*DRAFT – REQUIRES BOARD APPROVAL*

EXHIBIT A

AGREEMENT

FOR PROFESSIONAL SERVICES BETWEEN

LANDSCAPE ARCHITECT AND CLIENT

Preliminary Provisions

Date

This Agreement is made as of March \_\_, 2021, between **Sleepy Hollow Fire Protection District** (the “Client”) and **Ann Baker Landscape Architecture** (“Landscape Architect”) for the Landscape Architectural Services as provided herein. Unless otherwise noted, this Agreement supersedes all previous proposals, agreements, and negotiations between the parties.

Client

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| Sleepy Hollow Fire Protection District |
| Name |
| 47 Legend Road |
| San Anselmo, CA 94960 |
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| Client’s Representative: Richard C. Shortall Jr., Director/President |
| Relationship to Project Owner |

Landscape Architect

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| --- |
| Ann Baker Landscape Architecture |
| Entity: sole practitioner |
| 625 2nd St., Ste 110, Petaluma CA 94952 |
| address |
| P: (707) 772 - 5062 - Email: landarches@gmail.com |
| contact information |

Project

Sleepy Hollow Community Center Fire Smart Demonstration Garden

Project Description:

The project is to design and prepare construction documents for the Client’s establishment of a public exhibition garden at the Sleepy Hollow Community Center that demonstrates Fire-Smart landscape elements, use of native and climate adaptive species, and integration of sustainable landscape elements that are low resource-intensive so as to engage and educate the public about Fire-Smart landscapes and inspire visitors to support the Client’s goals to meet or exceed WUI requirements, MWELO requirements, and other fire prevention-related vegetation management and sustainability practices in the District (the “Project”).

Program

The Landscape Architect expects to develop a program based on discussions with the Client and the Design Team and review of their current program documents.

Scope of Services

The scope of services to be provided by the Landscape Architect under this Agreement and the Supplemental Services which may be provided when requested in writing by the Client are described in *Exhibit “A” - ABLA Scope of Work dated October 27, 2020*

Compensation

Compensation for the Landscape Architect’s Services performed under this Agreement shall be a stipulated sum of Thirty-Seven Thousand Eight Hundred One Dollars ($37,801) for the base proposal including a Contingency amount, estimated Time and Materials fees for Task B, and Reimbursable Expenses as indicated in *Exhibit B - Fee Schedule*, and as defined in Article 4. Compensation is subject to the provisions of this Agreement. Supplemental Services, when requested in writing by the Client, shall be compensated on an hourly basis at the rates provided in *Exhibit A* or on the basis of a negotiated fee provided in an amendment to this Agreement.

Schedule of Services

The schedule for the performance of the Landscape Architect’s Services under this Agreement will be discussed with the Client and the Landscape Architect and is subject to the provisions of this Agreement and to the execution of an agreement between the Client and the Sleepy Hollow Charitable Foundation granting the District an exclusive right to enter and use for demonstration garden purposes the areas depicted on *Exhibit C* (the “Garden Areas”).

**Article 1**

**Landscape Architectural Services**

**1.1 Standard of Care**

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| In providing services under this Agreement, the Landscape Architect shall perform, consistent with but limited to, that degree of skill and care ordinarily used by other reputable members of the Landscape Architect profession, practicing in the same or similar locality and under similar circumstances. Nothing in this Agreement shall be interpreted to require the Landscape Architect to meet any higher standard of care, and this Section 1.1 shall control over any such contrary provision.  |

1.2 Coordination

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

1.3 Representations

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

1.4 Scope of Services

The Scope of Landscape Architect’s Services to be provided under this Agreement is detailed in E*xhibit “A - Scope of Work”*

1.5 Supplemental Services

Supplemental Services are beyond the scope of the basic Scope of Services, and when requested in writing by the Client, shall entail additional compensation (either on the hourly basis stated in Exhibit “A” or on the basis of a negotiated sum) beyond the Compensation stated in the Preliminary Provisions.

1.6 Approval of Services/Changes to Approved Services

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

1.7 Opinions of Probable Construction Costs

If included in the scope of work, opinions of probable construction costs provided by the Landscape Architect are based on the Landscape Architect’s familiarity with the landscape construction industry and are provided only to assist the Client’s budget planning; such opinions shall not be construed to provide a guarantee or warranty of the actual construction costs at the time construction bids are solicited or construction contracts negotiated. Unless expressly agreed in writing and signed by the parties, no fixed limit of construction costs is established as a condition of this Agreement by the furnishing of opinions of probable construction costs.

