

## **AGREEMENT FOR PORTABLE RESTROOMS AND SERVICES**

**THIS AGREEMENT FOR PORTABLE RESTROOMS AND SERVICES** ("the Agreement"), made this as of the date entered at the signature block below, by and between the **WHEATON PARK DISTRICT**, 102 E. Wesley Street, Wheaton, Illinois 60187 (the "District") and **AREA SANITATION SOLUTIONS, INC.** (the "Contractor"), collectively referred to as the "Parties" or individually as "Party."

- A. The District desires to provide portable restrooms and services for patrons using the District's parks and other outdoor facilities.
- B. Contractor has represented to the District that Contractor is an experienced portable restroom provider capable of providing quality and sanitary portable restrooms and services, and Contractor desires to provide said restrooms and services.
- C. The District deems it in the best interest of the District to enter into an agreement with the Contractor to provide the portable restrooms and related services.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, receipt of which each Party hereby acknowledges, the Parties respectively agree and represent as follows:

### **1. Contract Documents**

The Contract Documents shall consist of this Agreement, the Bid Documents dated February 16, 2016, attached to and incorporated as part of this Agreement as **Exhibit A**, Contractor's Proposal dated March 1, 2016, attached to and incorporated as part of this Agreement as **Exhibit B**, Contractor's Compliance and Certification Attachment, attached to and incorporated as part of this Agreement as **Exhibit C**, and any addenda issued prior to the execution of this Contract and Modifications issued after the execution of this Contract. Modifications to this Contract may only be made in writing and endorsed by the Parties.

The Contract Documents represent the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the other Party that is not contained in the Contract Documents shall be valid or binding. In the event of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Documents, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority: a) Modifications; b) this Agreement and the General Conditions; c) Specifications; and d) Contractor's Proposal.

### **2. Labor and Materials**

Contractor shall provide all labor and materials for the supply of portable restrooms and related services in accordance with the Contract Documents (the "Services") for the Term specified in Paragraph 3 of this Agreement.

### **3. Term**

The Contractor shall provide the Services commencing April 1, 2016 and, unless terminated earlier as provided in the Agreement, ending December 30, 2016 (the "Initial Term"). The District reserves the right to renew this Agreement in its sole discretion for two additional terms as follows:

- a. First Renewal Term: commencing April 1, 2017 and ending December 30, 2017.
- b. Second Renewal Term: commencing April 1, 2018 and ending December 30, 2018.

(collectively or individually referred to as "Renewal Term").

In the event that the District elects to renew this Agreement for any Renewal Term, the District will provide Contractor thirty (30) days written notice prior to the commencement of each Renewal Term of its intent to renew this Agreement.

### **4. Contract Sum and Payment**

The District agrees to pay Contractor for the proper and timely performance of the Services in strict accordance with the Agreement the following prices for the Initial Term:

- a. ADA Compliant Unit - Seasonal rental fee per month (with twice a week service): \$82/Unit.
- b. Standard Unit - Seasonal rental fee per month (with twice a week service): \$55/Unit.
- c. ADA Compliant Unit - Special Event Multiple Unit Pricing (minimum 2 units): \$112/Unit.
- d. Standard Unit - Special Event Multiple Unit Pricing (minimum 6 units): \$60/Unit.
- e. Hand Wash Station - Special Event Multiple Unit Pricing: \$65/Unit.
- f. Hand Sanitizer - Special Event Multiple Unit Pricing: \$0/Unit, included in pricing.
- g. Extra service per unit per occurrence – Special Event Multiple Unit Pricing (minimum 6 units): \$11.50/Unit.

(collectively, hereinafter referred to as the "Contract Sum").

In the event the Park District elects to renew the Agreement for the First Renewal Term, as defined above, the unit pricing and Contract Sum shall remain the same as set forth above and in accordance with Contractor's Proposal. In the event the Park District elects to renew the Agreement for the Second Renewal Term, as defined above, all unit pricing will remain the same as set forth above and in accordance with Contractor's Proposal, except the unit price per month for the Standard Unit shall increase to \$57.50.

The District shall pay the Contractor the Contract Sum for the Initial Term, and for any Renewal Term, and any other costs due to Contractor pursuant to Paragraphs 6 and 8 of this Agreement in accordance with the Local Government Prompt Payment Act (5 ILCS 505/1, *et seq.*).

**5. Performance of the Services**

Contractor agrees to perform all Services in a good and workmanlike manner. In performance of the Services, Contractor shall not interfere in any way with and shall cooperate fully with District employees and any other contractors procured by the District.

