

**Agenda
For
Joint City/County Commission Meeting
Monday, July 14, 2014
Rose Room
Ford County Government Center
6:00 PM
Meeting #4963**

CALL TO ORDER

County Commission Roll Call-Chairman Boys

City Commission Roll Call-Mayor Delzeit

PUBLIC HEARING

A Public Hearing regarding increased estimated costs of projects to be financed by Special Sales Taxes approved on June 10, 1997.

RESOLUTIONS

CITY RESOLUTION NO. 2014-19 - A Resolution Authorizing Proceeding with projects to be financed from the proceeds of Special Sales Taxes approved at elections held on June 20, 1997.

COUNTY RESOLUTION NO. 2014-- A Resolution Authorizing Proceeding with projects to be financed from the proceeds of Special Sales Taxes approved at elections held on June 20, 1997.

NEW BUSINESS

- 1.** Approval of CFAB Recommendation for Features and Amenities for Regional Aquatics Park-Report by Director of Parks and Recreation-Paul Lewis
- 2.** Approval of CFAB Recommendation for Aquatics Park Procurement Process-Report by Director of Parks and Recreation-Paul Lewis

3. Discussion of CFAB Recommendation for Optional Enhancements for Regional Aquatics Park-Report by Director of Parks and Recreation-Paul Lewis
4. Water's Edge Agreement-Report by Director of Parks and Recreation Paul Lewis

Upcoming Meetings-

1. Monday, October 13, 2014 and Monday, December 8, 2014- Tentative Dates for Upcoming Joint Commission Meetings-Rose Room, Ford County Government Center

Adjournment

City of Dodge City

City of Dodge City
806 N. Second Ave.
67801

Phone: 620-225-8100
FAX: 620-225-8144
www.dodgecity.org

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: July 9, 2014
Subject: City Resolution No. 2014-19 and County Resolution.
Agenda Item: Resolutions

Recommendation: I recommend the City Commission adopt Resolution No. 2014-19 and the County adopt a similar resolution.

Background: A public hearing has been scheduled for Monday July 14 at 6:00 p.m. at the joint City/County Commission meeting. This notice was published in the June 28th Dodge City Daily Globe. This public hearing is required because the original information that was published in 1997 when the public voted on the sales tax to fund the projects mentioned in the ballot, included information regarding how much would be issued in revenue bonds to fund the projects. When the amount of revenue bonds issued for projects exceed 120% of what was published, it is required to have a public hearing to notify the public that the amount will be above the published amount. The joint commissions took similar action in 2009 when prior to issuing the bonds for the event center, as the amount of those bonds would have exceeded the 120%. With the anticipation of issuing revenue bonds to fund the Aquatics Center, it is again necessary to take this action to keep the public informed of our intentions.

After the public hearing is held, there are two Resolutions on the agenda, one for the City to approve and one for the County to approve. These resolutions: restate what the special sales tax (.5% City Sales Tax and .5% County Sales Tax) is to be used for; state the prior revenue bonds that have been issued to fund these projects; state the requirement that a public hearing is to be held if more than 120% of the original published amount of 26,000,000 is issued in revenue bonds; and pledges the revenues received by both the City of Dodge City and Ford County to repay the revenue bonds issued. The resolutions also state that a public hearing was held.

Justification: These actions are a requirement to proceed with the Aquatics Park project and to issue revenue bonds to fund this project

Financial Considerations: none with these actions

Purpose/Mission: To promote open communications with our community members to improve the quality of life in Dodge City and Ford County.

Legal Considerations: All legal actions are being met as we go through the process

Attachments: A City Resolution and a County Resolution.

RESOLUTION NO. 2014-19

A RESOLUTION AUTHORIZING PROCEEDING WITH PROJECTS TO BE FINANCED FROM THE PROCEEDS OF SPECIAL SALES TAXES APPROVED AT ELECTIONS HELD ON JUNE 10, 1997.

