

**BAINBRIDGE ISLAND METROPOLITAN
PARK & RECREATION DISTRICT**

RECREATION CONTRACTOR SERVICE AGREEMENT

SEASON/YEAR _____

COMPANY _____ (or) **INDIVIDUAL** _____

ADDRESS _____

PHONE NUMBER _____ **EMAIL** _____

This Agreement is made and entered into by the Bainbridge Island Metropolitan Park & Recreation District ("District") and the above-named company or individual that as Recreation Contractor ("Contractor") is engaged in offering instructional services. The District wishes to retain Contractor to provide its services to District customers. This Agreement supplements the District's Recreation Contractor Manual ("Manual"), which is incorporated herein by this reference. Contractor is bound by both this Agreement and the Manual. If there is a conflict between this Agreement and the Manual, this Agreement shall control.

SECTION 1: SCOPE OF WORK

Contractor agrees to provide the instructional services identified below and represents and warrants that all instructors used by Contractor will have the necessary certification, skill, and ability to provide the specified services.

Activity Name	Activity Number	Time	Date	Activity Fee	Materials Fee	Min/Max	Location

SECTION 2: COMPENSATION (select one)

____ **Alternative 1.** Seventy (70%) percent of the activity tuition actually collected by the District (exclusive of any and all other fees, penalties and surcharges charged in connection with the activity) for activities held at publicly owned facilities.

____ **Alternative 2.** Eighty (80%) percent of the activity tuition actually collected by the District (exclusive of any and all other fees, penalties and surcharges charged in connection with the activity) for activities held at the Contractor's facility, with approval by the District.

____ **Alternative 3.** Flat fee of \$_____ per activity participant (exclusive of any and all other fees, penalties and surcharges charged in connection with the activity).

____ **Alternative 4.** Donation of services.

The following is applicable to all of the above compensation alternatives:

Contractor shall invoice the District in writing (including all of the information set forth in the Manual) within 30 days of the final activity session for services rendered in connection with the activity. Contractor shall include with the invoice a final activity roster, any completed activity evaluation forms, and any liability waiver forms specific to the activity. If Contractor's invoice and related documents are not postmarked or delivered to the District within 30 days of the final activity session, the District shall be obligated to pay only 90% of the invoice. If the invoice and documents are not postmarked or delivered to the District within 90 days of the final activity session, the District reserves the right not to pay Contractor for services rendered in connection with the activity.

This Section 2 shall survive termination of this Agreement and be fully applicable and enforceable thereafter.

SECTION 3: INSURANCE REQUIREMENTS (select one)

____ **Level 1 Activity:** An activity with low risk of injury or loss such as art or photo activities:

Contractor shall obtain, and maintain continuously for the term of this Agreement, at Contractor's expense, Commercial General Liability Insurance to indemnify for the activities and services of this Agreement with a minimum \$500,000 per

occurrence/\$1,000,000 aggregate limits of coverage. Contractor's insurance shall be primary, and the District shall be named as an additional insured.

_____ **Level 2 Activity:** An activity with a high risk of injury or loss such as sports, outdoor, or fitness activities:

Contractor shall obtain, and maintain continuously for the term of this Agreement, at Contractor's expense, Commercial General Liability Insurance to indemnify for the activities and services of this Agreement with a minimum \$1,000,000 per occurrence/\$2,000,000 aggregate limits of coverage. Contractor's insurance shall be primary, and the District shall be named as an additional insured.

SECTION 4: CRIMINAL BACKGROUND CHECK (select one)

_____ **Alternative 1: Contractor conducts background checks.**

Contractor hereby represents and warrants (A) that it has conducted (or will conduct before commencement of its performance under this Agreement) a criminal background check on every employee, agent or other person who will perform services under this Agreement on behalf of Contractor and (B) that each such employee, agent or other person has "successfully passed" the criminal background check (C) that the contractor's background check will meet or exceed the District's own internal standards: (1) the criminal background checks must include their current legal name and if applicable all previous legal names and (2) the criminal background checks must include WA State Criminal History Search, a National Criminal History Search, Sex Offender Search, Global Terrorist Search, and utilize the Washington State's Administrative Office of the Courts' Judicial Information System (JIS), a network of all Washington court indexes. For purposes of this section, "successfully passed" means the criminal background check revealed no conviction or other adverse disposition for any crime against persons or property (including but not limited to murder, kidnapping, assault, rape, arson, robbery, burglary, theft, malicious mischief, stalking, or abuse of a child or vulnerable adult) or any crime involving fraud, dishonesty or moral turpitude. Before commencement of its performance under this Agreement, Contractor shall provide to the District a written report of each criminal background check performed under this section. Criminal background checks provided to the District under this section can be no more than 3 years old.