**6. Delivery and Schedule for Cleaning and Servicing the Portable Restrooms Units**

As part of the Services:

- a. Contractor shall deliver all portable restroom units (the "Units" or "Unit") in a clean and sanitized condition and each Unit shall contain at least one toilet tissue holder with two rolls of paper. Contractor shall securely stake down the Units on all four corners using 2" x 2" wood stakes to help prevent the Units from falling over or being turned over.
- b. Contractor shall clean and service all Units at least once each week in accordance with Paragraph 7 of this Agreement. Additional cleaning may be required in the event of increased use of the Units. The District shall contact the Contractor regarding the need for any such additional cleaning and Contractor shall provide any said additional cleaning at an additional charge to the District as mutually agreed to by the Parties in writing prior to the performance of any such additional cleaning.
- c. Contractor shall deliver and pick-up the Units according to the schedule in **Exhibit D**. If weather conditions or unstable turf prevent the cleaning of the Units on a day the Units are designated for cleaning and servicing, Contractor shall service the Units on the first possible day following the inclement weather

or, in the case of unstable turf, the first possible day when the turf conditions are returned to a stable condition.

## **7. Procedures for Cleaning and Servicing the Units**

As part of the Services, Contractor shall perform the following procedures each time a Unit is cleaned and serviced:

- a. Pump waste from tank;
- b. Remove rocks, ice and other debris from tank;
- c. Scrub all surfaces with the appropriate brushes and cleaning solution;
- d. Clean and scrub floor of mud, ice and other debris;
- e. Scrub urinal inside and out;
- f. Remove graffiti;
- g. Add fresh water and anti-bacterial solution to the tank;
- h. Spray with deodorizer;
- i. Replace or replenish toilet tissue;
- j. Wipe off ledges above screens and door;
- k. Complete or schedule needed repairs;
- l. Schedule replacement of the Unit if needed;
- m. Confirm Unit is in the proper place and is level; and
- n. Sign and date the service log sticker in each Unit.

If a Unit is blocked and cannot be pumped, the Contractor shall perform the remaining procedures on the Unit as outlined above and shall notify Paul Stanczak (630 917 4832) at the Wheaton Park District of the inability to pump the Unit, identifying the specific Unit.

## **8. Warranty and Repair**

The Contractor warrants to the District that materials and equipment furnished under the Agreement will be of the best quality and new, that the Services will be free from defects and deficiencies, and that the Services will conform to the requirements of the Contract Documents. Services not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and shall be replaced by Contractor at no cost to the District.

The Contractor shall pay for the cost of minor damages to any Unit. Major damage or vandalism sufficient to require a Unit to be replaced will be the responsibility of the District to the extent such damage or vandalism is not caused by Contractor's negligent acts or omissions. In the event a Unit needs to be replaced at the District's cost as provided hereunder, the Contractor will document the required replacement cost of the Unit, including labor and delivery costs and, upon prior review and approval by the District, invoice the District for the same. The District shall remit payment to the Contractor for any such costs in accordance with Paragraph 4 of this Agreement.

## **9. Correction of Deficiencies**

If the Contractor defaults or neglects to provide any Services in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the District to commence and continue correction of such default or neglect, with diligence and promptness, the District may, without prejudice to other remedies the District may have, correct such deficiencies. In such case, the District shall deduct from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation to the District for any and all expenses related thereto. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District.

The rights and remedies of the District stated in this Agreement shall be in addition to and not in limitation of, any other rights of the District granted in the other Contract Documents or at law or in equity.

## **10. Cleaning Up**

Contractor shall keep District property free from accumulation of waste materials or rubbish caused by the performance of the Services. At completion of delivering, picking-up or cleaning the Units, the Contractor shall remove from and about the site waste materials, rubbish, the Contractor's tools, equipment, machinery and surplus materials. If the Contractor fails to clean up as provided herein, the District may do so and the cost thereof shall be charged to the Contractor.

## **11. Safety of Persons and Property**

- A. The Contractor shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to
  - 1. employees engaged in the Services and other persons who may be affected thereby;
  - 2. the materials and equipment to be incorporated in the Services, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and
  - 3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.
- B. The Contractor shall promptly remedy damage and loss, at Contractor's sole cost and expense, to District property, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities, caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible in the performance of the Services, except to the extent such damage or loss is attributable to acts or omissions of the District or

anyone directly or indirectly employed by the District, or by anyone for whose acts the District may be liable, and not attributable to the fault or negligence of the Contractor.