WHEREAS, the City of Dodge City, Kansas (the "City") is a city of the first class duly created, organized and existing under the Constitution and laws of the State of Kansas; and

WHEREAS, pursuant to Resolution No. 97-11, adopted by the governing body of the City on April 28, 1997, and K.S.A. 12-187 *et seq.*, as amended (the "Act"), a special election was duly held in the City on June 10, 1997, on the question of whether to implement a special City-wide retailers' sales tax at a rate of one-half percent (0.5%) (the "City Sales Tax"); the collection of one-quarter percent (1/4%) of which will commence on October 1, 1997 and the remaining one-quarter percent (1/4%) of which will commence on January 1, 2000 upon the expiration of the City's 1994 Sales Tax, in order to jointly finance, in conjunction with Ford County, Kansas (the "County"), the construction, equipping and operation of certain public projects, including installing air conditioning in the Civic Center, constructing an outdoor motor sports complex, constructing field sports facilities, constructing and equipping a special events center and other public projects (collectively the "Projects") and authorizing the issuance of revenue bonds of the City payable from and secured by the proceeds of the City Sales Tax, and it was found and determined that more than a majority of the qualified electors of the City voting on the question had voted in favor of the implementation of the City Sales Tax for the purpose aforesaid and the issuance of such revenue bonds; and

WHEREAS, pursuant to Resolution No. 1997-12 and the Act, a special election was also duly held in the County on June 10, 1997, on the question of whether to implement a special County-wide retailers' sales tax at a rate of one-half percent (0.5%), (the "County Sales Tax"); the collection of one-quarter percent (1/4%) of which will commence on October 1, 1997 and the remaining one-quarter percent (1/4%) of which will commence on upon the expiration of the County's 1991 Sales Tax, in order to finance, in conjunction with the City, the construction, equipping and operation of the Projects and authorizing the issuance of revenue bonds of the County payable from and secured by the proceeds of the County Sales Tax to be retained by the County, and it was found and determined that more than a majority of the qualified electors of the County voting on the question had voted in favor of the implementation of the County Sales Tax for the purpose aforesaid and the issuance of such revenue bonds; and

WHEREAS, pursuant to Resolution No. 97-11, the governing body of the City declared an intent, in order to finance a portion of the costs of the Project, to issue sales tax revenue bonds secured by the City's share of the County Sales Tax, a notice of such intent was duly published in accordance with the provisions of the Act and no sufficient protest was filed against the issuance of such revenue bonds within the time period prescribed in the Act; and

WHEREAS, the City and the County have entered into an Interlocal Cooperation Agreement, dated July 21, 1997 (the "Cooperation Agreement") whereby the City and County agree to: (a) jointly fund the construction, equipping and operation of the Projects; (b) deposit the proceeds to be derived by the City and County from the City Sales Tax and the County Sales Tax into a separate fund to be established and maintained by the City; (c) create a Project Review and Advisory Committee (the "Project Committee") to oversee the location, construction and operation of the Projects; (d) permit the County to assign its rights

to issue revenue bonds against its portion of the County Sales Tax to the City; and (e) authorize the City, upon recommendation of the Project Committee, to issue sales tax revenue bonds secured by the City Sales Tax, the City's portion of the County Sales Tax and the County's portion of the County Sales Tax (collectively the "Sales Tax"); and

WHEREAS, the City has heretofore issued its: (a) Sales Tax Revenue Bonds, Series 1998A, in the principal amount of \$6,000,000; (b) Sales Tax Revenue Bonds, Series 1998B, in the principal amount of \$3,200,000; and (c) Sales Tax Revenue Bonds, Series 2009 (the "Series 2009 Bonds"), in the principal amount of \$40,300,000, to finance a portion of the costs of the Projects; and

WHEREAS, K.S.A. 12-6,122 provides, in substance, that prior to financing or letting of contracts for making improvements authorized at an election, if the proposed costs of such improvements are determined to exceed, by at least 20%, the amount of the projected costs set forth in the notice of election authorizing such financing and improvements, the governing body shall not authorize the letting of contracts for such improvements until the governing body publishes a notice in a newspaper of general circulation within such municipality of the time, date and place of a public hearing before such governing body concerning the costs of such improvements; and

