



Spokane Park Board
August 13, 2015 – 1:30 p.m.
City Hall, City Council Chambers
808 W. Spokane Falls Blvd, Spokane, Washington

Park Board Members:

Wright, Chris– President – Abs Excused
X Traver, Susan – Vice President
X Eadie, Leroy
X Kelley, Ross
X Van Voorhis, Ken
X Dunau, Andy
X Selinger, Sam
Potratz, Preston – Abs. Excused
X Pendergraft, Lauren
X Sumner, Nick
X McGregor, Ted
X Councilman Allen, Mike

Parks Staff:

Jason Conley
Tony Madunich
Garrett Jones
Al Vorderbrueggen
Angel Spell
Sam Song
Sari Luciano
Monique Cotton

Guest(s):

Heather Beebe-Stevens
Kate Green
Jerry Unruh

MINUTES

1. **Roll Call:** Leroy Eadie
See above.

2. **July Minutes:**

Motion No. 1: Ken Van Voorhis motioned to approve the July 9, 2015 Regular Park Board Meeting Minutes.
Ross Kelly seconded.
Motion carried unanimously.

3. **Additions or Deletions to the Agenda:**

None.

4. **Special Guests:**

- A. SYSCA Update - Jerry Unruh, Executive Director, Hillyard Senior Center started his update, explaining that they represent ten different non-profit agencies; collectively servicing low income seniors and youth throughout Spokane. Mr. Unruh and Kate Green, Executive Director, Northeast Youth Center presented slides showing the different fun things that have happened over the summer.
- B. Parks Foundation – Heather Beebe-Stevens, Executive Director, Park Foundation, gave an update on their new web site. Ms. Beebe-Stevens continued by updating the Board on Spokane Police Activities League which consists of Police Officers doing basketball clinics. Next week, the Parks Foundation is funding a week of free swimming throughout the county. Hopefully there will be more free swimming session next year, in-lieu of passing out the day swim passes.

- C. Parks Performance Measures – Jason Conley, Executive Officer, Parks and Recreation gave an update on identifying some key performance measures. Mr. Conley briefed on a couple of key performance measures for Parks and Recreation. First, the percentage of Golf capacity utilized and second, percentage of Recreation class capacity. Moving forward, we are also considering percentage of our Recreation field capacity utilization, percentage of Pool capacity, and Social media.

5. **Claims:**

Motion No. 2: Susan Traver motioned to approve claims for the month of July 2015 in the amount of \$1,819,547.06

Mike Allen seconded

Motion carried unanimously

6. **Financial Report & Budget Update:** Sari Luciano provided the July Financial Report and Budget Update. Park Fund revenue is tracking at 96% with expenditures tracking at 90% of the projected budget. The Golf fund revenue is tracking at 107% and expenditures are tracking at 100% of the projected budget.

7. **Special Discussion/Action Items:**

- A. Revision to Committee Assignment, Park Foundation Liaison – Susan Traver explained that Chris Wright is unable to attend the Park Foundation meetings and she has been asked to represent the Park Board as the Park Foundation Liaison. Ms. Traver asked the Board of which was followed by a nomination.

Motion No. 3: Sam Selinger motioned to approve Susan Traver as Park Foundation Liaison.

Ken Van Voorhis seconded.

Motion passed unanimously.

7. **Committee Reports – Action Items:**

Golf Committee: August 11, 2015 – *Ross Kelley*

- A. The meeting took place at Downriver Golf Course.
- B. 2016 Golf budget was discussed. Still looking at numbers due to the Affordable Care Act (ACA).
- C. There was an update on the Golf online tee-time which went live on July 29th. So far, there's been a good turnout.
- D. Update was given on the Roaster's Open from last month at Indian Canyon. Golfers offered praises on the condition of the Golf Course.
- E. Discussion also took place on the conditions of all the golf course, which are all in really good shape.
- F. After adjournment, there was a tour of Downriver Golf Course. Looking at the need to replace some of the old irrigation pipes and valves.
- G. City Championship Tournament is scheduled to start the 27th through the 29th of August.
- H. Mr. Kelly reviewed the financials, stating June was a tough month for golf due to the days with 100 + degree temperatures.
- I. The next regularly scheduled meeting will be Tuesday, September 8, 2015 at 8:05 a.m. at City Hall Briefing Center.

