

**WINNEBAGO COUNTY**  
**PURCHASE OF SERVICES AGREEMENT**

**RE: Services Related to the Installation and Removal of Portable Docks at Five Winnebago County Boat Landings**

**THIS AGREEMENT** made and entered into this \_\_ day of **February, 2020** by and between Winnebago County (hereinafter referred to as "COUNTY", whether a department, board or agency thereof) and **Radtke Contractors Inc.** (hereinafter referred to as "CONTRACTOR").

**WITNESSETH:**

**WHEREAS** the COUNTY whose address is 112 Otter Avenue, Oshkosh, Wisconsin 54901 desires to purchase services from the CONTRACTOR for the purpose of **addressing the task of installing, removing and repairing the seasonal docks at the County's Boom Bay, Asylum Bay, Black Wolf, Osh-O-Nee and Lake Poygan Boat Landings;** and

**WHEREAS** the CONTRACTOR whose address is 6408 Cross Road, Winneconne, WI 54986, is able and willing to provide such services.

**NOW, THEREFORE**, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, the COUNTY and the CONTRACTOR do agree as follows:

- 1. TERM** – In accordance with RFP #PK06-19, the agreement for the installation, maintenance and removal of navigation aids shall be for a term of approximately five (5) years between the COUNTY and the CONTRACTOR to which the term is mutually recognized to begin on March 1<sup>st</sup>, 2020 and hence scheduled to terminate on February 28<sup>th</sup>, 2025. A failure by the CONTRACTOR to complete its obligations under this agreement shall be deemed a violation of the agreement and shall allow the COUNTY to pursue such penalties as set forth in the attached Scope of Services. The COUNTY shall not be liable for any services performed by CONTRACTOR other than during the term of this agreement.
- 2. SERVICE TO BE PROVIDED** - CONTRACTOR agrees to provide the services detailed in RFP #PK06-19 and in the Scope of Services incorporated herein by reference. In the event of a conflict the terms of Scope of Services, to the extent of any conflict, will be controlling.
- 3. ASSIGNMENT** - CONTRACTOR shall not assign any interest or obligation in this

agreement and shall not transfer any interest or obligation in this agreement, whether by assignment or novation, without the prior written consent of the COUNTY unless permitted otherwise by the Scope of Services.

4. **TERMINATION** - If through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this agreement, or if the CONTRACTOR shall violate any of the covenants or stipulations of this agreement, the COUNTY shall thereupon have the right to terminate this agreement by giving a thirty (30) day written notice to the CONTRACTOR of such termination and specifying the effective date thereof. There shall be no other termination or cancellation of this agreement during its term, without the prior written consent of both parties unless specifically permitted otherwise by the terms of the Scope of Services.

5. **UNFINISHED WORK** - In the event the COUNTY exercises its unilateral right to terminate this agreement for cause in the manner provided for in paragraph 4 above, all finished or unfinished documents, services, papers, data, products, or the like prepared, produced or made by the CONTRACTOR under this agreement shall at the option of the COUNTY become the property of the COUNTY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents, services, papers, data, products or the like. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this agreement by the CONTRACTOR, and the COUNTY may withhold any payments to the CONTRACTOR for the purpose of set-off.

6. **FAILURE TO APPROPRIATE FUNDS** - The failure of the Winnebago County Board of Supervisors to appropriate sufficient funds in any year covered by this agreement shall automatically terminate this agreement.

7. **TERMS OF PAYMENT** - COUNTY will pay CONTRACTOR for all the aforementioned work the sum of **eight thousand one hundred fifty dollars & 00/100 (\$8,150.00)** per year upon satisfactory completion of the work and performance of this contract. All goods and services provided prior to December 31<sup>st</sup> of each year of the contract must be invoiced to the COUNTY by January 14<sup>th</sup> of the following year or the invoice will be subject to a 10% deduction for late billing.

8. **WISCONSIN LAW CONTROLLING** - It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling.

