

Attachment B

BAINBRIDGE ISLAND METROPOLITAN PARK AND RECREATION

DISTRICT

AGREEMENT FOR SERVICES

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"), "Vendor" referred to as "*Contractor*" for the project Aquatic Center Slide Stairwell.

- 1) Services Rendered by *Contractor*: *Contractor* shall provide the professional services as defined in this Agreement and as necessary to accomplish the Scope of the 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) Terms of Payment:
 - A) Payment. The District shall pay *Contractor* for cost reimbursable services: (check one)
☐ Hourly, plus actual expenses, in accordance with Bid Documents, but not more than a total of _____;
☒ Fixed Sum: a total amount of \$ _____
☐ Other: per bid document.
 - B) Invoicing. *Contractor* shall submit monthly invoices for services performed in a previous calendar month in a format acceptable to the District. Each project and each task within a project shall be the subject of a separate invoice. *Contractor* shall maintain time and expense records according to industry standards and provide them to the District upon request.
 - C) Payments to *Contractor*. All invoices shall be paid by mailing a check within 60-days of receipt of a proper invoice and W-9 form. Checks will be mailed to address indicated on W-9 submitted by *Contractor*.
 - D) Final Payment. Final payment of any balances will be made upon completion of the Scope of Service and receipt of all deliverables and all project- related documents and data that are required under this Agreement. Provided, however, in accordance with RCW 39.08.010(3), on contracts of \$150,000 or less, if Contractor has so elected, the District may, in lieu of a payment and performance bond, retain 10% of the contract amount for the period of time specified in RCW 39.08.010(3).

- E) Satisfaction of Scope of Services. 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) Discrimination and 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, except for a bona fide occupational qualification. Violation of this Section 3.A shall be a material breach of this Agreement and grounds for termination or suspension of this Agreement by the District.

B) *Contractor* shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under the Agreement. Violation of this Section 3.B shall be a material breach of this Agreement and grounds for termination or suspension of this Agreement by the District.

C) As a prerequisite to performing work under this Agreement, Contractor shall provide a sworn statement to the District certifying that it has not violated labor laws in the last three years. If Contractor is not able to provide said sworn statement, the District may terminate this Agreement.

D) As a prerequisite to performing work under this Agreement, Contractor shall provide the District with a signed statement certifying its compliance with established criteria to be considered a responsible bidder. If Contractor is not able to provide said statement, the District may terminate 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, unless sooner terminated by either party pursuant to Section 4.B below.

B) This Agreement may be terminated by either party without cause upon 30 days' written notice, in which event all finished or unfinished documents, reports, data or other material or work pursuant to this Agreement shall be submitted to the District, and *Contractor* shall be entitled to compensation at the rate set forth in Section 2 above for any satisfactory work completed prior to the date of termination.

5) Work Made for Hire:

Any and all work or intellectual property developed in the course of the Scope of Services is a direct result of this Agreement, to the extent applicable shall be deemed a work made for hire, and the District shall be the sole and exclusive holder of any and all right, title and interest in and to said work or intellectual property.

6)General Administration:

A) District Authorization and its Designee. The Director of the District, or his 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) Independent Contractor. Contractor's relationship with 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 Contractor's 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 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 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 District harmless from and against any and all claims, actions, penalties, fees, assessments, liabilities and expenses (including reasonable attorney fees) arising out of or relating in way whatsoever to Contractor's breach of the warranty in this Section 6.B

C) Lower Tier Subcontracts. *Contractor* shall not sublet or assign any of the work covered by this Agreement, except with the prior written approval of the District and in strict compliance with the terms, provisions, and conditions of this Agreement. *Contractor* will bind in writing all Lower Tier Subcontractors to the provisions of this Agreement.

D) No Additional Relationship or Burden Implied. Neither this Agreement nor any Lower Tier subcontract will create any contractual relationship between any Lower Tier Subcontractor and the District, nor any liability on the part of the District from any Lower Tier Subcontractor.

E) Access to and Retention of Records. Contractor will maintain project and accounting records for a minimum of six (6) years in accordance with RCW

40.14.070, and make them available for examination by the District upon request. Records will also be made available to the District to fulfill any public record request received by the District. See Section 9 below. If Contractor does not want to retain the project and accounting records for the six (6) year period, Contractor will turn the records over to the District, which will assume responsibility for retaining them for the required length of time.

