

SUBJECT: APPROVE THE INSTALLATION OF A MEMORIAL SCULPTURE AND
AUTHORIZE FUNDING FOR ASSOCIATED LANDSCAPE
ENHANCEMENTS TO CREATE A MARSHALL FIRE PET MEMORIAL
AT THE LOUISVILLE ARBORETUM

DATE: APRIL 2, 2024

PRESENTED BY: BRYON WEBER, PROJECT MANAGER
ADAM BLACKMORE, DIRECTOR
PARKS, RECREATION, AND OPEN SPACE DEPARTMENT

SUMMARY:

Local non-profit Louisville Rising approached City staff in hopes of establishing a memorial to pets lost as result of the Marshall Fire. In discussions with staff, the Louisville Arboretum was chosen as a desirable site given its peaceful setting and Staff's desire to revitalize the area. An existing sandstone boulder within the Arboretum was identified to serve as the foundation for the piece – a series of bronze animal sculptures to be affixed to the boulder. Louisville Rising has completed fundraising and commissioned the sculpture with the desire to donate the piece to the City following installation.

To support the memorial efforts and as part of the desired arboretum revitalization, staff recommend relocating the selected boulder in proximity to an existing stone seat wall to allow visitors an opportunity for reflection. If funding allows, a series of landscape improvements are also envisioned to enhance the memorial both visually and experientially.

Upon Council approval of the installation, Parks staff will assist with modifications to the irrigation system needed to support the proposed landscaping. Cultural Services will provide a plaque identifying the artwork and recognizing the donation. The City will need to support boulder relocation, repairs to the stone seat wall and/or landscape enhancements.

The proposed art installation and site improvements have been reviewed by the Parks and Public Landscape Advisory Board (PPLAB) and the art work posted for public input by the Cultural Advisory Board. The Board reviewed public comment and voted to accept the artwork as originally proposed. Staff are also working with legal counsel on an agreement for the donation and installation of the piece which would become City property.

The desired timeframe for public unveiling is June 2024. The artist is currently working to meet that deadline and landscape enhancements should be possible assuming authorization is given in a timely fashion.

SUBJECT: PET MEMORIAL INSTALLATION & LANDSCAPE FUNDING**DATE: APRIL 2, 2024****PAGE 2 OF 3****FISCAL IMPACT:**

While the sculpture is donated by the non-profit, relocation of the boulder, repair to the seat wall and any associated landscape enhancements require funding by the City. The low end, or basic improvements, is anticipated at approximately \$5,000 with enhanced improvements coming to \$13,000. These items were not anticipated in the development of the 2024 budget. If council supports, staff will explore potential funding options, including the City Manager's Office contingency line, and may bring forward a budget amendment as needed.

Estimated Budget – Option 1

Sculpture & Install by Artist (Donated by non-profit, Louisville Rising)	\$0
Site & Landscape (Basic Improvements Only)	\$4,879.94
Total Available:	\$4,987.94

Estimated Budget – Option 2

Sculpture & Install by Artist (Donated by non-profit, Louisville Rising)	\$0
Site & Landscape (Enhanced Improvements)	\$12,988.59
Total Available:	\$12,988.59

PROGRAM/SUB-PROGRAM IMPACT:

The recommended approval of installation and designation of funds for landscaping supports the City's value of collaboration, vision to provide a vibrant and healthy community and mission to enhance the quality of life in our community.

RECOMMENDATION:

Staff recommends City Council approve the donation by Louisville Rising, approve installation of the art piece at the Arboretum, designate a specified amount of funding for landscaping and authorize the Mayor, City Manager, Cultural Services Director, Parks, Recreation, and Open Space Director and City Clerk to sign and execute contract documents on behalf of the City.

ATTACHMENT(S):

1. Public Art Donation and Installation Agreement
 - a. Exhibit A – Depiction of Work
 - b. Exhibit B – Contract between Artist and Louisville Rising
 - c. Exhibit C – Landscape Renderings
2. Sample Agreement with Green Landscape Solutions

SUBJECT: PET MEMORIAL INSTALLATION & LANDSCAPE FUNDING**DATE: APRIL 2, 2024****PAGE 3 OF 3****STRATEGIC PLAN IMPACT:**

☐	 Financial Stewardship & Asset Management	☐	 Reliable Core Services
☐	 Vibrant Economic Climate	☒	 Quality Programs & Amenities
☒	 Engaged Community	☐	 Healthy Workforce
☐	 Supportive Technology	☐	 Collaborative Regional Partner

**PUBLIC ART INSTALLATION AND DONATION AGREEMENT
BY AND BETWEEN THE CITY OF LOUISVILLE, LOUISVILLE RISING, AND MICHAEL
PATRICK GARMAN**

1.0 PARTIES

This PUBLIC ART DONATION AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 20__ (the "Effective Date"), by and between the **City of Louisville**, a Colorado home rule municipal corporation (the "City"), **Louisville Rising**, a Colorado nonprofit corporation (the "Donor"), and **Michael Patrick Garman** (the "Artist").