- C. Contractor shall require that any individual employed or otherwise retained by Contractor or by any subcontractor of Contractor to perform the Services, consent and submit to, prior to such employment or retention by Contractor or subcontractor for the Services, a criminal background check. Contractor shall be required to certify to the District that no Contractor or subcontractor employee hired to perform the Services has been convicted of a crime that would make an employee ineligible to be employed by the District in accordance with 70 ILCS 1205/8-23.

## **12. Termination**

The District may terminate this Agreement as follows:

- a. The District may, at any time, terminate the Contract in whole or in part for the convenience of the Park District and without cause. Termination by the District under this Paragraph 12.a shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination the Contractor shall immediately, in accordance with instructions from the District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Services; (4) terminate all subcontracts and orders to the extent they relate to the Services; (5) proceed to complete the performance of the Services not terminated; and, (6) take actions that may be necessary or that the District may direct, for the protection and preservation of the District property. In the event of termination for convenience by the District, the Contractor shall recover payment for approved Services executed before the effective date of the termination. Contractor shall not be entitled to damages resulting from termination for convenience under this Paragraph.
- b. If Contractor fails to provide the labor and materials as required in the Contract Documents, or otherwise breaches or defaults under any provision of this Agreement and does not remedy such failure, breach or default within three (3) business days after demand from the District to take corrective action, or in the event of repeated or multiple failures or defaults by Contractor, the District may terminate this Contract and enter into an agreement with another contractor or contractors to provide the Services. In such event: (1) the District shall not pay Contractor for any portion of the Services not completed in accordance with the Contract

Documents; (2) the District shall deduct from payments due to the Contractor the cost of correcting any deficiencies in accordance with Section 9 of this Agreement; and (3) Contractor shall be liable to the District for the increased cost to the Park District of obtaining services from the substitute contractor(s).

- c. If Contractor is adjudged as bankrupt, or if Contractor makes a general assignment for the benefit of Contractor's creditors, or if a receiver is appointed on account of Contractor's insolvency, or if any provision of the bankruptcy law is invoked by or against Contractor, then notwithstanding any other rights or remedies granted the District, the District may, without prejudice to any other right or remedy, (1) immediately terminate the retention of Contractor and/or (2) finish or cause to be finished the Contractor's Services required under this Agreement by whatever method and by whichever persons the District deems expedient. In such case, Contractor shall not be entitled to receive any payment until the Services are completed. If the unpaid balance of the Contract Sum exceeds (i) the expenses of completing the Services, including compensation for additional managerial and administrative services, plus (ii) the District's losses and damages because of Contractor's default, such excess shall be paid to Contractor. If such expense plus the District's losses and damages shall exceed such unpaid balance, Contractor shall pay the difference to the District promptly on demand and the District may resort to any other rights or remedies the District may have by law or under this Agreement.

### **13. Insurance**

In furtherance and not in limitation of its foregoing indemnification obligation, Contractor shall obtain and maintain at all times during the Initial Term and any Renewal Term, insurance coverage written for not less than the limits of liability, and under all the other terms and conditions set forth in **Exhibit C** attached to and incorporated by reference in this Agreement, and shall name the District as an additional insured with respect to all such coverages.

### **14. Indemnification**

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's Services, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission, by the

Contractor any subcontractors and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused by the District. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify, defend and hold and save harmless the District's officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of breach of any of their obligations under, or default of, any provision of the Agreement.

**15. No Liability of the District**

The District is not responsible or liable for any injury, damages loss or costs sustained or incurred by any person, including without limitation, Contractor's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to the Services. The District is not liable for acts or omissions of the Contractor or any of the Contractor's employees, contractors, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Contractor.

**16. Compliance with Laws and Permits**

Contractor shall comply with and cause its employees to comply fully with all applicable local, state and federal codes, laws, ordinances, rules and regulations pertaining to providing the Services.

Contractor shall be licensed and bonded to perform the Services hereunder and shall, at its sole cost and obligation, be responsible for obtaining all permits required to perform its duties under this Agreement. Any breach by Contractor of the foregoing laws, regulations and rules shall constitute a breach by Contractor of this Agreement.

**17. Governing Law; Venue**

This Agreement and the other Contract Documents shall be governed by and construed in accordance with the laws of the State of Illinois. Venue shall be proper in the Circuit Court of DuPage County.

