File # 15-059
2/5/2015

CITY OF FRESNO
City Clerk's Office (Original)

MEMORANDUM OF UNDERSTANDING
WITH
THE ART OF LIFE CANCER FOUNDATION REGARDING WOODWARD PARK

This Memorandum of Understanding ("MOU") is entered into this 5th day of February, 2015, by and between the CITY OF FRESNO, a municipal corporation, ("City"), and THE ART OF LIFE CANCER FOUNDATION, INC., a California nonprofit public benefit corporation ("Foundation").

WITNESS

WHEREAS, City owns Woodward Park ("Park") and Foundation intends to develop a garden which will include trails, display kiosks, reflective areas, playscapes for children, and a gathering place for events ("Garden");

WHEREAS, the mission of Foundation is to inspire people impacted by cancer to connect and heal through creative expression;

WHEREAS, Foundation's mission will be benefitted and advanced by the development of the Garden at the Park; and

WHEREAS, the City and Foundation now wish to enter into this MOU to allow the Foundation to develop the Garden at the Park.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative: Manuel A. Mollinedo, Director
Parks, After School, Recreation and Community Services
1515 E. Divisadero Street
Fresno, CA 93721
Tel: (559) 621-2900

FOUNDATION Representative(s): Jenelle Higton, Executive Director
Mark Somma, Ph.D., Professor
The Art of Life Cancer Foundation
6121 N.Thesta, Suite 204
Fresno, CA 93710
Tel: (559) 301-5606

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES

A. The City will:

(i) Designate a representative to work with the Foundation to ensure each stage of the project and the scope of work has been completed.

(ii) Review each project phase of the design and construction of the Garden, however, nothing in this MOU shall bind future City action which may be necessary to fund and approve future development of the Park.

B. Foundation will:

(i) Assume financial responsibility for all costs associated with the design and construction of the Garden as identified in tasks 1 through 5 in **Exhibit A**.

(ii) Establish an Advisory Council of six to ten members that will assist in the FOUNDATION Initiative. The Advisory Council will hold monthly meetings, at minimum, to determine ongoing progress and scale up promotion and fund-raising efforts as needed. The Advisory Committee will solicit cash and in-kind support for the on-going operations of the Garden (including program planning efforts).

(iii) Appoint a Project Director to lead the Advisory Council and fund-raising efforts.

(iv) Hold all funds raised in a segregated FOUNDATION Account.

(v) Endeavor to establish written agreements or letters of intent with community benefit organizations and other service and educational organizations to provide a full range of services to the public at the Garden

(vi) Provide the City with a quarterly activity report to include Advisory Council/FOUNDATION Initiative meeting minutes, financial activity, including use of donation proceeds to fund Garden planning, construction and maintenance; and fund-raising, marketing, and partnering efforts.

3. EFFECTIVENESS, DURATION AND TERMINATION

This MOU shall be effective February 5, 2015 through February 4, 2017. Thereafter, this MOU may be administratively extended by the City Manager (or designee) for up to one additional year, ending February 4, 2018. The City will negotiate in good faith with Foundation the terms of a long-term maintenance agreement for the Garden, which will replace this MOU once executed.

Either party may at any time terminate this MOU with cause upon written notice to the other party following the other party's failure to reasonably cure an event of non-performance hereunder following thirty (30) days written notice thereof. Termination shall be effective (the "Effective Date of Termination") as of the date specified in said notice of termination. Upon such termination, all rights and obligations of each party under this MOU shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein.

4. RECORDKEEPING AND PERFORMANCE DATA

Each party shall keep and maintain proper records and documentation sufficient to substantiate its contributions hereunder, and shall make such available for review and audit during normal operating hours upon the reasonable written request of the other party for a period of three (3) years following expiration or earlier termination of this MOU.

5. COMPLIANCE WITH GOVERNING LAW

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this MOU shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, and ethnicity, status as a disabled veteran or veteran of the Vietnam era.