2.0 RECITALS AND PURPOSE

- 2.1 Donor has commissioned Artist to create and install the artwork described and depicted in **Exhibit A**, attached hereto and incorporated herein by reference (the "Work"), which Work is to be installed at the Louisville Arboretum (the "Site").
- 2.2 Donor has offered to donate the Work to the City to be included as part of the City's public art collection.
- 2.3 The City is willing to accept the donation of the Work and to maintain and repair the Work in accordance with the terms and conditions of this Agreement.

3.0 RESPONSIBILITIES OF THE PARTIES

- 3.1 **Artist Responsibilities.** Artist agrees to provide the Work and to perform the specific tasks, duties and responsibilities set forth in the agreement between Artist and Donor, which is attached hereto as **Exhibit B** and incorporated herein by reference. Artist shall furnish all tools, labor and supplies in such quantities and of the proper quality as are necessary to professionally and timely perform the Work. In addition, the Artist agrees to install the Work at the Site in accordance with the following:
 - 3.1.1 Artist shall communicate with the City via email or phone before scheduling delivery and installation. City will instruct the Artist as to when the City is ready to receive the Work. Artist shall obtain a permit from the City for the installation work. During the permitting process, Artist shall describe the installation of the Work, including the area needed for staging equipment, the equipment that will be brought onto the site, the proposed date of installation commencement, the period of time Artist will be on site to complete the installation, and whether and how pedestrian and/or vehicle traffic will need to be restricted.
 - 3.1.2 Prior to commencing installation of the Work, Artist shall notify the City so that the City may add Artist as an additional insured under the City's general liability insurance policy. Artist shall obtain and maintain throughout the delivery and installation period automobile insurance in such amounts as are required by law.
 - 3.1.3 Artist shall securely crate and ship completed Work to the Site and shall be responsible for uncrating and installing the Work at the Site. Unless otherwise agreed upon by the City in writing, Artist shall provide, erect, and maintain barricades, fences, lights, and other traffic control devices, and shall furnish such

personnel (as the City may require) to warn the public and guard the site and shall take such other precautionary measures as are reasonably necessary to protect persons, property, and the work done under this Agreement.

3.1.4 During installation of the Work, Artist shall clean up the Site at reasonable intervals and at other times when directed by the City. At all times while finish work is being accomplished, the Site shall be kept clean, free of dust, construction debris and trash. Directly upon completion of the Work, Artist shall remove from the Site all equipment and any waste materials not previously disposed of, leaving the Site thoroughly clean and ready for the City's final inspection

3.1.5 The Work shall be fully installed and completed by Artist by July 31, 2024, unless delays are caused by the City or by events beyond the control of both parties. Any extensions of time must be agreed to in writing by both parties. Artist must notify the City when the Work is fully installed and complete. No more than thirty (30) days after receiving such notice, the City will provide the Artist a written response, informing the Artist that either (i) the City agrees that the Work is fully installed and is complete consistent with the terms of this Agreement, and the City formally accepts the Work as completed; or (ii) the City does not consider the Work to be completed due to unresolved issues or defects that remain, and describing the outstanding issues or defects and the time frame in which the Artist must cure before the City will issue written final acceptance.

3.2 **Donor Responsibilities.** Donor shall be solely responsible for paying Artist for the Work in accordance with the terms and conditions of the contract between Artist and Donor, attached hereto as **Exhibit B**. Within seven (7) days of the City's written final acceptance of the Work, Donor shall make final payment to Artist ("Final Payment"). The Artist and Donor agree and understand that the City shall have no responsibility for paying the Artist for the Work.

3.3 **City Responsibilities.** The City shall, at its own cost, be responsible for relocating the selected boulder in proximity to an existing stone seat wall on the Site, repairing the stone seat, installing landscape improvements, making modifications to the irrigation systems, and installing a plaque that identifies the Work, in accordance with the plans attached hereto as **Exhibit C**. The City's financial contribution to the foregoing improvements shall not exceed \$ 13,000.