_____ **Alternative 2: District conducts background checks on behalf of Contractor.**

Before commencement of its performance under this Agreement, Contractor shall submit to the District a signed form from every employee, agent or other person who will perform services under this Agreement on behalf of Contractor authorizing the District to conduct a criminal background check on him or her. Contractor shall reimburse the District the current fee for each criminal background check conducted plus a District administrative fee. These amounts shall be paid by Contractor directly to the District or, if not, withheld by the District from Contractor's compensation under this Agreement.

SECTION 5: COVID-19 VACCINATION

Contractor and its employees, volunteers and other agents must be fully vaccinated against COVID-19. A person is deemed fully vaccinated fourteen days after completion of the primary series of an FDA-authorized COVID-19 vaccine. Before commencement of its performance under this Agreement, Contractor must submit to the District proof of vaccination for itself and each employee, volunteer or other agent who will perform services on Contractor's behalf under this Agreement. Acceptable proof of vaccination includes the following: (i) a copy of the CDC COVID-19 Vaccination Record Card or clearly legible photo of the card; (ii) documentation of vaccination from a healthcare provider or electronic health record; (iii) public health, tribal or state immunization information system record; or (iv) a copy of any other official documentation that contains the type of vaccine administered, date(s) of administration, and the name of the healthcare professional(s) or clinic site(s) administering the vaccine(s). The District retains the right, in its sole discretion, to determine which form of proof of vaccination is acceptable. Personal attestation is not acceptable proof of vaccination.

SECTION 6: MATERIALS, SUPPLIES AND EXPENSES

Contractor shall acquire, provide, repair, and maintain, at Contractor's expense, such supplies and equipment as it may deem necessary to provide services under this Agreement. Contractor shall not be reimbursed for out-of-pocket expenses incurred in connection with performance of services under this Agreement

SECTION 7: PROVISION OF FACILITIES

If public facilities are used by Contractor for District activities, Contractor shall be responsible for any and all damage to the facilities caused by Contractor.

If Contractor's facilities are used by Contractor for District activities, Contractor shall be responsible for any and all damage to the facilities and any and all liabilities that may arise; shall have appropriate property owner's insurance in addition to liability insurance required under Section 3, and shall comply with all applicable codes, laws, regulations and ordinances. If the

Contractor offers activities in their own facility, such facility must be preapproved by the District and is subject to subsequent inspections annually by appointment thereafter, or whenever deemed necessary by the District.

Any variance to the above requirement for property insurance must be reviewed and approved by the District's Division Director and indicated in this section of the Agreement.

SECTION 8: CONTRACTOR VEHICLES

The Contractor will not use private vehicles to transport activity participants unless on a case by case basis specific criteria has been met as outlined in the Manual. Such use must be part of the Recreation Contractor's formal business operation, be approved by the Division Director or designee, and be indicated in this section of the Agreement.

Contractor ____ IS ____ IS NOT authorized to use its vehicles to transport activity participants.