9. **ARBITRATION**

**A.** This agreement shall be covered by the laws of the State of Wisconsin.

**B.** Claims, disputes, and other matters in question between the parties to this Agreement arising out of, or relating to, this agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining, upon the express written consent of all parties to this agreement. In the event the parties proceed to arbitration, the following shall govern any such proceedings:

1. The American Arbitration Association shall submit a panel of five arbitrators to the parties. The parties shall alternate strikes until one arbitrator remains who shall arbitrate the dispute. The party initiating the first strike shall be determined by the winner of a coin flip.
2. The costs of the arbitration proceeding (except for the filing fee, which shall be paid by the party initiating the proceeding) shall be borne equally by the parties. Each party shall pay his own legal fees and expenses incurred in connection with the proceeding.
3. Any arbitration shall take place in the City of Oshkosh, Winnebago COUNTY, Wisconsin.
4. Unless otherwise agreed by the parties, the arbitration hearing in this matter shall be limited to one day in length with the arbitrator providing each side equal time to present its case during that day.
5. That any discovery proceeding shall be limited to the thirty (30) day period prior to the date of the arbitration hearing. The party requesting the discovery shall pay for all costs incurred by the opposite party, except for attorney's fees, related to the discovery procedure, including, but not limited to witness and reporter's fees related to depositions, photocopying fees, postage fees, and delivery fees.
6. That the arbitrator, in issuing any ruling with regard to any arbitration matter, shall issue a written decision which shall include written findings of fact and conclusions of law.
7. The proceeding and arbitration shall be governed by the laws of the State of Wisconsin, including specifically, Chapter 788 of the Wisconsin Statutes.

**10. CONTRACTOR EFFICIENCY - CONTRACTOR shall commence, carry on and**

complete its obligations under this agreement with all deliberate speed and in a sound, economical and efficient manner, in accordance with this agreement and all applicable laws. In providing services under this agreement, the CONTRACTOR agrees to cooperate with the various departments, agencies, employees and officers of the COUNTY.

**11. CONTRACTOR** shall not subcontract any work pursuant to this agreement without the prior written consent of COUNTY. CONTRACTOR shall maintain a written list of all sub-contractors and suppliers performing labor or supplying materials under this agreement and shall make the list available to COUNTY upon request. COUNTY, at its option, may make direct payments to sub-contractors for services performed pursuant to this agreement or, alternatively, may issue a two-party check to CONTRACTOR and his sub-contractors.

**12. CONTRACTOR** shall not be obligated to comply with any bonding requirements.

**13. CONTRACTOR** shall pay all legitimate claims for labor performed and materials furnished, used or consumed in making any public improvement or performing any public work pursuant to this agreement. Failure to comply with this provision, if applicable, may subject CONTRACTOR to criminal penalties pursuant to Sections 779.16 and 943.20, Wisconsin Statutes.

**14. CONTRACTOR EMPLOYEES** - CONTRACTOR agrees to secure at CONTRACTOR'S own expense all personnel necessary to carry out CONTRACTOR'S obligations under this agreement. Such personnel shall not be deemed to be employees of the COUNTY nor have any direct contractual relationship with the COUNTY.

**15. DELIVERY BY MAIL** - Notices, bills, invoices and reports required by this agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.

**16. HOLD HARMLESS** - CONTRACTOR agrees to at all times during the term of this agreement, indemnify, save harmless and defend the COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, losses, damages, costs or expenses, whether personal injury or property damage, that the COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of the CONTRACTOR furnishing the services or goods required to be provided under this agreement, provided, however, that

the provisions of this section shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of the COUNTY, its agencies, boards, commissions, officers, employees or representatives.

**17. INSURANCE**

**A.** Prior to commencing work, CONTRACTOR shall, at its own cost and expense, furnish COUNTY with Certificate of Insurance indicating proof of the following insurance from companies licensed in the state:

**1. Workers' Compensation** - statutory - in compliance with the Compensation law of the State and Employers' Liability Insurance with a limit not less than \$100,000 each accident.

**2. Comprehensive or Commercial General Liability Insurance** with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate combined Single Limit for Bodily Injury and Property Damage Liability. This insurance shall include, but not be limited to, the following coverages:

- a) Premises - Operations
- b) Products and Completed Operations
- c) Broad Form Property Damage
- d) Contractual
- e) Personal Injury

If excavating, underground or collapse is involved the limits of liability stated above shall be changed to \$2,000,000.

If Asbestos is involved the limits of liability stated above shall be changed to \$5,000,000.