4.0 OWNERSHIP, DONATION AND RIGHTS RELATED TO WORK

4.1 Artist shall own the Work and bear the sole risk of loss, damage, or destruction, until (i) the Work has been delivered to and installed at the Site, (ii) the Work has been finally accepted by the City, and (iii) Final Payment has been made to the Artist by the Donor.

4.2 Donor agrees to donate the Work to the City for no compensation now or in the future. Upon Final Payment by Donor to Artist, ownership of the Work shall pass to the City; provided that, Artist will maintain common-law copyright in the Work. By entering into this Agreement, Donor hereby irrevocably donates, transfers and conveys all right, title, interest and ownership in the Work to the City and its respective successors and assigns. If requested by the City, Donor and Artist shall execute a bill of sale to effect or memorialize the transfer of ownership of the Work to the City.

- 4.3 In view of the intention that the Work in its final dimensions shall be unique, Artist shall not make any additional exact duplicate reproduction of the final Work, nor shall Artist grant permission to others to do so except with the written permission of the City. Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including, but not limited to, reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a professional manner and not to market goods or services. Artist, however, may use photographic reproductions of the Work in its portfolio, in critical and scholarly writings, or for non-commercial purposes, including reproductions used in advertising brochures, media publicity, and catalogues or other similar publications.
- 4.4 Any two-dimensional reproduction by the City shall contain a credit to Artist and display a copyright notice. City shall use its best efforts to credit Donor's donation of the Work in any such reproduction. Artist shall use its best efforts to give a credit reading substantially, "an original work commissioned by Louisville Rising and owned by the City of Louisville," in any public showing of the Work or reproductions thereof.
- 4.5 Artist shall place a copyright notice on the Work that informs the public that the Work is protected by copyright, identifies the copyright owner, and shows the year of first publication. If the copyright is registered with the U.S. Copyright Office, the Artist shall provide the City with a copy of the application for registration, the registration number, and the effective date of the registration.
- 4.6 To the extent the uses, modification, destruction or removal of the Work under this Agreement affect any rights Artist may have under the provisions of federal or state law, including the 1990 Visual Artists' Rights Act under 17 U.S.C. §106A(a) and §113, the Artist hereby knowingly waives any rights provided by those laws.
- 4.7 Artist shall have the right of first refusal to any sale or donation of the Work during the ten (10) years following the Final Payment by Donor. Such right of first refusal shall be exercised by written notice to the City within thirty (30) days of written notification by the City. If the Artist elects to exercise its right of first refusal, it shall pay all costs associated with removal of the Work as set forth in Section 5.2, below. If the City decides to donate or sell the Work, the donee or buyer of the Work will take the Work subject to all of the Artist's rights as stated herein. The donee or buyer shall be given a copy of this executed Agreement at the time of the donation or sale. The City will endeavor to notify the Artist of such donation and sale and of the identity of the donee or buyer. In the event the Artist does not exercise the right of first refusal, the City may proceed to sell or donate the Work.

5.0 MAINTENANCE, REPAIR, & RESTORATION

- 5.1 The City recognizes that maintenance of the Work on a regular basis according to the maintenance instructions is essential to the integrity of the Work and that the City will be solely obliged to maintain the Work after the warranty period set forth in Section 6.1.7. The City shall nonetheless have the right to determine, in its sole discretion, if maintenance, repairs, and restorations to the Work will be made. To the extent practicable, and if the Artist has provided a current address pursuant to Section 18.0, during the ten years following the Final Payment, the Artist shall be given the opportunity to consult on repairs or restorations in addition to those described in the maintenance instructions.

- 5.2 Nothing in this Agreement shall preclude any right of the City in its sole discretion to (i) remove the Work from public display; (ii) move or relocate the Work to another location selected by the City for public display; or (iii) destroy the Work. If the City shall at any time decides to destroy the Work, the City shall notify the Artist and offer the Artist a reasonable opportunity to recover the Work at no cost to the Artist, except for an obligation of the Artist to indemnify and reimburse the City for the difference between the City's cost to recover the Work and the City's cost to destroy the Work, as reasonably determined by the City. Without limiting the generality of this section, the Artist agrees that his rights in connection with the destruction of the Work are as described in this Section; the Artist waives any greater or other rights which he might have in connection with the removal or destruction of the Work under 17 U.S.C. §106A(a) and §113.

