

INFORMATIONAL MEMORANDUM

Tukwila Pool Metropolitan Park District

TO: Tukwila Pool MPD Board

FROM: Brian Snure, Legal Counsel

DATE: December 3, 2014

SUBJECT: Professional Services Agreement with Steven Burke

ISSUE

A Professional Services Agreement with Steven Burke to assist and guide the transition of the TPMPD to a self-operated model.

FINANCIAL IMPACT

Outlined in the agreement.

BACKGROUND

The District requires the services of an experienced individual to assist with the District's transition to a self-operated model. Mr. Burke offers the necessary experience and is available on an interim basis to provide the needed oversight and guidance in the transition and will be available to assist the District in identifying and hiring an executive director.

DISCUSSION

The form of the Agreement is similar to that proposed for the CPA services and, if approved, would hire Mr. Burke as an independent contractor. Although the Board is referring to Mr. Burke as an interim executive director he is not being hired as the executive director but as an interim consultant with specific duties unique to the District's transition to a self-operated model. The critical elements of the Agreement for Board discussion and review are as follows:

1. **Compensation.** \$___ per hour and \$___ per hour for travel time and \$_____ monthly not to exceed amount.
2. **Term.** Contract can be terminated by the TPMPD with 7 days notice.
3. **Duties.** The proposed duties are listed in Exhibit A and are based, in part on the Executive Director job description.

RECOMMENDATION

Authorize the Board President to sign a Professional Services Agreement with Steven Burke subject to final approval by Legal Counsel.

ATTACHMENTS

Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT
Between the Tukwila Pool Metropolitan Park District and

Steven Burke

THIS AGREEMENT is made between the Tukwila Pool Metropolitan Park District, a Washington municipal corporation "TPMPD," and Steven Burke "Contractor."

I. DESCRIPTION OF WORK.

Contractor shall perform the following services for the TPMPD:

See the attached **Exhibit A**. "Services"

Contractor further represents that the Services furnished under this Agreement will be performed diligently and in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

II. TIME OF COMPLETION. The parties agree that the time period for Contractor to provide the Services described in Section I above shall be reviewed on a monthly basis until such time as the TPMPD Board hires an executive director or otherwise decides to terminate the Agreement in accordance with the provisions of Paragraph VI.

III. COMPENSATION. The TPMPD shall pay Contractor an hourly rate of \$ ____ for Services rendered and a travel time rate of \$ ____ for time spent travelling to and from the TPMPD. Contractor shall be reimbursed for mileage at the current IRS rates and for actual costs incurred for tolls and ferry fares. In no event shall the monthly sum payable to the Contractor exceed \$ _____ without advance written approval from the TPMPD Board President. The Contractor shall submit monthly invoices identify the services performed and the time spent. The TPMPD shall pay all approved invoices within 30 days of receipt. All hourly rates charged shall remain fixed at the negotiated rates throughout the term of this Agreement.

IV. ADDITIONAL WORK. If, during the performance of this Agreement or subsequent to completion of the work under this Agreement, services other than those described in Section I are ordered by the TPMPD, the Contractor agrees to provide said services and the TPMPD agrees to compensate the Contractor for the same according to the method determined at the time the additional services are ordered. The Contractor shall not proceed with said additional services until such time as the cost for the additional services and the method of payment are approved in writing by the TPMPD.

V. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement. By their execution of this Agreement, and in accordance with Ch. 51.08 RCW, the parties make the following representations:

- A. The Contractor has the ability to control and direct the performance and details of its work, the TPMPD being interested only in the results obtained under this Agreement.
- B. The Contractor maintains and pays for its own place of business from which Contractor's services under this Agreement will be performed.
- C. The Contractor has an established and independent business that is eligible for a business deduction for federal income tax purposes that existed before the TPMPD retained Contractor's services, or the Contractor is engaged in an independently established trade, occupation, profession, or business of the same nature as that involved under this Agreement.
- D. The Contractor is responsible for filing as they become due all necessary tax documents with appropriate federal and state agencies, including the Internal Revenue Service and the state Department of Revenue.
- E. The Contractor has registered its business and established an account with the state Department of Revenue and other state agencies as may be required by Contractor's business, and has obtained a Unified Business Identifier (UBI) number from the State of Washington.
- F. The Contractor maintains a set of books dedicated to the expenses and earnings of its business.

