



## Spokane Park Board Land Committee

3:30 p.m. Wed., Dec. 04, 2024

**In-person:** Ponderosa Room, Woodland Center  
Finch Arboretum, 3404 W. Woodland Blvd, Spokane, WA 99224

**WebEx virtual meeting:** Call-in:  
408-418-9388; Access code: 2488 107 4382  
Al Vorderbrueggen – Operations Director

### Committee Members:

Greta Gilman – Chair  
Sally Lodato  
Hannah Kitz  
Kevin Brownlee  
Doug Kelley

The Land Committee meeting will be held in-person in the Woodland Center Ponderosa Room at **Finch Arboretum**, 3404 W. Woodland Blvd, Spokane, WA 99224 and virtually via WebEx at 3:30 p.m. Wednesday, Dec. 04, 2024. Committee members, staff, and presenters still have the option to participate virtually via WebEx during all meetings.

The public may listen to the meeting by calling 408-418-9388 and entering access code **2488 107 4382**, when prompted.

Written public comment may be submitted via email or mail. Comments must be received no later than 11:30 a.m. Dec. 04 by email to: [spokaneparks@spokanecity.org](mailto: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** – Greta Gilman

**Public comment** – Greta Gilman

#### Action Items:

1. [Land & Life, LLC. / Manito Park Memory Garden Planning & Initial Design \(\\$60,000\)](#) – Nick Hamad

#### Discussion Items:

#### Unfinished Business Items:

#### Standing Report Items:

#### Adjournment

Agenda 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. Individuals requesting reasonable accommodations or further information may call, write, or email Risk Management at 509.625.6221, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [mLOWmaster@spokanecity.org](mailto:mLOWmaster@spokanecity.org). Persons who are deaf or hard of hearing may contact Risk Management through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

# Spokane Park Board

## Briefing Paper



<b>Committee</b>	Land Committee	<b>Committee meeting date:</b> December 4, 2024	
<b>Requester</b>	Nick Hamad	<b>Phone number:</b> 509.363.5452	
<b>Type of agenda item</b>	<input type="radio"/> Consent <input type="radio"/> Discussion <input type="radio"/> Information <input checked="" type="radio"/> Action		
<b>Type of contract/agreement</b>	<input checked="" type="radio"/> New <input type="radio"/> Renewal/ext. <input type="radio"/> Lease <input type="radio"/> Amendment/change order <input type="radio"/> Other		
<b>City Clerks file</b> (OPR or policy #)			
<b>Master Plan Goal, Objective, Strategy</b> (Click <a href="#">HERE</a> for link to the adopted plan)	Goal B, Obj. 1	<b>Master Plan Priority Tier:</b>	Third (pg. 171-175)
<b>Item title:</b> (Use exact language noted on the agenda)	Land & Life, LLC. / Manito Park Memory Garden Planning & Initial Design (\$60,000)		
<b>Begin/end dates</b>	Begins: 12/12/2024	Ends: 12/31/2025	<input type="checkbox"/> 06/01/2525
<b>Background/history:</b>			
<p>A private citizen group has sought improvement of a 'memory garden' within the city park system since 2023. Advocate's work has included outreach to neighborhoods, site assessments for suitability, and research. Advocates previously proposed a memory garden to park board land committee in September 2023 &amp; April 2024, proposing several potential sites for the garden addition within Manito Park.</p> <p>In October of 2024, city council approved ordinance C36592 allocating \$60,000 in American Rescue Plan Act (ARPA) funding in order to formally develop a concept and site within Manito Park. This contract will more fully develop a concepts plans &amp; cost estimates for the garden at no cost to parks.</p> <p>Approval of this contract is not a commitment by parks to fund and/or maintain a memory garden in Manito Park, which is not a priority of the parks and natural lands master plan.</p>			
<b>Motion wording:</b>			
Motion to approve Land & Life, LLC. contract for Manito Park Memory Garden Planning & Initial Design in the amount of \$60,000.00			
<b>Approvals/signatures outside Parks:</b> <input checked="" type="radio"/> Yes <input type="radio"/> No			
If so, who/what department, agency or company: Land & Life, LLC.			
Name: Bob Scarfo		Email address: bscarfo@landandlife.com	Phone: 509.220.5113
<b>Distribution:</b>			
Parks – Accounting			
Parks – Sarah Deatrich			
Requester: Nick Hamad			
Grant Management Department/Name:			
<b>Fiscal impact:</b> <input checked="" type="radio"/> Expenditure <input type="radio"/> Revenue			
Amount: \$60,000.00		Budget code: 1425-88155-94760-56414-97350	
<b>Vendor:</b> <input checked="" type="radio"/> Existing vendor <input type="radio"/> New vendor			
<b>Supporting documents:</b>			
<input type="checkbox"/> Quotes/solicitation (RFP, RFQ, RFB)		<input type="checkbox"/> W-9 (for new contractors/consultants/vendors)	
<input checked="" type="checkbox"/> Contractor is on the MRSC Roster - City of Spokane		<input checked="" type="checkbox"/> ACH Forms (for new contractors/consultants/vendors)	
<input checked="" type="checkbox"/> UBI: 603-242-120    Business license expiration date: 10/31/25		<input checked="" type="checkbox"/> Insurance Certificate (min. \$1 million in General Liability)	



**CITY OF SPOKANE  
PARKS AND RECREATION  
CONSULTANT AGREEMENT  
Title: MANITO PARK MEMORY GARDEN  
DESIGN SERVICES**

This Consultant Agreement is made and entered into by and between the **CITY OF SPOKANE PARKS AND RECREATION** as (“City”), a Washington municipal corporation, and **LAND AND LIFE, LLC.**, whose address is 514 West 25<sup>th</sup> Avenue, Spokane, Washington 99203, as (“Consultant”), individually hereafter referenced as a “Party”, and together as the “Parties”.