1.8 Construction Safety

The presence of the Landscape Architect, its employees, or consultants at the Project site shall not be deemed an assumption by the Landscape Architect of any obligations, duties, or responsibilities for safety including, but not limited to construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating the work of the Project in accordance with the Construction Documents or any regulatory health or safety requirements. The Landscape Architect, its employees, and consultants have no authority to exercise any control over any construction contractor, its employees, or subcontractors in connection with their work or health and safety programs and procedures.

**Article 2**

**Client’s Responsibilities**

2.1 Program

The Client shall provide program and Project submittal schedule information.

2.2 Information

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

2.2.2 The Client shall be responsible for all legal, accounting, and insurance services the Client may require or deem necessary in the interest of the Project.

2.3 Independent Testing

The Client shall provide independent testing services when deemed necessary to determine site conditions such as soil and subsoil conditions, water, pollution, and hazardous waste conditions.

2.4 Reliance

The Landscape Architect shall be entitled to rely on the accuracy and completeness of the information, test results, and work product provided by the Client and the Client’s consultants. The Landscape Architect shall not be responsible for calculations, specifications, or designs based on erroneous, inaccurate, or incomplete information provided by the Client.

2.5 Client’s Representative

The Client shall designate a representative with authority to act on the Client’s behalf with regard to the Project.

2.6 Approvals

The Client’s decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architect’s Services. Comments, if from a committee, the Client, or multiple interested entities, must be a consolidation of all comments in order to provide clear direction to the Landscape Architect and to avoid delays.

2.7 Notice of Nonconformance

If the Client observes or becomes aware of any errors or omissions or inconsistencies in any documents provided by the Landscape Architect or any fault or defect in the Project, then the Client shall promptly give written notice thereof to the Landscape Architect.

2.8 Project Permit and Review Fees

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

**Article 3**

**Ownership of Documents**

**3.1** The Landscape Architect shall be deemed the author and owner of all deliverables provided to the Client including, but not limited to, plans, drawings, specifications, Construction Documents, displays, graphic art, photographs, and other images and devices of any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by the Landscape Architect (collectively, the “Design Materials”). One (1) reproducible copy of all Design Materials shall be provided by the Landscape Architect to the Client promptly upon the completion of the Project.

**3.2** Subject to payment by the Client of all fees and costs owed to the Landscape Architect, the Landscape Architect grants to the Client a nonexclusive license to reproduce the Design Materials solely for the construction and use of the Project without incurring any obligation for additional compensation to the Landscape Architect.

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

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

**Article 4**

**Landscape Architect Compensation**

**4.1** Compensation for the Scope of Services described in *Exhibit A - Scope of Work,* and in *Exhibit B - Project Fee Schedule* to be performed under this Agreement shall be the stipulated sum indicated in the Preliminary Provisions plus Reimbursable Expenses as defined below. Supplemental Services, described in Section 1.5 of this Agreement, when requested in writing by the Client, shall be compensated on an hourly basis at the rates provided in *Exhibit A* or on the basis of a negotiated fee provided in an amendment to this Agreement.

**4.2** Reimbursable expenses are actual out-of-pocket, commercially reasonable expenditures made by the Landscape Architect in exclusively connection with the execution of the Project, and only as pre-approved in writing by the Client and without mark-up for administrative costs or profit overhead. Reimbursable expenses include but are not limited to the following:

4.2.1 travel expenses in connection with the Project; living expenses in connection with out-of-town travel, long-distance communications;

4.2.2 costs of reproductions, faxes, postage and handling, messenger and overnight

 delivery services;

4.2.3 if authorized in advance by the Client, overtime-related employee expenses;

4.2.4 costs of renderings, photographs, models, and mock-ups requested by the Client;

4.2.5 expense of professional liability insurance dedicated exclusively to the Project, or additional insurance coverage or limits requested by the Client in excess of that normally carried by the Landscape Architect and its consultants;

4.2.6 costs of printing and delivering bid packages;

4.2.7 services of professional consultants which cannot be quantified at the time of contracting; and

4.2.8 other similar direct Project-related expenditures.

