

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into the date below written between the BAINBRIDGE ISLAND METROPOLITAN PARK AND RECREATION DISTRICT, a Washington special purpose district (the "District"), and \_\_\_\_\_ referred to as "Contractor."

1. Contractor shall provide the professional services as defined in this Agreement and as necessary to accomplish the Scope of Services attached as Attachment A and incorporated by this reference. Contractor shall furnish all services, labor and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment & Invoicing:

A) The District shall pay Contractor as follows (check one):

Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of \_\_\_\_\_

Fixed sum: a total amount not to exceed \_\_\_\_\_

Other: \_\_\_\_\_

B) Contractor shall submit monthly invoices for services performed in a previous calendar month in a format acceptable to the District. Each project shall be the subject of a separate invoice, and each task shall be the subject of a separate line item. Contractor shall maintain time and expense records according to industry standards and provide them to the District upon request.

C) Contractor will provide the District with a signed W-9 upon execution of this Agreement.

D) All invoices shall be paid by mailing a check within 60 days of receipt of a proper invoice. Checks will be mailed to:

E) If the services rendered do not meet the requirements of this Agreement, Contractor shall timely correct or modify the work to comply with this Agreement. The District may withhold payment for such work until it meets the requirements of the Agreement. Satisfaction of services will be the degree of skill and diligence normally employed by professional engineers and consultants performing the same or similar services.

3. Compliance with Laws:

A) Contractor agrees not to discriminate against any employee or any other person in the performance of the Agreement because of race, creed, color, national origin, marital

status, sex, age, veteran's status, disability or other circumstances prohibited under federal, state or local laws.

- B) Contractor shall comply with all federal, state and local laws applicable to the work to be done under this Agreement.

Violation of this Section 3 shall be a material breach of this Agreement.

4. Term and Termination of Agreement:

- A) This Agreement shall become effective upon execution by both parties and shall continue in full force until \_\_\_\_\_, 20\_\_\_\_, unless sooner terminated pursuant to Section 4(B) below.
- B) This Agreement may be terminated by either party without cause upon 30 days' written notice, or immediately upon written notice in the event of a material breach of this Agreement. Upon termination all finished and unfinished documents, reports, data and other material or work of Contractor pursuant to this Agreement shall be submitted to the District, and Contractor shall be entitled to compensation for work performed through the date of termination.

5. General Administration:

- A) The Executive Director of the District, or his/her designee, shall be the District's representative and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices under this Agreement.
- B) Contractor's relationship with the District is that of an independent contractor. Contractor is free to engage in other independent contracting activities, provided that such activities do not conflict with or interfere with its duties hereunder. Contractor has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed. Contractor is in business for itself, and is not economically dependent on the District. Nothing in this Agreement, or in the business dealings or relationship between the parties, shall be construed to create the relationship of employee and employer, partners or joint ventures. Contractor warrants to the District that it will pay all applicable taxes and withholdings, and will make all filings with governmental entities, as required as a result of execution of this Agreement and compensation received by it hereunder. Contractor agrees to defend, indemnify and hold the District harmless from and against any and all claims, actions, penalties, fees, assessments, liabilities and expenses (including attorney fees) arising out of or relating in way whatsoever to Contractor's breach of the warranty in this Section 5.B.
- C) Contractor shall not sublet, assign or delegate any of the work covered by this Agreement without the prior written approval of the District, which approval shall be withheld or conditioned in the District's sole and absolute discretion.
- D) Contractor will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the District upon request during normal business hours for a period of three (3) years after the final invoice.

- E) If Contractor is or will be delayed in the performance of services, it shall notify the District in writing of the cause and anticipated length of the delay. Such notice shall be delivered to the District within five (5) days of the time Contractor is delayed or becomes aware of future delay.
- F) Contractor will obtain and pay for all permits and licenses required by law that are associated with its performance of the Scope of Services, and will give all necessary notices.

6. Insurance: At all times while this Agreement is in effect, Contractor will maintain the following insurance:

- A) Worker's compensation and employer's liability insurance as required by Washington State.
- B) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and damages to property of others arising from the use of motor vehicles, including onsite and offsite operations, and owned, non-owned or hired vehicles, with \$1,000,000 combined single limits.
- C) Comprehensive general liability insurance covering claims for injuries arising out of any negligent act or omission of Contractor or its employees, agents or subcontractors with \$1,000,000 single incident, combined \$2,000,000.00 aggregate.
- D) Professional liability insurance of \$1,000,000.