WHEREAS, the purpose of this Agreement is for Consultant to provide Landscape Design for the Manito Park Memory Garden; and

WHEREAS, this contract is for preliminary design, study, and public engagement only and is not an endorsement of a memory garden in Manito Park (or elsewhere); and

WHEREAS, approval of this contract is not a commitment by Spokane Parks & Recreation to fund and/or maintain a memory garden in Manito Park, which is not a priority in the Parks and Natural Lands Master Plan; and

WHEREAS, the Consultant was selected from the MRSC Roster; and

WHEREAS, the City is authorized to expend ARPA funds for this Agreement with Ordinance C36592, Section 1, (14) as amended October 21, 2024; and

WHEREAS, the Consultant agrees to comply with the attached General Terms and Conditions;

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 December 12, 2024, and ends on December 31, 2025, 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 Consultant’s Proposal, which is attached as Attachment B 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. COMPENSATION.

Total compensation for Consultant's services under this Agreement shall not exceed **SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00)**, 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.

#### 5. PAYMENT.

The Consultant 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 Consultant's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Consultant 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. Only reimbursable costs, if any, will be taxed.

- 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 effect 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 markup. Receipts are required for all miscellaneous expenses that are billed.
- K. **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 <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Consultant 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; **The Consultant states they are a sole proprietor or partnership with no employees and; therefore, are not required to have proof of Workers' Compensation Coverage. Contractor will provide proof of Workers' Compensation coverage if their status changes.)**
- 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;

- i. Acceptable **supplementary Umbrella insurance** coverage combined with Consultant's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in 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.

[ ] Professional Liability Insurance - Insurance requirements have been reviewed by the City of Spokane Risk Manager and have been waived by the City. *Risk Manager must initial.*

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 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.**

Notwithstanding anything to the contrary, City will maintain the confidentiality of Consultant'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 Consultant's materials or information and the City determines there are exemptions only the Consultant can assert, City will endeavor to give Consultant notice. Consultant will be required to go to Court to get an injunction preventing the release of the requested records. In the event that Consultant 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 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 Convenience: Either party may terminate this Agreement without cause, upon thirty (30) days written notice to the other party.
- 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 or 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 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.

**LAND AND LIFE, LLC.**

**CITY OF SPOKANE  
PARKS AND RECREATION**

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 to this Agreement:**

- Attachment A – Federal Certificate Regarding Debarment
- Attachment – ARP-CLFRF CFDA 21.027 Funding
- Attachment – General Terms and Conditions
- Attachment B - Consultant's Proposal

ATTACHMENT A - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION AND FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) CERTIFICATION

<b>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</b>
This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 2 CFR Part 180.
(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals: (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (b) Have not within a three-year period preceding this application been convicted of or had a civil judgement 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 for or otherwise criminally or civilly charged by a governmental 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 Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
(2) The undersigned agrees by signing this Agreement 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 Agreement that it will include the following required certification, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions: <u>Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions</u> 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.
(4) The undersigned shall notify the City immediately that if it or a lower tier contractor become debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency during the period of performance of this Agreement.
(5) 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.
(6) I understand that a false statement of this certification may be grounds for termination of the Agreement.
<b>By signing this Attachment, the Grantee indicates acceptance of and compliance with all requirements described above.</b>

<b>Federal Funding Accountability and Transparency Act (FFATA) Certification</b>	
<b>The Federal Funding Accountability and Transparency Act (FFATA) seeks to provide the public with greater access to Federal spending information. Due to FFATA requirements, you are required to provide the following information which will be used by the City to comply with federal reporting requirements.</b>	
If certain conditions are met, Grantee must provide names and total compensation of the top five highly compensated Executives. Please answer question 1, and follow the instructions. If directed to question 2, please answer and follow instructions.	
1. In Grantee's previous fiscal year, did Grantee receive (a) 80% or more of Grantee's annual gross revenues in U.S. Federal contracts and subcontracts and other Federal financial assistance subject to the Transparency Act, as defined in 2 CFR 170.320; AND (b) \$25,000,000 or more in annual gross revenues from contracts and subcontracts and other Federal financial assistance subject to the Transparency Act, as defined in 2 CFR 170.320?	
Yes <input type="checkbox"/> If yes, answer question 2 below.	
No <input type="checkbox"/> If no, stop, you are not required to report names and compensation. Please sign and submit form with the Agreement. _____	
2. Does the public have access to information about the compensation of Grantee's Executives through periodic reports filed under section 13(a) or 15(d) of the Security Exchange Act of 1934 (15 U.S.C. 78(m)(a), 78o(d)), or section 6104 of the Internal Revenue Code of 1986?	
Yes <input type="checkbox"/> If yes, stop, you are not required to report names and compensation. Please sign and submit form with the Agreement.	
No <input type="checkbox"/> If no, you are required to report names and compensation. Please fill out the remainder of this form. _____	
Please provide the names and Total Compensation of the top five most highly compensated Executives in the space below.	
Name:	Total Compensation:
Name:	Total Compensation:
Name:	Total Compensation:
Name:	Total Compensation:
Name:	Total Compensation:
<b>The Grantee certifies that the information contained on this form is true and accurate.</b>	
<b>By:</b>	
<b>Title:</b>	
<b>Date:</b>	



## **ATTACHMENT – ARP/CSLFRF CFDA 21.027 FUNDING**

American Rescue Plan (ARP)  
Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)  
Funding Authority: U.S. Department of Treasury  
CFDA# 21.027 – Coronavirus State and Local Fiscal Recovery Funds

The Contractor specifically agrees to comply with all applicable state and federal laws, rules, regulations, requirements, program guidance, including but not limited to the following:

All applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies including, but not limited to:

Nondiscrimination laws and/or policies, and safety and health regulations.  
Americans with Disabilities Act (ADA), Age Discrimination Act of 1975,  
Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968,  
Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92).  
Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288, as amended),  
Ethics in Public Services (RCW 42.52),  
Covenant Against Contingent Fees (48 CFR Section 52.203-5),  
Public Records Act (RCW 42.56),  
Prevailing Wages on Public Works (RCW 39.12),  
State Environmental Policy Act (RCW 43.21C),  
Shoreline Management Act of 1971 (RCW 90.58),  
State Building Code (RCW 19.27),  
Energy Policy and Conservation Act (PL 94-163, as amended),  
Energy Related Building Standards (RCW 19.27A),

Comply with all procurement requirements of 2 CFR Part 200.317 - 200.327. All sole source contracts expected to exceed \$50,000 must be submitted to Spokane City Purchasing for review and approval prior to the award and execution of a contract.

