

CITY OF WEST ALLIS

AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT is entered into by and between the CITY OF WEST ALLIS, Wisconsin (the "City"), a municipal corporation) and **PARKITECTURE + PLANNING, LLC** (the "Consultant").

WHEREAS, the City has solicited proposals from qualified persons to furnish professional environmental assessment services for the **SITE SELECTION & DESIGN OF AN INCLUSIVE PARK** (the "Project"); and,

WHEREAS, Consultant has submitted a proposal to provide such services; and,

WHEREAS, the City is authorized to enter into this Agreement with Consultant for such services and has authorized the expenditure of funds to pay the liability that will accrue to the City under this Agreement.

NOW, THEREFORE, in consideration of these premises the parties hereby mutually agree as set forth in the following pages, exhibits and schedules which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement together with the attachments, which are made a part hereof.


CITY OF WEST ALLIS:

By: 

Title: Executive Director

Date: 4-20-22

CONSULTANT:

By: 

Title: Principal

Date: 4/29/2022

ATTACHMENTS:  
GENERAL CONDITIONS OF AGREEMENT  
SCOPE OF SERVICES  
WORK ORDER

Kail/City-Consultants-Agrmnt Prof Serv-Form

Approved as to form this 25th day  
of April, 2022.

  
City Attorney

**CITY OF WEST ALLIS  
GENERAL CONDITIONS OF AGREEMENT FOR  
PROFESSIONAL SERVICES**

CONSULTANT:       **PARKITECTURE + PLANNING, LLC**

PROJECT:           **SITE SELECTION & DESIGN OF AN INCLUSIVE PARK**

**1.01    BASIC SERVICES**

A.        Basic Services of CONSULTANT to be provided under this AGREEMENT are listed in the Scope of Services, attached hereto and made a part of this AGREEMENT by reference.

B.        Payment for Basic Services shall be made in accordance with Section 3 of this Agreement.

**2.01    SERVICES REQUIRING AUTHORIZATION IN ADVANCE**

A.        Those services listed in the Scope of Services but not identified in Section 1 of this AGREEMENT may be requested by the CITY to complete the work, are considered additional services. The CITY may request CONSULTANT at a future date to perform any or all of these services by a written authorization to proceed with the Additional Service(s). The written authorization to proceed shall become an Amendment to the Agreement.

B.        Payment for the Additional Service(s) shall be in accordance with Section 3 of this AGREEMENT.

**3.01    BASIC SERVICES**

A.        CITY shall pay CONSULTANT for Basic Services rendered under Section 1 on the basis of CONSULTANT'S Hourly Rate, plus Reimbursable Expenses and Services of Professional Associates and other Consultants as defined in this Section 3.

B.        CONSULTANT estimates that the total cost required to perform Basic Services as enumerated in Section 1 will not exceed **Thirteen Thousand One Hundred & Sixty Dollars (\$13,160).**

Given the assumptions which must be made, the CITY recognizes that the CONSULTANT cannot guarantee the complete accuracy of its estimate of total cost, and, therefore waives any claim against CONSULTANT in this regard, except to the extent that any cost overrun can be attributable to fraudulent conduct, bad faith or inexcusable ignorance or incompetence.

**3.02    ADDITIONAL SERVICES**

CITY shall pay CONSULTANT for Additional Services rendered under Section 2 as follows:

1. For Additional Services of CONSULTANT'S principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of CONSULTANT'S Hourly Rate.

2. For services and Reimbursable Expenses of independent Professional Associates and Consultants employed by CONSULTANT to render Additional services pursuant to Section 2, the amount billed to CONSULTANT therefore.

### 3.03 REIMBURSABLE EXPENSES

A. As used in this AGREEMENT Reimbursable Expenses mean the actual expense incurred by CONSULTANT or its independent Professional Associates or Consultants, directly or indirectly in connection with the Project, such as expenses for: toll telephone calls and express mailings, reproduction of reports, drawings, specifications, bidding documents, laboratory tests and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by the CITY, overtime work requiring higher than regular rates.

B. The Reimbursable Expenses for Basic Services are as set forth in the CONSULTANT'S Hourly Rates attached hereto and made a part of this AGREEMENT.

### 3.04 HOURLY RATES.

As used in this AGREEMENT hourly rates used as a basis for payment mean salaries and wages (basic and incentive) paid to all CONSULTANT'S personnel engaged directly on the Project, including but not limited to other technical and business personnel as set forth in the CONSULTANT'S Hourly Rates.

### 3.05 TIME OF PAYMENT

A. CONSULTANT shall submit monthly statements on or before the twentieth of the month for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The CITY shall make prompt payment on or before the twentieth of the month following the date of the CONSULTANT monthly statement.

