picnic pavilion, Parks Maintenance and Operations Building and Restrooms. A basketball court and skatepark facility will be studied developed and considered through schematic design to determine if their size and adjacencies to other playground features are appropriate to be constructed on the site. The project will have two substantial completion dates, Labor Day, September 2, 2019 and April 28, 2020.

Scope of Services – North Bank Regional Playground

The following work items and tasks will be inclusive to the concepts explored in the development of the Plan for the playground. All referenced dates are subject to change to accommodate pursuing parallel goals and schedules of the Spokane Public Facilities District (PFD) Sportsplex Facility.

Schematic Plan Refinement

1. Refine Schematic Plan to meet current design criteria September 11, 2018. Depending on programming layout, there may be two schematics developed.
2. Presentation to Park Board, executive session 3:30 pm September 13, 2018. Amusement rides, skate park and basketball court to be discussed. Develop Pro's /Cons site area capacity.

Programming/Stakeholder Engagement 30%

1. Participate in kick-off meeting at Parks and Recreation office. (Client meeting #1).
 - a. Tour the Site, Restroom, Pavilion and M&O Building with P&R representative.
 - b. Review Historic requirements from City of Spokane Historic Preservation Office.
 - c. Collect available base maps, surveys, Soils Management Plan, historic data and other pertinent data from the City or other sources.
 - d. Establish project stakeholder list and contacts, dates, location, and format for orientation interviews and public engagement efforts.
2. Prepare information and format for public stakeholder interviews
 - a. Produce exhibits and maps illustrating Existing Conditions and Site Inventory and Analysis.
 - b. Refine site schematic plan to meet requirements identified in the scoping meeting
 - c. Conduct steering committee-stakeholder presentation September 17-21, 2018
 - d. Gather feedback and input for use in further refinement of initial schematic concepts/alternative concepts, access, parking, playgrounds etc.
 - e. Summarize stakeholder information for inclusion in development of alternative concepts.
 - f. Determine project construction phases.
3. Develop two (2) alternative concepts for review and discussion.
 - a. Review alternate arrangements reflecting stakeholder input with Client. (Client meeting #2).
 - b. Identify most appropriate input for site elements including access, inclusivity, accessibility, playground elements, architecture, stormwater, the geologic story/theme, branding, etc. in development of alternative concepts. Branding includes how the City markets the playground to promote it as a regional park.
 - c. Present and review architectural renovations
 - d. Submit preferred alternative concept and costs October 15, 2018 to Park Board approval
 - e. Two (2) Presentations allowed for Ad-Hoc, etc.
 - f. Present to Park Board October 18, 2018.

Design Development 60%

1. Conduct Open House #1 (October 29, 2018 target date)
 - a. Present graphic exhibits illustrating the board approved concept layouts, design and dot board exercise for discussion with public.
 - b. Provide open house participants with opportunity to submit written comments on preferred alternative.
2. Finalize Proposed Playground Plan with architectural renovations.
 - a. Prepare final adjustments per client and public comments.
 - b. Prepare Opinion of Probable Cost for proposed improvements.
 - c. Prepare final exhibit plan December 17, 2018. Review for approval with Executive Team. (Client meeting 3).
 - d. 3rd Party Inclusive Playground Analysis by Northwest Playground subconsultant Mara Kaplan to review and make recommendations to improve inclusivity.
 - e. Four (4) Presentations allowed for Ad-Hoc, Executive Team, Design Review Board, Pre-development.