Any contract awarded to the successful Contractor must contain and/or comply with the following procurement provisions in accordance with 2 CFR Part 200.317 - 200.327:

Contractor must maintain a Conflict of Interest Policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the award. All potential conflicts of interest related to this award must be reported to Spokane City and/or U.S. Treasury

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;
- Compliance with Executive Order 11246, “Equal Employment Opportunity,” (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, as supplemented in Department of Labor regulations (41 CFR Chapter 60);
- For Capital Expenditures that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For all contracts in excess of \$100,000 with respect to water, sewer, or broadband that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For construction or repair contracts: Compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR part 3);

- For construction contracts in excess of \$2,000 when required by Federal grant program legislation: Compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5); Davis Bacon Act—Does **not** apply to projects funded **solely** with ARPA/CSLFRF CFDA 21.027 funds. However, if other federal funds are also used for the construction project in addition to FRF, and those federal funds require Davis-Bacon compliance, all prime construction contracts in excess of \$2,000 must follow Davis-Bacon Act;
- For construction contracts in excess of \$100,000 that involve the employment of mechanics and laborers: Compliance with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Compliance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency
- For contracts in excess of \$150,000: Compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended;
- Compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Federal awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by Spokane City, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records, sub-agreements, leases, subcontracts, arrangements, or other third-party agreements of any type, and supporting materials related to those records of the Contractor, which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions;
- Retention of all required records for **six years** after Spokane City makes final payment and all other pending matters are closed;
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871);
- Notice of awarding agency requirements and regulations governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards (37 C.F.R. Part 401) and the standard patent rights clause (37 C.F.R. section 401.14);
- Compliance with Executive Order 13858 “Strengthening Buy-American Preferences for Infrastructure Projects” as appropriate and to the extent consistent with law; and
- Compliance with 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018).

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.332(a) - 200.332(a)(1)-200.332(a)(6) Requirements for pass-through entities:

- Identify as a Subaward (2 CFR 200.332(a));
- Federal Award Identification (2 CFR 200.332(a)(1));
- Terms and conditions from ARP/CLFRF (2 CFR 200.332(a)(2));
- Additional City of Spokane imposed requirements based on risk assessment (2 CFR 200.332(a)(3));
- Indirect cost rate (2 CFR 200.332(a)(4));
- Records access & retention (2 CFR 200.332(a)(5));

- Closeout provisions (2 CFR 200.332(a)(6)).

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.501(a)-200.501(h) Audit Requirements:

- Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity’s fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provision of this part (2 CFR 200.501(a));
- Single Audit (2 CFR 200.501(b));
- Program-specific audit election (2 CFR 200.501(c));
- Exemption when Federal awards expended are less than \$750,000(2 CFR 200.501(d));
- Federally Funded Research and Development Centers (2 CFR 200.501(e));
- Subrecipients and contractors (2 CFR 200.501(f));
- Compliance responsibility for contractors (2 CFR 200.501(g));
- For-profit subrecipient (2 CFR 200.501(h)).

Contractor must comply with Executive Orders 12549 and 12689 and 2 C.F.R. Part 180, which restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor must certify that it is not presently debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Contractor must comply with the requirements of 31 U.S.C. § 3729-3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See also 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

Contractor is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

Contractor’s costs must be compliant with 2 CFR Part 200 Subpart E Cost Principles.

Contractor must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, Member of Congress, an officer, or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning an award, making of any federal grant, federal loan, continuation, renewal, amendment or modification of any federal contract, grant loan, or cooperative agreement, and that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award, the Contractor will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

In the event of the Contractor’s noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, Spokane City may rescind, cancel, or terminate the contract in whole or in part in its sole discretion. The Contractor is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

**CERTIFICATION**

\_\_\_\_\_  
Signature, Administrator, or Applicant Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
print name and title

## **General Terms & Conditions**

### **1. CONTRACTING WITH CURRENT OR FORMER CITY EMPLOYEES**

Specific restrictions apply to contracting with current or former City officers and employees pursuant to the Code of Ethics in chapter 1.04A of the Spokane Municipal Code. Proposers shall familiarize themselves with the requirements prior to submitting a Proposal that includes current or former City officers or employees.

### **2. PROPRIETARY INFORMATION / PUBLIC DISCLOSURE**

All materials submitted to the City in responses to this competitive procurement shall become the property of the City.

All materials received by the City are public records and are subject to being released pursuant to a valid public records request. Washington state law mandates that all documents used, received or produced by a governmental entity are presumptively public records, and there are few exemptions. Chapter 41.56 RCW.

When responding to this competitive procurement, please consider that what you submit will be a public record. If you believe that some part of your response constitutes legally protected proprietary information, you **MUST** submit those portions of your response as a separate part of your response, and you **MUST** label it as "PROPRIETARY INFORMATION." If a valid public records request is then received by the City for this information, you will be given notice and a 10-day opportunity to go to court to obtain an injunction to prevent the City from releasing this part of your response. If no injunction is obtained, the City is legally required to release the records.

The City will neither look for nor honor any claims of "proprietary information" that are not within the separate part of your response.

### **3. OWNERSHIP OF DOCUMENTS**

Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other material created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Firm or the Firm's subcontractors or consultants for delivery to the City under this Agreement shall be the sole and absolute property of the City. Such property shall constitute "work made for hire" as defined by U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the City at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Firm uses to perform this Agreement, but is not created, prepared, constructed, assembled, made, performed or otherwise produced for, or paid for, by the City is owned by the Firm and is not "work made for hire" within the terms of this Agreement.

### **4. ACCEPTANCE PERIOD**

Proposals shall remain in effect for ninety (90) days for acceptance by the City from the due date for receipt of Proposals.

