



## NEIGHBORHOOD MATCHING FUND AGREEMENT

This Agreement is made between The City of Seattle (“the City”), acting through the Seattle Department of Neighborhoods (“the Department”) and its Director (“the Director”), The Eli's Park Project (“Neighborhood Organization”) and Seattle Parks Foundation (“Fiscal Sponsor”) (or collectively the “Recipients”), to carry out Ordinance 125120 and the Neighborhood Matching Fund (NMF) project: Burke Gilman Park Renovation (Final Phase 4), (“Project”), P21051.

### ARTICLE I: SCOPE OF WORK

#### Section 100: Project Description

The Neighborhood Organization shall perform the work to complete the Project under this Agreement and shall arrange for reimbursement through the Fiscal Sponsor. As used in this Agreement, “Project” means the following:

**Project Description:** Initiated and designed by the community it will serve, the Eli's Park Project at the Burke Gilman Playground Park, located at 5201 Sand Point Way NE, will renovate an underutilized green space into a park that is fully accessible to people of all ages, abilities and identities. This phase of funding will complete the art elements partially funded in the previous cycle and includes the fabrication and installation of 5 permanent art features. All contractors qualified through community hiring panels and public art calls. This project will be completed by December 30, 2022.

#### Section 101: Project Work Plan

Step Number	Step/Activity	Responsible Person/Group	Month Done	Year Done
01	Coordinate contracts, designs, and reviews with SPR	Hannah Viano, artists, SPR, Design Team	December	2021
02	Fabrication of all art elements, February-June, 2022	Hannah Viano, Abe Singer, Kate Clark, Design Team, SPR	June	2022
03	Artists will assist with and oversee the installation of their sculptural art	Hannah Viano, Abe Singer, Kate Clark, Design Team, SPR, Contractors	September	2022
04	Artist will install mural	Hannah Viano, Devon Midori Hale, Design Team, SPR, Contractors	October	2022
05	Final invoicing upon completion of all art elements	Hannah Viano, Abe Singer, Kate Clark, Devon Midori Hale, Design Team, SPR	October	2022

Step Number	Step/Activity	Responsible Person/Group	Month Done	Year Done
06	Bi-weekly meetings with Design Team	Hannah Viano, Landscape Architect-led Design Team, Invite Teen Advisors, artists as needed	Ongoing	2022
07	Project summary report	Hannah Viano, Paige Reischl	November	2022
08	Submit Final Report and Claim for Reimbursement in WebGrants by December 15, 2022.	Paige Reischl and Rebecca Bear	December	2022

#### **Section 102: Term of Agreement**

The term of this Agreement is December 21, 2021 through December 30, 2022. The Project must be complete, including all reporting requirements, and all funds under this Agreement must be expended by December 30, 2022. Any expenses that are not incurred and submitted for reimbursement by December 30, 2022 the end of the term will not be available for disbursement to recipients, unless this Agreement is extended in writing at the sole discretion of the Director.

The City cannot advance funds or reimburse any expense incurred prior to the beginning date or after the end date of this Agreement.

#### **Section 103: Project Location**

Burke-Gilman Playground Park, 5201 Sand Point Way NE, Seattle, WA 98105

#### **Section 104: Property Owner Permission**

The Neighborhood Organization shall furnish written proof of ownership or permission from the property owner to use the designated site for the Project described in Section 103. The property owner for this Project is:

**Seattle Parks and Recreation**

#### **Section 105: Project Maintenance**

The Neighborhood Organization shall submit to the City a maintenance plan approved by the property owner, Seattle Parks and Recreation prior to project implementation. The maintenance plan shall include the term of the maintenance period, maintenance duties required by the Neighborhood Organization and/or maintenance duties required of the property owner. The maintenance plan shall also be signed by both the neighborhood organization and property owner.

**This project will be maintained by Seattle Parks and Recreation.**

Failure to maintain the Project as required above may prevent the Neighborhood Organization from receiving future City funding. If the project is on City-owned property, failure to maintain the Project may result in the City taking any action it deems appropriate to preserve the Project, to protect the public, or to protect City-owned property.

#### **Section 106: Requirements, Permits, Award Conditions and Approvals**

Prior to proceeding with the Project, the Neighborhood Organization shall furnish to the City's Project Manager:

- Secure Commercial General Liability insurance naming the City of Seattle as an additionally insured party. Provide copy of insurance coverage.
- Ensure NMF Program is recognized as a funder in outreach materials, press releases, news stories and project related activities.
- Provide copies of signed parent permission forms for youth under 18 years of age.
- Provide documentation of Washington State Patrol background checks for all project volunteers and staff working with youth under 18 years of age.
- Review and respond to enclosed comments from Seattle Parks and Recreation (SPR).
- Review and respond to enclosed comments from Seattle Office of Arts and Culture.
- This project will be implemented in accordance with Seattle Parks and Recreation requirements.