Reimbursable expenses shall be reduced by all cash discounts, trade discounts, quantity discounts, rebates, or other amounts received by the Landscape Architect in the purchase of any goods or services in connection with the Project. As soon as practicable after incurring a reimbursable expense, the Landscape Architect will furnish to the Client a statement itemized on a line-item-by-line-item basis accurately showing the nature and amount of such reimbursable expense, in each case accompanied by supporting documentation.

4.3 Payments

4.3.1 An initial paymentofOne Thousand Dollars($1,000.00) shall be made upon execution of this Agreement; this amount shall be credited to the Client’s initial invoice payment. This initial payment may be waived upon Client’s request.

4.3.2 Monthly payments to the Landscape Architect shall be based on (1) the percentage of the Scope of Services completed in accordance with the Fee Schedule provided in *Exhibit B* herein, and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.

4.3.3 Payments are due and payable thirty (30) days from the date of the Client’s receipt of the Landscape Architect’s invoice. Invoiced amounts remaining unpaid thirty (30) days after the due date shall be deemed overdue and shall accrue one and one-half percent (1.5%) interest per month. Pursuant to Section 7.2, below, at the Landscape Architect’s option, overdue payments may be grounds for suspension of services or termination of this Agreement.

4.4 Extended Services

If through no fault of the Landscape Architect the Scope Services described in *Exhibit A* have not been completed within three (3) years after the contract date*,* and the Scope of Services has not otherwise changed*,* then Landscape Architect may propose modest additional fees for Project management related to the extension of time working on the Project.

**Article 5**

**Insurance, Indemnification, Consequential Damages**

5.1 Insurance

 The Landscape Architect shall secure and maintain insurance coverages with an insurer or insurers, qualified to do business in the State of California and acceptable to the Client (which acceptance shall not be unreasonably withheld) which will protect the Client from claims which may arise out of or result from the actions or inactions of the Landscape Architect relating to this Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by the Landscape Architect or its subcontractors, or by anyone for whose acts any of them may be liable as follows:

Coverage Liability Limits

Professional Liability $1,000,000 /$2,000,000 per claim/aggregate

Commercial General Liability $1,000,000 per occurrence

Comprehensive Automobile Liability $1,000,000 per accident

Workers Compensation NA

Such insurance coverages shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter, if reasonably available and affordable at that time. Such policies of insurance, except Professional Liability, shall name the Client and its officers, agents, and employees as additional insureds. Each policy of insurance, except Professional Liability, shall state that, with respect to the operations of the Landscape Architect, such policy is primary and any insurance carried by the Client is excess and non-contributory with such primary insurance. Each policy of insurance required above shall state that not less than thirty (30) days’ written notice shall be given to the Client prior to cancellation and shall waive all rights of subrogation. The Landscape Architect shall notify the District in the event of material change in, or failure to renew, each policy. Prior to commencing work, the Landscape Architect shall deliver to the Client certificates of insurance as evidence of compliance with the requirements in this Section 5.1. In the event the Landscape Architect fails to secure or maintain any policy of insurance required hereby, the District may, at its sole discretion, secure such policy of insurance in the name of and for the account of the Landscape Architect, and in such event, the Landscape Architect shall reimburse the District upon demand for the cost thereof.

5.2 Indemnification

Client and Landscape Architect each agrees to indemnify and hold harmless the other, but not defend, their respective officers, employees, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys’ fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party’s negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Client and the Landscape Architect, they shall be borne by each party in proportion to its negligence. The rights and obligations of the parties set forth in this Section 5.2 shall survive indefinitely the termination of this Agreement.

5.3 Consequential Damages

 The Landscape Architect and the Client each hereby waives any consequential, incidental, indirect, punitive, or special damages in connection with the performance of the Services or otherwise under this Agreement, whether or not liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, even if it is advised of the likelihood of such damages; *provided, however*, that if damages of such kind are awarded against a party hereto in favor of a third party on grounds entitling the party hereto to indemnity from the other party hereto, then the indemnified party may recover such damages from the indemnifying party.

**5.4 Limitation of Liability**

To the maximum extent permitted by law, the Client agrees to limit the Landscape Architect’s liability for the Client’s damages to the sum of One Hundred Thousand Dollars ($100,000) or the Landscape Architect’s fees for services rendered (excluding reimbursable expenses) with respect to the Project, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

**Article 6**

**Dispute Resolution**

**6.1** If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions between the parties or their representatives who shall have authority to settle the dispute. If the dispute has not been settled within fourteen (14) days of the initial discussions, then the parties shall submit the dispute to mediation in accordance with Section 6.2.