VI. TERMINATION. The TPMPD may terminate this Agreement, with or without cause, upon providing the Contractor seven (7) calendar days written notice at its address set forth on the signature block of this Agreement. The Contractor may terminate this Agreement, with or without cause, upon providing the TPMPD thirty (30) calendar days written notice at its address set forth on the signature block of this Agreement.

VII. DISCRIMINATION. The Contractor shall not discriminate against any employee, applicant for employment or any person seeking the services of the Contractor under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status or the presence of any sensory, mental or physical handicap.

VIII. INDEMNIFICATION. Contractor shall defend, indemnify and hold the TPMPD, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Contractor's performance of this Agreement, except for that portion of the injuries and damages caused by the TPMPD's negligence. The TPMPD's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification. The provisions of this section shall survive the expiration or termination of this Agreement.

In the event Contractor refuses tender of defense in any suit or any claim, if that tender was made pursuant to this indemnification clause, and if that refusal is subsequently determined by a court having jurisdiction (or other agreed tribunal) to have been a wrongful refusal on the Contractor's part, then Contractor shall pay all the TPMPD's costs for defense, including all reasonable expert witness fees and reasonable attorneys' fees, plus the TPMPD's legal costs and fees incurred because there was a wrongful refusal on the Contractor's part.

IX. INSURANCE. The Contractor shall procure and maintain for the duration of the Agreement, insurance of the types and in the amounts described in **Exhibit B** attached and incorporated by this reference.

X. CONFIDENTIALITY. In the performance of the Agreement, Contractor may have access to certain confidential information. Contractor agrees to protect confidential information of District against any unauthorized use or disclosure. Without limitation of the foregoing:

- A. Contractor will use such confidential information solely for the purposes of fulfilling the job requirements.
- B. Contractor will disclose such confidential information only to those employees, Consultants, agents and other representatives who have a need to know the same and who understand and acknowledge their obligation and willingness to preserve and hold such confidential information in strict confidence.

XI. CONTRACTOR'S WORK AND RISK. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those services. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XII. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY. Any records, reports, designs, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials prepared or produced by the Contractor in connection with the services provided hereunder shall be the property of the TPMPD whether the project for which they were created is executed or not. No confidential information obtained or created by Contractor shall be disclosed to any person or party other than the TPMPD without the TPMPD's prior written consent.

XIII. MISCELLANEOUS PROVISIONS.

A. Conflict of Interest. The Contractor represents to the TPMPD that it has no conflict of interest in performing any of the services described herein. In the event that the

Contractor is asked to perform services for a project with which it may have a conflict, the Contractor shall immediately disclose such potential conflict to the TPMPD.

B. Non-Waiver of Breach. The failure of the TPMPD to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

C. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the TPMPD's right to indemnification under Section VII of this Agreement.

D. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

E. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void.

F. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the TPMPD and Contractor.

G. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the TPMPD, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. Should any language in any of the exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

CONTRACTOR: By: _____ Steve Burke DATE: _____	TUKWILA POOL METROPOLITAN PARK DISTRICT: By: _____ De'Sean Quinn, Board President DATE: _____
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NOTICES TO BE SENT TO:	NOTICES TO BE SENT TO: Board President Tukwila Pool Metropolitan Park District 4414 South 144 th Street Tukwila, WA 98168
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EXHIBIT A - Contractor Duties

Primary Duties:

- Assist the TPMPD Board and Aquatics Manger in transitioning the TPMPD to a self operated model including but not limited to representing the Board of Commissioners in working with the City of Tukwila, other 3rd party vendors, community groups and organizations and TPMPD legal counsel.
- Assist the TPMPD Board in recruiting and hiring an permanent Executive Director.
- Perform the duties set forth below when necessary to complete the transition.
 - Oversee effective operations of the Metropolitan Park District's Tukwila Pool.
 - Administer on-going TPMPD projects and activities
 - Establish and implement policies and operating procedures for TPMPD
 - Assist TPMPD in serving the citizens of Tukwila and surrounding communities
 - Provide direction, oversight and represent the TPMPD Board to Staff* and Staff to the Board
 - Develop and facilitate an active planning process including short and long term planning
 - Develop TPMPD policies consistent with organizational vision, goals, and statutory requirements
 - Manage the TPMPD's annual calendar of events working with pool staff
 - Draft the TPMPD agenda and materials for TPMPD meetings (held Monthly and ad-hoc, as needed)
 - Engage in the development of an TPMPD Business Plan, including marketing activities
 - Do research, find resources, evaluate and provide information to the Board of Commissioners and/or staff in support of TPMPD's activities
 - Develop, implement and maintain policy and procedure documents consistent with organizational goals and statutory requirements
 - Develop, implement and maintain operational processes/procedures consistent with Board direction

- Establish policies supportive of Board objectives
- Manage any Board identified Request for Proposals (RFPs) or Quotes (RFQs) needs
- Oversee compliance with fiduciary and regulatory requirements, including:
 - WAC 246-260 Water Recreation Facilities
 - RCW 35.61 Metropolitan Park Districts
 - RCW 70.90 Water Recreation Facilities
- Ensure TPMPD operates within the approved annual budget
- Develop, recommend to The Board, an annual budget with proposals
- Identify performance metrics for revenue and operational expenses, collate on a monthly basis and review with the TPMPD
- Review monthly TPMPD financial statements and report to Board president
- Develop, document and ensure effective audit processes and trails
- Ensure the coordination of payment of invoices
- Ensure quarterly financial reporting to The Board, as well as annual reporting
- Notify TPMPD Board immediately if the TPMPD budget obligations are not met
- Engage as necessary with assessment of physical plant problems as they arise and assist in defining the scope of work
- Provide oversight to procurement activities for TPMPD, including the provisioning of materials, services, consultants, architects & engineers and contractors (as needed)
- Monitor project progress by working with TPMPD staff, and others, as needed
- Maintain and safeguard the assets, records and documents of the TPMPD
- Benchmark TPMPD against substantially similar community pools
- Work the TPMPD meeting agendas with the President of the Board (who reviews/approves them)

- Assist the President/Clerk of the Board in planning and supporting ad-hoc committees
- Initiate and assist in developing policy recommendations, preparing resolutions and setting priorities
- Facilitate the orientation of new commissioners
- Interface directly with TPMPD legal representation, as necessary, on issues requiring legal attention
- Serve as spokesperson for TPMPD
- Facilitate over the Tukwila Pool Advisory Committee (TPAC) -a citizen group with advisory capacity to The Board; coordinate the agenda
- Coordinate activities of:
 - President of the TPMPD Board and TPAC
 - Contracted services (lawyer, accountant)
 - Local school districts
 - Contracted users of the TPMPD facilities
 - Ensure that the TPMPD's website and other social media services remain current

EXHIBIT B - INSURANCE REQUIREMENT

The Contractor shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverage and in the amounts described below. The Contractor shall furnish evidence, satisfactory to the TPMPD, of all such policies with an insurer acceptable to the TPMPD. During the term hereof, the Contractor shall take out and maintain in full force and effect the following insurance policies:

- a. Comprehensive general liability (CGL) insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage).
- b. Automobile liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Automobile liability coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary
- c. Such workmen's compensation and other similar insurance as may be required by law.
- d. Contractor agrees to disclose the existence and nature of any limiting endorsement that applies to any liability insurance policy purchased in accord with this contract.
- e. Contractor's insurance coverage shall be primary insurance as respects the TPMPD and Contractor shall provide documentation of the primary nature of Contractor's insurance. Any insurance maintained by the TPMPD shall be excess of the Contractor's insurance and shall not contribute with it.