

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this "Agreement") is entered into as of the date written below between the City of Bainbridge Island, a Washington state municipal corporation (the "City") and GHD, Inc. (the "Consultant").

WHEREAS, the City desires to hire a consultant to evaluate strategic options for the long-term ownership, governance, operations, and financing of the City's water utility; and

WHEREAS, the Consultant has the expertise and experience to provide said services and is willing to do so in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the Consultant as follows:

1. SERVICES BY CONSULTANT

The Consultant shall provide the professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as Attachment A and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. PAYMENT

A. The City shall pay the Consultant for such services: (check one)

Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of \$85,000.00;

Fixed Sum: a total amount of \$_____;

Other: _____, for all services performed and incurred under this Agreement, to be billed monthly in equal amounts.

B. The Consultant shall submit monthly invoices for services performed in a previous calendar month in a format acceptable to the City. Each project and each task within a project shall be the subject of a separate invoice. The Consultant shall maintain time and expense records and provide them to the City upon request.

C. All invoices shall be paid by mailing a city check within sixty (60) days of receipt of a proper invoice.

D. If the services rendered do not meet the requirements of this Agreement, the Consultant shall correct or modify the work to comply with this Agreement. The City may withhold payment for such work until it meets the requirements of this Agreement.

3. INSPECTION AND AUDIT

The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

4. INDEPENDENT CONTRACTOR

A. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that the Consultant's status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

B. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

D. The Consultant shall obtain a business license and, if applicable, pay business and occupation taxes pursuant to Title 5 of the Bainbridge Island Municipal Code.

5. DISCRIMINATION AND COMPLIANCE WITH LAWS

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 5 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

6. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon execution by both parties and shall continue in full force and effect until December 31, 2011, unless sooner terminated by either party as provided below.

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

7. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda and other documents developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City in hard copy and in digital format that is compatible with the City's computer software programs.

8. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or designee, shall be the City's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

9. HOLD HARMLESS AND INDEMNIFICATION

A. The Consultant agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused by or occurring by reason of any negligent act, error and/or omission of the Consultant, its officers, employees, and/or agents, arising out of or in connection with the performance or non-performance of the services, duties, and obligations required of the Consultant under this Agreement.

B. In the event that the Consultant and the City are both negligent, then the Consultant's liability for indemnification of the City shall be limited to the contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the Consultant, its officers, employees and agents.

C. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the immunity of the Consultant under Washington's Industrial Insurance Act, RCW Title 51, as respects the other parties only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the employees of the Consultant. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

D. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to void, nullify and/or invalidate any of these covenants of indemnification.

E. Nothing contained in this section of this Agreement shall be construed to create a liability or a right of indemnification in any third party.

F. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

10. INSURANCE

Consultant shall maintain insurance as follows:

Commercial General Liability as described in Attachment B.

Professional Liability as described in Attachment B.

Automobile Liability as described in Attachment B.

None.

11. SUBLETTING OR ASSIGNING CONTRACT

This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Consultant to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the Consultant as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

A. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NON-WAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City: City of Bainbridge Island
 280 Madison Avenue North
 Bainbridge Island, WA 98110
 Attention: City Manager

To the Consultant: GHD, Inc.
 1201 Third Ave, Ste 1500
 Seattle, WA 98101-3033
 Attention: Thomas Keown, P.E.

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

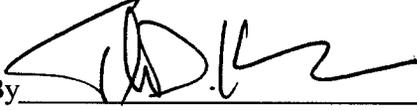
20. COUNTERPARTS

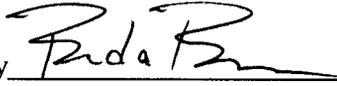
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of 1/19/11, _____.

GHD, INC.

CITY OF BAINBRIDGE ISLAND

By 

By 

Name Thomas D. Geesman

Brenda Bauer, Interim City Manager

Title Service Group Manager

Tax I.D. # 98-0425935

City Bus. Lic. # 43181



ATTACHMENT A

UTILITY BUSINESS ADVISOR SCOPE OF SERVICES

PROJECT UNDERSTANDING

During the term of this agreement, GHD shall perform professional services and will serve as a Utility Business Advisor in order to evaluate strategic options for the long-term ownership, governance, operations, and financing of the City's water utility.

SCOPE OF SERVICES

TASK 1: PROJECT MANAGEMENT/CONSULTANT COORDINATION

1. The Consultant shall coordinate with the City's project manager throughout the project.
2. The Consultant shall develop and maintain an updated project schedule, provided to the City on a monthly basis.
3. The Consultant shall submit monthly invoices with a written summary of project progress.

TASK 2: WATER UTILITY ANALYSIS

1. Identify and evaluate potential options for the City:
 - A. City transfers/sells water utility to KPUD or another governmental entity.
 - Includes specifically performing a gap analysis on KPUD's Assumption of COBI's Public Drinking Water Systems memo.
 - Comparative analysis of financial differential between a transfer or sale of water utility to KPUD or other governmental entity.
 - B. City sells water utility to a non-governmental entity.
 - C. City contracts with an outside entity to manage the water utility.
 - D. City retains ownership, operations, and maintenance responsibilities. City reorganizes internally to achieve competitive rates.
 - E. Identify other viable options.
2. For each option other than option D, provide analysis and evaluate based on the following criteria:

Financial:

 - Assess valuation of water utility as a City asset.
 - Outline what happens to all water utility funds (capital, reserves, etc.)?