**6.2** If the dispute is not settled pursuant to Section 6.1, then before recourse to any other dispute resolution procedure, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be the location of the Project. A request for mediation may be filed with the American Arbitration Association or any other mediation service acceptable to both parties. The parties agree to conclude the mediation within sixty (60) days of filing the request.

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

**6.4** Appropriate provisions for consolidation shall be included in other contracts relating to the Project so that all parties necessary to resolving a claim are parties to the same dispute resolution proceeding.

**6.5** Unless otherwise agreed, the cost of mediation shall be shared equally by the parties.

**6.6** Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

**Article 7**

**Suspension/Termination**

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

**7.2** The Client’s failure to make payments to the Landscape Architect in accordance with the provisions of this Agreement shall be deemed a substantial failure to perform and a cause for termination; *however*, in this circumstance the Landscape Architect, at its option, may elect to suspend its services on thirty (30) days’ notice to the Client rather than terminate this Agreement. The Landscape Architect shall have no liability to the Client for any delays caused by a suspension under this provision.

**7.3** If the Client suspends the Landscape Architect’s services for any reason, then the Landscape Architect shall be compensated for all services satisfactorily performed to that date, and the Landscape Architect shall have no liability to the Client for any delays caused by the Client’s decision to suspend the services.

**7.4** When suspended services are resumed, the Landscape Architect shall be compensated for Landscape Architect’s direct, out-of-pocket expenses reasonably incurred as a result of the interruption and resumption of the Landscape Architect’s Services, and the Landscape Architect Compensation and the Schedule of Services for the services remaining to be performed shall be equitably adjusted.

**7.5** A suspension of services by either party for more than thirty (30) days may, at the option of either or both parties, be deemed grounds for termination of the Agreement.

**7.6** If termination is not due to the fault of the Landscape Architect, then the Client shall pay, in addition to Compensation and Reimbursable Expenses due at the time of the termination, all of the Landscape Architect’s direct, out-of-pocket costs and expenses reasonably incurred by the Landscape Architect in connection with such termination. In addition, the Client shall comply and cooperate in accordance with the provisions of Article 3, Ownership of Documents.

**Article 8**

**Other Terms and Conditions**

8.1 Force Majeure

 Either party shall be relieved of its obligations hereunder in the event and to the extent that performance hereunder is delayed or prevented by any cause beyond its control and not caused by the party claiming relief hereunder, including, without limitation, acts of God, public enemies, war, insurrection, acts or orders of governmental authorities, fire, flood, explosion, or the recovery from such cause (“Force Majeure”). The parties agree to make all reasonable efforts to mitigate the delays and damages of Force Majeure.

8.2 Notices

 Notices required pursuant to this Agreement shall be sufficient if delivered personally or by registered or certified mail, return receipt requested at the addresses indicated on the first page of this Agreement.

8.3 Assignment

 Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

8.4 Third-Party Relationships

Nothing in this Agreement shall (a) create a contractual relationship, obligation to, or a cause of action in favor of any third party against either the Client or the Landscape Architect, or (b) shall confer upon any person or entity not a party to this Agreement, or the legal representatives of such person or entity, any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement.

8.5 Severability

 If any term or provision of this Agreement shall be found to be invalid or unenforceable, the remaining provisions shall, to the fullest extent permitted by law, remain in full force and effect.

8.6 Captions

 Captions of articles, sections, paragraphs, or subparagraphs of this Agreement are for convenience and reference only.

8.7 Governing Law

 This Agreement shall be governed by the laws of the State of California. Subject to the requirements of Article 6, above, any action seeking to enforce any provision of, or directly or indirectly arising out of, or in any way relating to, this Agreement shall be brought in the Superior Court of Marin County, California.

8.8 Complete Agreement

 This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement only may be amended in writing signed by both the Client and the Landscape Architect.

Exhibits

The following Exhibits are incorporated in and made a part of this Agreement:

*“A” ABLA Scope of Services*

*“B” ABLA Fee Schedule*

*“C” Garden Areas*

**Signatures**

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|  |
| *Client*By: Richard C. Shortall, Jr., President |
| Date: March \_\_, 2021 |
|  |
| *Client*By: Ann F. Baker |
| Date: March \_\_, 2021 |