#### **Section 107: Project Contacts and Notice Addresses**

Each party shall use the person designated below as the primary contact for communications regarding this Agreement. The primary contacts shall be the only authorized users of the City's Web Grants online system for Claims and Report requirements under this Agreement unless otherwise requested and approved in writing. Notices shall be sent to the addresses below:

##### **A. City of Seattle**

Seattle Department of Neighborhoods  
Karen Selander, NMF Project Manager  
600 4th Avenue, 4th Floor, PO Box 94649, Seattle, WA 98124-4649  
206-733-9256

##### **B. Neighborhood Organization**

The Eli's Park Project  
Paige Reischl  
4801 38th Avenue NE, Seattle, WA 98105  
206-349-4606

##### **C. Fiscal Sponsor and Primary Contact**

Seattle Parks Foundation  
Shava Lawson, Director of Fiscal Services

PO Box 3541, Seattle, WA 98124-3541  
206-332-9900

## ARTICLE II: FINANCIAL CONDITIONS

### Section 200: Maximum Funds Available

- A. Conditioned upon the Recipients' compliance with requirements for reimbursement under this Agreement, the Department shall reimburse the Neighborhood Organization through the Fiscal Sponsor the allowable Project costs identified in the Budget in an amount not to exceed \$50,000 ("Maximum Funds").
- B. Reimbursement of all Allowable Project Costs up to the Maximum Funds amount shall constitute full and complete payment by the City under this Agreement regardless of the total actual Project cost. "Allowable Project Costs" shall mean those necessary and proper costs as described in the Budget approved by the Department. Allowable Project Costs shall be eligible for reimbursement under this Agreement when either 1) the Fiscal Sponsor has paid the costs, or 2) Recipients have become legally obligated to pay.
- C. As used in this Agreement, "Budget" means the Allowable Project Costs described in this section.

#### Budget Award Details

##### Professional Services Expenses

Item	Description	Amount
Lookout Panels	Payment to one artist to complete the panels for the lookout feature.	\$6,000.00
Nest, Roost Den, Rest Secondary Entryway	Payment to one artist to complete the secondary entry feature "Nest, Roost, Den, Rest".	\$10,000.00
Beyond the Surface Secondary Entryway	Payment to one artist to complete the secondary entry feature "Beyond the Surface".	\$10,000.00
Roots of Recognition	Payment to one artist to design, fabricate and install the Roots of Recognition feature.	\$15,000.00
Everyone Game Mural	Payment to one artist for community mural of Everyone Game.	\$5,000.00
Fiscal Fee	8% fiscal fee to Seattle Parks Foundation.	\$4,000.00
		<b>\$50,000.00</b>
<b>TOTAL AWARD AMOUNT</b>		<b>\$50,000.00</b>

### Section 201: Minimum Community Match Required

The Recipients shall ensure that the Community Match component of the Project is fulfilled. As used in this Agreement, "Community Match" means the cash, volunteer hours, services, supplies and materials the community has committed to the Project in a match value of **\$29,400**. Recipients must make every effort to meet this value pledged in the application to the NMF. Failure to generate the minimum match of **\$25,000** will be cause for the Department to withhold payment of invoices under this Agreement or

to terminate this Agreement. The Community Match will be generated and expended according to the following schedule:

### Match Budget Detail

#### Volunteer Labor Match

Item	Description	Amount
Volunteer Time	980 hours x \$30/hour	\$29,400.00
		<b>\$29,400.00</b>
<b>TOTAL MATCH AMOUNT</b>		<b>\$29,400.00</b>

#### Section 202: Project Budget Revisions and Overruns

All Project Budget and Community Match revisions must be approved by the NMF Project Manager prior to expenditure. The City will not be responsible for any overruns and/or revisions incurred prior to its approval, unless such cost overruns result from requests by the City to change the scope of work of this Agreement or are the result of budget revisions made by the City.

Budget revisions which increase or reduce the Maximum Award, or which redirect more than 10% of the total amount of any cost category to another cost category, must be authorized by an executed amendment to this Agreement. Smaller shifts of dollars between line items within one category or redirection of less than 10% between cost categories may be approved verbally by the NMF Project Manager.

#### Section 203: Project Income

Where the activities of this Project are expected to yield income to the Project from sales of tickets or otherwise, that cash should be considered as match and offset expenses of the Project. Where excess income is generated during or after the term of this Agreement, the Recipients will use the income to extend the activities of this Project.

## ARTICLE III RECIPIENT RESPONSIBILITIES

#### Section 300: Responsibilities of the Fiscal Sponsor

The Fiscal Sponsor acts as trustee of the funds provided by the City through this Agreement and assumes the financial responsibilities related to completion of the Neighborhood Matching Fund Project. The Fiscal Sponsor handles and is accountable for the funds and is responsible for the following:

- Acting as trustee of the funds paid by the City and disbursing such funds to the Neighborhood Organization in accordance with the Budget as specified under Section 200.
- Making payments for all Project-related expenses as well as providing up-front cash to pay for Project costs until reimbursement is received from the City as specified under Section 200.
- Accepting and depositing checks from the City of Seattle for Allowable Project Costs.