6. CAPACITY OF CITY AND FOUNDATION

Each party is acting in an independent contractor capacity. Nothing in this MOU and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

In addition and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, workers' compensation insurance, benefits and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of the FOUNDATION. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this MOU, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable. Conversely, personnel supplied by FOUNDATION will not for any purpose be considered employees or agents of the City. FOUNDATION assumes full responsibility for the actions of such personnel while they are performing services pursuant to this MOU, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The City and FOUNDATION agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. The City's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by FOUNDATION. FOUNDATION agrees and acknowledges that FOUNDATION's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the City.

The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each shall be solely responsible for payment of all sales, use, or other taxes assessed

against or associated with the performance of each party's respective obligations or on the exercise of their rights under this MOU, including without limitation income, payroll or employment-related taxes and payments.

Neither party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior written consent of both parties.

7. INDEMNIFICATION

FOUNDATION shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by FOUNDATION, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of FOUNDATION or any of its officers, officials, employees, agents or volunteers in the performance of this MOU.

City shall indemnify, hold harmless and defend FOUNDATION and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, FOUNDATION or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this MOU; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

FOUNDATION agrees that this MOU shall in no way act to abrogate or waive any immunities available to City under the Tort Claims Act of the State of California.

In the event of concurrent negligence on the part of FOUNDATION or any of its officers, officials, employees, agents or volunteers, and City or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this MOU.

8. INSURANCE

Throughout the life of this MOU, FOUNDATION shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the City's Risk Manager or his/her designee. The required policies of insurance shall maintain limits of liability of not less than those

amounts stated herein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured. The following policies of insurance are required:

A. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than $1,000,000 per occurrence for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury, $2,000,000 aggregate for products and completed operations, and $2,000,000 general aggregate.

B. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than $1,000,000 per accident for bodily and property damage. Only required if automobiles are to be operated on City property.

C. WORKERS' COMPENSATION insurance as required under the California Labor Code.

D. EMPLOYERS' LIABILITY insurance with minimum limits of $1,000,000 each accident, $1,000,000 disease each employee and $1,000,000 disease policy limit.

E. COMMERCIAL CRIME insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Crime and Fidelity Form CR 00 20 with limits of insurance of not less than $200,000.

In the event FOUNDATION purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

FOUNDATION shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and FOUNDATION shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) FOUNDATION shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide

a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this MOU, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, FOUNDATION shall file with the City a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence from and shall name the City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so FOUNDATION's insurance shall be primary and no contribution shall be required of the City. The Crime insurance policy shall name the City as a joint loss payee .Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City and each of its officers, officials, employees, agents and volunteers. FOUNDATION shall furnish the City with the certificate(s) and applicable endorsements for ALL required insurance prior to the City's execution of this MOU.

If at any time during the life of this MOU or any extension, FOUNDATION fails to maintain any required insurance in full force and effect, all of FOUNDATION's activities under this MOU shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this MOU. No action taken by City pursuant to this section shall in any way relieve FOUNDATION Corporation of its responsibilities under this MOU.

Upon request of City, FOUNDATION shall immediately furnish City with a complete copy of any insurance policy required under this MOU, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this MOU.

The fact that insurance is obtained by FOUNDATION shall not be deemed to release or diminish the liability of FOUNDATION, including, without limitation, liability under the indemnification provisions of this MOU. The duty to indemnify City and its officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by FOUNDATION. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of FOUNDATION or any of its officers, board members, employees, agents, volunteers, invitees, caters, concessionaires, suppliers, vendors, consultants, contractors or subcontractors.

If FOUNDATION should subcontract all or any portion of the services to be performed under this MOU, FOUNDATION shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with FOUNDATION and City prior to the commencement of any services by the subcontractor.

