

**CONSULTANT AGREEMENT FOR
CONSULTANT SERVICES**

THIS AGREEMENT is entered into between the Tukwila Pool Metropolitan Park District, hereinafter referred to as "the MPD", and KJ Design, hereinafter referred to as "the Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **Project Designation.** The Consultant is retained by the MPD to perform services in connection with the project titled Tukwila Pool Operations and Program Review.
2. **Scope of Services.** The Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. **Time for Performance.** Work under this contract shall commence upon the giving of written notice by the MPD to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement within 40 calendar days from the date written notice is given to proceed, unless an extension of such time is granted in writing by the MPD.
4. **Payment.** The Consultant shall be paid by the MPD for completed work and for services rendered under this Agreement as follows:
 - A. Payment for the work provided by the Consultant shall be made as provided on Exhibit "A" attached hereto, provided that the total amount of payment to the Consultant shall not exceed \$4800, plus travel fees as described in Exhibit "A", without express written modification of the Agreement signed by the MPD.
 - B. The Consultant may submit vouchers to the MPD once per month during the progress of the work for partial payment for that portion of the project completed to date. Such vouchers will be checked by the MPD and, upon approval thereof, payment shall be made to the Consultant in the amount approved.
 - C. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the MPD after the completion of the work under this Agreement and its acceptance by the MPD.
 - D. Payment is provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment and incidentals necessary to complete the work.
 - E. The Consultant's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the MPD and state for a period of three (3) years after final payments. Copies shall be made available upon request.

1st of 2013

5. **Ownership and Use of Documents.** All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this Agreement shall be the property of the MPD whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Consultant's endeavors. The Consultant shall not be responsible for any use of the said documents, drawings, specifications or other materials by the MPD on any project other than the project specified in this Agreement.
6. **Compliance with Laws.** The Consultant shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Agreement.
7. **Indemnification.** The Consultant shall indemnify, defend and hold harmless the MPD, its officers, agents and employees, from and against any and all claims, losses or liability, including attorney's fees, arising from injury or death to persons or damage to property occasioned by any act, omission or failure of the Consultant, its officers, agents and employees, in performing the work required by this Agreement. With respect to the performance of this Agreement and as to claims against the MPD, its officers, agents and employees, the Consultant expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligation to indemnify, defend and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Consultant. This waiver is mutually negotiated by the parties. This paragraph shall not apply to any damage resulting from the sole negligence of the MPD, its agents and employees. To the extent any of the damages referenced by this paragraph were caused by or resulted from the concurrent negligence of the MPD, its agents or employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of the Consultant, its officers, agents and employees.
8. **Insurance.** The Consultant shall secure and maintain in force throughout the duration of this contract comprehensive general liability insurance, with a minimum coverage of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage, and professional liability insurance in the amount of \$1,000,000.

Said general liability policy shall name the Tukwila Pool Metropolitan Park District as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the MPD. Certificates of coverage as required by this section shall be delivered to the MPD within fifteen (15) days of execution of this Agreement.

9. **Independent Contractor.** The Consultant and the MPD agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and

employee between the parties hereto. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded MPD employees by virtue of the services provided under this Agreement. The MPD shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant.

10. **Covenant Against Contingent Fees.** The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the MPD shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. **Discrimination Prohibited.** The Consultant, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, sex or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
12. **Assignment.** The Consultant shall not sublet or assign any of the services covered by this Agreement without the express written consent of the MPD.
13. **Non-Waiver.** Waiver by the MPD of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.
14. **Termination.**
 - A. The MPD reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Consultant.
 - B. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the MPD. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the MPD, if the MPD so chooses.
15. **Attorneys Fees and Costs.** In the event either party shall bring suit against the other to enforce any provision of this Agreement, the prevailing party in such suit shall be entitled to recover its costs, including reasonable attorney's fees, incurred in such suit from the losing party.