- Maintaining a financial accounting system and records for the Project that identify all expenditures of Neighborhood Matching Funds and income related to the Project as specified under Section 302.
- Preparing and submitting Claims as specified under Section 304.
- Maintaining a third-party liability insurance policy as specified in under Section 402.
- Coordinating selection processes and/or subcontracting process if required and as specified under Section 404, 405, 406, and 407.
- Complying with applicable prevailing and minimum wage requirements of Washington State law as specified under Section 408.
- Complying with the City's Social Equity requirements for the life of the project, as specified under Section 502.
- Providing a tax identification number for the organization or business to allow the City to send appropriate tax records to the Internal Revenue Service (IRS).
- Ensuring compliance with IRS requirements applicable to the Project and the award funds.

### **Section 301: Fiscal Sponsor's Right to Withhold Funds**

If any vendor, personnel, contractor, or other party contracted for the Project fails to fulfill its contract obligations, the Fiscal Sponsor may withhold funds until the contracted obligations have been completed to the satisfaction of the Recipients or to the satisfaction of the Fiscal Sponsor if the Neighborhood Organization has not completed its contracted obligations. This clause should be included in the contract between the Fiscal Sponsor and the Neighborhood Organization and in agreements between the Recipients and their contractors.

The City shall not be held responsible for any amounts claimed by a Neighborhood Organization's or Fiscal Sponsor's employees, suppliers, staff, contractors or subcontractors which have not been approved for payment by the City or which have been disbursed to the Fiscal Sponsor.

### **Section 302: Documentation of Costs and Financial and Records Requirements**

- A. The Fiscal Sponsor shall keep good, complete, and accurate financial records relating to all activities under this Agreement. All accounting documents pertaining in whole or in part to this Agreement and the Project shall be clearly identified and readily accessible, and the City shall have the right to audit the records of the Fiscal Sponsor and Neighborhood Organization as they relate to the Project, upon reasonable notice. The Fiscal Sponsor is also responsible for the following:
- Maintaining an effective system of internal control over and accountability for all funds and property supplied to the Project to ensure the same are used solely for authorized Project-related purposes.
  - Keeping a continuing record of all disbursements by date, check number, amount, vendor, description of items purchased and line item from which money was expended, as reflected in the Fiscal Sponsor's accounting records. A receipt, invoice marked "Paid," or payroll record must substantiate the line-item notations.
  - Maintaining payroll and financial records for a period of six (6) years after receipt of final payment under the Agreement.

- Permitting representatives of the City, the United States and the State Auditor to inspect and audit Fiscal Sponsor's records with respect to all matters under this Agreement at any time during normal business hours and as often as necessary.
- Repaying to the City any funds in Fiscal Sponsor's possession at the time of the expiration or termination of this Agreement that may be due to the City.
- Providing the Internal Revenue Service with appropriate and timely information regarding employee and/or consultant earnings.

- B. In the event that the United States or the State or the City shall determine that any funds were expended by the Recipients for unauthorized or ineligible purposes or constitute disallowed costs and order repayment of the same, the Recipients shall within thirty (30) days remit the same to the Department.
- C. Further, all financial records and fiscal control systems will be established and maintained in a manner to meet the approval of the City and the State Auditor; records and reports submitted shall be satisfactory to meet the approval of the Director of the Department of Neighborhoods.

### **Section 303: Responsibilities of Neighborhood Organization**

The Neighborhood Organization is awarded the Neighborhood Matching Fund grant and is responsible for the performance of the work and the long-term maintenance of the Project. The Neighborhood Organization is responsible for the following:

- Maintaining the Project throughout its useful life as specified under Section 105.
- Providing to the Fiscal Sponsor documentation and evidence of services rendered, and equipment purchased so as to satisfy the City's requirements for payment of funds, as specified under Section 200.
- Providing to the Fiscal Sponsor documentation and evidence of Community Match to satisfy the City's requirements as specified under Section 201.
- Executing contracts with vendors, consultants, contractors as necessary to provide materials and services to accomplish the Project.
- Recruiting, supervising, and training volunteer workers to accomplish the Project.
- Maintaining records, particularly as they relate to the Community Match and Volunteers as specified under Section 304 and 305.
- Maintaining a third-party liability insurance policy as specified under Section 402.
- Tracking and reporting volunteer information as required for Volunteer Insurance Coverage in Section 403.
- Coordinating selection processes and/or subcontracting processes if required and as specified under Section 404, 405, 406, and 407.
- Complying with applicable prevailing and minimum wage requirements of State law as specified under Section 408.
- Complying with the City's Social Equity requirements for the life of the project, as specified under Section 502.

#### Section 304: Reimbursement Process

The City shall, through the Fiscal Sponsor, reimburse the Neighborhood Organization only for allowable Project costs incurred during the term of the Agreement set forth in Section 102, and in compliance with all items included in Article III Recipient Responsibilities. As used in this Agreement, “Claim” means a claim for reimbursement. All Claims shall be supported by properly executed payrolls, time records, receipts, invoices, vouchers, or other official documentation as evidence of the eligibility and validity of all allowable Project costs.

The City cannot advance any funds but only makes reimbursement based on actual cash spent or expenses incurred. The reimbursement will be made approximately **5 to 7 working days** after submitting a properly executed Claim.