9. ATTORNEY'S FEES

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

10. NOTICES

Any notice required or intended to be given to a party under the terms of this MOU shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express, DHL, or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the FOUNDATION Representative, or (c) three (3) business days after the date of mailing (postage pre- paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

11. BINDING

Once this MOU is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The terms and conditions of this MOU, express or implied, exist only for the benefit of the parties to this MOU and their respective successors and assigns. No other person or entity will be deemed to be a third party beneficiary of this MOU.

12. ASSIGNMENT

There shall be no assignment by any party of its rights or obligations under this MOU without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

13. WAIVER

The waiver by any party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU.

No provisions of this MOU may be waived unless in writing and approved by and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

No action or omission by either party shall constitute a breach of this MOU unless the injured party first notifies the other party of the purported breach in writing setting forth the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the MOU shall be implied from

any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

14. GOVERNING LAW AND VENUE

This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be Fresno, California.

15. HEADINGS

The section headings in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this MOU.

16. SEVERABILITY

The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in this MOU shall not affect the other provisions.

17. INTERPRETATION

The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

18. REPRESENTATIONS AND WARRANTIES

FOUNDATION represents and warrants that it is a duly authorized and existing California nonprofit corporation in good standing, and shall remain in good standing during the term of this MOU. Each party hereby represents and warrants to the other party, and agrees that it has the full power and authority to enter into this MOU and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this MOU.

19. ENTIRE MOU

It is mutually understood and agreed that the foregoing constitutes the entire MOU between the parties. Any modifications or amendments to this MOU must be in writing signed by an authorized agent of each party.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this MOU as of the date first set forth above:

CITY OF FRESNO, a municipal corporation

By: _____
Manuel A. Mollinedo, PARCS Director

ATTEST

YVONNE SPENCE, CMC
City Clerk

By: Cindy Bruer 3/24/15
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____ 12/19/14
Brandon C. Collet Date
Deputy

Attachment: Exhibit A

THE ART OF LIFE CANCER FOUNDATION, INC. a California nonprofit public benefit corporation

By: _____

Name: Jenna Sawdon-Bea

Title: President
(if corporation or LLC, Board Chair, Pres. or Vice Pres.)

By: _____

Name: Jenelle Higton

Title: Secretary
(if corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

Exhibit A

THE ART OF LIFE:
A HEALING GARDEN
CREATED BY
CANCER PATIENTS, FAMILIES AND CLINICS
IN
WOODWARD PARK
FRESNO, CA

SCOPE OF WORK (SOW)
FOR
PLANNING AND DESIGN

JENELLE HIGTON, THE ART OF LIFE FOUNDATION
PAMELA HUTTON,
MANUELA PERKINS,
MARK SOMMA, Ph.D., CALIFORNIA STATE UNIVERSITY, FRESNO

Department of Political Science
2225 E. Ramon Avenue M/S MF19
Fresno, California 93740-8029

JULY 16, 2014

Brief History of Organization and Mission

Mission statement: To inspire people impacted by cancer to connect and heal through creative expression.

Vision statement: People everywhere touched by cancer will discover the *art of life* through creative expression.

Our Core Values:

Inclusiveness: We acknowledge that *everyone* is affected by cancer.

Integrity: We seek to serve with transparency, accountability and reliability.

Excellence: Our desire is to reflect excellence in all we do.

Respect: We respect the opinions, conditions and perspectives of others.

Empowerment: We will empower individuals and families to discover that which gives them strength, encouragement and the ability to move forward.

Courage: We will demonstrate and foster courage.

Faith: We will spread hope in things seen and unseen.

The Art of Life Cancer Foundation began in 2008 as a special program called *The Art of Life* at Dr. Christopher Perkins' California Oncology center in central California. Specializing in women's cancer treatment, California Oncology launched a healing arts program to advance the mind, body and spirit components of cancer survivorship.

Originally, The Art of Life linked groups of women with cancer to local artists with the goal of co-creating works of art for public viewing. Now the Art of Life reaches to all cancer patients throughout Fresno. The purpose of the art was to represent life in the midst of the cancer journey. The outcome of creating the art was life-giving transformation for the many people involved.