WHEREAS, the Notices of Election published in conjunction with the elections held on June 10, 1997, estimated the costs of the Projects to be \$26,000,000; and

WHEREAS, prior to the issuance of the Series 2009 Bonds, the City and County were advised that the projected costs of the Projects, specifically including the costs of the special events center, approved at such elections would exceed by 20% the costs set forth in such Notices of Election, and the City and County provided for notice of and conducted a public hearing in accordance with K.S.A. 12-6,122, at the conclusion of which the governing body of the City adopted Resolution No. 2009-01 and the governing body of the County adopted Resolution No. 2009-05 authorizing proceeding with the Projects to be financed by the Series 2009 Bonds and the letting of contracts relating thereto notwithstanding the increased costs; and

WHEREAS, the Project Committee has recommended to the governing bodies of the City and the County that a new regional outdoor aquatic facility be approved as a related public Project pursuant to the Cooperation Agreement, and the governing bodies of the City and the County have jointly accepted such recommendation; and

WHEREAS, the City and County have been advised that the projected costs of the Projects, specifically including the costs of the regional outdoor aquatic facility, approved at such elections will exceed by 20% the costs set forth in such Notices of Election; and

WHEREAS, the City and County have provided for the publication of a notice of public hearing in a newspaper of general circulation within the City and the County regarding such increased costs and conducted a public hearing in accordance with provisions of K.S.A. 12-6,122; and

WHEREAS, the City desires to authorize the proceeding with the Projects and the letting of contracts relating thereto notwithstanding the increased costs.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, AS FOLLOWS:

Section 1. The governing body of the City hereby determines that notice of a public hearing referenced in the preamble to this resolution has been made and the public hearing has been conducted in accordance with the provisions of K.S.A. 12-6,122.

Section 2. After consideration of the information provided at the public hearing, the governing body of the City hereby determines it advisable to proceed with the Projects and the letting of contracts therefore notwithstanding the increased costs.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

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ADOPTED by the governing body on July 14, 2014.

(SEAL)

ATTEST:

Mayor

Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the governing body on July 14, 2014, as the same appears of record in my office.

DATED: July 14, 2014.

Clerk

RESOLUTION NO. 2014-_____

A RESOLUTION AUTHORIZING PROCEEDING WITH PROJECTS TO BE FINANCED FROM THE PROCEEDS OF SPECIAL SALES TAXES APPROVED AT ELECTIONS HELD ON JUNE 10, 1997.

WHEREAS, Ford County, Kansas (the "County") is a political subdivision duly created and existing under the Constitution and laws of the State of Kansas; and

WHEREAS, pursuant to Resolution No. 1997-12 and K.S.A. 12-187 *et seq.*, as amended (the "Act"), a special election was also duly held in the County on June 10, 1997, on the question of whether to implement a special County-wide retailers' sales tax at a rate of one-half percent (0.5%) (the "County Sales Tax"); the collection of one-quarter percent (1/4%) of which will commence on October 1, 1997 and the remaining one-quarter percent (1/4%) of which will commence on upon the expiration of the County's 1991 Sales Tax, in order to finance, in conjunction with the City of Dodge City, Kansas (the "City"), the construction, equipping and operation of the Projects and authorizing the issuance of revenue bonds of the County payable from and secured by the proceeds of the County Sales Tax to be retained by the County, and it was found and determined that more than a majority of the qualified electors of the County voting on the question had voted in favor of the implementation of the County Sales Tax for the purpose aforesaid and the issuance of such revenue bonds; and

WHEREAS, pursuant to Resolution No. 97-11, adopted by the governing body of the City on April 28, 1997, and the Act, a special election was duly held in the City on June 10, 1997, on the question of whether to implement a special City-wide retailers' sales tax at a rate of one-half percent (0.5%) (the "City Sales Tax"); the collection of one-quarter percent (1/4%) of which will commence on October 1, 1997 and the remaining one-quarter percent (1/4%) of which will commence on January 1, 2000 upon the expiration of the City's 1994 Sales Tax, in order to jointly finance, in conjunction with the County, the construction, equipping and operation of certain public projects, including installing air conditioning in the Civic Center, constructing an outdoor motor sports complex, constructing field sports facilities, constructing and equipping a special events center and other public projects (collectively the "Projects") and authorizing the issuance of revenue bonds of the City payable from and secured by the proceeds of the City Sales Tax, and it was found and determined that more than a majority of the qualified electors of the City voting on the question had voted in favor of the implementation of the City Sales Tax for the purpose aforesaid and the issuance of such revenue bonds; and