### **5. COSTS TO PROPOSE**

The City will not be liable for any costs incurred by the Proposer in preparation of a Proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

### **6. INTERLOCAL PURCHASE AGREEMENTS**

The City of Spokane has entered into Interlocal Purchase Agreements with other public agencies pursuant to Chapter 39.34 RCW. In submitting a response, the Proposer agrees to provide its services to other public agencies at the same contracted price, terms and conditions it is providing to the City of Spokane, contingent upon the Firm's review and approval at the time of a requested contract. The Firm's right to refuse to enter into a contract with another public agency at the time of request shall be absolute.

## **7. DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. Discussion will be limited to a critique of the requesting Firm's Proposal. Debriefing conferences may be conducted in person or on the telephone.

## **8. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

The City encourages participation in all of its contracts by Firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). Proposers may contact OMWBE at (360)753-9693 to obtain information on certified Firms.

## **9. NONDISCRIMINATION**

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 Contract 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 Firm 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 Firm.

## **10. BUSINESS REGISTRATION REQUIREMENT**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained and currently being the holder of a valid annual business registration or temporary business registration as provided in this chapter. The Firm shall be responsible for contacting the State of Washington Business License Services at <http://dor.wa.gov> or 1-360-705-6741 to obtain a business registration. If the Firm 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.

## **11. PAYMENT**

Payment will be made via direct deposit/ACH except as provided by state law. A completed ACH application is required before a City Order will be issued. 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.

## **12. ANTI-KICKBACK**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this contract shall have or acquire any interest in the contract, 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 the contract.

## **13. DISPUTES**

This contract shall be performed under the laws of Washington State. Any litigation to enforce this contract or any of its provisions shall be brought in Spokane County, Washington.

## **14. 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 Convenience: Either party may terminate this Agreement without cause, upon thirty (30) days written notice to the other party.
- 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.

## **15. LIABILITY**

The Firm shall indemnify, defend, and hold harmless the City, its officers, and employees from all claims, demands, or suits in law or equity arising from the Firm's negligence or breach or its obligations under the contract. The Firm's duty to indemnify shall not apply to liability caused by the sole negligence of the City, its officers, and employees. The Firm's duty to indemnify for liability arising from the concurrent negligence of the City, its officers and employees and the Firm, its officers and employees shall apply only to the extent of the negligence of the Firm, its officers and employees. The Firm's duty to indemnify shall survive termination or expiration of the contract. The Firm waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance.

## **16. INSURANCE COVERAGE**

During the term of the contract, the Firm shall maintain in force at its own expense, each insurance coverage noted below:

- 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 contract. It shall provide that the City, its officers and employees are additional insureds, but only with respect to the Firm's services to be provided under this contract.
- 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 contract. The coverage must remain in effect for at

least three (3) years after the contract 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 Firm or its insurer(s) to the City.

As evidence of the insurance coverages required by this contract, the Firm shall furnish acceptable insurance certificates to the City at the time it returns the signed contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements, and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided. The Firm shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

### **SPECIFIC GRANT RELATED LANGUAGE**

#### **17. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

A certification form will accompany the contract to be signed confirming that, to the best of its knowledge and belief, Firm, 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.
- 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.

#### **18. CERTIFICATION REGARDING LOBBYING**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Firms who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying in non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

A Certification Form is attached and included in this Request for Proposal by reference as Attachment A “Certification Regarding Lobbying”. The Proposer is required to sign and submit this Form with Proposal. The Proposer certifies by signing and submitting this Proposal, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- C. The Proposer also agrees by submitting his or her Proposal, that he or she shall require that the language of this certification be included in all lower tier subcontracts. Which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **19. DOMESTIC PREFERENCE**

200.322 (a) As appropriate and to the extent consistent with law, the non-Federal entity should to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

## **20. CLEAN AIR ACT**

Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended – Firms and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C.

1251 et seq.) Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **21. CONFORMANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

Federal, State and Local Laws: Services of a project as a result of the use of a Firm's services including the letting of subcontracts in connection with any project work related to this RFQ may be required to conform to the applicable requirements of Federal, State and local laws and ordinances. The City stipulates that Federal funds may be involved.

## **22. MAINTENANCE OF RECORDS**

Federal, State and Local Laws: Services of a project as a result of the use of a Firm's services including the letting of subcontracts in connection with any project work related to this RFQ may be required to conform to the applicable requirements of Federal, State and local laws and ordinances. The City stipulates that Federal funds may be involved.



### **23. CONFERENCE ROOMS**

Conference Rooms: All space used for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds under this contract must comply with the protection and controlling guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended).

### **24. AMERICANS WITH DISABILITIES ACT INFORMATION (ADA)**

Americans with Disabilities Act (42 U.S.C. 12101, et seq.). The Applicant shall comply with the provisions of the Americans with Disabilities Act, 42 U.S.C. 12101, et. seq. That Act provides a comprehensive national mandate to eliminate discrimination against individuals with disabilities. The Act may impose requirements on the Applicant in four principle ways: 1) with respect to employment; 2) with respect to the provision of public services; 3) with respect to transportation; 4) with respect to existing facilities and new construction.

The City in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) commits to nondiscrimination in all of its programs and activities. The Firm 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 Firm.

Law Against Discrimination, Chapter 49.60 RCW. The Applicant shall comply with the provisions of Chapter 49.60 RCW in all activities relating to this Grant Agreement.

This material can be made available in an alternate format by request through ProcureWare question tab or by calling (509) 625-6400.

### **25. TITLE VI STATEMENT**

The City of Spokane in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all Proposers that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit Proposals in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Public Law 88 - 352, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (24 CFR Part 1). The Applicant must comply with the provisions of "Public Law 88 - 352," which refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**ATTACHMENT B**

**Land and Life® LLC CONTRACT FOR PROFESSIONAL SERVICES**

**November 18, 2024**

**Preliminary Provisions**

**Date** This Agreement is made as of \_\_\_\_\_, 2024, between the Client’s Representative,  
Nick Hamed, Planning & Development Manager, Spokane City Parks and Recreation and the Landscape Architect for the Landscape Architectural Services as provided herein.