- Quantify and assess impact to general fund and other stranded costs.
- Quantify and assess impact of lost annual revenue from BIMC Chapter 5.08 UTILITY TAX.
- Quantify and assess impact to the Unified utility fund.
- Quantify and assess impacts to ratepayers (identify several sample customers to compare the fiscal impact)
- How are outstanding bonds affected?
- How is bonding capacity affected?
- Possible Municipal Code changes?
- Assess impacts of Lane Case.

Operational:

- How would it affect operating costs of other City utilities, and what management options are available to absorb costs previously shared among utilities?
- How are Levels of Service affected (including cross-connection control, aquifer control, and fire protection)?
- How would it affect coordination and control of City capital infrastructure project planning and delivery?
- What scale of economy, customer base, or other factors would allow the City the opportunity to provide services at water rates comparable to the KPUD?

Strategic:

- Currently Water Resource Management is performed by City staff and significantly funded by the water utility. If the City divests the water utility, how might this function be met?
- How will divestiture of water utility impact City's ability to manage growth, land use, and comprehensive planning?
- Assess impacts to Capital Program (grants/matching funds, project scheduling, etc.)
- Assess imposition of utility tax on KPUD, other governmental entities and private water utilities.
- Assess imposition of franchise agreement on KPUD and/or other governmental entities.
- Identification of potential legal issues.

Task 2 Meetings

1. The Consultant shall lead a kick-off meeting with City Staff.
2. The Consultant shall meet with KPUD to discuss their assumptions of assuming COBI's water system.
3. The Consultant shall meet with City staff to discuss and identify current financial, operations and capital project management programs. The City shall provide the following data and documents which shall include:
 - a. Legal assessment of COBI codes that may have conflicts with proposed actions.
 - b. Existing COBI Interlocal agreements
 - c. COBI and KPUD Water system plan,
 - d. COBI and KPUD capital improvement plans,

- e. COBI and KPUD Financial statements (2008-09) and budget (2010-2011),
 - f. Number of customers in 2008, 2009 and to date water consumption history
 - g. Existing COBI Bond covenants
 - h. Existing COBI water utility related contracts (consultant, construction, etc)
 - i. KPUD policies and standards
 - j. KPUD history of customer service (there are on-Island customers)
4. The Consultant shall meet with City staff to coordinate progress and review draft findings with City staff.
 5. The Consultant shall attend a meeting to review the final report with City staff.

Task 2 Deliverables

1. The Consultant shall prepare a draft report for review and comment by City Staff within 120 days of contract execution.
2. The Consultant shall prepare a final report for Council presentation.

TASK 3: PUBLIC MEETINGS

1. The Consultant shall conduct a presentation to the City Council.
2. The Consultant shall conduct a presentation to the Utility Advisory Committee upon recommendation by City Council.

Task 3 Deliverables

1. The Consultant shall be responsible for preparing the materials and exhibits for the presentation to City Council.
2. The Consultant shall be responsible for preparing the materials and exhibits for the presentation to the Utility Advisory Committee.
3. The Consultant shall prepare a written response to additional questions posed by the Council or Utility Advisory Committee.

TASK 4: CONTINGENCY FUND

It is difficult to determine ahead of time the precise scope of every design team member's involvement, and it is unnecessarily expensive for an owner to negotiate fees that encompass every conceivable service that might be required. Hence, a contingency fund will be established as part of this contract.

The use of this contingency fund shall comply with solving unforeseen conditions. Contingency funds are not available simply to fund desirables or to fund new interpretations.

ATTACHMENT B

Insurance against claims for injuries to persons or damage to property arising out of or in connection with the performance of this Agreement by the Consultant, its officers, employees and agents:

A. Automobile Liability Insurance with limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage.

B. Commercial General Liability Insurance written on an occurrence basis with limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

C. Professional Liability Insurance with limits no less than \$1,000,000.00 limit per occurrence.

Before commencing work and services, the Consultant shall provide to the person identified in Section 16 of the Agreement a Certificate of Insurance evidencing the required insurance. City reserves the right to request and receive a certified copy of all required insurance policies.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Consultant. City shall be named as an additional insured on the Commercial General Liability Insurance Policy, with regard to work and services performed by or on behalf of the Consultant, and a copy of the endorsement naming City as an additional insured shall be attached to the Certificate of Insurance.

The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to City; and (3) shall state that City will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/25/2011

Page 1 of 1

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis Insurance Services of California, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 37230-5191	CONTACT NAME: PHONE (A/C, NO, EXT): 877-945-7378 FAX (A/C, NO): 888-467-2378 E-MAIL ADDRESS: certificates@willis.com	
	INSURER(S) AFFORDING COVERAGE INSURER A: Ace American Insurance Company NAIC#: 22667-001	
INSURED GHD Inc. 1201 Third Avenue Suite 1500 Seattle, WA 98101	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

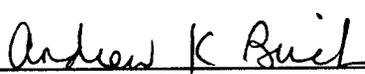
COVERAGES **CERTIFICATE NUMBER: 15459056** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L INSRD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Claims Made Professional Liability			G23638678002	12/1/2010	12/1/2011	\$1,000,000 Each Claim \$1,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach Acord 101, Additional Remarks Schedule, if more space is required)
 RE: 860903607 City of Bainbridge Island T. Keown

CERTIFICATE HOLDER**CANCELLATION**

City of Bainbridge Island ATTN: City Manager 280 Madison Avenue North Bainbridge Island, WA 98110	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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