Land Committee: August 5, 2015 – *Ken Van Voorhis*

- A. Mr. Mike Forness from the Ronald McDonald House attended the meeting, reviewing background and visions for the future, possibly involving Cowley Park. Staff will research the park for additional information for consideration during future discussions.
- B. Irrigation improvements were discussed with the Water Department regarding conservation collaboration.
- C. Primary discussion took place around the 2016 budget.
- D. Capital Project updates were given.
- E. CSO projects were discussed and there should be an update next month from utilities.
- F. The lease of Heath Park is nearing termination and working with the group there regarding possibly renewing the lease.
- G. The next regularly scheduled meeting will be Tuesday, September 2, 2015 at 3:00 p.m. in City Hall Conference Room 3B.

Recreation Committee: August 6, 2015 – *Sam Selinger*

- A. There was an update on Parks Foundation by Heather Beebe-Stevens where she announced that a grant from the Empire Health Foundation for \$2500.00 has been awarded to be shared among Liberty, Cannon and Harman Parks, via sponsorship from the Spokane Police Activities League.
- B. The 2016 budget was discussed.
- C. Information was shared regarding a kick-off luncheon in September or October that will begin efforts to raise \$100,000 from the community for the Adaptive Ball Field to be matched by Cal Ripken Sr. Foundation.
- D. A report on the status of the future Wheel Park was given with 3 possible park locations. Now in the designing phase.
- E. A slide presentation was given by Carl Strong on Aquatic's Free Swim Week at Witter Pool. Currently programming fee revenue is up \$13,000 from 2014.
- F. Art in Bloom is scheduled for September 25th and 26th at Moore Turner Gardens.
- G. The Recreation Financial report was given.
- H. The next regularly scheduled meeting will be Thursday, September 3, 2015 at 3:00 p.m. at City Hall Conference Room 2B.

Riverfront Park Committee: August 10, 2015 – *Andy Dunau*

- A. Mr. Dunau first went over the major contract with Berger Partnership that was passed at Riverfront Park Committee level.

Various motions were presented and discussed with final action taken as follows:

Motion No. 4: Susan Traver motioned to approve the Berger Partnership as discussed with friendly amendments as agreed to by Andy Dunau and Ken Van Voorhis. (Final contract attached.)

Motion passed unanimously.

- B. Discussion took place regarding the Howard Street Bridge with Leonard Butter, an industrial engineer sharing his input.
- C. Discussion took place on the PRC and agreed to further discuss the proposed application in a Special Board Meeting on August 24, 2015 at 9:00 a.m.
- D. An update presentation was given by Laura Becker with Spokane Arts Funds.
- E. A presentation was given on Light and Sound Concept Study by Digital Kitchen.
- F. Ted McGregor and Sam Selinger introduced a conservancy concept which goes into the long term maintenance programming.

- G. Operation Reports and July Financial were discussed.
- H. Downtown Spokane River Access is having its official ribbon cutting on August 19th at noon.
- I. The next regularly scheduled meeting will be Tuesday, September 8, 2015 at 10:00 a.m. at City Hall Council Briefing Center.
- J. Ken Van Voorhis thanked Leroy Eadie and company for getting the fountain up and running.

Finance Committee: August 11, 2015 – *Susan Traver*

- A. The 2016 budget was discussed. Each committee presented.
- B. Capital Projects for 2016 were discussed including a possible Policy and Procedure for Wastewater Revenue of \$400,000.
- C. Affordable Care Act was discussed. It was acknowledged that these are costs to the 2015 budget that weren't budgeted and will need to find money elsewhere in the Parks and Recreation budget to cover those costs.
- D. A brief update was given on the Riverfront Park Bond expenditures.
- E. July's financial report was given.
- F. IT issues were discussed. Park Board members were given the OK for having City email addresses.
- G. An update was given on the 8% Allocation/Fieldhouse agreement. Looking into what the 8% will be based on and what may need to be a City Charter change.
- H. The next regularly scheduled meeting will be Thursday, September 8, 2015 at 3:00 p.m. at City Hall Conference Room 3B. This will be an important meeting regarding the 2016 budget.

Urban Forestry Tree Committee: August 4, 2015 – *Lauren Pendergraft*

- A. WDNR grant was discussed to form a new Urban Forestry Management Plan.
- B. Discussion revolved around City email accounts, their usage, licensing and expense for volunteers.
- C. The 2016 budget guide lines along with the draft budget comparison were presented.
- D. Information was shared from the Citizen Advisory Committee including introduction of a new sub-committee called Ponderosa Pine Peril Posse.
- E. Research and data reports were provided pertaining to the Finch Arboretum Energy Audit that was conducted in March 2014.
- F. The June Financial Report was discussed.
- G. The next regularly scheduled meeting will be Tuesday, September 1, 2015 at 4:15 p.m. at Finch Arboretum in the Woodland Center's Willow Room.