F) Notice of Delay. The time schedule for the performance of services set forth under this Agreement is based on *Contractor's* anticipation of the orderly and continuous progress of the project. If *Contractor* is delayed in the performance of services by conditions that are beyond its control, *Contractor* shall notify the District in writing of the cause of the delay and the amount of the delay anticipated. Such notice shall be delivered to the District within five (5) days of the time *Contractor* is aware of the delay.

G) Permits, Licenses and Fees: *Contractor* will obtain and pay for all permits and licenses required by law that are associated with *Contractor's* performance of the Scope of Services and will give all necessary notices.

H) The GENERAL CONDITIONS FOR BAINBRIDGE ISLAND METROPOLITAN PARK AND RECREATION DISTRICT PUBLIC WORKS PROJECTS ("General Conditions") are incorporated herein by this reference as if fully set forth herein. If there is a conflict between this Agreement and the General Conditions, the General Conditions control.

7)Insurance: *Contractor* will maintain throughout this Agreement the following insurance and, as a prerequisite to performing work under this Agreement, will submit certificates verifying such to the District:

A) Worker's compensation 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, or non-owned or hired vehicles, with \$2,000,000 combined single limits.

C) Comprehensive general liability insurance covering claims for injuries arising out of any negligent act or omission of *Contractor* or of any of its employees, agents, or subcontractors with \$2,000,000 per occurrence/\$4,000,000 aggregate.

If Contractor is not able to provide said insurance certificates, the District may terminate this Agreement.

D) 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 secured by the *Contractor*, the District will be named on all policies as an additional insured. The District reserves the right to require complete, certified copies of all required insurance policies at any time.

8) Hold Harmless:

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

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability resulting from the concurrent negligence of Contractor and the District, Contractor shall be liable only to the extent of its negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

- B) The District shall protect, defend, indemnify and save harmless Contractor, its officers, employees and agents from any and all costs, claims, judgments and awards of damages, and expenses (including reasonable attorney fees) arising out of or in any way resulting from (i) the grossly negligent acts or omissions, or intentional misconduct, of the District, its officers, employees or agents in performing under this Agreement and/or (ii) material breach of this Agreement by the District; provided, that the District shall be liable only to the extent of gross negligence and/or intentional misconduct.

9) Public Records Act

- A) This Agreement and all public records associated with this Agreement shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "PRA"). To the extent that public records then in the custody of Contractor are needed for the District to respond to a request under the PRA, as determined by Park District in its sole and absolute discretion, Contractor agrees to make them promptly available to the District; provided, that Contractor shall have the right, under RCW 42.56.540, to seek a court order if it believes a record is exempt from disclosure.

- B) The District has no obligation on behalf of Contractor to claim any exemption

from disclosure under the PRA. The District shall not be liable to Contractor for any records that the District releases in compliance with the PRA or an order of a court of competent jurisdiction.

10) General Provisions:

A) Waivers. 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) Force Majeure. Neither party to this Agreement will be liable to the other party for delays in performing the Scope of Services, 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) Authorization to Proceed. Execution of this Agreement by the District will be authorization for *Contractor* to proceed with the Scope of Services, subject to any other requirements or prerequisites under this Agreement.

D) No Third- Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than *Contractor* and the District. There are no third-party beneficiaries.

E) Dispute Resolution. 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 mediators 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 one of the parties 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.

F) Contractor may not assign its rights or obligations arising under this Agreement

without the prior written consent of the District.

G) If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement are severable, and the unenforceability of any single provision herein shall not affect the remaining provisions of this Agreement.

H) Those provisions of this Agreement that have or could have effect after termination of this Agreement, which include, without limitation, dispute resolution and indemnification provisions, shall survive termination of this Agreement and be fully applicable and enforceable thereafter.

I) This Agreement represents the entire agreement between the parties, supersedes all prior agreements and understandings, and may be changed only by written amendment executed by both parties. This Agreement may be executed in counterparts, and facsimile and pdf signatures shall be deemed the equivalent of original signatures for all purposes.

11) Attachments and Schedules:

The following attachments and schedules are hereby made a part of this

Agreement: Attachment – Complete Bid Package & Bid Submitted

Accepted for the Bainbridge Island Metropolitan Park and Recreation

District BY: _____

Title: _____

Date: _____

Accepted for *CONTRACTOR*

BY: _____

Title: _____

Date _____