**Client** City of Spokane, Parks and Recreation Department

**Client’s Representative** Nick Hamed, Planning & Development Manager, City Parks and Recreation

**ADDRESS** 808 W Spokane Falls Blvd.  
Spokane, WA 99201

The Client’s Representative acknowledges that he is authorized to enter into this Agreement on behalf of the Client, the City of Spokane, City Parks and Recreation.

**NAME** City of Spokane, Parks and Recreation Department  
(Address same as above)

**LANDSCAPE ARCHITECT**

**NAME** Bob Scarfo Project Manager  
Land and Life® LLC 509.220.5113  
514 West 25<sup>th</sup> Avenue bscarfo@landandlife.com  
Spokane, WA 99203  
Licensed Landscape Architect in WA State -- # 645

**Business Insurance** Hartford Underwriters Insurance Company NAIC # 30104  
See Appendix A Certificate of Liability Insurance

**Project Rationale**

Memory gardens are specifically designed for people living with dementia, and other cognitive impairments, and their caregivers. Even so, the garden will be open to everyone. Without memory gardens people with dementia and, more so, their care partners have literally no place, NO PLACE, to go where they can find solace, relaxation, and rejuvenation. Being a caregiver requires you are on alert 24/7/365, except in a memory garden. What is amazing is that even with the existing statistics; even with about 65% of Spokane residents saying they are currently touched by someone experiencing dementia; even with national estimates showing 55 million people diagnosed with dementia in 2024 and the expectation that number will triple to over

150 million by 2050, there are no more than 5 or 6 public memory gardens in the country.

### Growth of the “Let’s Bring a Public Memory Garden to Spokane” Idea

Over the past two years the idea of Spokane providing citizens with a public memory garden has gained in acceptance, support, and donations. In December 2022 City Council members Lori Kinnear, Karen Stratton, and Betsy Wilkerson expressed overwhelming support for the project.

What with changes to the City Council over the past two years – Betsy Wilkerson is now Council President, Paul Dillion and Lili Navarrete replaced Kinnear and Stratton, who both termed out, as District 2 Council Members. All remain very supportive of the project.

Project Team	<p>Bob Scarfo --- Team Captain, Licensed Landscape Architect Background in research and development in best practices regarding ways that landscape design can improve the life qualities of people living with dementia and their caregivers. Development of a one-of-a-kind Public Memory Garden Assessment Tool. Development of a one-of-a-kind memory garden design process: narrative-storyboard-design process Landscape plan locating the proposed memory garden and scaled drawing of the Garden design.</p> <p>Debby Dodds --- Gerontologist Specializing in Dementia Provides gerontological approval and rationale for siting, approach, and design organization of public memory garden How design features (landscape and architectural) interact with person with dementia and caregiver; her care for her mother provided the basis for the narrative used to develop the storyboard and eventually the public memory garden’s design.</p> <p>Natasha Kinser – Computer Graphics Specialist Computer generated aerial view of the memory garden. Animated approach, arrival at, entry, and walk through of the garden. Tasha has worked with me on the Comstock Park master plan process and the Coeur d’Alene Park master plan in Browne’s Addition and their respective neighborhood councils.</p> <p>Jena P Jauchius -- Licensed landscape architect whose decades-long career designing children’s nature play areas, sensory gardens, learning landscapes, and custom playscapes brings a valuable and critical sensitivity to the public memory garden project. The rationale behind Nature Play for children echoes the sensory needs of people living with dementia and their care partners’ need to have a place of calming rejuvenation.</p>
Available Pro Bono Resources	<p>Judy Cornish -- Founder of DAWN (Dementia &amp; Alzheimer’s Wellbeing Network®)</p> <p>Cathi Lamoreux -- Certified Horticultural Therapist; co-lead, 2024 WSU Extension Master</p>

Gardener Advanced Education Conference, Master Gardener Foundation of Washington State

Richard Fleming -- Honorary Professor, University of Wollongong, Faculty of Arts, Social Sciences and Humanities, Wollongong, Australia; specializes in built environment design as benefits people living with dementia and their caregivers.

Jack Carman -- Founder and president of Design for Generations, LLC; landscape architect; recognized expert in the design of therapeutic gardens, particularly Alzheimer's gardens and outdoor environments for senior living communities.

Yvonne Trudeau -- Executive Director Spokane Park Foundation

Marilyn Thordarson -- Past Spokane Parks Foundation board member and community volunteer. Long-time supporter of the Park Foundation. Served on many other non-profit boards, retired from Providence, and experienced in grant writing and fundraising.

## Project Understanding

The Land and Life® LLC Team understands the project to result in a 75% design (meaning without construction drawings and related contract documents) of a memory garden specifically designed for people living with dementia and their caregivers to include:

- Minimum three in-person discussions of project progress with City Parks and Recreation staff, and if requested, Park Board members: existing base plan and design content; intermediate design development; and final design.
- Design of an Assessment Tool to be used to rank the 8 city parks recognized as potential sites for the proposed public memory garden.
- Application of the Assessment Tool and development of a spreadsheet ranking the 8 parks from Most Likely Successful to Least Likely Successful.
- Surveying most likely successful selected parks with City Parks and Recreation staff to have firsthand discussion as to pros and cons of specific locations to people living with dementia and their care partners.

Design of the Public Memory Garden will employ a person-centered approach to Capture the needs of someone living with dementia

- A three-year study of dementia research articles, surveys, design critiques, case studies, and discussions with dementia specialists led to the realization that the mind of a person living with dementia exercises much the same mental and physical behaviors of someone practicing mindfulness (See Judy Cornish's blog entry "Mindfulness and Dementia – Living in the Intuitive World" <https://thedawnmethod.com/mindfulness-and-dementia-living-in-the-intuitive-world/>)

An Introduction to and Description of the Narrative-Storyboard-Design approach to be applied to proposed public memory garden:

- An experiential narrative of what is likely occupies the minds of the person

with dementia and their caregiver.