**18. No Third Party Beneficiary**

This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a Party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common



law and/or statutory immunities, defenses and/or privileges of the District and/or Contractor, and/or any of their respective officials, officers and/or employees.

**19. No Waiver**

Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

**20. Independent Contractor**

Contractor acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting the Services; that it, as well as any persons or agents as it may employ, are not employees of the District; and that neither this Agreement, nor the administration thereof, shall operate to render or deem either Party hereto the agent or employee of the other.

**21. Non-Assignment/No Subcontracting**

This Agreement is non-assignable in whole or in part by the Contractor, and any assignment shall be void without prior written consent of the District.

Contractor shall perform all Services and shall not subcontract the Services or any portion thereof without prior written approval the District.

**22. Notices**

All notices required or permitted to be given under this Agreement shall be deemed given when such notice is hand delivered; or when such notice is sent by e-mail or facsimile transmission, provided such transmission together with e-mail or fax machine generated confirmation of such transmission is also sent on the transmission date to the other Party by United States mail, with postage therewith prepaid; or when such notice is deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addresses:

If to Park District:	Wheaton Park District
	102 E. Wesley Street
	Wheaton, IL 60187
	F: 630-665-5880
	Email: mbenard@wheatonparks.org
	Attention: Executive Director

If to Contractor: Area Sanitation Solutions, Inc.  
461 NE Industrial Drive  
Aurora, IL 60505  
F: 630-8926994  
Email: [Karen@arearestroomsolutions.com](mailto:Karen@arearestroomsolutions.com)  
Attention: Karen J. Carlson

### **23. No Amendment**

No modification of this Agreement shall be effective unless in writing dated a date subsequent to the date of this Agreement and signed by an authorized representative of each Party.

### **24. Headings**

The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

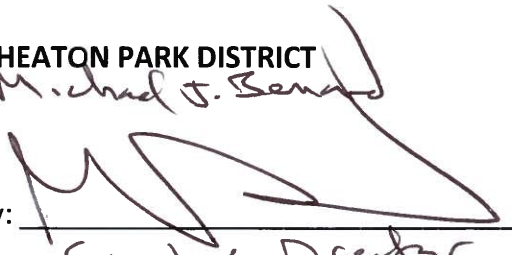
### **25. Severability**

The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

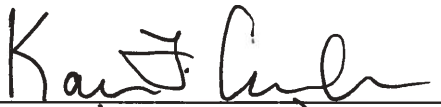
IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and written below.

Entered into this 16<sup>th</sup> day of March, 2016, at Wheaton, Illinois.

**WHEATON PARK DISTRICT**

*Michael J. Sena*  
By:   
Executive Director

**AREA SANITATION SOLUTIONS, INC.**

By:   
(owner)

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit A Bid Documents**

**Exhibit B Contractor's Proposal**

**Exhibit C Contractor's Compliance and Certification Attachment**

**Exhibit D Schedule**

## **Exhibit C**

### **Insurance**

Contractor shall obtain and maintain at its cost for the Term of this Agreement, insurance of the types and in the amounts listed below.

#### **A. Commercial General and Umbrella Liability Insurance**

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, \$2,000,000 in the aggregate. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurances shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93 or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, products, materials or services supplied by Contractor, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

District, its agents, officers, commissioners, employees and volunteers, and their successor and assigns shall be included as additional insureds under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing at least equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to District. If the additional insured have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage

#### **B. Business Auto and Umbrella Liability Insurance**

If applicable, Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provided contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

#### **C. Workers Compensation Insurance (if applicable)**

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than

\$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 or a substitute endorsement acceptable to District under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Contractor waives all rights against District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's Services.

#### **D. General Insurance Provisions**

##### **1. Evidence of Insurance**

Prior to commencing the Services, Contractor shall furnish District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to District prior to the cancellation or material change of any insurance referred to therein. Written notice to District shall be by certified mail, return receipt requested.

Failure of District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

District shall have the right, but not the obligation, of prohibiting Contractor from commencing the Services until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of this Agreement at District's option.

Contractor shall provide certified copies of all insurance policies required above within ten days of District's written request for said copies.

##### **2. Acceptability of Insurers**

For insurance companies which obtain a rating from A. M. Best, the rating should be no less than A VII using the most recent edition of the A. M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

##### **3. Cross-Liability Coverage**

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

##### **4. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to District. At the option of the District, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

#### **5. Subcontractors**

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.