**3. Automobile Liability** Insurance with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate Combined Single Limit for Bodily Injury and Property Damage Liability. This insurance shall include coverage for all of the following:

- a) Owned Automobiles
- b) Hired Automobiles
- c) Non-Owned Automobiles

**B.** The certificate shall list the **Certificate Holder and Address as follows:** Winnebago COUNTY, Attn: Insurance Administrator, 112 Otter Street, Oshkosh, WI 54903. The Winnebago COUNTY Parks Department shall be listed under **"Description of Operations"**.

C. Such insurance shall include under the **General Liability and Automobile Liability Policies** Winnebago COUNTY, its employees, elected officials, representatives, and members of its boards and/or commissions as "**Additional Insureds**",

D. CONTRACTOR shall require sub-contractors, if applicable, to furnish identical certificates of insurance to the Winnebago County Insurance Administrator prior to contract taking effect.

E. Such Insurance Certificate shall include a thirty (30) day notice prior to cancellation or material policy change, which notice shall be given to Winnebago County, Attention: Insurance Administrator, 112 Otter Street, Oshkosh, Wisconsin 54903. All such notices will name the CONTRACTOR and identify the Project.

The Winnebago County Insurance Coordinator must approve any exception to these requirements. Submit any requests in writing to Winnebago County, Attn: Insurance Administrator, 112 Otter Street, Oshkosh, WI 54903-2808 or e-mail to lforbes@co.winnebago.wi.us.

**18. LIMITATION EFFECT ON PAYMENTS BY COUNTY** - In no event shall the making of any payment required by this agreement constitute or be construed as a waiver by the COUNTY of any breach of the covenants of this agreement or a waiver of any default of the CONTRACTOR and the making of any such payment by the COUNTY while any such default or breach shall exist shall in no way impair or prejudice the right of the COUNTY with respect to recovery of damages or other remedy as a result of such breach or default.

**19. DISCRIMINATION** - During the term of this agreement the CONTRACTOR agrees not to discriminate against any person, whether a recipient of services (actual or potential), an employee, or an applicant for employment on the basis of race, religion, sex, handicap, national origin, age, cultural differences, sexual preference, marital status, or physical appearance. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, or any other form of compensation. The CONTRACTOR agrees to post in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this agreement as they relate to affirmative action and nondiscrimination.

**20. AFFIRMATIVE ACTION** - CONTRACTOR may be required to file an Affirmative Action Plan with the COUNTY if the CONTRACTOR receives \$10,000 in annual aggregate

contracts or other such consideration of comparable worth and CONTRACTOR has 10 or more employees. Such plan must be filed within fifteen (15) days of the effective date of this agreement and failure to do so by said date shall constitute grounds for immediate termination of this agreement by the COUNTY.

**21. EQUAL OPPORTUNITY EMPLOYER** - CONTRACTOR shall, in all solicitations for employment placed on CONTRACTOR'S behalf, state that CONTRACTOR is an "Equal Opportunity Employer."

**22. COMPLIANCE INFORMATION** - CONTRACTOR agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and nondiscrimination, which may include any books, records, or accounts deemed appropriate to determine such compliance.

**23. CONTRACTOR'S LEGAL STATUS** - CONTRACTOR warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this agreement on its behalf are authorized to do so, and, if a corporation, that the name and address of CONTRACTOR'S registered agent is as set forth opposite the heading registered agent on the last page of this agreement. CONTRACTOR shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her address, and CONTRACTOR'S legal status.

**24. ENTIRE AGREEMENT** - The entire agreement of the parties is contained herein and this agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

**25. COMPLIANCE WITH WISCONSIN PUBLIC RECORDS LAW** CONTRACTOR understands that Winnebago County is bound by the Wisconsin Public Records Law, Wis. Stat. sec. 19.21, et. seq. Pursuant to Wis. Stat. sec. 19.36 (3), COUNTY may be obligated to produce to a third party the records of a CONTRACTOR that are "produced or collected" by the CONTRACTOR under this agreement ("Records"). CONTRACTOR is further directed to Wis. Stat. sec. 19.21, et. seq. for the statutory definition of Records subject to disclosure under this paragraph, and CONTRACTOR acknowledges that it has read and understands that definition. Notwithstanding any other term of this agreement, CONTRACTOR is (1) obligated to retain Records for seven (7) years from the date of the Record's creation; and (2) produce such Records to COUNTY if, in COUNTY's determination, COUNTY is required to produce the records to a third party in response to a public records request. CONTRACTOR's failure to retain and produce Records as required by this paragraph shall constitute a material breach of this

Agreement, and CONTRACTOR must defend and hold COUNTY harmless from liability due such breach.