- A storyboard that visualizes moments throughout the narrative.
- Interpreting the storyboard into a final plan view design and 3D computer generated still-life and animated depictions of the proposed garden.
- Minimum of two focus group sessions using the narrative and storyboard images as a way of testing the quality of the design with people with dementia and their care partners.
- One focus group session with Aging and Long-term Care of Eastern Washington Program Management Committee.
- Hand-drawn and computer-generated plan views of the proposed garden accompanied with eye-level perspectives and elevation drawings of a sequence of locations in the garden.
- A written document tracing the project's development from original idea to final submission.

Our understanding is that the selected site's topography, existence of underground utilities, and subsurface qualities, if not already known by City Parks and Recreation, will be located with a survey conducted by the City. Use of documentation deemed acceptable by Parks and Recreation and provided Land and Life® LLC team will be used to produce a base map which will then be used as a starting point for the memory garden's design.

#### Scope of Services

The Scope of Services to be provided by the Landscape Architect under this Agreement and the Supplemental Services which may be provided when requested in writing by the Client are described here:

##### Deliverables

Intermediate informational, rationale, design presentations to Park Board and Park Board's Land Community

Design Process Products:

User experiential narrative

Storyboard

Initial, intermediate, and final design

75% Final Design (w/o construction documents) will constitute a master plan design for a memory garden designed as a place of rejuvenation and solace for the greater public and specifically designed for the health, wellbeing, and respite of people living with dementia and their care partners.

Periodic planning and informational meetings with Parks and Recreation staff

Assessment Tool

Design of a one-of-a-kind assessment tool used to identify the most favorable location for the memory garden within the City:

Application of assessment tool to 8 City parks agreed upon by the Client and the Landscape Architect

Assessment Outcomes entered in a spreadsheet

Identification of most favorable site as ranked by the Assessment Tool

Walk selected sites and discuss site's pros and cons

Garden construction cost estimates will be provided for a potential minimum size ¼ acre garden and for a potential maximum size ½ acre garden:  
Letters of support for project if requested by the Client  
Secure funding for the design phase of the garden  
Neighborhood Councils: 4-7 awareness-building presentations to neighborhood councils  
Governor's State Council on Aging: awareness building presentations & feedback  
Aging and Long-term Care of Eastern Washington: awareness building presentations & feedback  
Outside Scope of Project: production of a guidebook that other Washington State communities may use to develop memory gardens for their local and regional citizens

#### Landscape Architects' Potential Additional Services

If the need for additional service arises the Client and the Landscape Architect will discuss relevant changes to the contract. When mutual agreement is arrived at an addendum signed by both the Client and the Landscape Architect will be added to this contract.

The selected site's overhead, surface, and subsurface features seen as potentially influencing the design of the proposed memory garden will be inventoried and documented by the Client and provided the Landscape Architect to be included at the project's starting point.

As the project landscape architect, Land and Life® LLC agrees to provide professional services in accordance with generally acceptable standards of its profession as mandated by the State of Washington.

#### Potential Excluded Services

Excluded Services are not a part of Landscape Architect's Basic or Additional Services and are the responsibility of others. Excluded Services include, but are not limited to, the following: investigation and testing of surface and subsurface conditions; soil nutrient testing, geotechnical evaluation and soil chemistry; soils compaction; lot line location; drainage; utilities' location; signage; lighting and the design of security components. Land and Life® LLC does not complete, and does not subcontract for Level 2 or Level 3 Environmental Audits.

#### Client's Responsibilities

Client agrees to provide Landscape Architect with all information, surveys, reports, and professional recommendations and any other related items requested by Landscape Architect in order to provide its professional services.

Landscape Architect may rely on the accuracy and completeness of these items; however, it is the responsibility of the Landscape Architect to inform the Client of discrepancies and deficiencies in the data if found to be incorrect.

Client shall furnish the services of the following consultants: Any utility consultants or contacts: 514 West 25<sup>th</sup> Avenue, Spokane, WA 99203

Client agrees to provide the items described in Part 2, above and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Landscape Architect's services.

### Compensation

Compensation for Landscape Architectural Services performed under this Agreement shall total \$ 60,000. That amount will include Reimbursable Expenses. Supplemental Services, when requested in writing by the Client, shall be compensated on an hourly basis at the rates provided here:

Upon signing this contract, the client will pay the Land and Life® Team 25% of the total project budget, \$15,000. Subsequent invoices not to exceed \$9,000 will be billed the client at end of each month (January through May 2025) and not to extend beyond 30 May 2025.

\$ 15,000	Contract Signing
\$ 9,000	Invoiced 30 January 2025
\$ 9,000	Invoiced 28 February 2025
\$ 9,000	Invoiced 30 March 2025
\$ 9,000	Invoiced 30 April 2025
\$ 9,000	Invoiced 30 May 2025
\$ 60,000	Total

Compensation for the Scope of Services described above to be performed under this Agreement shall be as indicated in the Preliminary Provisions plus Reimbursable Expenses as defined below. Supplemental Services, described in section 1.5 of Exhibit "B," when requested in writing by the Client, shall be compensated on an hourly basis at the rates provided in Exhibit "C" or on the basis of a negotiated fee provided in an amendment to this Agreement.

Reimbursable Expenses are expenditures as made by the Landscape Architect, its employees, and consultants in the interest of the Project. The Landscape Architect believes that all reimbursable expenses have been anticipated in the above stated fee schedule. If as agreed upon by the Client and the Landscape Architect, unanticipated reimbursables arise, and are agreed upon by both parties, they shall be added to the appropriate monthly invoice.

Reimbursable Expenses include, but are not limited to the following:

- Travel expenses in connection with the Project; living expenses in connection with out-of-town travel, long-distance communications;
- Costs of reproductions, faxes, postage and handling of documents, messenger and overnight delivery services;
- If authorized in advance by the Client, overtime-related employee expenses;
- Costs of renderings, photographs, models, and mock-ups requested by the Client;
- Expense of professional liability insurance dedicated exclusively to the Project, or additional insurance coverage or limits requested by the Client in excess of that normally carried by the Landscape Architect and its consultants;



Costs of printing and delivering bid packages; 4.2.7 services of professional consultants which cannot be quantified at the time of contracting; and  
Other, similar direct Project-related expenditures.