6.0 WARRANTIES

- 6.1 Artist represents and warrants to the City that:

- 6.1.1 The Work is artistically unique, and agrees not to create or be involved in the creation of an identical artwork within 100 miles of Louisville, Colorado.
- 6.1.2 The Work is solely the result of the artistic effort of the Artist.
- 6.1.3 Except as otherwise disclosed in writing to the City prior to the time of execution hereof, the Work is unique and original and does not infringe upon any copyright and any other property or personal right
- 6.1.4 That neither the Work delivered hereunder, nor a duplicate thereof, has been accepted for sale elsewhere.
- 6.1.5 The Work is free and clear of any liens or claims or encumbrances from any source whatsoever.
- 6.1.6 The Work, as fabricated and executed, will use materials that are of good quality, fit for the selected purpose, within manufacturer tolerances and warranties, and free from all faults and defects not inherent in the quality required.
- 6.1.7 For a period of two (2) years from the date of the Final Payment, Artist agrees to replace or correct any material defects in the Work and that relate to a defect in the design, workmanship, or materials, without cost to the City. The City shall give notice to Artist of any observed material defect. If Artist fails to cure any such material defects, or to make arrangements to do so within a reasonable time satisfactory to the City, the City has the right to arrange for such replacements or corrections, and Artist must reimburse the City for the costs of any such replacements or corrections. If the City requests that Artist repair damage caused to the Work not related to the design, workmanship, or materials (e.g., by vandalism, collision, extreme environmental conditions, or other unforeseeable causes), the City will reimburse Artist for reasonable material and labor costs for such repairs, except to the extent such damage is due to a defect in design, workmanship or materials used in the Work.

- 6.2 Donor represents and warrants to the City that the Work has not been accepted for sale or donation elsewhere, and the Work is free and clear of any liens or claims or encumbrances from any source whatsoever.
- 6.3 Artist and Donor shall procure and maintain at their own expense and cost any kinds and amounts of insurance that in the Artist's and Donor's judgment may be necessary for their proper protection in the prosecution of the warranties and guaranties hereunder.

7.0 PROJECT REPRESENTATION

- 7.1 The City designates its Arts & Special Events Program Manager ("City's Project Manager"), as the responsible City staff to communicate with Artist during the conduct of the Work.
- 7.2 The Artist designates Michael Garman as its project manager and as the principal in charge who shall be providing the Work under this Agreement.
- 7.3 The Donor designates _____ as the principal in charge in communicating with the City and Artist about the Work.

8.0 INDEMNIFICATION; GOVERNMENTAL IMMUNITY

- 8.1 To the fullest extent permitted by law, Artist agrees to indemnify and hold harmless the City, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of: (1) any injury, loss, or damage, which arise out of or are connected with the Work hereunder, if such injury, loss, or damage is caused by the negligent act, omission, or other fault of Artist, any subcontractor of the Artist, or any officer, employee, volunteer, or agent of the Artist; and (2) copyright infringement or claim involving the Work. Artist shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. Artist shall further bear all other costs and expenses incurred by the City or Artist and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Artist. The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section. The insurance coverage specified herein shall in no way lessen or limit the liability of the Artist under the terms of the Agreement. The Artist's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.
- 8.2 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

9.0 QUALITY OF WORK

The Work shall be created and shipped in accordance with the highest workmanship and service standards in the field to the satisfaction of the City.

10.0 INDEPENDENT CONTRACTOR

It is the expressed intent of the parties that Artist and Donor shall be independent contractors and not the agent, employee or servant of the City, and that:

- 10.1 ARTIST AND DONOR SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSE RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES. NO STATE, FEDERAL OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE CITY.
- 10.2 ARTIST AND DONOR ARE NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS EXCEPT AS MAY BE PROVIDED BY THE ARTIST OR DONOR NOR TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE ARTIST, DONOR OR SOME ENTITY OTHER THAN THE CITY.

11.0 ASSIGNMENT

Neither Artist nor Donor shall assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

- 13.1 This Agreement may be terminated by any party for material breach or default of this Agreement by the defaulting party, if such default is not caused by any action or omission of the terminating party, by giving the defaulting party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.
- 13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date.

