

**AGREEMENT WITH
WASHINGTON STATE SCHOOL FOR THE BLIND**

1 THIS AGREEMENT is made by and between the Washington State School for the Blind, hereinafter "School," and that party whose name(s) appear(s) in Item 2 below, hereinafter "Contractor"

2 CONTRACTOR: City of Vancouver

SPECIAL TERMS AND CONDITIONS

IT IS MUTUALLY AGREED THAT:

3 The School authorizes the Contractor to use the School swimming pool and equipment as described in Exhibit A -- Statement of Work

4 Subject to the provisions of this Agreement, the period of use of the pool will begin June 1, 2006, and end by June 1, 2007, unless terminated sooner as provided elsewhere herein; provided that at the Contractor's option, the term of the Agreement may be extended for up to a total of eight (8) weeks, on a week-by-week basis, upon tender of payment of \$250/week based on the prorated amount of the monthly rental set forth herein. Either party may choose to terminate this Agreement by notifying the other party in writing thirty (30) days prior to termination.

5 All rights and obligations of the parties to this contract shall be subject to and governed by the Special Terms and Conditions contained in the text of this contract and the General Terms and Conditions attached hereto and incorporated herein as Exhibit B

IN CONSIDERATION WHEREOF:

6 The Contractor shall pay the School for such use as follows:

- a The base rental rate for the pool and equipment shall be \$1000 00 per month. The contractor shall also pay whatever amount is agreed upon between the two parties for damages or losses incurred while the Contractor is using the facilities. Any amount assessed.
- b The Contractor will allow School employees who are signed up in the School's "Wellness Program" to participate at no charge in the aquatics classes offered by the Contractor at the Kennedy Pool at the School.
- c The Contractor shall reimburse the School for its actual and reasonable costs for pool chemicals and/or custodial services in an amount not to exceed \$200/month.

IT IS FURTHER AGREED THAT:

7 The School shall submit invoices for rent and other consideration on a timely basis to the Contractor. Invoices shall be sent to: Andy Meade at the address listed herein

8 In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: A) Applicable Federal and State Statutes and Regulations, B) Special Terms and Conditions, C) General Terms and Conditions, D) Statement of Work, and E) any other provision of the contract whether incorporated by reference or otherwise.

- 9. This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties hereto
- 10. This agreement shall be subject to the written approval of the Contracting Officer of the School and shall not be binding until so approved. Only the Contracting Officer or his/her delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Contracting Officer.
- 11. Notices provided for in this Agreement shall be delivered postage prepaid and addressed to:

Contractor:

City of Vancouver
P.O Box 1995
Vancouver, Washington 98668-1995
Attention: City Manager

With a copy at the same address to the Procurement Manager

School:

Washington State School for the Blind
2214 East 13th Street, Vancouver,
Washington 98661
Attention: Contracting Officer

IN WITNESS WHEREOF: The School and the Contractor have signed this agreement

Julianna M. Csonaki, Procurement Services Manager
Contractor, City of Vancouver

[Signature]
Contracting Officer, School for the Blind

Approved as to form:
This contract has been

approved as to form by the Attorney General.
Attest:

R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form: —

[Signature]
Ted H. Gathe, City Attorney

EXHIBIT "A"
STATEMENT OF WORK

It is the purpose of this contract to allow the contractor to use the swimming pool and requested equipment at the Kennedy Building at the Washington State School for the Blind, located at 2214 East 13th Street, Vancouver, Washington 98661.

The School will grant to the Contractor the use of the premises at the School for the Blind as hereinafter conditioned subject to the terms and conditions stated in this contract. The School will be responsible for the maintenance and repair of the premises.

THE CONTRACTOR WILL:

- 1) Provide the School a schedule of requested use of pool, by quarter, to be agreed upon by both parties. This schedule will be filed with the Facility Use Coordinator and used as an addendum to the contract. Contractor will work with the School for special events, i.e. Swim Meet for students, Sports Camp (July 16-19, 2006) and will modify their schedule to meet the School's students' needs.
- 2) **HAVE USE OF THE FOLLOWING PORTIONS OF THE PREMISES:** Unlocked lockers and baskets, shower baskets that are the property of the School and the school will provide janitorial services.