#### 4.3 Payments

Timing of an initial payment and subsequent payments are noted above.

If the Client disputes, in good faith, all or any portion of any statement from the Landscape Architect for Landscape Architectural Services or Reimbursable Expenses, the Client shall notify the Landscape Architect in writing within seven (7) days of receipt of the disputed statement, describing the nature of the dispute and including a reasonably detailed explanation of the reason for the dispute.

Payments are due and payable 30 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and shall accrue % simple interest per month. Pursuant to section 7.2, herein, at the Landscape Architect's option, overdue payments may be grounds for suspension of services or termination of this Agreement.

#### Extended Services

If through no fault of the Landscape Architect the Scope Services have not been completed within the term indicated in the Schedule of Services, the compensation for services rendered after that time period shall be renegotiated or shall be on the basis of the hourly rates provided above.

If there is a need, as agreed upon by The Client and The Landscape Architect for services beyond the limits of this contract, the Client will be charged according to the following hourly rates.

Landscape architect	\$ 125/hour
Gerontologist	\$125/hour
Computer graphist	\$ 75/hour
Storyboard Artist	\$ 125/hour

If additional time is required to extend Land and Life® Team's completion of the project, it will be discussed by the Landscape Architect and the Client and noted as agreed upon in a written extension signed by both interests.

#### Estimated Schedule of Services

The schedule for the performance of the Landscape Architectural Services under this Agreement is provided here:

#### December 2024

- Initiate a series of informational presentations to Spokane Neighborhood Councils
- Neighborhood Councils to be periodically updated on project's development
- Monthly discussion with Parks and recreation (P&R) staff
- Review notes from earlier (22 February 2024 & 3 April 2024) informational presentation

to Land Committee  
Discuss with Nick, selection of 8 potential park sites for proposed garden  
Background Research and design of Memory Garden Potential Site Assessment Tool  
Application of Assessment Tool  
Spreadsheet Assessment Tool findings  
Work to build public support for public memory garden idea  
Park Board Presentation  
Meet with Funder and discuss donation and potential endowment

#### January 2025

Partner with Park Foundation  
Establish donation procedure  
Research and design of narrative  
Refine narrative with feedback from outside professional and lay outside readers  
Begin garnering donations to fund design phase of public memory garden project  
Interpretation of narrative into storyboard  
Meet with Nick, Al, and Debby to discuss project status  
Progress update with endowment funder  
Discuss and outline storyboard  
Schedule 2-4 focus groups — use narrative and storyboard as basis of focus group sessions  
Discuss and outline computer generated graphics to be produced

#### February 2025

Review storyboard graphics for flow  
Prepare PowerPoint for focus groups  
Prepare discussion points to be used in focus groups  
Meet with Nick, Al, and Debby to discuss project status

#### March 2025

Focus group presentations and discussions  
Refine memory garden design to schematic  
Meet with Nick, Al, and Debby to discuss project status  
Develop basic computer graphics

#### April

Initial schematic design  
Meet with Nick, Al, and Debby to discuss project status  
Modify design as needed  
Introducing details into computer graphics e.g. animated walk through memory garden design  
Plan for and schedule final presentation(s) in May 2025

#### May

Meet with Nick, Al, and Debby to discuss project status  
Make final presentations as agreed upon

Discuss potential of Land and Life LLC team developing and delivering final construction documents at an agreed upon date.

## Landscape Architectural Services

### Standard of Care

The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the Project and appropriate for a project of the nature and scope of this Project.

### Coordination

The Landscape Architect shall coordinate the services of its consultants and shall cooperate with the Client's representatives and separate consultants in the best interest of the Project.

### Representations

The Landscape Architect represents that it and its consultants have and shall maintain throughout the performance of the Landscape Architectural Services under this Agreement the requisite licenses, registrations, and/or certifications required for the performance of these Services in the jurisdiction in which the Project is located.

### Supplemental Services

Supplemental Services are beyond the basic Scope of Services, and when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation (either on the hourly basis stated in Compensation above or on the basis of a negotiated sum) beyond the Compensation stated in the Preliminary Provisions.

### Approval of Services/Changes to Approved Services

The Landscape Architect shall proceed with a phase or design package of the Landscape Architectural Services only after receiving the Client's written approval of the Services and deliverables provided in the previous phase and written authorization to proceed with the next phase. Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous Project budget parameters or Program requirements.

### Client's Responsibilities

The Client shall provide the detailed Project description and budget parameters designated Exhibit "A" and attached hereto.

### Information

The Client shall provide site surveys and legal information, including as applicable: written legal description of the site, a land survey by a professional land surveyor who is licensed or registered under the law of the jurisdiction in which the property is located, rights-of-way, easements, encroachments, zoning, covenants, and deed or other restrictions, if any.

### Client's Representative

The Client shall designate a representative with authority to act on the Client's behalf with regard to the Project. If for any reason Client's designated representative is replaced during the progress of the Project, the Landscape Architect shall have the right to renegotiate its compensation in response to the change.

#### Approvals

Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services. Comments from the Client's Representative shall be a consolidation of all comments of interested user groups or entities to provide clear direction to the Landscape Architect and to avoid delays.

#### Project Permit and Review Fees

The Client shall pay all fees required to secure jurisdictional approvals for the Project.

#### Ownership of Documents

The Landscape Architect shall be deemed the author and owner of all deliverables provided to the Client, including but not limited to plans, drawings, specifications, Construction Documents, displays, graphic art, photographs, and other images and devices in any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by the Landscape Architect (collectively, the "Design Materials").

Subject to payment by the Client of all Compensation and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project. Termination of this Agreement prior to the completion of the Project shall terminate this license; all Design Materials and copies thereof in the Client's possession or control shall be returned to the Landscape Architect within 21 days of the notice of termination.