14.0 ENFORCEMENT

- 14.1 In the event that suit is brought upon this Agreement to enforce its terms, the parties shall each bear and be responsible for their own attorneys' fees and court costs.
- 14.2 This Agreement shall be deemed entered into in Boulder County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the courts of

Boulder County or the federal district court for the District of Colorado, and in no other court. Colorado law shall apply to the construction and enforcement of this Agreement.

15.0 COMPLIANCE WITH LAWS

Artist and Donor shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

16.0 NON-APPROPRIATION

Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

17.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

18.0 NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by email transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Louisville
Attn: City Manager
749 Main Street
Louisville, CO 80027
e-mail: durbin@louisvilleco.gov

If to Artist:

Michael Patrick Garman

e-mail: _____

If to Donor:

Louisville Rising
Attn:

726 Front Street
Louisville, CO 80027, US
e-mail: _____

Except for notices by email transmission, any notice required or permitted under this Agreement shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail. Notices by email transmission shall be effective on transmission, so long as no message of error or non-receipt is received by the party giving notice. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

19.0 EQUAL OPPORTUNITY EMPLOYER

19.1 Artist and Donor will not discriminate against any employee or applicant for employment because of age 40 and over, race, sex, color, religion, national origin, disability, genetic information, sexual orientation, veteran status, or any other applicable status protected by state or local law. Artist and Donor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to any status set forth in the preceding sentence. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Artist and Donor agree to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

19.2 Artist and Donor shall be in compliance with the applicable provisions of the American with Disabilities Act as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement.

20.0 NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City, Donor and Artist, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City, Donor or Artist receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

21.0 AUTHORITY TO BIND

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

In witness whereof, the parties have executed this Agreement to be effective as of the day and year first above written.

CITY OF LOUISVILLE

By: _____
Christopher M. Leh

ATTEST:

Meredyth Muth, City Clerk

ARTIST:

Sign: _____
Michael Patrick Garman

DONOR:
LOUISVILLE RISING

Sign: _____

Print: _____

Title: _____

Exhibit A – Depiction of Work

Exhibit A – Depiction of Work



Exhibit B – Copy of Contract Between Donor and Artist

Down Dog Art Colorado Springs, CO

Client information

Louisville Rising Pet Memorial

Project information

Creation of custom bronze sculpture consisting of life-sized likenesses of a dog, cat, hamster/gerbil, snake, bird, horseshoe, reptile, bunny incorporated on and around a boulder for placement on a concrete slab. (See attachment)

Project price and payment terms

The project is based upon a multi-piece package price project of \$30,000. The project payments will be applied as follows:

- Down payment of $1/3 = \$10,000$
- Completion of clay sculpture $1/3 = \$10,000$
- Final delivery $1/3 = \$10,000$

Production schedule/delivery of project

Upon receipt of the Down Payment, the sculpture shall be completed within 4 months. Once the completed sculpture is approved, the pieces will be molded and delivered to the foundry for casting. The estimated casting time is 12 weeks but is subject to change based upon current lead times at the foundry.

The pieces will be delivered to Louisville at no charge. The designer will assist in placement configuration of the pieces around the boulder (provided by client). The client will assume any other insurance, or installation costs related to the project. The client will be responsible for base/concrete slab and any necessary permitting. Any alteration or deviation from the above specifications involving extra costs will be executed only upon approval with the client. The designer shall not incur any liability or penalty for delays in the completion of the project due to actions or negligence of client, unusual transportation delays, unforeseen illness, or external forces beyond the control of the designer. If such event(s) occur, it shall entitle the designer to extend the completion/delivery date, by the time equivalent to the period of such delay.

Down Dog Art Colorado Springs, CO

Cancellation

In the event of cancellation of the project, a fee for work completed, based on the contract price and expenses already incurred, shall be paid by the client. Ownership of all copyrights and the original artwork shall be retained by Michael Patrick Garman.

Acceptance of Agreement

The above prices, specifications and conditions are hereby accepted. The designer is authorized to execute the project as outlined in this agreement. Payment will be made as proposed above.