THE CONTRACTOR ACKNOWLEDGES THAT:

- 3) No bowling, use of the weight room or gymnasium will be allowed.
- 4) There will be no towel or laundry service.
- 5) The Contractor shall not use or permit to be used any part of the occupied premises for any dangerous, noxious, or offensive purposes and further, the Contractor shall not introduce or suffer or permit the introduction of any dangerous, noxious or offensive materials or substances onto the occupied space at any time. The Occupant shall not cause or maintain or permit any nuisance in, at, or on the occupied premises.
- 6) **CONDITION OF OCCUPIED AREA:** The Contractor shall take good care of the occupied premises and each and every part thereof and shall maintain that space in a clean, neat, orderly and sanitary condition at all times. At the expiration or termination of this agreement, the Contractor shall deliver the same up to the School in as good condition as when first occupied by the Contractor, reasonable wear and tear excepted. The Contractor will pay the School for excess wear or damages to the premises. The Contractor's obligation to observe or perform this covenant shall survive the expiration or termination of this agreement. The Contractor further agrees to daily testing of water conditions. Contractor shall keep a written record of these chemical readings.
- 7) **ALTERATIONS:** The Contractor shall not make any alterations to the occupied premises and/or install fixtures or equipment without the prior written consent of the School.
- 8) **CREDENTIALS/CERTIFICATION:** Contractor shall provide School with copies of Lifeguard Certifications and Certified Pool Operator Credentials.

EXHIBIT B
GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS**- As used throughout this contract, the following terms shall be defined as follows:
 - (a) "Client shall mean any agency, firm, organization, individual or other entity applying for or receiving services under this contract.
 - (b) "Contractor" shall mean that agency, firm, provider, organization, individual or other entity performing services under this contract. It shall include any subcontractor retained by the prime Contractor as permitted under the terms of this agreement.
 - (c) "Contracting Officer" shall mean Superintendent of the School or one to whom he delegates, in writing, the authority to execute contracts.
 - (d) "School" shall mean the Washington State School for the Blind, any division, section, office, unit or other entity of the School, or any of the officers or other officials lawfully representing the School.
 - (e) "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of the services under this contract under a separate contract with the Contractor. The Terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. **CONTRACTOR NOT EMPLOYEE OF SCHOOL**- The Contractor and his or her employees or agents performing under this agreement are not employees or agents of the School. The Contractor will not hold itself out as nor claim to be an officer or employee of the School or of the state of Washington by reason hereof, nor make any claim of right, privilege or benefit which would accrue to a civil service employee under Chapter 41 06 RCW.

3. **NONDISCRIMINATION**- During the performance of this agreement, the Contractor shall comply with the School's nondiscrimination plan and the federal and state laws upon which it is based. Requirements of the nondiscrimination plan are hereby incorporated by reference, and include, but are not limited to:
 - (a) **Nondiscrimination in employment**: The Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence if any of any sensory, mental or physical handicap. This requirement does not apply, however, to a religious corporation, association educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities

The contractor shall take affirmative action to ensure that employees are employed and treated during employment without discrimination because of their race, color, religion, sex, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following employment, upgrading, demotion, or transfer; recruitment, selection for training, including apprenticeships and volunteers
 - (b) **Nondiscrimination in Client Services**: The Contractor shall not, on grounds of race, color, sex, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental or physical handicap:
 - (1) Deny any individual any services or other benefits provided under this agreement
 - (2) Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner from those provided to others under this agreement
 - (3) Subject an individual to segregation or separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this agreement
 - (4) Deny any individual an opportunity to participate in any program provided under this agreement or afford an opportunity to do so which is different from that afforded others under this agreement. The Contractor, in determining (1) the types of services or other benefits to be provided or (2) the class of individuals to whom, or the situation in which, such services or other benefits will be provided or (3) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color,

sex, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental or physical handicap