The Client, to the fullest extent permitted by law, shall indemnify and hold harmless the Landscape Architect for costs, including legal fees and defense costs, liability or loss, which result from unauthorized modification of the Design Materials, if any, or the use of the Design Materials for any purpose other than the Project.

In the event this Agreement is terminated prior to the completion of the Project, the Landscape Architect shall have no liability to the Client or to anyone claiming through the Client for any claims, liabilities, or damages resulting from the use, misuse, or modification of the Design Materials without the Landscape Architect's approval, and the Client agrees to indemnify and defend the Landscape Architect against all such claims.

#### Dispute Resolution

If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions between the parties or their representatives who shall have authority to settle the dispute. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation as noted here.

If the dispute is not settled within the 14 day period, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be the location of the Project unless the parties agree otherwise. A request for mediation may be filed with the American Arbitration Association or any other mediation service acceptable to both parties. The parties agree to conclude the mediation within 60 days of filing the request. Unless otherwise agreed, the cost of mediation shall be shared equally by the parties.

For any claim subject to, but not resolved by, mediation pursuant the above, the method of binding dispute resolution shall be Arbitration.

If the parties have selected arbitration in section 6.3, claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. All arbitration hearings shall be conducted at the location of the Project unless the parties agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Unless otherwise agreed in writing, the Landscape Architect agrees to continue to perform its services during any dispute resolution proceedings. If the Landscape Architect continues to perform, the Client shall continue to make payments in accordance with this Agreement for amounts not in dispute.

#### Suspension/Termination

This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

The Client's failure to make payments to the Landscape Architect in accordance with the provisions of this Agreement shall be deemed a substantial failure to perform and a cause for termination; however, in this circumstance the Landscape Architect, at its option, may elect to suspend its services on seven (7) days' written notice to the Client. The Landscape Architect shall have no liability to the Client for any delays caused by a suspension under this provision.

If the Client suspends the Landscape Architect's services for any reason, the Landscape Architect shall be compensated for all Landscape Architectural Services performed to that date, and the

Landscape Architect shall have no liability to the Client for any delays caused by the Client's decision to suspend the Services.

When suspended Services are resumed, the Landscape Architect shall be compensated for expenses incurred due to the interruption and resumption of the Landscape Architectural Services, and the Compensation and the Schedule of Services for the Services remaining to be performed shall be equitably adjusted.

A suspension of Services by either party for more than thirty (30) days may, at the Landscape Architect's option, be deemed grounds for termination of the Agreement.

If termination is not due to the fault of the Landscape Architect, the Client shall pay, in addition to Compensation and Reimbursable Expenses due at the time of the termination, all actual costs and expenses reasonably incurred by the Landscape Architect in connection with such termination. In addition, the Client shall comply and cooperate in accordance with the provisions of Ownership of Documents above.

The Client may terminate this Agreement for convenience and without cause with seven (7) days' written notice to the Landscape Architect providing, in addition to the Compensation, Reimbursable Expenses, and compliance with the Ownership of Documents provisions indicated above, the Client pays to the Landscape Architect an amount representing the anticipated profit on the Scope of Services not performed under this Agreement because of the Client's decision to terminate for its convenience.

#### Miscellaneous Provisions

- This Agreement is governed by the law of Landscape Architect's principal place of business.
- This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and Landscape Architect.
- In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- Neither Client nor Landscape Architect shall assign this Agreement without the written consent of the other.
- Irrespective of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents.
- Client agrees to indemnify, defend and hold Landscape Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to,

reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of the Project and/or this Agreement, except that the Landscape Architect shall not be entitled to be indemnified to the extent such damages or losses are found by a court or forum of competent jurisdiction to be caused by Landscape Architect's negligent errors or omissions.

- Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.
- Client and Landscape Architect waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement. Landscape Architect's waiver of consequential damages, however, is contingent upon the Client requiring contractor and its subcontractors to waive all consequential damages against Landscape Architect for claims, disputes or other matters in question arising out of or relating to the Project that are not related to the Scope of Work for this Project.
- To the extent damages are covered by property insurance during construction, Client and Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for such damages. Client or Landscape Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties described in this paragraph.
- Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance in areas such as, but not limited to, tree plantings, irrigation, and grass plantings may result in damage to property or persons. Client further acknowledges and agrees that, as between the parties to this Agreement, the Owner of the Project, which may or may not be the Client, is solely responsible for the results of any lack of or improper maintenance.
- Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.
- Client Decisions: does not make decisions for our client at the construction site other than for my design/plan without client approval.
- If this Agreement is not signed and returned to Landscape Architect within 60 days, the offer to perform the described services may, in Landscape Architect's sole discretion, be withdrawn and be null and void.

Appendix A Business Insurance





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/15/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> NUTMEG INSURANCE AGENCY INC/PHS 02025657 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251	<b>CONTACT NAME:</b> PHONE (866) 467-8730 FAX (888) 443-6112 (A/C, No, Ext): (A/C, No):	
	<b>E-MAIL ADDRESS:</b>	
<b>INSURED</b> LAND AND LIFE LLC 514 W 25TH AVE SPOKANE WA 99203		<b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC#</b> INSURER A : Hartford Underwriters Insurance Company      30104 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.



INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liability			02 SBM BD1R1S	08/09/2024	08/09/2025	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/PROP AGG \$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			02 SBM BD1R1S	08/09/2024	08/09/2025	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> OCCUR CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				PER STATUTE OTHER E.L. EACH ACCIDENT E.L. DISEASE -EA EMPLOYEE E.L. DISEASE - POLICY LIMIT
	Employment Practices Liability Insurance			02 SBM BD1R1S	08/09/2024	08/09/2025	Each Claim Limit \$25,000 Annual Aggregate Limit \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 The Business Liability Coverage Part includes a Blanket Additional Insured By Contract Endorsement, Form SL 30 32.

<b>CERTIFICATE HOLDER</b>  	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Susan S. Castaneda</i>
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ACORD 25 (2016/03)

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Landscape Architect

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Date

Client

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Date