Accepted By: Dorian Ryanoble

Signature: [Signature] Date: 5/17/23

Attachment= Design



Exhibit C- Landscape Plans

Marshall Fire Pet Memorial

3/14/23

Aerial Map



Artist's Rendering (Progress Draft)



Site Photos



Selected Boulder



Proposed Location



Existing Stone Wall

Marshall Fire Pet Memorial

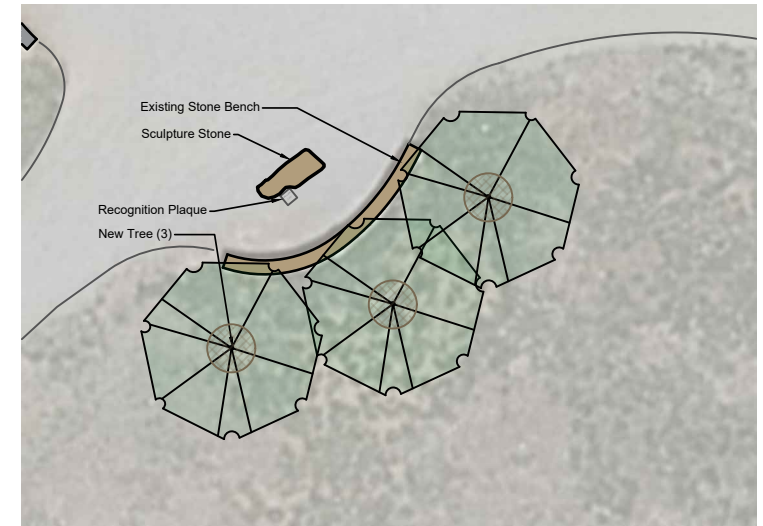
3/14/23

Option 1 | Basic Improvements

Site Rendering



Site Plan



Cost: ~\$5,000

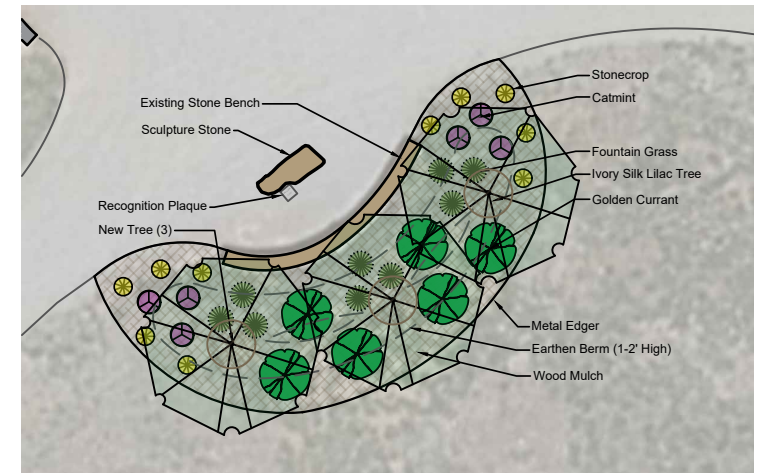
Cost Includes: boulder relocation, stone wall repair, planting 3 trees

Option 2 | Enhanced Improvements

Site Rendering



Site Plan



Cost: ~\$13,000

Cost Includes: boulder relocation, stone wall repair, berm enlargement, planting bed delineation, planting 3 trees, 6 shrubs, 9 grasses, 16 perennials, edger and mulch installation

AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE AND
GREEN LANDSCAPE SOLUTIONS FOR PET MEMORIAL LANDSCAPE INSTALLATION

1.0 PARTIES

This AGREEMENT FOR RESURFACING SERVICES (this "Agreement") is made and entered into this ____ day of _____, 2024 (the "Effective Date"), by and between the **City of Louisville**, a Colorado home rule municipal corporation, hereinafter referred to as the "City", and **BeGreen Landscapes LLC**, dba Green Landscape Solutions, hereinafter referred to as the "Contractor."

2.0 RECITALS AND PURPOSE

- 2.1 The City desires to engage the Contractor for the purpose of providing **landscape installation services for the Pet Memorial at the Louisville Arboretum** lot as further set forth in the Contractor's Scope of Services (which services are hereinafter referred to as the "Services" or "Work").
- 2.2 The Contractor represents that it has the special expertise, qualifications and background necessary to complete the Services.

3.0 SCOPE OF SERVICES

The Contractor agrees to provide the City with the specific Services and to perform the specific tasks, duties and responsibilities set forth in Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference.