By-Laws Committee: Not discussed

8. **Reports:**

Park Board President: Not discussed

Liaison Reports:

- A. Conservation Futures Liaison – Susan Traver removed as Conservation Futures Liaison.
- B. Parks Foundation Liaison – *Susan Traver* touched on the variety of programs available to try to get our Youth out into our parks.
- C. Council Liaison – Not discussed
- D. Parks Department Revenue & Sponsorship Subcommittee – Going forward, this will no longer be included as an agenda item.

Director's Report: *Leroy Eadie* acknowledged the Public Facility District who funded most of the improvements on the Division Street Access, Garrett Jones who did all permitting and working for the designer, as well as Avista who paid for all the new signage associated with it. Mr. Eadie also noted that Fred Marchant and Kathleen Keck both received "Employee of the Quarter". Mr. Eadie thanked both, Jason Conley and Susan Traver with all their work on the UTF. Sari Luciano was recognized and appreciated for all her hard work and long hours she's put in working on budget while being down-staffed. Lori Harvey was also recognized for her efforts in doing two people's jobs plus supporting the finance and budget department.

9. **Executive Session:**

A. None.

10. **Correspondence:**

A. Letters: All letters were distributed via email prior to today's meeting

B. Newsletters: Southside Senior and Community Center

11. **Public Comments:**

None.

12. **Adjournment:**

A. Next Committee meeting dates:

Golf Committee: September 8, 2015, 8:00 a.m., City Council Briefing Center

Land Committee: September 2, 2015, 3:00 p.m., City Hall Conference Room 3B

Recreation Committee: September 3, 2015 at 3:00 p.m., City Council Briefing Center
Conference Room

Riverfront Park Committee: September 8, 2015, 10:00 a.m., City Council Briefing Center

Finance Committee: September 8, 2015, 3:00 p.m., City Hall Conference Room 3B

Urban Forestry Committee: September 1, 2015, 4:15 p.m., Woodland Center

B. Next Park Board meeting date: September 10, 2015, 1:30 p.m., City Council Chambers

C. Next Joint City Council/Park Board Study Session: September 10, 2015, 3:30 p.m., City Council Briefing Center

City of Spokane

CONSULTANT AGREEMENT

Title: Riverfront Park Design of Major Public Spaces

This Agreement is made and entered into by and between the City of Spokane as ("City"), a Washington municipal corporation, and Berger Partnership, whose address is 1721 8th Avenue N, Seattle, WA 98109 as ("Consultant").

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

1. TERM OF AGREEMENT.

The term of this Agreement begins on August 13, 2015, and ends on December 31, 2019, unless amended by written agreement or terminated earlier under the provisions.

2. TIME OF BEGINNING AND COMPLETION.

The Consultant shall begin the work outlined in the "Scope of Work" ("Work") upon receipt of written notice to proceed from the City. 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. If such changes affect Consultant's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement.

3. SCOPE OF WORK.

The Scope of Work for this Agreement is described in Exhibit A, which is attached to and made a part of this Agreement.

The Work is subject to City review and approval. The Consultant shall confer with the City periodically, and prepare and present information and materials identified in Exhibit A.

4. PAYMENT.

Total compensation for Consultant's services and travel under this Agreement shall not exceed ONE MILLION, FIVE HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,550,000.00) unless modified by a written amendment to this Agreement.

Compensation shall be based upon hourly fees billed monthly based upon the work completed. Services will be billed at hourly rates based on staff and position as provided in the Fee Schedule included in Exhibit A.

Hourly Rate Adjustments: The Consultant may request reasonable changes to billing rates no more than once annually. The first change shall be effective no sooner than 365 days after the execution of this contract. Subsequent changes shall be effective no sooner than 365 days after the effective date of the prior adjustment.

5. REIMBURSABLES

If the Agreement specified reimbursables to be compensated by the City, the following limitations apply. If no travel or direct charges are identified and allowed in the Agreement, the City shall provide no reimbursement.

- 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. Consultant is pre-approved for expenditures up to five hundred and no/100 dollars (\$500.00). 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 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 (*excluding the "Incidental" portion of the published CONUS Federal M&I 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 Runzheimer Cost Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
- G. **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 56.5 cents per mile.) Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
- H. **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
- I. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- J. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a mark up. Receipts are required for all miscellaneous expenses that are billed.