If "IS" is checked:

- (a) Contractor has provided proof of auto insurance with minimum liability limits of \$1,000,000 and the Park District named as an additional insured. The following people, all of whom are 21 years of age and have successfully completed a vehicle background check, are authorized to drive Contractor's vehicles to transport activity participants:_____

- (b) The following vehicles have passed the Park District's safety and inspection standards per completed District checklist and are authorized to be used by Contractor to transport activity participants:

Type vehicle _____ Make _____ Model _____ VIN _____
Type vehicle _____ Make _____ Model _____ VIN _____

- (c) The following additional requirements are imposed with respect to Contractor's transportation of activity participants:

SECTION 9: MARKETING CONTRACTED ACTIVITIES

Contractor may promote the activity; provided, that all promotional and marketing materials used by Contractor must be approved in advance by the District. The contractor will give the District permission to photograph and videotape the contractor and all its employees, volunteers or sub-contractors during all activities within any Agreement with the District. The contractor authorizes the District to use such photographs and videotapes to promote its programs and classes and will waive any and all claims to compensation for such usage. The Contractor acknowledges and agrees that all such photographs and videotapes will belong to the District. Any promotional materials or images provided by the Contractor to promote District activities may also be used by the District for that purpose.

SECTION 10: ACTIVITY REGISTRATION / CANCELLATION

Unless otherwise explicitly provided in this Agreement, the District shall be responsible for and have complete control over the registration of activity participants, and the District alone shall collect all tuition and fees. Activity registration or payment may not be accepted by Contractor. All participants must preregister with the District before being allowed into any activity. It is Contractor's responsibility to ensure all participants have registered and fully paid prior to attending any activity. Contractor shall notify activity participants and the District as soon as possible, preferably in advance, if an activity session is canceled for any reason. Provision for a makeup session will be established if possible.

SECTION 11: NON-SOLICIT/COMPETE

- A. Non-Solicit. Contractor hereby agrees that it will not, during the term of this Agreement and the one-year period thereafter, directly or indirectly, (a) solicit any District employee to reduce or terminate their employment with the District, nor (b) solicit any District customer/patron to participate in activities that are identical or substantially similar to the activities provided by Contractor under this Agreement.
- B. Non-Competition. If and only if the threshold applicability requirements of Chapter 49.62 RCW are satisfied, during the term of this Agreement and the one-year period thereafter, Contractor shall not, directly or indirectly, anywhere in Bainbridge Island, Washington, participate in or sponsor the provision to the general public of activities that are identical or substantially similar to the activities provided by Contractor under this Agreement.
- C. Reasonableness of Restrictions. Contractor has carefully read and considered Sections 11.A and 11.B and agrees that the restrictions set forth therein, including but not limited to temporal and geographical restrictions, are fair and

reasonable, and are reasonably required for the protection of the interests of the District. If any provision of Section 11.A or 11.B relating to temporal or geographical restriction is declared by a court of competent jurisdiction to be unenforceable, then the restriction in question shall be modified to become the maximum restriction, if any, that the court deems enforceable.

This Section 11 shall survive the termination of this Agreement and be fully applicable and enforceable thereafter.

SECTION 12: RECORDS

During the term of this Agreement and thereafter, records related to the contracted activity that are generated by or provided to Contractor (including without limitation activity rosters) will be treated as confidential, will not be shared with third parties, and will be retained by Contractor in accordance with WA State laws governing records retention. Records include written and electronic documents, emails, text messages, photos, etc. regardless of the device that creates them. To the extent that any such records are needed by the Park District to respond to a public records request or otherwise comply with applicable law, Contractor will make them promptly available to the Park District. Violation of this Section 12 will constitute a material breach of this Agreement and may give rise to legal liability on the part of Contractor.

This Section 12 shall survive the termination of this Agreement and be fully applicable and enforceable thereafter.