WHEREAS, pursuant to Resolution No. 97-11, the governing body of the City declared an intent, in order to finance a portion of the costs of the Project, to issue sales tax revenue bonds secured by the City's share of the County Sales Tax, a notice of such intent was duly published in accordance with the provisions of the Act and no sufficient protest was filed against the issuance of such revenue bonds within the time period prescribed in the Act; and

WHEREAS, the City and the County have entered into an Interlocal Cooperation Agreement, dated July 21, 1997 (the "Cooperation Agreement") whereby the City and County agree to: (a) jointly fund the construction, equipping and operation of the Projects; (b) deposit the proceeds to be derived by the City and County from the City Sales Tax and the County Sales Tax into a separate fund to be established and maintained by the City; (c) create a Project Review and Advisory Committee (the "Project Committee") to oversee the location, construction and operation of the Projects; (d) permit the County to assign its rights

to issue revenue bonds against its portion of the County Sales Tax to the City; and (e) authorize the City, upon recommendation of the Project Committee, to issue sales tax revenue bonds secured by the City Sales Tax, the City's portion of the County Sales Tax and the County's portion of the County Sales Tax (collectively the "Sales Tax"); and

WHEREAS, the City has heretofore issued its: (a) Sales Tax Revenue Bonds, Series 1998A, in the principal amount of \$6,000,000; (b) Sales Tax Revenue Bonds, Series 1998B, in the principal amount of \$3,200,000; and (c) Sales Tax Revenue Bonds, Series 2009 (the "Series 2009 Bonds"), in the principal amount of \$40,300,000, to finance a portion of the costs of the Projects; and

WHEREAS, K.S.A. 12-6,122 provides, in substance, that prior to financing or letting of contracts for making improvements authorized at an election, if the proposed costs of such improvements are determined to exceed, by at least 20%, the amount of the projected costs set forth in the notice of election authorizing such financing and improvements, the governing body shall not authorize the letting of contracts for such improvements until the governing body publishes a notice in a newspaper of general circulation within such municipality of the time, date and place of a public hearing before such governing body concerning the costs of such improvements; and

WHEREAS, the Notices of Election published in conjunction with the elections held on June 10, 1997, estimated the costs of the Projects to be \$26,000,000; and

WHEREAS, prior to the issuance of the Series 2009 Bonds, the City and County were advised that the projected costs of the Projects, specifically including the costs of the special events center, approved at such elections would exceed by 20% the costs set forth in such Notices of Election, and the City and County provided for notice of and conducted a public hearing in accordance with K.S.A. 12-6,122, at the conclusion of which the governing body of the County adopted Resolution No. 2009-05 and the governing body of the City adopted Resolution No. 2009-01 authorizing proceeding with the Projects to be financed by the Series 2009 Bonds and the letting of contracts relating thereto notwithstanding the increased costs; and

WHEREAS, the Project Committee has recommended to the governing bodies of the City and the County that a new regional outdoor aquatic facility be approved as a related public Project pursuant to the Cooperation Agreement, and the governing bodies of the City and the County have jointly accepted such recommendation; and

WHEREAS, the City and County have been advised that the projected costs of the Projects, specifically including the costs of the regional outdoor aquatic facility, approved at such elections will exceed by 20% the costs set forth in such Notices of Election; and

WHEREAS, the City and County have provided for the publication of a notice of public hearing in a newspaper of general circulation within the City and the County regarding such increased costs and conducted a public hearing in accordance with provisions of K.S.A. 12-6,122; and

WHEREAS, the County desires to authorize the proceeding with the Projects and the letting of contracts relating thereto notwithstanding the increased costs.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FORD COUNTY, KANSAS, AS FOLLOWS:

Section 1. The Board of County Commissioners (the "Board") hereby determines that notice of a public hearing referenced in the preamble to this resolution has been made and the public hearing has been conducted in accordance with the provisions of K.S.A. 12-6,122.