### 4.01 COMMENCEMENT OF WORK

A. CONSULTANT shall commence the work to be performed under this AGREEMENT upon receipt of a written Work Order or verbal authorization to proceed from the CITY. Each Work Order or verbal authorization shall define by task(s) the scope of services to be performed. Verbal authorizations shall be followed up with written Work Orders.

B. Additional services shall be commenced at within the time agreed to between the CONSULTANT and the CITY at the time such services are authorized.

C. The CITY shall not be liable to CONSULTANT and/or any of its independent Professional Associates and Consultants and/or subcontractors for claims or damages or monetary claims of any nature caused by or arising out of delays from any cause whatsoever, including but not

limited to any time which may be specified for the notice to proceed under this AGREEMENT. The sole remedy against the CITY for delays shall be the allowance to claimant of additional time for completion of work, the amount thereof to be reasonable as determined by the CITY.

#### 4.02 COMPLETION OF WORK

A. CONSULTANT shall complete the work to be performed under this AGREEMENT within the time specified in the Scope of Services, or if none is specified, then within a reasonable time for the type of work involved.

B. Additional services shall be completed within the time agreed to between the CONSULTANT and the CITY at the time such services are authorized.

#### 5.01 APPLICABLE LAW

This AGREEMENT shall be governed by the laws of the State of Wisconsin and venue for any action concerning this AGREEMENT shall be in Milwaukee County, Wisconsin. The CONSULTANT shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this AGREEMENT.

#### 6.01 APPROVALS OR INSPECTIONS

None of the approvals or inspections performed by the CITY shall be construed or implied to relieve the CONSULTANT from any duty or responsibility it has for its professional performance, unless the CITY formally assumes such responsibility through a letter from the CITY expressly stating that the responsibility has been assumed.

#### 7.01 DISPUTE RESOLUTION

In the event a dispute arises under this AGREEMENT, which is not resolvable through informal means, the parties agree to submit the dispute to the following resolution mechanism prior to pursuing other available legal remedies. Upon receipt of a written request by either party to utilize this provision each party shall have five working days to notify the other as to the name and address of the person designated to present the dispute for that party. Upon designation of the dispute resolution representatives, those persons shall have ten working days to appoint a mutually acceptable third person to hear the dispute, and to agree on a time and location to hear the matter in dispute. The representatives shall jointly determine the procedure to be used for gathering information and hearing the dispute. Binding mediation or arbitration shall not be chosen as a dispute resolution method.

#### 8.01 ASSIGNMENT

Neither this AGREEMENT nor any right or duty, in whole or in part, of the CONSULTANT under this AGREEMENT may be assigned, delegated or subcontracted without the written consent of the CITY.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than the CITY and the CONSULTANT, and all duties and

responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of the CITY and the CONSULTANT and not for the benefit of any of any other party.

#### 9.01 CANCELLATION; TERMINATION

A. The CITY reserves the right to cancel this AGREEMENT in whole or in part, without penalty, due to non-appropriation of funds or for failure of the CONSULTANT to comply with terms, conditions, or specifications of this AGREEMENT.

B. The CITY may terminate this AGREEMENT for any reason at any time upon not less than 10 days' written notice to the CONSULTANT.

C. In the event of termination, the CITY shall pay the CONSULTANT for that portion of the work satisfactorily performed prior to the date of termination.

D. If this AGREEMENT is cancelled or terminated by the CITY for reasons other than the failure of the CONSULTANT to comply with terms, conditions or specifications of this AGREEMENT, the CONSULTANT shall also be entitled to reasonable cancellation or termination costs relating to costs incurred by the CONSULTANT for commitments, which had become firm prior to the cancellation or termination.

E. Upon cancellation or termination under Paragraph A. or B., above, the CONSULTANT shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONSULTANT in performing this AGREEMENT, whether completed or in progress.

F. If any undisputed invoice shall not be paid within the payment terms of this AGREEMENT, CONSULTANT shall have the right, after giving seven (7) days written notice, to suspend all Services on the project until all accounts have been paid. If any overdue invoice shall not be paid within forty-five (45) calendar days after the date of the invoice, CONSULTANT shall have the right to terminate this AGREEMENT.

#### 10.01 DISCLOSURE

If a city official (as defined under Section 3.02(l) of the Revised Municipal Code of the City of West Allis), a member of official's immediate family, or any organization in which a city official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this AGREEMENT, and if this AGREEMENT involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this AGREEMENT is voidable by the City unless appropriate disclosure is made according to Section 3.5 of the Revised Municipal Code, before signing the AGREEMENT. Disclosures shall be made to the Ethics Board of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (Telephone 414-302-8200).