TABLE OF CONTENTS

Introduction/Background
Acceptance Criteria
Scope of Work for Planning and Design: List of Tasks
Period of Work
Location of Work
Schedule of Work
Budget
Confidentiality
Terms and Conditions
Insurance
Approval to Proceed
Acceptance
Appendix A

INTRODUCTION/BACKGROUND

The Art of Life Foundation associated with California Oncology of Central California in collaboration with community partners, including California State University, Fresno and RiverTree Volunteers will create the Art of Life Garden in Woodward Park in Fresno, California. The Art of Life Garden is an effort by the community of people affected by cancer to provide a place to show what the disease has taught us about the art of life. The site will include trails, display kiosks, reflective areas, playscapes for children, and a gathering place for events.

The site is located at the northern edge of Woodward Park north of the parking area next to the Friant Road entrance to the park. An image of the area and a measured outline of the garden site can be found in Appendix A.

A trailhead for the Art of Life will be located at the southwest corner of the site connecting to the ADA park entry from the parking area. Two additional trailheads will be located in the northeast and southeast sections of the site connecting it to the River Parkway trail. A trail will run from the northeast corner of the site to the southeast corner of the site so that pedestrians, bikers and runners can exit the River Parkway trail into the Art of Life Garden and then reenter the River Parkway easily.

Kiosks, designed for outdoor use, will be raised in areas of the site to be used to display artwork, posters, information and messages. On occasion, the Art of Life Foundation will hold events that display the artwork of patients to the general public.

Trails, benches and a gathering area for events will be constructed to ADA standards. The site will be open to the public as part of Woodward Park and entry to the Art of Life will require entry to Woodward Park.

The Scope of Work for Design and Planning includes design and planning, landscape and plant, irrigation, and maintenance plans. A team of professionals and volunteers (hereafter designated as the TEAM) organized by the Art of Life Foundation will write the Scope of Work for Design and Planning and the Scope of Work for Construction. The TEAM will be responsible for the design of the Art of Life Garden, playscapes, the gathering area, trails, and plants. Each stage of the project will require approval from the Art of Life Foundation and the City of Fresno before moving on to the next stage. A specific schedule of work is included in this SOW.

ACCEPTANCE CRITERIA

For the Project the acceptance of all designs and plans resides with the Art of Life Foundation and the City of Fresno. The City of Fresno will designate a representative to work with the TEAM to ensure the completeness of each stage of the project and that the scope of work has been met. Once a project phase is completed and the City of Fresno representative approves, the TEAM will begin the next phase of the project.

Upon completion of the Scope of Work for Design and Planning, a Scope of Work for Construction will be developed and submitted to the City of Fresno for approval.

SCOPE OF WORK FOR DESIGN AND PLANNING

LIST OF TASKS

The scope of work for the Art of Life planning and design project is organized by tasks involving initial assessment and coordination (Tasks 1), site planning and design (Task 2 and 4) and maintenance (Task 5). By considering landscape design as a multi-task process, the Art of Life Foundation and the City of Fresno can more easily develop, schedule and construct the Project, using a step-by-step approach:

1. Project Management and Meetings
2. Conceptual Site Planning
3. Schematic Site Design
4. Landscaping and Plant Design
5. Maintenance Plan

The Art of Life: A Healing Garden

Task One: Project Management and Meetings

The TEAM will meet to initiate the project and establish a working relationship with the appropriate officials in City of Fresno government. A draft scope of work will be provided to the City of Fresno from which to establish a Memorandum of Understanding between the City of Fresno and the Art of Life Foundation.

Task Two: Conceptual Site Planning

The TEAM will work with the City of Fresno and its designees to evaluate the project site and discuss a Conceptual Site Plan. A Conceptual Site plans will consist of a clear vision for the Art of Life Garden, including trails, trailheads, playscapes, a gathering area, benches, kiosks, and reflective areas.