16. **Notices.** Notices to the Tukwila Pool Metropolitan Park District shall be sent to the following address:

Tukwila Metropolitan Park District Clerk
C/O City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

Notices to Consultant shall be sent to the following address:

Kevin Johnston, M.S., Principal
PO Box 63
Pullman, WA 99163-0063

17. **Integrated Agreement.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the MPD and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. This Agreement may be amended only by written instrument signed by both the MPD and the Consultant.

DATED this 28th day of August, 2013.

TUKWILA POOL
METROPOLITAN PARK DISTRICT

CONSULTANT

PS. Wm Seal
MPD Board President

By: Kevin M. Johnston

Printed Name: Kevin M. Johnston

Title: Principal/owner

Attest/Authenticated:

Approved as to Form:

[Signature]
MPD Board Clerk

[Signature] for
Office of the MPD Attorney

EXHIBIT A

KJ Design, LLC
Scope of Work
Tukwila Pool Administrative & Program Assessment
For the Tukwila Metropolitan Park District

Below is the scope of work to be accomplished by KJ Design, LLC.

Tukwila Pool Administrative & Program Assessment: The scope of work has two major components the Pool Operations & Programming & the MPD Model of Governance Comparison.

- *Pool Operations & Programming*
The analysis for this portion of the work will include: identification of best practices for pool programming; comparison of the pool's current operation to those practices, reviewing pool schedules for efficient & effective operational use; cost analysis of pool operations (defining a lane hour or space hour cost), program cost analysis (per program); salary analysis for employees compared to neighboring communities and compared to privatized and partnership aquatic operations; a review of job description and qualifications for employees; and a cost review to privatize services for current support services (pros & cons).

- **MPD Model of Governance Comparison**
The analysis for this portion of the work will include: definition of governance styles, advantages and disadvantages of each style, comparison of parallel communities with each style, the role of an executive director could play including job description and identifying the qualifications of an ideal candidate and recommendations for efficiency in operations.

Access to Pool & Administrative Personnel: KJ Design, LLC will need to have access to the Tukwila Pool and its associated administrative personnel for approximately 16 hours to collect the necessary information up to three consecutive days (dates to be determined) at a schedule to be pre-arranged.

Purpose: The purpose of the analysis is to determine both short term and long term direction and areas for improvement that should be the district focus and integrated into the district's strategic plan. This evaluation is practical and helpful assessment of the current programs and administration of the district for the aquatic facility.

Elements to be Used in Assessment: Specifically, the mission, goals, and objectives of the district, the pool schedule, hours of operation, revenue sources, brochures and print material, web sites, web searches, program expenses (fixed and variable), operating budgets, administrative costs, advertising & marketing plans, community census data, secret shopper inquiries, observations of aquatic programs and instructors, actual participation in aquatic programs, informal and formal interviews.

Recommendations for the District: Recommendations will be made to help in the decision making process of the staff, administration and commissioners.

Report Contents: The report will contain and be organized under the following headings:

- Table of Contents
- Introduction
- Pool Operations & Programming

Recommendations & Summary

MPD Model of Governance Comparison
Recommendations & Summary

Presentation & Meeting Facilitation: The report will be prepared for presentation and presented at a work shop sharing the findings and recommendations at a mutually agreed upon date. A discussion will be facilitated to help in the process of making decisions related to the various recommendations.

Two printed and bound reports will be sent to the District within four weeks from the completion of the on-site work. Upon completion of the work, KJ Design will be paid \$4800 for the scope of the work and be reimbursed for up to 3 nights hotel (up to \$450) if necessary, three days of per diem for meals at the federal rate and mileage at federal rate for two round trip from our Colfax office to Tukwila.

Payments of invoices are due upon receipt and considered late after 30 days and a \$100.00 late fee will be charged. Payment should be made to KJ Design LLC, PO Box 63, Pullman, WA 99163-0063.

Kevin Johnston, M.S.
Principal & Professional Consultant
KJ Design, LLC

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