## 11.01 ENTIRE AGREEMENT; AMENDMENTS

This AGREEMENT, together with the specifications in the proposal and referenced parts and attachments, shall constitute the entire agreement between the parties and previous communications or agreements pertaining to the subject matter of this AGREEMENT are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this AGREEMENT, signed by both parties prior to the ending date of this AGREEMENT.

## 12.01 FORCE MAJEURE

No party shall be responsible to the other party for any resulting losses and it shall not be a default of this AGREEMENT if the fulfillment of any of the terms of this AGREEMENT is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, unusual adverse weather conditions, or by any other cause not within the control of the party whose performance was interfered with and which by the exercise of reasonable diligence such party is unable to prevent, whether of the class of enumerate causes or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. Upon the occurrence of a force majeure, written notice to the other party shall be given as herein provided. If the period of non-performance exceeds thirty (30) days from the receipt of the notice, the party whose ability to perform has not been so affected may, by written notice, terminate this AGREEMENT.

## 13.01 INDEMNIFICATION; LIABILITY

A. To the fullest extent allowable by law, CONSULTANT hereby agrees to indemnify and shall defend and hold harmless the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising from the work hereunder and caused, , by reason of the gross negligence, fraud or willful misconduct of Contractor.. CONSULTANT's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the City of West Allis, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

CONSULTANT shall reimburse the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers, however, the CONSULTANT's indemnity liability hereunder or under any other provision of this Agreement is limited to the aggregate fees actually paid to CONSULTANT under this Agreement.

B. CITY agrees to indemnify, defend and hold harmless CONSULTANT and its subcontractors, subconsultants, agents, directors, and employees from and against all claims, suits, damages, and losses, including, but not limited to, those claims, suits, damages, or losses caused or arising out of, relating to, or based upon: 1) the acts, omissions, or other conduct of CITY; and [2] the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes acids, alkalis, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere or on, onto, upon, in or into the surface or subsurface of soil, water or water course, objects, or any tangible or intangible matter, whether abated or not; except to the extent that such damage or loss is caused by the negligent acts or willful misconduct of CONSULTANT or its agents, officers, directors, or employees.] [For environmental services only.]

C. Nothing contained within this AGREEMENT is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes Sections 893.80 and 345.05. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

#### 14.01 INDEPENDENT CONTRACTOR

The CITY agrees that the CONSULTANT shall have sole control of the method, hours worked, and time and manner of any performance under this AGREEMENT other than as specifically provided herein. The CITY reserves the right only to inspect the job site or premises for the purpose of insuring that the performance is progressing or has been completed in compliance with the AGREEMENT. The CITY takes no responsibility for supervision or direction of the performance of the AGREEMENT to be performed by the CONSULTANT or the CONSULTANT'S employees or agents. The CITY further agrees that it will exercise no control over the selection and dismissal of the CONSULTANT'S employees or agents.

## 15.01 REPORT AND DOCUMENTATION REQUIREMENTS

A. The CONSULTANT'S invoices will be reduced by the sums set forth below for each week that the CONSULTANT fails to submit a report or document required under this AGREEMENT'S time schedule unless the CITY determines that such delay is attributable to a force majeure as defined in Section 8., above. These reductions shall accrue in the amount of 5% of the Work Order for the first week and 10% of the Work Order for each week thereafter, for each report or document, which is overdue.

B. Assessment of reductions under this Section does not preclude the CITY from pursuing any other remedies or sanctions because of the CONSULTANT'S failure to comply with any of the terms of this AGREEMENT, including a suit to enforce the terms of this AGREEMENT.

C. With respect to any individual failure to submit a report or document required under this AGREEMENT'S time schedule, the CITY may at its sole discretion, in whole or in part, waive its right to penalties otherwise due under this Section.

## 16.01 NO WAIVER OF CONDITIONS

The failure of either party to insist on strict performance of this AGREEMENT does not constitute a waiver of any of the provisions of this AGREEMENT or a waiver of any default of the other party.

## 17.01 OWNERSHIP OF DOCUMENTS

A. Upon completion of the services provided for in this AGREEMENT, or upon payment for services as provided for in Section 5., all reports, specifications, charts, sketches, drawings and other documents, whether finished or not, shall become the property of the CITY.

B. CONSULTANT shall retain one copy of all documents for its file. Any documents generated by CONSULTANT used by the CITY beyond the intended purpose shall be at the sole risk of the CITY, unless otherwise agreed upon by CONSULTANT in writing. To the fullest extent permitted by law, CITY shall indemnify, defend and hold harmless CONSULTANT, its subcontractors, consultants, officers, directors, employees and agents, for any loss or damages arising out of the unauthorized use of such documents by the CITY.