The TEAM shall complete the following activities:

1. **Evaluate the objectives, including existing and planned elements, of the Project.**

   The objective of the Art of Life is to provide a natural setting for cancer patients, their families and the oncology clinics to create a site of serenity and joy to show what cancer has taught us about the Art of Life. The Art of Life also provides a setting for events and gatherings, formal and informal, for families and organizations to join together. The features of the site will be planned and, where possible, constructed by volunteers. We will reach out to cancer survivors, families of cancer survivors and victims, and the clinics that treat us for ideas and assistance.

2. **Consider the extent to which proposed site changes may impact the site.**

   A trailhead for the Art of Life will be located at the southwest corner of the site and allow ADA access from the parking area. Two additional ADA-accessible trailheads will be located in the northeast and southeast sections of the site connecting it to the River Parkway trail. A trail will run from the northeast corner of the site to the southeast corner of the site so that pedestrians, bikers and runners can exit the River Parkway trail into the Art of Life Garden and then reenter the River Parkway easily. The main trail of the Art of Life will be shaped so as to appear from above as the Breast Cancer Ribbon.

   The project will increase the number of trees and plants onsite. We will establish a screen of trees and plants along the eastside for noise suppression and open the westside vista that overlooks the Jensen River Ranch and the San Joaquin River floodplain. Irrigation will be extended as needed to new vegetation. 15 Cedar trees and 3 fruitless blueberry trees were planted in April, 2014 immediately adjacent to Friant Road to initiate the vegetation screen for the project.

   An undetermined number of kiosks, designed for outdoor use, will be erected to be used for information and artwork. "Reflective areas" of plants and trees, including "playscapes" for children, will be constructed along site trails where small groups can gather. Some of these "reflective areas" may be as small as 10-square feet but represent a

distinct feature of the garden. Creative "playscapes" for children designed for durability and low maintenance will be established. The "playscapes" are intended to delight and arouse the curiosity of children (and adults).

A gathering circle of approximately 50 feet in diameter will be established onsite for events. The gathering circle will allow groups to assemble for ceremonies, meeting or presentations. In addition to the east-side screen of vegetation, an additional screen of vegetation, probably hedging, will screen the east-side of the gathering circle to allow for a sense of privacy and an additional noise mitigation from Friant Road traffic.

3. **Screen the key technical and environmental features that encourage or constrain educational and recreational structures on the site. These include: ADA requirements, access to patients, existing vegetation, irrigation and maintenance.**

All trails, "reflective areas" and the gathering circle will meet ADA requirements for access and we will seek durability and low maintenance in designing garden features.

Given the proximity of Friant Road and heavy vehicle traffic, noise suppression using a screen of trees and plants will be established along the eastside of the site and along the eastside of the gathering circle.

Working with Woodward Park staff, we will identify and use existing main-line irrigation. We will stem off of main irrigation lines and use drip irrigation for new vegetation. An irrigation plan will be presented prior to construction (See Task 4). The plant palette will include only drought resistance plants. The final irrigation design will use less water that is currently used onsite at Woodward Park.

The site sits along the river bluff overlooking the Jensen River Ranch Conservancy property and the San Joaquin River. The vista will be preserved and enhanced in our site plan.

A main trail through the Art of Life Garden will connect to the Parkway River Trail and the southwest parking are with sufficient line of sight to allow safe entry and exit to the Art of Life. The main trail will allow for pedestrian and bicycle traffic. Additional trails will stem from the main trail to the gathering circle, the overlooks, the playscapes and the "reflective areas".

Every effort will be made to ensure durability and low maintenance in garden features. The Art of Life Foundation and its partners, including RiverTree Volunteers and Fresno State Environmental Service Learning, will take responsibility for maintenance in collaboration with Woodward Park staff. A maintenance plan will be established in the Scope of Design and Planning (See Task 5).