- A. The Recipients shall use the City of Seattle WebGrants system to submit the following items online:
1. **Claim** that outlines the allowable Project costs eligible to be reimbursed as outlined in Section 200. The Claim shall include documentation supporting the expenses to be reimbursed, which includes electronic copies of all receipts, purchase orders, invoices, and/or vouchers for individual expenses.
  2. **Match Claim** that outlines the actual Community Match contributed to the Project as specified under Section 201. The Match Claim shall include electronic copies of documentation of the Community Match and its value.
  3. **Status Report** that outlines the progress of the Project throughout the specified period of time as specified under Section 305.

The Department will authorize reimbursement payments after receipt and approval of such Claim, including supporting documentation, Match Claim and Status Report. Approved Claims will result in a payment directly to the Fiscal Sponsor.

- B. The Department reserves the right to withhold payments pending properly completed and submitted Claim, Match Claim, Status Report, and/or scanned documents as required under this Agreement.
- C. All expenditures must be incurred by the closing date, as specified under Section 102, unless properly amended. The Recipients must submit the Final Claim, Final Match Claim along with the Final Status Report, by the closing date of this Agreement.

#### Section 305: Project Reporting

A. Match Claim

The Recipients shall submit a Match Claim with each Claim requesting reimbursement for project expenses. The Match Claim consists of actual Community Match for the project which may include cash, volunteer hours, in-kind professional services, and/or donated supplies and materials as specified under Section 201. The Match Claim must include electronic copies of documentation of the community match and its value. This documentation will include volunteer hours, letters from



professionals identifying their in-kind donation and its value, vendor receipts for donated goods or receipts for expenditures paid by funds raised by the Recipients.

Documentation of volunteer hours must be provided by completing the Volunteer Match section in the Status Report. The Volunteer Match shall be completed regardless of value to enroll in Volunteer Insurance as specified under Section 403. The Match Claim and Volunteer Match may be completed and submitted using the City of Seattle WebGrants system.

**B. Reports**

The Recipients shall submit a Status Report with each Claim requesting reimbursement for allowable Project costs. Upon completion of the Project scope of work, the Neighborhood Organization shall submit a Final Status Report. Both Status Report and Final Status Report are completed and submitted using the City of Seattle WebGrants system.

**C. Project Deliverables**

The Recipients shall submit electronic copies of materials which help document the progress of the project include project outreach materials (flyers, posters, and postcards), meeting minutes, final reports, photographs, construction timelines, job descriptions, contractor contracts, and design drawings. The Project deliverables may be submitted using the City of Seattle WebGrants system.

**D. Public Information**

All public outreach materials including flyers, posters, signage and plaques shall include the Department of Neighborhood logo and/or this reference to the Neighborhood Matching Fund:

“Funding provided by the Neighborhood Matching Fund from the Seattle Department of Neighborhoods”.

**Section 306: Quality of Performance**

- A. The Recipients shall be responsible for the quality of the Project, any services rendered, and the suitability of the end product for its intended use. Recipients’ responsibilities hereunder shall not be reduced by any recommendation or assistance received from the City which varies from the terms and conditions of this Agreement unless reduced to writing, signed by the responsible City officer and made addenda to or amendments of this Agreement.
- B. The City shall judge the adequacy and efficiency of the Project. If during the course of the Agreement, the Project is not being completed in a manner to meet the desired results, the Recipients will make the corrections required by the Department in its reasonable discretion. Failure to make the necessary corrections shall be a material breach of Agreement and be cause for termination.
- C. All work shall be performed and services supplied in a manner to further the Project’s purposes and goals, and in compliance with guidelines for performance set by this Agreement and general direction of the Department.

## ARTICLE IV: PROJECT REQUIREMENTS

### Section 400: Indemnification

To the fullest extent permitted by law, the Recipients agree to defend, indemnify and save harmless the City, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages, including attorney's fees ("Claims") arising out of, in connection with, or incident to the Project or any breach of this Agreement; provided that the foregoing shall not be interpreted to apply to Claims arising out of bodily injury to persons or damage to property resulting from the City's sole negligence. If the damages result from concurrent negligence of the City and either or both of the Recipients, the City may elect to join in the defense of the claims and the Recipients' indemnification obligation under this Agreement shall apply only to the extent the Claims result from the Recipients' negligence or breach of this Agreement or from the negligence or breach of Recipients' officers, agents, employees, and contractors. This indemnification obligation shall include, but is not limited to, all claims against the City by an employee or former employee or volunteer of the Recipients, and the Recipients expressly waive all immunity and limitation on liability under the Washington State Industrial Insurance Act (Title 51, RCW), but only as to the City and to the extent necessary to fulfill the defense and indemnification obligation under this Agreement.

### Section 401: Risk Management

It shall be the responsibility of the Recipients at all times to ensure that the Project is managed in a manner that ensures the safety of those working on the project and the general public.