4. NONCOMPLIANCE WITH NONDISCRIMINATION PLAN In the event of the Contractor's noncompliance or refusal to comply with the above nondiscrimination plan, this contract may be terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the School. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.
5. INDEMNIFICATION Each party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.
6. COVENANT AGAINST CONTINGENT FEES The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business. The School shall have the right, in the event of breach of this clause by the Contractor, to terminate in part or whole this contract without liability or, in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
7. CONFLICT OF INTEREST - The School may, by written notice to the Contractor terminate the right of the Contractor to proceed under this contract if it is found, after due notice and examination by the Contracting Officer that gratuities in the form of entertainment, gifts or otherwise are offered or given by the contractor, or an agent or representative of the Contractor, to any officer or employee of the School, with a view towards securing this contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to this contract. Term shall be effective on the date specified in the notice.
8. TREATMENT OF ASSETS
 - (a) Title to all property furnished by the School shall remain in the School. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the School upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the School upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the School in whole or in part, whichever first occurs. The Contractor agrees that it will, upon the School's request, assist the School in perfecting any security interest in such property which might arise under the Uniform Commercial Code.
 - (b) Any property of the School furnished to the Contractor shall, unless otherwise provided herein, or approved by the Contracting Officer, be used only for the performance of this contract.
 - (c) The Contractor shall be responsible for any loss or damage to property of the School which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
 - (d) Upon loss or destruction of, or damage to, any School property, the Contractor shall notify the Contracting Officer thereof and shall take all reasonable steps to protect that property from further damage.
 - (e) The Contractor shall surrender to the School all property of the School prior to settlement upon completion, termination or cancellation of this agreement.
 - (f) All reference to the Contractor under this clause shall include any of his/her employees or agents or subcontractors.
9. NONASSIGNABILITY OF CLAIMS - No claim arising under this contract shall be transferred or assigned by the Contractor.
10. RECORDS, DOCUMENTS, AND REPORTS - The Contractor shall maintain books, records, documents and other evidence of procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performances of this agreement. These materials shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the School, the Office of the State Auditor, and federal officials so

authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other material relevant to the provision of services under this agreement for three years after settlement, and make them available for inspection by persons authorized under this provision.

11. SAFEGUARDING OF CLIENT INFORMATION- The use or disclosure by any party of any information concerning a client for any purpose not directly connected with the administration of the School's or the Contractor's responsibilities with respect to services provided under this agreement is prohibited except by written consent of the recipient or client, his/her attorney, or his/her responsible parent or guardian, whichever is applicable, and any disclosure shall be in accordance with applicable laws, WAC'S, etc.

12. RIGHTS IN DATA- Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U S Copyright Act of 1976 and shall be owned by the School. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate there from, shall be transferred to the School with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; Provided, that such license shall be limited to the extent which the Contractor has the right to grant such a license. The Contractor shall exert all reasonable effort to advise the School, at the time of delivery of data furnished under this agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this agreement. The School shall receive; prompt written notice of each claim or copyright infringement received by the Contractor with respect to any data delivered under this agreement. The School shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

13. SUBCONTRACTING- The Contractor shall not enter into subcontracts for any of the work contemplated under this agreement without prior written approval of the Contracting Officer.

14. LICENSING AND ACCREDITATION STANDARDS- The Contractor shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards, necessary in the performance of this contract.

15. RIGHT OF INSPECTION The contractor shall provide right of access to its facilities to the School, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

16. ADVANCE PAYMENTS PROHIBITED- No payment in advance or in anticipation of services or supplies to be provided under this agreement shall be made by the School.

17. SAVINGS- In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Contracting Officer may terminate the contract under the "Termination for Convenience" clause, subject to renegotiation under those new funding limitations and conditions.

18. WAIVER OF DEFAULT- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the agreement unless stated to be such in writing, executed by the Contracting Officer of the School with all the formalities of a contract amendment.