Section 2. After consideration of the information provided at the public hearing, the Board hereby determines it advisable to proceed with the Projects and the letting of contracts therefore notwithstanding the increased costs.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

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ADOPTED by the Board of County Commissioners of Ford County, Kansas, on July 14, 2014.

Chairman

Commissioner

Commissioner

(Seal)

ATTEST:

County Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the County adopted by the Board on July 14, 2014, as the same appears of record in my office.

DATED: July 14, 2014.

County Clerk



Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Joint City/County Commissioners
From: Paul Lewis, Parks & Recreation Director 
Date: July 11, 2014
Cc: Cherise Tieben, City Manager
Ed Elam, County Administrator
Subject: Regional Water Park Features

RECOMMENDATION: Staff requests approval of the preliminary design for the new regional water park. The Community Facilities Advisory Board has reviewed the features and amenities included in the design and recommended their inclusion to the Joint Commissions. Attached is a list of the primary features discussed.

BACKGROUND: Dave Schwartz with Water's Edge will present schematics of three layouts for your review and consideration. Each layout includes the recommended features and is based on the \$10,000,000 budget established for this project. Additional work has been completed and these layouts provide modifications from previous sketches to incorporate technical changes required by site and engineering considerations.

Both layouts include the list of approved features and amenities. Additionally the layouts include provisions for future enhancements and expansion.

JUSTIFICATION: The feature list included in the schematics and supported by this budget are extensive and provides wide ranging amenities consistent with a modern water park. The proposed project includes amenities and design elements not found anywhere else in the state and delivers a comprehensive package that make this facility a premier aquatic attraction. As designed it will draw visitors from the entire region and help retain visitors and complement existing attractions and make Dodge City/Ford County as a destination of choice.

Additionally the design provides ample capacity to serve local clientele as well as visitors and guests the facility will attract. The design includes almost 18,000 sq ft. of water surface, over three times the size of the existing local facility. Based on national guidelines and comparable to other communities, this size easily accommodates anticipated bather loads and represents a facility that can be effectively managed and operated in the local environment.

The list of proposed features and amenities has been arrived at over a long period of time and through multiple community outreach efforts. Most recently, those efforts consisted of two

come and go receptions for the general public and a special focus group meeting with swim team supporters, aquatic task force members and YMCA staff to review specific needs for local programming and competitive swim.

Additionally, a survey has been used to measure community expectations for the new aquatic facility. This survey was first used by the Aquatics Task Force last year and then promoted again in the last several weeks. Survey results are tabulated and presented on an attached sheet.