### Section 402 Insurance

The Recipients shall, at all times during the term of this Agreement, maintain continuously, ***at its own expense***, (1) **Commercial General Liability (CGL)** insurance, including premises/ operations, products/completed operations, personal/advertising injury, contractual liability and stop gap liability. The minimum limits of liability shall be \$1,000,000 each occurrence combined single limit bodily injury and property damage (CSL); (2) If vehicles are used in the conduct of business, **Automobile Liability** insurance, including coverage for owned, non-owned, leased or hired vehicles as appropriate. The minimum limits of liability shall be \$1,000,000 CSL; (3) **Worker's Compensation** insurance for the state of Washington and per Federal statutes, as required.

**CGL and Automobile** insurance as specified above shall: (1) include the City of Seattle as an additional insured for primary and non-contributory limits of liability, (2) shall not be canceled without thirty (30) days prior written notice to the City, except ten (10) days with respect to cancellation for non-payment of premium, and (3) shall have certification issued evidencing compliance with this paragraph C. issued to "The City of Seattle, Seattle Department of Neighborhoods, PO Box 94649, 600 4th Avenue, 4th Floor, Seattle, WA 98124-4649." Prior to the Recipient receiving any funds, the Department shall approve certification of insurance in connection with the described project.

### Section 403: Volunteer Insurance

The City shall provide insurance for adult volunteers working on this project which will extend limited coverage for excess medical due to Project-related accidents or personal liability related to Project-related incidents.

The Recipients shall provide names, phone numbers, addresses and a general description of volunteer work duties for each adult volunteer working on the project to the Department prior to completion of their work and as soon as they are available. Volunteer records for this purpose can be the same as the information completed in the Volunteer Match Section of the City of Seattle WebGrants Status Reports submitted to the Department as specified under Section 304 and 305.

Only individuals listed as volunteers in these reports will be eligible for this coverage. Changes to the scope of the project may affect coverage and, therefore, such changes must be approved by your assigned NMF Project Manager prior to making such change.

### Section 404: Selection Process for Goods and Services

For the purchase of goods and services of \$5,000 or more from a single vendor, the Recipients shall complete the following Selection Process:

1. Develop a written specification of the item(s) or scope of work to be purchased.
2. Solicit and obtain at least 3 written bids, proposals or cost estimates from qualified vendors.
3. Select the lowest or best bid or quote for the goods and services.
4. Submit written statement to NMF Project Manager describing the selection process.

### Section 405: Selection of Consultants Process – (Not Applicable to this Agreement)

For the selection of Consultants, Recipients shall complete the following selection process for professional services. Recipients are encouraged to utilize the City of Seattle's Consultant Roster Program, which lists consultants for various categories of service.

Prior to selecting a consultant, Recipients shall:

- Develop a written scope of work of consultant services needed
- Identify the desired qualifications, related experience and knowledge
- Establish a timeline for the selection process (deadline for proposals, interviews and decisions).  
Note: Timeline must provide at least 2 weeks for accepting proposals from interested candidates

Based on the type and total value of the professional services, Recipients shall complete the following Selection Process for Consultants:

Services less than \$15,000	Services \$15,000 or more or any architectural or engineering services
1. Invite Consultants from the City of Seattle Consultant Roster to submit proposals. Note: Encouraged to invite Women and	1. Advertise in the Seattle Daily Journal of Commerce newspaper for a minimum of two (2) days.

Services less than \$15,000	Services \$15,000 or more or any architectural or engineering services
<p>Minority Business Enterprises (WMBEs) also located on the City Seattle Consultant Roster.</p> <ol style="list-style-type: none"> <li>2. Receive a minimum of three (3) written proposals that include statement of qualification, related experience and references</li> <li>3. Interview the consultants who meet the desired qualifications</li> <li>4. Select the preferred consultant based on qualification, experience and best fit for project. Price may be considered as a factor.</li> </ol>	<p><b>Optional Step</b>  Invite qualified Consultants to submit proposals from City of Seattle Consultant Roster. Note: Encouraged to invite Women and Minority Business Enterprises (WMBEs) also located on the City Seattle Consultant Roster.</p> <ol style="list-style-type: none"> <li>2. Receive a minimum of three (3) written proposals that include statement of qualification, related experience and references</li> <li>3. Interview the consultants who meet the desired qualifications</li> <li>4. Select the preferred consultant based on qualification, experience and best fit for project. Price may be considered as a factor for non-architectural or non-engineering services. Architectural and Engineering services must be selected based upon qualifications and a fair and reasonable price negotiated for the services as provided under RCW 39.80.010.</li> </ol>

**Once a consultant has been selected, Recipients shall:**

5. Submit to the NMF Project Manager a written outline of the selection process including timeline, proposals submitted, interview candidates, rationale for selecting preferred candidate. Retain copies of all proposals submitted.
6. Negotiate and execute a Consultant contract.
7. Secure a copy of the Consultant's Professional Liability insurance policy.
8. Oversee consultant work, including management of contract and authorization of payments.

**Section 406: Selection of Contractors**

The Recipients shall complete the following selection process for Contractors:

1. Develop a written specification of the item(s) or scope of work.
2. Identify the desired qualifications, related experience and knowledge needed.