4.0 COMPENSATION

- 4.1 The City shall pay the Contractor for Services under this Agreement a total not to exceed the amounts set forth in Exhibit "B" attached hereto and incorporated herein by this reference. For Services compensated at per unit rates or on a per-task basis, such rates or costs per unit or task shall not exceed the amounts set forth in Exhibit "B." The City shall not pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.), unless such expenses are (1) clearly set forth in the Scope of Services, and (2) necessary for performance of the Services ("Pre-Approved Expenses"). The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Contractor's efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, and outside consultant fees. The Scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.
- 4.2 The Contractor shall submit monthly an invoice to the City for Services rendered and a detailed expense report for Pre-Approved Expenses incurred during the previous month. The invoice shall document the Services provided during the preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the City. The Contractor shall provide such additional backup documentation as may be required by the City. The City shall pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

- 5.1 The City designates PROST Project Manager, Bryon Weber, as the responsible City staff to provide direction to the Contractor during the conduct of the Services. The Contractor shall comply with the directions given by Bryon Weber and such person's designees.
- 5.2 The Contractor designates _____ as its project manager and as the principal in charge who shall be providing the Services under this Agreement. Should any of the representatives be replaced, particularly _____, and should such replacement require the City or the Contractor to undertake additional reevaluations, coordination, orientations, etc., the Contractor shall be fully responsible for all such additional costs and services.

6.0 TERM

- 6.1 The term of this Agreement shall be from the Effective Date to _____, 2024, unless sooner terminated pursuant to Section 13, below. The Contractor's Services under this Agreement shall commence on the Effective Date and Contractor shall proceed with diligence and promptness so that the Services are completed consistent with the City's requirements by no later than _____, 2024.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

7.0 INSURANCE

- 7.1 The Contractor agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.1.1 through 7.1.3. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The coverages required below shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. The required coverages are:
- 7.1.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.
- 7.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the City of Louisville, its officers and its employees, as additional insureds, with primary coverage as respects the City of Louisville, its officers and its employees, and shall contain a severability of interests provision.
- 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FOUR HUNDRED THOUSAND DOLLARS (\$400,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services. The

policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Contractor providing services to the City of Louisville under this Agreement.

- 7.2 The Contractor's general liability insurance and automobile liability and physical damage insurance shall be endorsed to include the City, and its elected and appointed officers and employees, as additional insureds, unless the City in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Contractor. Such policies shall contain a severability of interests provision. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- 7.3 Certificates of insurance shall be provided by the Contractor as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. No required coverage shall be cancelled, terminated or materially changed until at least 30 days' prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 7.4 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to the Contractor from the City.
- 7.5 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if and to the extent such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Contractor shall further bear all other costs and expenses incurred by the City or Contractor and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Contractor. The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

9.0 CONTRACTOR OBLIGATIONS AND WARRANTIES

- 9.1 Contractor's services shall be in accordance with the prevailing standard of practice normally exercised in the performance of services of a similar nature in the Denver metropolitan area.
- 9.2 It is assumed that Contractor is familiar with all laws, codes, ordinances, and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or upon the site, or in any way affect the Work. No pleas or claims of misunderstanding or ignorance by Contractor shall in any way serve to modify the provisions of the Agreement. Contractor shall at all times observe and comply with all federal, state, county, local, and municipal laws, codes, ordinances, and regulations in any manner affecting the conduct of the Work.
- 9.3 Until the final acceptance of the Work by the City in writing, Contractor shall have the charge and care thereof, and shall take every necessary precaution against injury or damage to any part thereof by the effects of the elements or from any other cause. Contractor, at its own expense, shall rebuild, repair, restore, and correct all injuries or damages to any portion of the Work occasioned by any causes before its completion and final acceptance. In case of suspension of Work from any cause whatsoever, Contractor shall be responsible for all materials and shall properly store same, if necessary, and shall provide suitable drainage, barricades, and warning signs where necessary. Contractor shall correct or replace, at its own expense and as required by City, any material which may be destroyed, lost, damaged, or in any way made useless for the purpose and use intended prior to final acceptance of the Work, or portions thereof. Contractor shall be relieved of the responsibilities provided in this Section upon final acceptance of the Work by City, except no such relief shall apply to damages or injuries caused by or related to actions of Contractor or its subcontractors.
- 9.3 Contractor shall provide City with written evidence that all persons who have done and portion of the Work or have furnished material under this Agreement and are entitled to liens therefor under any laws of the State of Colorado have been fully paid or are not entitled to such liens. Final payment shall not be made to Contractor until the City is reasonably satisfied that all claims or liens have been satisfied by Contractor. The Work will be considered complete when all Work has been finished, the final inspection made, and the Work accepted by City in writing, and all claims for payment of labor, materials, or services of any kind used in connection with the Work thereof have been paid or settled by Contractor.
- 9.4 Contractor agrees to guarantee all Work under this Agreement for a period of one (1) year from the date of final acceptance by the City. If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Agreement, as reasonably determined by City, then the Contractor shall, when notified by City, immediately place such guaranteed Work in a condition satisfactory to City. The City shall have all available remedies to enforce such guaranty, except that City shall not have any work performed independently to fulfill such guaranty and require Contractor to pay City such sums as were expended by the City for such work, unless the City has first given notice to the Contractor of the deficiency and given the Contractor a reasonable opportunity to cure the same.