Subconsultant: Subconsultants shall comply with the Agreement obligations of the Prime Consultant, as described herein. Subconsultant expenses will be reimbursed at the actual cost incurred and may include a 4% Consultant mark-up to cover taxes and handling/processing of consultant invoicing. Copies of all Subconsultant invoices that are rebilled to the City are required.

6. PAYMENT PROCEDURES.

The Consultant may submit invoices to the City as frequently as once per month during progress of work, for partial payment for work completed to date. Payment shall be made by the City to the Consultant upon the City's receipt of an invoice containing the information listed below.

Invoices shall be submitted to:
<p>CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT – 5th Floor – City Hall 808 West Spokane Falls Boulevard Spokane, WA 99201</p>
Invoices under this Contract shall clearly display the following information (sub-consultants' invoices shall also include this information):
<ul style="list-style-type: none"> • Invoice Date and Invoice Number • Department Director: (Please do not put name in the address portion of the invoice) • Department Contract No. OPR # _____ • Contract Title: Riverfront Park Design of Major Public Spaces • Period covered by the invoice • Task # and title • Employee's name and classification • Employee's all-inclusive hourly rate and # of hours worked • Total labor costs per task • Itemization of direct, non-salary costs (per task, if so allocated) • The following Sub-Consultant payment information will be provided <i>[if needed]</i> (attach Sub-Consultant invoices as backup): <ul style="list-style-type: none"> ○ Amount Paid to all Sub-Consultants for the invoice period (list separate totals for each Sub-Consultant). ○ Cumulative To-Date amount paid to all Sub-Consultants (list separate totals for each Sub-Consultant). • Cumulative costs per task and for the total project

7. TAXES, FEES AND LICENSES.

- A. Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. 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.

8. CITY OF SPOKANE BUSINESS LICENSE.

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

9. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.

Deliver all official notices under this Agreement to:

If to the City:	If to the Consultant:
Parks & Recreation CITY PMT CONTACT NAME 5 th Floor – City Hall 808 West Spokane Falls Boulevard Spokane, WA 99201 (Copy to the City Attorney – 5 th Floor – City Hall)	Berger Partnership BERGER's CONTACT NAME 1721 8th Avenue N Seattle, WA 98109

10. SOCIAL EQUITY REQUIREMENTS.

Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training. The 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.

11. INDEMNIFICATION.

The Consultant shall indemnify and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity including but not limited to reasonable attorney's fees and litigation costs asserted by third parties for bodily injury, including death, and/or property damage to the proportionate extent caused solely by the Consultant's negligence or willful misconduct under this Agreement; 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 conduct of the City, its agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Consultant's agents or employees and (b) the City, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the Agency of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the negligence of the Consultant, its agents or employees. The Consultant specifically assumes potential liability 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 state industrial insurance law, Title 51 RCW, or any other industrial insurance, workers compensation, disability, employee benefit or similar laws. 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 indemnification provided for in this section shall survive any termination or expiration of this Agreement.

The parties agree that the City is fully responsible for its own negligence and for its material breaches of this Contract. It is not the intent of this Section to limit this understanding.

12. INSURANCE.

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

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

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

B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$2,000,000 each occurrence and \$5,000,000 in the aggregate 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.

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 limit of \$1,000,000 per claim and in the aggregate, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, without thirty (30) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates to the City at the time it returns the signed Agreement. The certificate shall specify the City as additional insureds, and include applicable policy endorsements, the thirty (30) 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.

13. AUDIT.

Upon request, the Consultant shall permit the City 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 during normal business hours and at reasonable notice by the City, including up to six (6) years after final payment or release of withheld amounts. Such inspection and audit shall occur in Spokane County, Washington, or other reasonable locations that the City selects. The Consultant shall supply or permit the City to copy such books and records. 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 does not as 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, without the express written consent of the City, which shall not be unreasonably withheld. If any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval does not release the Consultant from its obligations under this Agreement.

16. ASSIGNMENT AND SUBCONTRACTING.

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

17. FEDERAL DEBARMENT.

The Consultant shall immediately notify the City of any suspension or debarment or other action that excludes the Consultant or any subconsultant from participation in Federal contracts. Consultant shall verify all subconsultants intended and/or used by the Consultant for performance of City Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.sam.gov>. Consultant shall keep proof of such verification within the Consultant records.

18. 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 provide written notice to the City of any Consultant worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours

include those performed for the Consultant and other hours that the worker performed for the City under any other contract. The Consultant shall advise their Consultant Workers.