3. Solicit and obtain at least 3 written bids, proposals or cost estimates from qualified Contractors.
4. Select the lowest bid or quote.
5. Submit to the NMF Project Manager a written outline of the selection process including timeline, proposals submitted, interview candidates, rationale for selecting preferred candidate. Retain copies of all proposals submitted.
6. Negotiate and execute a contract with Contractor.
7. Secure a copy of the Contractor's Professional Liability insurance policy.
8. Oversee Contractor work, including management of contract and authorization of payments.

#### **Section 407: Subcontracting**

This Agreement is personal to each of the parties, and no party may assign or delegate any of its rights or obligations under this Agreement without first obtaining the consent of the other parties. In the event of any approved assignment or subcontract, the City shall continue to hold the Recipients responsible for proper performance of obligations under this Agreement. All provisions of this Agreement shall apply to all subcontracts entered into by the Recipients. The Recipients shall inform the Department of all subcontracts, including the process used for selecting a subcontractor.

#### **Section 408: Prevailing Wage Requirements**

If the funds provided under this Agreement are used to construct, alter, and improve or to maintain a public work, the Neighborhood Organization shall be responsible for the compliance with the prevailing wage requirements of Washington State law. A "public work" under RCW 39.04.010 includes "all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein".

The prevailing wage requirements of RCW 39.12.020 for public works funded by public monies states in part: "The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage".

The Neighborhood Organization shall include in any contract for construction, alteration, restoration, improvement or maintenance of a public work, the following provision:

The Contractor shall comply with the prevailing wage and minimum wage requirements of Washington State law. See RCW 39.12.020 (Prevailing Wage), RCW 49.28 (Hours of Labor), and to RCW 49.46 (Minimum Wage Act) as amended or supplemented.

The Contractor, any subcontractor or other person doing any portion of the Work, shall not pay any laborer, worker, or mechanic less than the applicable prevailing hourly wage rates and fringe benefits for said worker's classification. It shall be the sole responsibility of the Contractor to assign the appropriate classification to all laborers, workers or mechanics who perform any work pursuant to this Contract, in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries. It shall also be the Contractor's sole responsibility to ascertain the applicable prevailing rate of wage for each such classification.

#### **Section 409: Requirements applicable to all Vendors, Consultants, and Contractors**

Vendors, consultants, and contractors providing goods and services under this Agreement must have all required licenses, including a City of Seattle business license, if required by law. Recipients must verify that persons or entities providing goods and services funded under this Agreement have a current City of Seattle business license, unless otherwise exempted by law. For questions and assistance, call the Revenue and Consumer Protection (RCP) office which issues business licenses and enforces licensing requirements. The general e-mail is [rca@seattle.gov](mailto:rca@seattle.gov). The main phone is 206-684-8484. The licensing website is <http://www.seattle.gov/rca/taxes/taxmain.htm>.

### **ARTICLE V: GENERAL CONDITIONS**

#### **Section 500: Compliance with Law**

At no cost to the City, the Recipients shall comply with all applicable laws and statutes of the United States and the State of Washington, and the Charter and ordinances of The City of Seattle, including rules, regulations, orders, and directives of the administrative agencies and the officers thereof. Recipients shall obtain any permits and licenses necessary to complete the Project.

#### **Section 501: Involvement of Former City Employees**

If the Recipients become aware of any former City officer or employee who terminated City office or employment in the last twelve (12) months and who will be working on or subcontracting for any of the paid work under this Agreement, Recipients shall promptly inform the City. The Recipients further agree that no paid work under this Agreement will be done by a former City officer or employee who terminated City office or employment in the last twelve (12) months and who, in the course of official City duties, was involved in, participated in or acted on any matter related to this Agreement.

## **Section 502: Social Equity Requirements**

- A. The Recipients 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 Recipients 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 identity, 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.
- B. The Recipients shall promote and seek inclusion of woman and minority businesses on any contracting opportunities for the Project. 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.
- C. Inclusion responsibilities for contracting opportunities include using solicitation lists, advertisements in publications directed to minority communities, breaking work down to smaller tasks or quantities, making schedule or requirement modifications that assist woman and minority businesses to compete, targeted recruitment, using consultants or minority community organizations to strategize outreach, and selection strategies that result in greater diversity.
- D. If the Project will receive federal funding that includes requirements for disadvantaged business enterprises and if there is a conflict between the woman and minority inclusion requirements under this Agreement and any applicable federal statute, regulation, or grant requirement, the provisions of the federal statute, regulation, or federal grant shall control.
- E. The provisions of this section shall be inserted into all subcontracts for work covered by this Agreement.

## **Section 503: Americans with Disabilities Act**

- A. Without limiting the general obligation under Section 500, recipients must comply with the Americans With Disabilities Act of 1990 which in addition to existing federal, state, and city non-discrimination laws, extends the same civil rights protection to persons with disabilities which have already been granted on the basis of race, color, religion, sex, age and national origin requirements. The Neighborhood Organization shall provide the following:
  - 1. Provide advance notification of public meetings regarding the project with the statement, "accommodation for persons with disabilities upon request".
  - 2. Hold public meetings in accessible locations.
  - 3. Provide alternate forms of communication if requested.