Construction Documents 95 % and 100% Issued for Construction

1. Based on the approved Design Development Phase, prepare final design and construction documents for all park elements including civil/traffic, stormwater solutions, geological components for park theme, play equipment design, architectural TI's with MEP for pavilion, restrooms and maintenance operations building, structural and electrical/site lighting engineering, landscape architectural hardscape and softscape, Construction Documents will include detailed site and architectural plans, play equipment and feature elevations and details, planting plan and plant schedule, irrigation plan and materials schedule, and similar drawings typical for a project of this scale. A full Project Manual is anticipated meeting the City of Spokane format with technical requirements. This phase will also include design and price check at 50% for costs and full PMO review at 95% milestones.
2. Drawings:
 - a. Erosion Control Plans
 - b. Demolition Plans.
 - c. Layout Plan – Horizontal Control
 - d. Parking Lot for desired 180 cars, Grading and Drainage Plan – Vertical Control in coordination with Coffman Engineers.
 - e. Minor intersection improvements to the Washington Street and North River Drive to accommodate ROW enhancements and lane adjustments.
 - f. Materials - Plan- Delineation of all surface materials: softscape and hardscape
 - g. Architectural – Restroom, Pavilion and Maintenance and Operations.
 - h. Planting Plan – Trees, shrubs, ground cover and turf
 - i. Irrigation Plan
 - j. Geologic Features – All details associated with geologic features, coordination with geologist and artisan rock sculpture for site design.
 - k. Water Features– All details associated with stormwater demonstration – immersive sand/ water table feature (BWA will coordinate Northwest Playground fountain consultant as part of BWA team)
 - l. Playground Equipment and Towers – All details associated with custom, semi-custom and off the shelf playground equipment (BWA will coordinate with Northwest Playground for play equipment, CPSI review as part of BWA team)
 - m. Project Details – All site, civil, engineering and architectural details required to bid the project.
3. Technical Specifications – Required at 95% submittal and final issued for construction.
4. Meetings – We have allowed for three (3) client meetings at city hall, five (5) team review meetings at BWA office with team consultants.
5. 50% CD phase design and price check, 95% PMO review with full documents and updated Opinion of Probable Costs.
6. Review meeting with PMO, date TBD.
7. Submit Permit Set to building department at 95% February 18, 2019.
8. Final issued for construction solicitation for bid February 18, 2019.
9. Offer construction contract March 28, 2019 for board approval.

Bidding Assistance

1. Our Scope and Fee includes our participation during the bidding process for addressing items requiring addenda, clarifications, RFI, etc.

Contract Administration

1. Includes full project administration, attending regular biweekly construction meetings, processing change orders, pay app review, ASI's, clarifications, submittal and sample reviews, RFI's, site visits during construction, review pay requests, substantial completion review punch list and correction back punch list, and administration tasks related to project close-out.
 - a. This proposal assumes a ten (10) month construction period for the playground work. Assuming 3-month winter shutdown and ending April 28, 2020. We have allowed for bi-weekly construction meetings during the construction period: total of 12 site review meetings, including a final punch list meeting.
 - b. Change Order #1 April 5, 2019
 - c. BWA will develop the summary meeting minutes for distribution
 - d. BWA will review contractors as-builts, check for clarity, copy and forward to client.
 - e. Certified Playground Safety Inspection (CPSI) Reviews to identify playground safety issues and hazard identification.
 - f. Two substantial completion dates of September 2, 2019 for phase 1 and April 28, 2020.

Anticipated Schedules

We are prepared to start work immediately upon execution of a Client-Consultant contract. Based on how quickly orientation interviews and public meetings can be scheduled, we would anticipate;

1. Completion of schematic design refinement Sept 13, 2018
2. P referred alternative concept October 15, 2018
3. Submit for Plan Check/Building permit February 18, 2019
4. Completion of construction documents February 18, 2019
5. Receive Bids, Intent to Award March 18, 2019
6. Receive Board Approval, March 28, 2019
7. Construction NTP and CO#1 April 5, 2019
8. Soft Opening Ribbon Cutting, Playground Substantial Completion 1 – September 2, 2019
9. Substantial Completion #2, April 28, 2020

Professional Fees

BWA proposes to complete the North Bank Regional Park Playground design and contract documents for a lump sum fee of \$627,600.00 (Six Hundred Twenty-Seven Thousand, Six Hundred and 00/dollars). Equaling 10% of the total construction budget.

This fee anticipates exclusion of the following amenities. Final design and incorporation of the items if directed will be provided for a design fee not to exceed 10% of the construction value of the item.

1. Skate park design for \$300,000 construction cost skate park and wheels facility with design fees of \$29,610.
2. Basketball court with bleachers
3. Amusement Ride facilities
4. Environmental Engineering, this assumes the work is already covered under the existing park scope.
5. Traffic signal/intersection design and improvements at Washington Ave and North River Drive with design fees of \$49,500.000. Construction value estimated up to \$500,000.
6. Additional meetings, design charrettes or change of project schedule required to dovetail into the Sportsplex Project schedule are not included.

Expenses associated with this proposal are included in the lump sum fee quoted.

Thank You! We are looking forward to working with you and your team. Please feel free to call us at any time should you have any questions or require further clarification.

Sincerely,



Dell Hatch, ASLA
BWA Landscape Architecture/Urban Design/Planning



William LaRue, ASLA