4. **Mature trees and existing structures will be preserved and enhanced.**

   No structures are currently present onsite. With the exception of kiosks and playscapes, no structures are planned. Mature trees will be protected with the possible exception of opening the westside vista and a large number of new trees will be planted onsite.

5. **Attend meetings with City of Fresno designees to present and discuss the work.**

Task Three: Schematic Site Design

Upon approval of a Conceptual Site Plan by the Art of Life Foundation and the City of Fresno representative, a Schematic Site Design will be prepared.

The TEAM shall provide:

1. Conceptual trail and trailside features.
2. Type and location of benches and kiosks including proposed materials.
3. Identification of tree, shrub and groundcover areas (but not specific types and quantities).
4. Identify irrigation line requirements for selected areas of the property.
5. Location of the gathering site, including size and possible site improvements.
6. Identify number and location of children's "playscapes".

Task Four: Landscape and Plant Design

Upon approval by the Art of Life Foundation and the City of Fresno representative of the Schematic Site Design, the TEAM shall proceed with the Landscape and Plant Design.

The TEAM shall:

1. Identify trail construction materials, amounts needed, and costs.
2. Identify irrigation materials, amounts needed, and costs.
3. Create a catalog of plants from which Art of Life participants can select plants for their particular sites. The plants will be drought resistant. Special attention will be given to ensure that views, solar orientation, erosion control, and storm drainage are accommodated.
4. Create a plant cost budget.
5. Create a budget for kiosks.
6. Design and budget playscapes for children.

Task Five: Maintenance Plan

<u>Maintenance Specifications</u>

Upon approval by the Art of Life Foundation and the City of Fresno representative of the Landscape and Plant Design, the TEAM shall proceed with a maintenance plan that identifies likely maintenance requirements including the following elements.

1. Maintenance of plant areas, including establishment of native plant areas that will not require long-term irrigation.

2. Description of maintenance tasks with respect to the kiosks, the playscapes, the trails, and the gathering area.
3. If needed, irrigation requirements and irrigation system maintenance procedures for areas that require long-term irrigation.
4. Identify and specify nonprofit and volunteer responsibilities for maintenance.
5. Establish a site evaluation schedule
6. Identify local nonprofit organizations, including Fresno State students, who will "adopt" the Art of Life Garden and take responsibility for maintenance of the site.
7. Write a specific checklist of maintenance responsibilities.

PERIOD OF WORK

1. The Scope of Work for Design and Planning should be completed by August 1, 2014
2. The Scope of Work for Construction should be completed by November 1, 2014
3. On-site work should begin by November 1, 2014
4. Completion of the project is open pending the construction scope of work
5. 60-day Establishment period begins after Art of Life Foundation notifies City of Fresno that work is complete
6. Final review and approval of the Art of Life Garden by the City of Fresno

LOCATION OF WORK

1. The northern edge of Woodward Park in Fresno, California
2. See Appendix A for the specific location within the park.

SCHEDULE OF WORK

Project Management TEAM initiates planning	November 1, 2013
Conceptual Design Plan completed	August 1, 2014
Memorandum of Understanding executed	September 1, 2014
Schematic Design Plan completed	October 1, 2014
Construction Scope of Work complete	November 1, 1014
Construction work begins	November 1, 2014
Landscape and Plant Design Plan complete	December 1, 2014
Maintenance Design Plan complete	December 1, 2014
Construction complete	April 1, 2015
Final review and approval	June 1, 2015

BUDGET

All costs associated with the Art of Life Garden will be the responsibility of the Art of Life Foundation with the exception of some routine maintenance provided by the City of Fresno and irrigation water supplied by the City of Fresno.

The Art of Life: A Healing Garden

CONFIDENTIALITY

All work will be conducted on a confidential basis including draft documents submitted to the City of Fresno for review.

TERMS AND CONDITIONS

Upon approval of the Scope of Work for Design and Planning, The City of Fresno and the Art of Life Foundation will execute a Memorandum of Understanding that allows the Art of Life Foundation to begin the project.