**IN WITNESS WHEREOF**, the COUNTY and the CONTRACTOR have executed this agreement and its schedules as of the day and date first set forth above.

**FOR THE CONTRACTOR:**

**FOR THE COUNTY:**

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**Thomas Radtke  
Radtke CONTRACTORs Inc.**

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**Mark Harris  
COUNTY Executive**

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**Susan Ertmer, COUNTY Clerk**

**Scope of Services**

## **I. Project Description**

CONTRACTOR shall supply all manpower and equipment necessary to perform the task of both installing six (6) – 6' X 40' Radtke Seasonal Docks and removing six (6) – 6' X 40' Radtke Seasonal Docks from the ramp areas at various Winnebago COUNTY boat landings. CONTRACTOR would also be responsible for performing the same type of installation and removal tasks involving a corresponding number of 1 ½' X 6' cement blocks from the ramp areas at these same Winnebago County boat landings.

From time to time the CONTRACTOR may also be called upon to engage in tasks that require the repair and repositioning of the dock bases. Such adjustments will become necessary whenever dock alignment has been disrupted due to natural or manmade causes. In addition to the realignment of the docks, the CONTRACTOR may be called upon to perform repair work on the dock structures. Payment for these additional services shall be based on an hourly rate.

## **II. Locations**

The five boat landing locations are as follows:

- Boom Bay Boat Landing, 7499 Richter Lane, Larsen
- Black Wolf Boat Landing, 6850 Fond du Lac Road, Oshkosh
- Asylum Bay Boat Landing, 3400 Sherman Road, Oshkosh
- Poygan Boat Landing, 8817 Poygan Shore Lane, Poygan
- Osh-O-Nee Boat Landing, 1801 Grundman Lane, Oshkosh (2 docks).

## **III. Term**

In accordance with RFP #PK06-19, the agreement for the installation, maintenance and removal of navigation aids shall be for a term of approximately five (5) years between the COUNTY and the CONTRACTOR to which the term is mutually recognized to begin on March 1<sup>st</sup>, 2020 and hence scheduled to terminate on February 28<sup>th</sup>, 2025. A failure by the CONTRACTOR to complete its obligations under this agreement shall be deemed a violation of the agreement and shall allow the COUNTY to pursue such penalties as set forth in the Scope of Services. The COUNTY shall not be liable for any services performed by CONTRACTOR other than during the term of this agreement.

## **IV. Requirements for Installation of Seasonal Docks at Boom Bay Boat Landing, Asylum Point Boat Landing, Osh-O-Nee Boat Landing, Poygan Boat Landing and at Black Wolf Boat Landing**

- A. Installation and removal shall be performed in a manner necessary to minimize any adverse impact or damage from occurring to the docks as well as the adjacent turf and surrounding manmade structures. Such installation and removal shall require that the CONTRACTOR utilize a crane or similar piece of equipment to engage in said operations.

- B. In order to facilitate the correct positioning of each dock it shall be incumbent upon the CONTRACTOR to arrange to meet with a designated representative of the Winnebago County Parks Department at each site one day prior to the first of the five docks being installed.
- C. All six (6) docks are to be installed and secured such that their deck structures are on-level and handicap accessible. Further, it shall not be permissible for any of the docks to present a noticeable or otherwise latent hazard to persons traversing them.
- D. As part of dock installation responsibilities, the CONTRACTOR shall be obligated to clean up and remove of all debris that may have accumulated in and around the immediate dock storage area.

Additionally, as part of dock installation operations, the CONTRACTOR shall be responsible for all lawn restoration including the filling-in and reseeding of depressions.

- E. At each of the five (5) dock installation sites it shall be incumbent upon the CONTRACTOR to maneuver the respective 1½' X 6' cement block located on site, into a position such that it is set within 4' of the head-end of dock. Each cement block is to be installed such that it stands securely by itself and cannot be tipped or moved except by use of heavy machinery.
- F. Installation of docks and cement blocks shall occur within a period of three (3) weeks following the break-up of lake-ice on the respective body of water.