All insurance certificates will state that the insurance carrier will give the District thirty (30) days' advance notice of any cancelation of the policies. Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by Contractor, the District will be named on all policies as an additional insured. Upon request, Contractor shall furnish the District with verification of insurance and endorsements required by this Agreement. The District reserves the right to require complete, certified copies of all required insurance policies at any time.

Violation of this Section 6 shall be a material breach of this Agreement.

7. Indemnification:

- A) Contractor shall protect, defend, indemnify and save harmless the District and its officers, employees and agents from and against any and all costs, claims, judgments, awards of damages, and expenses (including attorney fees) arising out of or in any way resulting from (i) the negligent acts or omissions, or intentional misconduct, of Contractor and/or its officers, employees and agents in performing under this Agreement and/or (ii) material breach of this Agreement by Contractor.
- B) The District shall protect, defend, indemnify and save harmless Contractor and its officers, employees and agents from and against any and all costs, claims, judgments and awards of damages, and expenses (including attorney fees) arising out of or in any way resulting from (i) the negligent acts or omissions, or intentional misconduct, of the District and/or its officers, employees or agents in performing under this Agreement and/or (ii) material breach of this Agreement by the District.

8. Each party agrees that any and all information that is identified by the other party as “Confidential,” or that under the circumstances ought reasonably to be treated as confidential, will not be disclosed to any third party without the express, written consent of the other party. Confidential information includes, without limitation, information relating to employees, operations and finances that is not available to the public. Confidential information does not include information that (i) is or becomes available to the public, (ii) is already known to the receiving party before disclosure by the disclosing party, (iii) is developed through the independent efforts of the receiving party, or (iv) is lawfully received from third parties. If either party is required by subpoena or otherwise to disclose confidential information, the disclosing party shall give the other party notice of the proposed disclosure as soon as practicable after learning of the disclosure requirement. Upon expiration or termination of this Agreement, each party shall immediately return to the other party all of the other party’s confidential information in its possession. Each party agrees to defend, indemnify and hold harmless the other party and its owners, agents and employees from and against any and all claims, damages, losses and expenses (including attorney fees) arising out of or resulting from its breach of this Section 8.

Violation of this Section 8 shall be a material breach of this Agreement.

9. General Provisions:

- A) No waiver by either party of any default by the other party in the performance of any provision of this Agreement will operate as, or be construed as, a waiver of any future default, whether like or different in character.
- B) Neither party to this Agreement will be liable to the other party for delays in performing under this Agreement, or for the direct or indirect costs resulting from such delays, that may result from labor strikes, riots, war, acts of governmental catastrophe, or any other cause beyond the reasonable control or contemplation of either party.
- C) This Agreement confers no rights or benefits on anyone other than Contractor and the District, and there are no third-party beneficiaries.
- D) In the event of a dispute between the parties arising under or relating in any way whatsoever to this Agreement, the parties shall attempt to resolve it through good faith negotiation. If the dispute is not resolved through such negotiation, the parties shall attempt to resolve it through mediation in Kitsap County, Washington, with a neutral, third-party mediator mutually agreed upon by the parties, with the costs of mediation shared equally by the parties. If the dispute is not resolved through mediation, then upon written demand by either party it shall be referred to an arbitrator mutually agreed upon by the parties. The arbitration process shall be conducted in accordance with RCW 7.04A, except as modified herein. The arbitration hearing shall be held in Kitsap County, Washington. All remedies, legal and equitable, available in court shall also be available in arbitration. The arbitrator’s decision shall be final and binding, and judgment may be entered thereon in any court of competent jurisdiction. In any dispute arising out of this Agreement, including arbitration, the substantially prevailing party shall be entitled to recover its reasonable attorney fees and costs from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to conflict of law principles thereof. Venue of any dispute shall lie exclusively in Kitsap County.

- E) Contractor may not assign any of its rights or obligations under this Agreement without the prior written consent of the District. A purported transfer in violation of this Section 9(E) shall be void and shall constitute a material breach of this Agreement.
- F) The provisions of this Agreement are severable, and therefore the unenforceability of any single provision shall not affect the enforceability of any other provision.
- G) Those provisions of this Agreement that have or could have effect after termination of this Agreement, which include, without limitation, confidentiality, dispute resolution and indemnification provisions, shall survive expiration or termination of this Agreement and be fully enforceable thereafter.
- H) This Agreement may be executed in counterparts, and signatures transmitted electronically shall be deemed the equivalent of original signatures for all purposes.
- I) This Agreement represents the entire agreement, and supersedes all prior agreements and understandings, between the parties, and may be changed only by written amendment executed by both parties.

Accepted for the District

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted for Contractor

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_