4. Make programs or services provided to the public accessible; and
5. Increase general awareness of and sensitivity to people with disabilities.

B. This section is applicable to all Projects that require design or construction of a capital improvement. The Americans with Disabilities Act, 28 CFR 35.151 (ADA), requires that every new facility to be constructed on City owned property or within or upon a facility operated by or on behalf of the City, to fully comply with the ADA. Alterations to an existing facility must also comply with the ADA, and an accessible path of travel to altered elements as well as to certain other features serving the altered element, such as drinking fountains, restrooms and the like, are also required to be made accessible to the extent feasible. Neighborhood Matching Fund Grant recipients are responsible for determining and conforming to the applicable provisions of the ADA for any feature or element to be located within a City facility or upon City property. Work which does not conform to the requirements of the ADA may be rejected by the City, in which event the recipients shall be fully responsible for any corrective work, or may in the discretion of the City be required to remove any such work and to restore the City property to its previous condition.

#### **Section 504: Title to Property Supplied or Funded**

Whenever Neighborhood Matching Funds of \$500.00 or more are used towards the purchase of personal property, ownership of such property shall rest with the City and such property shall be considered to be on loan to the Recipients. Upon the expiration of this Agreement all property purchased or constructed with Neighborhood Matching funds shall be returned to the City via the administering department for use or disposal by the City under the City's surplus procedures. The City may choose to have the property remain with the Recipients beyond expiration of the Agreement when the property will continue to be used by the community or public. Unless specified otherwise in this Agreement, the following conditions apply to real and personal property used for the Project:

- A. Personal property loaned by private persons, State or Federal agencies, or the City, shall be returned to the owner. Property donated to the Project shall become the property of the City and shall be accepted by the City for its use or disposal, unless the donor specifies that the property is donated to a private entity or person.
- B. The use of City-owned or funded property shall only be used for the purposes set forth in the Agreement and the Neighborhood Organization shall be responsible for all maintenance, unless otherwise agreed.
- C. The Recipients shall be financially liable for loss, damage or disappearance of any City-owned or funded personal property or any damage to real property, and shall report any loss or damage to the Department immediately. The Neighborhood Organization remains responsible for all City-owned property until transferred to the control of the City or until the Neighborhood Organization is relieved of responsibility, in writing, by the City.
- D. The Neighborhood Organization shall provide permanent identification markings on all City-owned or funded properties acquired and shall maintain completed inventory records as required by the



City. Cost reimbursement shall be contingent upon satisfactory compliance with these requirements.

- E. If the Project includes any improvements to City-owned real property (for example, landscaping or a play structure), at the completion of the Project, the City shall own the improvement, subject to the Neighborhood Organization's maintenance requirements under Section 104 and subject to the written acceptance of the department with jurisdiction and management over the real property. If the Project includes any improvements to privately-owned real property, ownership of the improvements may be determined by agreement between the Recipients, provided that the improvements must continue to be used for Project purposes or other public purposes approved by the Department for such periods of time as determined by the Department. In its discretion, the Department may require written confirmation from the owner that the improvement shall remain in use for the public purpose.

#### **Section 505: Creative Works and Visual Art on City Property**

- A. The City shall not own the copyright of any copyrighted material created with funds under this Agreement. However, in consideration for the provision of Neighborhood Matching Funds to any artist or author under this Agreement, the City shall be granted a non-exclusive, irrevocable, unlimited, royalty-free license to use, reproduce, have access to, distribute, or otherwise use for public purpose any creative work produced by the artist or author, notwithstanding the existence of any copyright or trademark designation. This provision shall be included in any agreements with the artists or authors employed or contracted by the Neighborhood Organization or Fiscal Sponsor.
- B. All finished or unfinished documents and material prepared by Recipients with funds provided under this Agreement shall be available for inspection and copying by the City and the public.
- C. The City shall have unrestricted license and authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement.
- D. If the Project includes the installation on City property or the integration into City property of any work of visual art, prior to the installation or integration, the Recipients must deliver to the Department an executed waiver of the creator's rights under the Visual Artists Right Act of 1990 regarding the work of visual art, in a form acceptable to the City.

#### **Section 506: Disclaimer Required**

Unless specifically exempted by the Director, any documents, whether in a printed, digital or video medium, which are prepared by the Neighborhood Organization to be made available to the public shall contain the following disclaimer:

This document has been funded in part by the Neighborhood Matching Fund Program of the Seattle Department of Neighborhoods. The information contained herein does not necessarily reflect the policies, plans, beliefs, conclusions, or ideas, of the City of Seattle.

The City does not warrant the accuracy of any of the information, ideas, conclusions, or information, contained in this document.

**Section 507: Right to Review Documents Prepared for Public Use**

The Recipients shall provide the Department the opportunity to review and comment on any reports or other material prepared or assembled for distribution to the public under this Agreement prior to distribution to the public.

**Section 508: Citizen Participation**

The Recipients will take affirmative steps to encourage widespread citizen participation in planning and carrying out the Project.