- D. 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 City employees 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.

19. 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.

20. STANDARD OF CARE, 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. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional Consultants within the City of Spokane performing the same or similar services at the time said services are performed. Consultant, without additional compensation, shall correct or revise designs, drawings, specifications, and/or other consultant services that fail to meet this standard of care (as defined herein), upon notification by the City. The obligation provided for in this Section regarding the standard of care under this Agreement survives Agreement termination or expiration.

21. 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 proportional rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed exclusively within 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.
- D. 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.

22. CONFIDENTIALITY.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Spokane are **public records**. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10)8 describes those exemptions. Consultant must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Spokane's process for managing records.

The City will try to redact anything that seems obvious in the City opinion for redaction. For example, the City will black out (redact) Social Security Numbers, federal tax identifiers, and financial account numbers before records are made viewable by the public. However, this does not replace your own obligations to identify any materials you wish to have redacted or protected, and that you think are so under the Public Records Act (PRA).

Protecting your Materials from Disclosure (Protected, Confidential, or Proprietary): You must determine and declare any materials you want exempted (redacted), and that you also believe are eligible for redaction. This includes but is not limited to your bid submissions, contract materials and work products.

Contract Work Products: If you wish to assert exemptions for your contract work products you must notify the City Project Manager at the time such records are generated.

Please note the City cannot accept a generic marking of materials, such as marking everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected. You may not exempt an entire page unless each sentence is entitled to exemption; instead, identify paragraphs or sentences that meet the RCW exemption criteria you are relying upon.

City's Response to a Public Records Act Requests: The City will prepare two versions of your materials:

Full Redaction: A public copy that redacts (blacks out) both the exemptions (such as social security numbers) identified by the City and also materials or text you identified as exempt. The fully redacted version is made public upon contract execution and will be supplied with no notification to you.

Limited Redaction: A copy that redacts (blacks out) only the exemptions (such as social security numbers) identified by the City. This does not redact (black out) exemptions you identified. The Limited Redaction will be released only after you are provided "third party notice" that allows you the legal right under RCW 42.56.540 to bring a legal action to enjoin the release of any records you believe are not subject to disclosure.

If any requestor seeks the Limited Redacted or original versions, the City will provide you "third party notice", giving ten business days to obtain a temporary restraining order while you pursue a court injunction. A judge will determine the status of your exemptions and the Public Records Act.

23. 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 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 in accordance with the standard of care defined herein, 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.

24. TERMINATION.

- A. For Cause: The City may terminate the Agreement if the Consultant is in material breach of this Agreement, and such breach has not been corrected within seven (7) business days, after the City notifies the consultant of such breach in writing.
- 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.
- C. For City's Convenience: The City may terminate this Agreement without cause and including the City's convenience, upon written notice to the Consultant.
- D. Notice: 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.
- E. Actions upon Termination: If termination occurs, the Consultant shall be paid for the services properly performed prior to termination, 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.
- F. 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.

25. 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.

26. MISCELLANEOUS PROVISIONS.

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

conflicts between these documents, the controlling document will first be this Agreement as amended, the Consultant's Proposal, then the City Solicitation documents. 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 Agreement to afford the City the maximum benefits.

- K. 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.
- L. No personal liability: No officer, agent or authorized employee of the City or the Consultant shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.
- M. Subsurface Investigations: In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of Consultant.
- N. Opinions of Cost, Financial Considerations, and Schedules: In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the consultant is providing its reasonable estimates of such costs. Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that City's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates. If City wishes greater assurance as to any element of Project cost, feasibility, or schedule, City will employ an independent cost estimator, contractor, or other appropriate advisor.
- O. City-Furnished Data: City will provide to Consultant all data in City's possession relating to Consultant's services on the Project. Consultant will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by City.
- P. Consequential Damages: To the maximum extent permitted by law, Consultant and Consultant's affiliated corporations, officers, employees, and subcontractors shall not be liable for City's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect Consultant against indirect liability or third-party proceedings, City will indemnify Consultant for any such damages.
- Q. No Third-Party Beneficiaries: This Agreement gives no rights or benefits to anyone other than City and Consultant and has no third-party beneficiaries.
- R. Force Majeure: Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of Consultant. In any such event, Consultant's contract price and schedule shall be equitably adjusted.

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.

CONSULTANT

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

City of Spokane Business License Number: _____

Washington State Unified Business Identifier Number (UBI): _____

Attachments: Exhibit A - Scope of Work

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