**V. Requirements for Removal of Seasonal Docks at Boom Bay Boat Landing, Poygan Boat Landing, Asylum Point Boat Landing, Osh-O-Nee Boat Landing, and at Black Wolf Boat Landing**

- A. Removal of the docks and the cement blocks at each of the five (5) boat landings shall occur within one week prior to, or within one week after, November 15, 2020. Both the docks and the cement blocks are to be stored at a Winnebago County Parks Department designated location within the boundaries of the respective boat landing. Additionally, the docks are to be secured for winter storage in a manner such that they do not present an undue liability for persons who may visit the landing site(s). Specifically, it will be unacceptable for the docks to be able to be tipped, rocked or moved via the efforts of an individual or group of individuals, once the docks have been secured.

**VI. Requirements for Maintenance and/or Repositioning of Seasonal Docks at Boom Bay Boat Landing, Poygan Boat Landing, Asylum Point Boat Landing, Osh-O-Nee Boat Landing, and at Black Wolf Boat Landing**

- A. Given the COUNTY'S determination, from time to time the CONTRACTOR may become involved in dock maintenance both during and after the boating season. Maintenance may be defined as application of the CONTRACTOR'S services in the repair or replacement of any part(s),

device or component which is damaged, missing or faulty on any of the docks. Maintenance shall also include relocating or reinstalling any of the docks which may have moved from its original location given the request of the Parks Department.

- B. Repair and/or dock repositioning notices submitted to the CONTRACTOR will not be considered valid unless given a verbal acknowledgement by and between the CONTRACTOR and the Parks Director, or his designee. In the event the general public notifies the CONTRACTOR, the CONTRACTOR shall notify and gain approval from the Parks Director prior to proceeding with repair and/or repositioning work.
- C. Unless prior written exception is granted by the Parks Director, the CONTRACTOR shall be required to satisfactorily complete any/all maintenance tasks on a dock, or multiple docks, within 3 workdays following notification by the Parks Director or his designee.
- D. CONTRACTOR shall be responsible for supplying all necessary tools and hardware for proper installation and maintenance of the docks. Charges for labor, equipment or replacement hardware associated with the repair and/or repositioning of a dock shall be billed out separately from either the installation or the removal invoice(s).
- E. CONTRACTOR shall be required to keep a dock maintenance summary log for each repair or dock repositioning service call. The details of each summary log shall make up the list of information required as a prerequisite to the COUNTY'S acceptance of any of the CONTRACTOR'S maintenance related invoices. At a minimum, the dock maintenance summary log for each service call shall include the following information:
  - 1. Date and time of call-in or contact reporting dock problem.
  - 2. Name & phone number of person calling in or making contact.
  - 3. Date & time CONTRACTOR'S employee is dispatched to address problem.
  - 4. Location and description of problem.
  - 5. Action taken to correct the problem.
  - 6. Time and employees involved.
  - 7. Materials used or furnished.
  - 8. Itemization of costs plus total billing amount.

## **VII. Miscellaneous**

- A. The preceding narrative describes the workmanship and materials to be incorporated as required standards in the CONTRACTOR'S review of the project. In order to make this description as concise as possible, the CONTRACTOR shall understand that for each of the aforementioned provisions, unless noted otherwise, he is to furnish as a term of the agreement the particular item and all labor, materials, tools, equipment, appurtenances and all utilities, facilities and services mentioned in this

volume or required to place the item in its intended final condition as per the provision(s) of this project.

- B. CONTRACTOR shall be permitted to use any of the boat landing facilities to load and/or unload equipment if a barge is used as part its operations. However, the CONTRACTOR shall be held responsible for repair of any asphalt or turf areas damaged as a result of the loading and/or unloading process.
- C. While on site, the CONTRACTOR shall be responsible for securing all project-related equipment in such a way so as to eliminate obvious safety hazards. CONTRACTOR shall also be responsible for storing of such equipment in minimal traffic areas as determined by the Winnebago County Parks Department.
- D. CONTRACTOR shall obtain all necessary state and local permits as required to engage in, and complete, said project.
- E. CONTRACTOR shall be responsible for submitting at least two (2) separate invoices to the COUNTY during the term of the agreement. The first invoice shall be submitted within 7 days following the Black Wolf, Asylum Bay, Osh-O-Nee, Poygan and Boom Bay dock installations. The second invoice shall be submitted within 7 days following removal of all six (6) docks and cement blocks. Lastly, any dock repositioning and/or repair work that may be performed shall be invoiced separately within 7 days of the completion of said work.