SECTION 13: RELEASE AND INDEMNITY

Contractor understands that providing services for the District involves inherent risk, which could result in property damage, illness and/or bodily injury (up to and including death), and which includes risk of exposure to and infection by the novel coronavirus, COVID-19. Contractor understands that exposure and infection can result from the actions and/or omissions of Contractor, members of the public, and District employees, agents and contractors, and that infection could result in illness, bodily injury, permanent disability and/or death. Although the District has implemented preventive measures, such as participant screening, social distancing and sanitizing surfaces, to reduce the spread of COVID-19, risk of exposure and infection cannot be eliminated entirely. In and for good and valuable consideration, Contractor hereby (i) assumes the risk and all responsibility for Contractor's health and safety when providing services for the District; (ii) waives and forever releases the District and its employees, agents and contractors from any and all claims (including those for illness and bodily injury) arising out of or relating in any way whatsoever to Contractor's provision of services for the District, even though said claims may arise out of the negligence of the District and its employees, agents and contractors; (iii) limits the District's liability to the limits of the District's insurance policy if the foregoing waiver and release is adjudged to be unenforceable; (iv) agrees to defend, indemnify and hold the District and its employees, agents and contractors harmless from and against any and all claims (including those for illness and bodily injury), damages, liabilities and expenses (including attorney fees) arising out of or relating in any way whatsoever to Contractor's provision of services for the District and/or Contractor's breach of this Agreement; and (v) agrees to notify the District immediately if Contractor (or any of its employees, volunteers or other agents) tests positive for COVID-19, has been exposed or potentially exposed to COVID-19, or is experiencing symptoms associated with COVID-19, including, without limitation, fever, shortness of breath, cough, and loss of taste or smell.

This Section 13 shall survive the termination of this Agreement and be fully applicable and enforceable thereafter.

SECTION 14: INDEPENDENT CONTRACTOR

Contractor understands and acknowledges that in entering into this Agreement it is an independent contractor and not an employee of the District, and that accordingly it shall not be entitled to benefits of any kind to which an employee of the District is entitled, and further understands and acknowledges that the District does not maintain any worker's compensation, unemployment, accident or any other type of insurance coverage for independent contractors. The District shall not be liable for any payment or compensation in any form to Contractor except as specifically provided for in this Agreement. Contractor is solely responsible for any and all reporting, filing, withholding and taxes required by law in connection with this Agreement, and warrants that it will pay all taxes owed to governmental entities when and as the same become due.

SECTION 15: OBSERVANCE OF LAWS

In the performance of its services under this Agreement, Contractor shall abide by all applicable laws, ordinances, regulations and rules, including the Manual. By signing this Agreement, Contractor acknowledges that it has received and read the Manual. In addition, Contractor agrees to comply with all anti-discrimination and accommodation laws that the Park District is subject to, which laws include, without limitation, the Washington Law Against Discrimination and the Americans with Disabilities Act.

SECTION 16: ACCOMMODATIONS

If following activity registration, accommodations for a participant are requested, the District and Contractor will mutually agree in writing to how the accommodation will be provided and who will bear the cost.

SECTION 17: TERMINATION

The District reserves the right to terminate this Agreement immediately upon oral or written notice to Contractor at any time for any of the following reasons:

- A. Cancellation of the activity offering.
- B. Unavailability of funds or facilities.
- C. Insufficient enrollment in the activity.
- D. Misconduct of Contractor, which means, without limitation, violation of the Manual; violation of law; unexcused failure to attend, conduct or teach one or more scheduled activity sessions; performance of services in a manner which is unsafe or hazardous to Contractor, participants or members of the general public; or breach of any of the terms, representations or warranties of this Agreement.
- E. Any other conduct on the part of Contractor that is inappropriate, unbecoming, or reflects poorly on the District.

This Agreement shall automatically terminate upon completion of the final activity session.

If this Agreement is terminated for any reason other than completion of the final activity session, whether or not activity sessions have begun, Contractor shall receive no compensation under this Agreement.

SECTION 18: GENERAL PROVISIONS

Contractor may not assign its rights or obligations arising under this Agreement without the prior written consent of the District. This Agreement will be interpreted and enforced in accordance with the laws of the State of Washington. In any dispute arising out of this Agreement, the substantially prevailing party shall recover its costs and reasonable attorney fees from the other party. This Agreement may be modified only by a writing signed by the parties. This Agreement represents the entire Agreement, and supersedes any prior Agreements (oral or written), between the parties with respect to the matters herein. This Agreement may be executed in counterparts, and electronic signatures shall be deemed the equivalent of original signatures for all purposes. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect the enforceability of any other provision.

This Section 18 shall survive the termination of this Agreement and be fully applicable and enforceable thereafter.

RECREATION CONTRACTOR

BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT

By _____
 Print Name _____
 Title _____
 Date _____

Program Manager _____
 Print Name _____
 Date _____
 Division Director/Superintendent _____
 Print Name _____
 Date _____