## 18.01 OWNERSHIP OF WASTES [Environmental Contract Only]

The CITY acknowledges that the CONSULTANT is not, by virtue of this AGREEMENT, the owner or generator of any waste materials generated as a result of the services performed by the CONSULTANT under this AGREEMENT.

## 19.01. PERIOD OF AGREEMENT

This AGREEMENT shall commence upon its signing by both parties and shall follow the schedule developed herein, during which period all performance as described in this AGREEMENT shall be fully completed to the satisfaction of the CITY.



## 20.01 RELEASE OF INFORMATION

The CONSULTANT may not issue press releases or provide information to any third party regarding the Project without the prior written approval of the CITY, except as required by Federal or State regulations, or court order.

## 21.01 SAFETY

The CONSULTANT shall initiate, maintain and provide supervision of safety precautions and programs for CONSULTANT'S own employees, and shall require its subcontractors or subconsultants to comply with state and local safety laws and regulations in connection with its services. However, the CONSULTANT is not responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the project site carried on by other persons or firms directly employed by the CITY as separate consultants or contractors. The CITY agrees to require any such separate consultants or contractors to comply with federal, state and local safety laws and regulations and to comply with all reasonable requests and directions of the CONSULTANT for the elimination or abatement of any safety hazards at the project site.

## 22.01 SITE ACCESS; DATA

A. Unless the Scope of Work provides otherwise, the CITY shall obtain or provide reasonable access for the CONSULTANT to the project site when necessary and at any reasonable time requested.

B. The CITY shall attempt to provide the CONSULTANT with all relevant data and information in its possession regarding the project site. However, in providing such data and information, the CITY or the CONSULTANT assumes no responsibility for its accuracy, reliability or completeness.

## 23.01 STANDARD OF PERFORMANCE

The CONSULTANT'S services shall be performed with the usual thoroughness; skill and competence of the consulting profession, in accordance with the standard for professional services prevailing at the time those services are rendered.

## 24.01 SURVIVAL

These General Terms and Conditions shall survive the completion of the services under this AGREEMENT and the termination of this AGREEMENT for any cause.

## 25.01 SUCCESSORS AND ASSIGNS

The CITY and the CONSULTANT each bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this AGREEMENT.

## 26.01 TITLES

The headings or titles of Sections of this AGREEMENT are used for convenience and ease of reference and are not intended to limit the scope or intent of the Sections.

## 27.01 ACCESS TO RECORDS

A. The CONSULTANT and subcontractors to the CONSULTANT if any, agree to maintain for inspection by the CITY all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this AGREEMENT and to make such materials available at their respective offices at all reasonable times during the life of the AGREEMENT and for three (3) years from the date of final payment under the AGREEMENT, and to furnish copies thereof if requested.

B. If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the CITY.

## 28.01 ERRORS AND OMISSIONS

The CONSULTANT shall be responsible for the accuracy of the work performed by the CONSULTANT under the AGREEMENT, and shall promptly make necessary revisions or corrections resulting from its negligent acts, errors or omissions without additional compensation.

## 29.01 CONFLICT OF INTEREST

A. The CONSULTANT warrants it has no public or private interest, and shall not knowingly acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the AGREEMENT.

B. The CONSULTANT shall not employ any person employed by the CITY for any work included under the provisions of the AGREEMENT.


**CITY OF WEST ALLIS  
PROCEED ORDER #1**


TO: **PARKITECTURE + PLANNING, LLC**  
DATE: **APRIL 19, 2022**  
PROJECT: **SITE SELECTION & DESIGN OF AN INCLUSIVE PARK**

In accordance with Resolution No. R-2022-0310 and the Agreement for Professional Services dated as of April 19, 2022 (the "Agreement"), you are directed to proceed with work on the Project as outlined below:

Work: See attached Scope of Services dated March 17, 2022  
Estimate: \$13,160.00  
Schedule: Work to commence immediately. To be completed as part of the Basic Services under the Agreement.

This Proceed Order, including any attachments, is incorporated into the Agreement. All work defined in this Proceed Order and payment therefor shall be performed in accordance with the terms and conditions of the Agreement, unless otherwise modified herein. Any modification(s) of this Proceed Order is subject to approval and acceptance pursuant to the Agreement.

Issued:  
By:   
Title: Executive Director  
Date: 4-20-22

Received and Approved:  
By:   
Title: Principal  
Date: 4/29/2022

ATTACHMENTS:  
Scope of Services

COMPTROLLER'S CERTIFICATE  
Countersigned this 25th day of April, 2022,  
and I certify that the necessary funds have been  
provided to pay the liability that may be incurred  
by the City of West Allis under this Contract.

  
Jason Kaczmarek  
Director of Finance/Comptroller

Scott/City –Proceed Order-Form

I/c/c-Parkitecture – Site & Park Design--cowa