The Art of Life Foundation will assume responsibility for all costs associated with the design and construction of the Art of Life Garden. The City of Fresno agrees to provide irrigation water free of charge upon the City of Fresno's approval of the Scope of Work for Design and Planning. Some routine maintenance tasks may be the responsibility of the City of Fresno and will be clearly specified in the Maintenance Design Plan prior to approval.

Any changes in design plans must be submitted in writing and approved by the Art of Life Foundation and the City of Fresno.

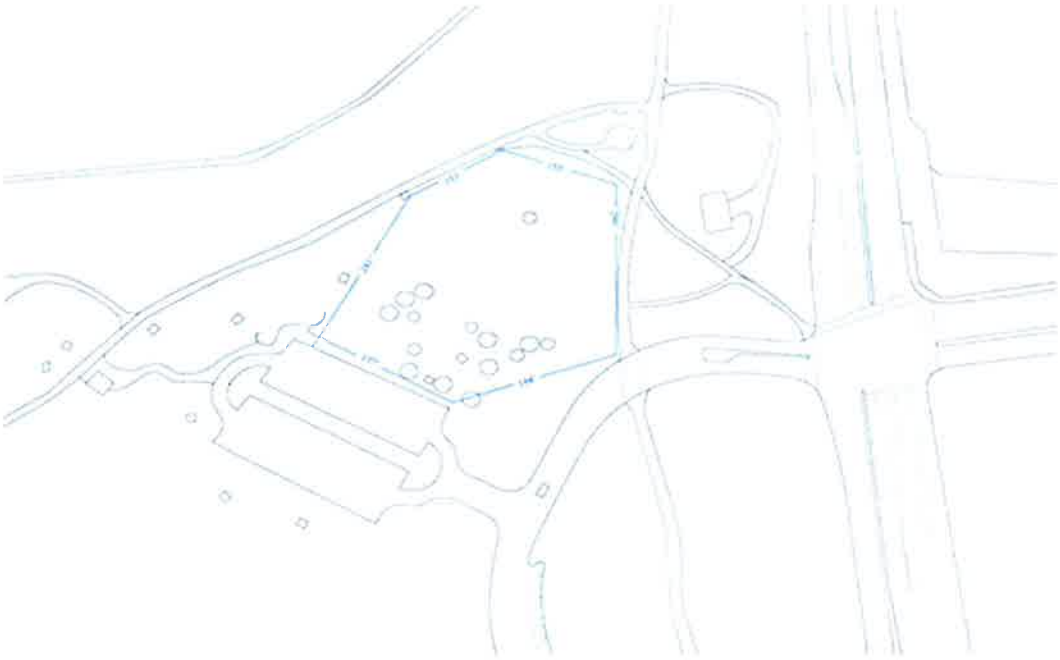
The Memorandum of Understanding between the City of Fresno and the Art of Life Foundation, including the Scope of Work for Planning and Design, will constitute the entire agreement between the parties relating to the subject matter contained in it and supersedes all prior and contemporaneous representations, agreements, or understandings between the parties. No amendment or supplement of this Agreement shall be binding unless in writing signed by the party to be bound. No waiver of any one provision of this agreement shall constitute a waiver of any other provision.

INSURANCE

Liability insurance for volunteers assisting in the on-site construction and maintenance of the Art of Life Garden is to be provided by the Art of Life Foundation. Any subcontractor hired by the Art of Life Foundation will be required to have insurance policies in the following amounts: Professional Liability – $1 million per claim and in the aggregate, General Liability – $1 million per occurrence with $2 million in the aggregate, Employers' Liability under Worker's Compensation – $1 million, Excess General and Employers' Liability – $2 million, and Auto Liability – $1 million.

APPROVAL TO PROCEED

The planning and construction for the Art of Life Garden can be initiated by completion of the Memorandum of Understanding between the City of Fresno and the Art of Life Foundation.

The Art of Life: A Healing Garden

Appendix A