10.0 INDEPENDENT CONTRACTOR

It is the expressed intent of the parties that the Contractor is an independent contractor and not the agent, employee or servant of the City, and that:

- 10.1. **Contractor** shall satisfy all tax and other governmentally imposed responsibilities including but not limited to, payment of state, federal, and social security taxes, unemployment taxes, worker's

compensation and self-employment taxes. No state, federal or local taxes of any kind shall be withheld or paid by the City.

- 10.2. **Contractor is not entitled to worker's compensation benefits except as may be provided by the Contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some entity other than the City.**
- 10.3. Contractor does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.
- 10.4. Contractor has and retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder.
- 10.5. The City will not provide training or instruction to Contractor or any of its employees regarding the performance of the Services hereunder.
- 10.6. Neither the Contractor nor any of its officers or employees will receive benefits of any type from the City.
- 10.7. Contractor represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.
- 10.8. All Services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the proper and sole performance thereof.
- 10.9. Contractor will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

11.0 ASSIGNMENT

Except as provided in section 22.0 hereof, Contractor shall not assign or delegate this Agreement or any portion thereof, or any monies due or to become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

- 13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

- 13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Contractor will be paid for the reasonable value of the services rendered to the date of termination, not to exceed a pro-rated daily rate, for the services rendered to the date of termination, and upon such payment, all obligations of the City to the Contractor under this Agreement will cease. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION AND AUDIT

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 DOCUMENTS

All computer input and output, analyses, plans, documents photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed for the City in performance of the Services are and shall remain the sole and exclusive property of the City. All such materials shall be promptly provided to the City upon request therefor and at the time of termination of this Agreement, without further charge or expense to the City. Contractor shall not provide copies of any such material to any other party without the prior written consent of the City.

16.0 ENFORCEMENT

- 16.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.
- 16.2 This Agreement shall be deemed entered into in Boulder County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Boulder County of the State of Colorado, and in no other court. Contractor hereby waives its right to challenge the personal jurisdiction of the District Court of Boulder County of the State of Colorado over it.

17.0 COMPLIANCE WITH LAWS

- 17.1 Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.
- 17.2 Contractor acknowledges that the City of Louisville Code of Ethics provides that independent contractors who perform official actions on behalf of the City which involve the use of discretionary authority shall not receive any gifts seeking to influence their official actions on behalf of the City, and that City officers and employees similarly shall not receive such gifts. Contractor agrees to abide by the gift restrictions of the City's Code of Ethics.

18.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

19.0 NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by facsimile transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Louisville
Attn: City Manager
749 Main Street
Louisville, Colorado 80027
Telephone: (303) 335-4533
Fax: (303) 335-4550

If to the Contractor:

Green Landscape Solutions
Attn: Josh Wagner
150 Wells St #310
Erie, CO 80516
Telephone: (720) 468-0987

Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail; or on facsimile transmission receipt. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

20.0 EQUAL OPPORTUNITY EMPLOYER

- 20.1 Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- 20.2 Contractor shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

21.0 NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22.0 SUBCONTRACTORS

Contractor may utilize subcontractors identified in its qualifications submittal to assist with non-specialized works as necessary to complete projects. Contractor will submit any proposed subcontractor and the description of its services to the City for approval. The City will not work directly with subcontractors.

23.0 AUTHORITY TO BIND

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

In witness whereof, the parties have executed this Agreement to be effective on the date first above written.

CITY OF LOUISVILLE,
a Colorado Municipal Corporation

By: _____
Jeff Durbin, City Manager

Attest: _____
Meredyth Muth, City Clerk

CONTRACTOR:
BEGREEN LANDSCAPING LLC

By: _____

Title: _____

CONTRACT EXHIBIT A – Scope of Work

CONTRACT EXHIBIT B – Contractor Pricing