**Section 509: Future Support**

The City makes no commitment of future support and assumes no obligations for future support or maintenance of the Project except as set forth in this Agreement.

**Section 510: Reservation of Rights**

Neither payment by the City nor performance by the Recipients shall be construed as a waiver of any party's right or remedies against the other. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

**Section 511: Severability**

If any provisions of this Agreement other than those provided in Article II are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the contemplated project and the City.

**Section 512: Termination of Agreement for Cause**

- A. If, through any cause, the Recipients shall fail to fulfill their obligations under this Agreement in a timely and proper manner, or if they violate any of the terms or conditions of this Agreement, after written notice from the City specifying the nature of the failure and a reasonable time for cure, the Recipients shall be in "default". If the Recipients are in default, the City may terminate this Agreement by giving at least five (5) working days written notice of termination to the Recipients and specifying the effective date. If the City terminates the Agreement for default, the City shall have the rights to all Project-related documents and improvements completed as of the termination date as provided under Sections 505 and 506.

- B. Notwithstanding the above, the Recipients shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Recipients, and the City may withhold any payments to the Recipients for the purposes of set off until such time as the exact amount of damages due to the City from the Recipients is determined.

### **Section 513: Debarment**

Under SMC Chapter 20.70, the Director of Finance and Administrative Services or designee may debar and prevent an organization or individual from contracting or subcontracting with the City for up to five years if the organization or individual:

1. Received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City contracts;
2. Failed to comply with City ordinances or contract terms, including but not limited to, ordinance or contract terms related to woman and minority business utilization, discrimination, or other state, local or federal non-discrimination laws;
3. Abandoned, surrendered, or failed to complete or to perform work on or for a City contract;
4. Failed to comply with contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards;
5. Submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a contract;
6. Colluded with another firm to restrain competition;
7. Committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for the City or any other government entity;
8. Failed to cooperate in a City debarment investigation.

The Director or designee may issue an Order of Debarment under the SMC 20.70.050. The rights and remedies of the City under these debarment provisions are besides any other rights and remedies provided by law or under the Agreement.

### **Section 514: Repayment**

In the event that the City determines any funds provided under this Agreement were misappropriated or not used in compliance with this Agreement, the Fiscal Sponsor shall reimburse the City such funds determined by the City to be due as a result of the misappropriation or non-compliant use.

### **Section 515: Termination for Convenience of City**

The City may terminate this Agreement any time by a notice in writing from the City to the Recipients. If the Agreement is terminated for convenience by the City, the Recipients will be reimbursed for all valid and allowed expenditures incurred prior to the effective date of termination so long as the same are properly submitted as a Claim in the manner required under this Agreement within thirty (30) days of the effective date of termination. Title to any completed Project-related improvements, documents, or property shall be as provided under Sections 504 and 505.

#### **Section 516: Termination of Agreement by the Recipients**

This Agreement may be terminated by the joint agreement of the Recipients upon fifteen (15) days written notice if the City materially breaches its obligations under the Agreement through no fault of the Recipients. In the event of termination due to the breach of the City, the Recipients shall be paid compensation for services performed to termination date, including all authorized expenses then due and expenses directly attributable to the uncompleted portion of the services covered by this Agreement.

#### **Section 517: Changes**

Either party may request changes in the scope of services, performance, or reporting standards to be performed or provided under this Agreement. Any changes which are mutually agreed upon by and between the Recipients and the City must be incorporated in written amendments to this Agreement in order to be binding as specified under Section 202.

#### **Section 518: Integrated Document**

This Agreement, including all exhibits, embodies the entire agreement, terms and conditions between the City, and the Recipients regarding the Project and Project-related activities. No verbal agreements or conversation with any officer, agent or employee of the City prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon either party.

Recipients and the City may execute this Agreement in counterparts, which, taken together, constitute the entire Agreement.

SIGNATURE PAGE

*This Agreement* is made between The City of Seattle (“the City”), acting through the Seattle Department of Neighborhoods (“the Department”) The Eli's Park Project (“Neighborhood Organization”) and Seattle Parks Foundation (“Fiscal Sponsor”) (or collectively the “Recipients”), to carry out Ordinance 125120 and the Neighborhood Matching Fund (NMF) project: **Burke Gilman Park Renovation (Final Phase 4)**, (“Project”), **P21051**.

IN WITNESS WHEREOF, THE CITY, THE NEIGHBORHOOD ORGANIZATION, AND THE FISCAL SPONSOR HAVE EXECUTED THIS AGREEMENT.



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Paige Reischl  
The Eli's Park Project  
Neighborhood Organization

December 10, 2021

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Date

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*Shava Lawson*

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Shava Lawson, Director of Fiscal Services  
Seattle Parks Foundation  
Fiscal Sponsor Organization

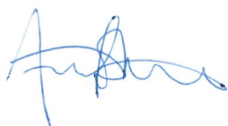
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Andrés Mantilla, Director  
City of Seattle  
Seattle Department of Neighborhoods

12/14/21

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Date