19. CHANGES AND MODIFICATIONS- The Contracting Officer may, at any time, by written notification to the Contractor, and without notice to any known guarantor or surety, make changes within the general scope of the services to be performed under the contract. If any such change causes an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price, or period of performance, or both, and the contract shall be modified in writing, accordingly. Any claim by the contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notice of such change; Provided, however, that the Contracting Officer may, if he/she decides that the facts justify such action,

receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

- 20 DISPUTES - Except as otherwise provided in this contract, when a bona fide dispute arises between the School and the contractor and it cannot be resolved, either party may submit a request for a dispute resolution to the Superintendent of the School. The parties agree that this resolution process shall precede any action in a judicial or quasi-judicial tribunal. A party's request for a dispute resolution must:
- (a) be in writing,
 - (b) state the disputed issues, and supporting facts,
 - (c) state the relative positions of the parties,
 - (d) state the Contractor's name, address, and his/her School contract number
 - (e) be mailed to the Superintendent, Washington State School for the Blind, 2214 E 13th St, Vancouver, WA 98661-4120, within thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue which he/she now disputes, and
 - (f) the Superintendent shall mail a copy of the stated issues and facts to the non-requesting party. The responding party shall provide a statement of issues and supporting facts within twenty-five (25) days to the superintendent and requesting party, and
 - (g) the Superintendent shall make a decision regarding the dispute and notify the parties.

This dispute resolution process constitutes the sole administrative remedy available under this contract.

21. TERMINATION FOR DEFAULT OR VIOLATION OF PROVISIONS - The Contracting Officer may, by written notice to address stated in this contract, terminate the contract in the whole or part, for failure of the Contractor to perform or violation of, any of the provisions hereof. Termination shall be effective on the date specified in the notice. In such event the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative cost directly related to the replacement contract, to include but not limited to cost of the competitive bidding, mailing, advertising and staff time; Provided, that if (i) it is determined for any reason the Contractor was not in default, or violation, or (ii) the Contractor's failure to perform is without his/her and/or his/her subcontractor's control, fault or negligence, the termination shall be deemed to be a Termination for convenience.
- 21.5 TERMINATION FOR CONFLICT OF INTEREST - Notice of termination shall be given to the Contracting Officer, in writing, and mailed to the address stated herein. Termination shall be effective in fourteen (14) days, which time period begins on the third (3rd) day after the date the notice was mailed.
22. TERMINATION FOR CONVENIENCE - Except as otherwise provided in this contract, the Contracting Officer may terminate this contract in whole or in part when it is in the best interests of the School. If this contract is so terminated, the School shall be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination.
23. TERMINATION PROCEDURE - Notice of termination shall be given, in writing, to the address of the party as contained in this contract. Notice will be deemed properly given on the third (3rd) day after the date the notice is mailed; for example, if there is a fourteen (14) day notice requirement, and notice is mailed on Friday, the fourteen (14) days begins running on Monday, and the contract will terminate on the fourteenth (14th) day therefrom. Time periods specified in this contract include weekends and holidays.

Upon termination of this agreement the School, in addition to any other rights provided in this agreement, may require the Contractor to deliver to the School any property specifically produced or acquired for the performance of such part of this agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The School shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the School, and the amount agreed upon by the Contractor and the Contracting Officer for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the School, and (d) the protection and preservation of property, unless the termination is

for default, in which case the Contracting Officer shall determine the extent of the liability of the School. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this agreement. The School may withhold from any amounts due the Contractor for such completed work or services such sum as the Contracting Officer determines to be necessary to protect the School against potential loss or liability

The rights and remedies of the School provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement

After receipt of a notice of termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (a) Stop work under the agreement on the date, and to the extent specified, in the notice; and cooperate with the School in termination procedures.
- (b) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the agreement as is not terminated;
- (c) Be deemed to have assigned to the School, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the rights, titles, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Contracting Officer has the right, at his/her discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts
- (d) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer to the extent he/she may require, which approval or ratification shall be final for all the purposes of the clause;
- (e) Transfer title to the School and deliver in the manner, at the times, and to the extent, if any, as directed by the Contracting Officer, any property which, if the agreement had been completed, would have been required to be furnished to the School;
- (f) Complete performance of such part of the work as shall not have been terminated by the Contracting Officer, and,
- (g) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this agreement which is in the possession of the Contractor and in which the School has or may acquire an interest

24 GOVERNING LAW -- This contract shall be governed by the laws of the state of Washington

25 WAIVER & SEVERABILITY -- No provision of this contract or agreement, or the right to receive reasonable performance of any called for by its terms shall be deemed waived by a breach thereof as to a particular transaction or occurrence. If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision; to this end the provisions of this agreement declared severable