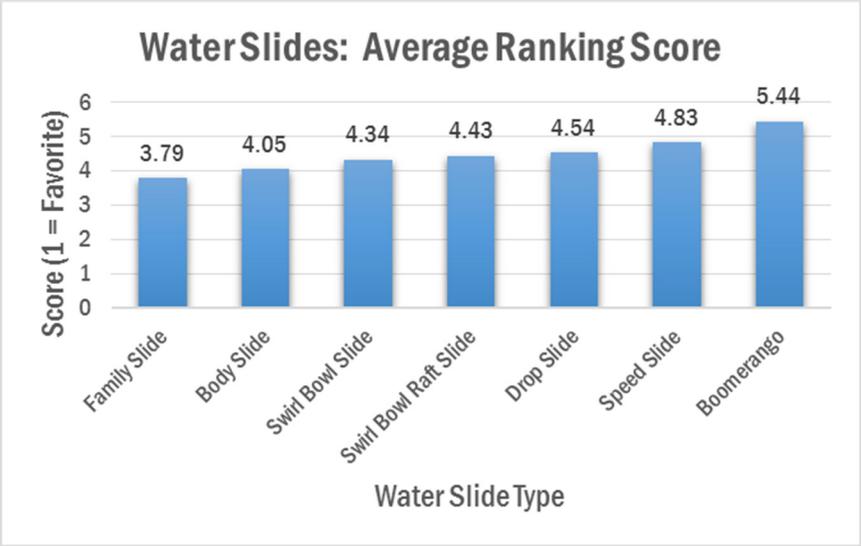
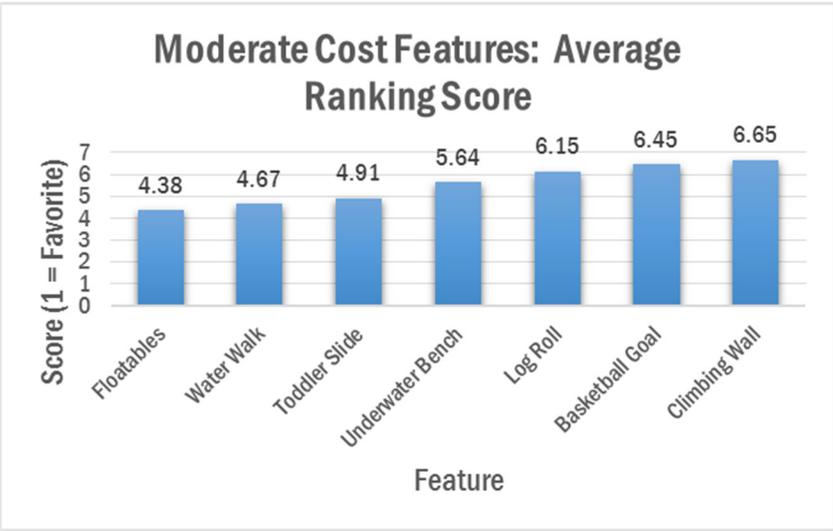
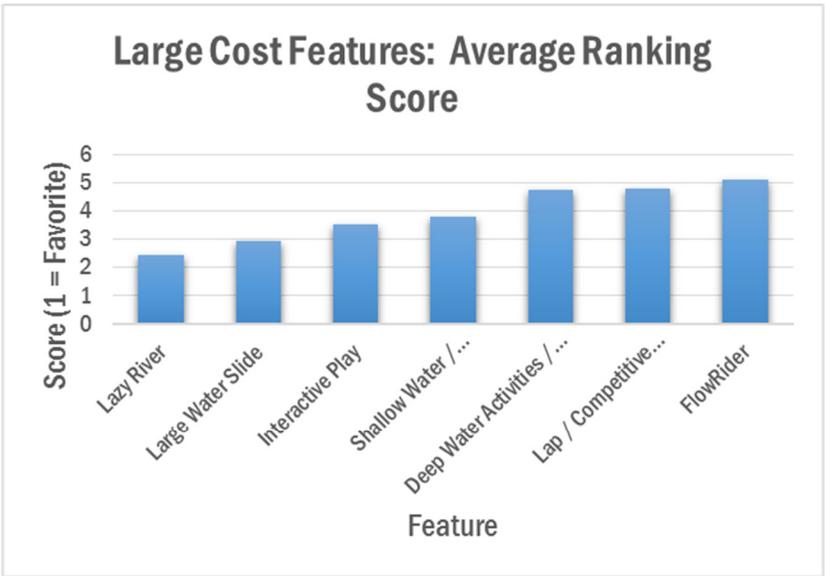
FINANCIAL CONSIDERATIONS: The schematic presented is based on the \$10,000,000 budget established for this project. That budget was developed and adopted by the Joint Commissions as the program budget based on a review of sales tax fund current obligations, supporting existing programs and shifting and reallocating of certain expenses to other funds. After those considerations, the \$10,000,000 budget was arrived at by measuring the funds ability to fund debt service obligations that will occur with this project.

LEGAL CONSIDERATIONS: N/A

ATTACHMENTS: Features Outline
Survey Tabulation

Regional Water Park Features

Submitted Concept	Budget
17,783 sq. feet of water surface including:	10,000,000
Children's Play area w/ Zero-depth entry	
Interactive play structure	
Lazy River with dual channel	
Action channel in river w/ riffles and waterfalls	
Short Course lap pool for competitive swim and diving	
Boomerango signature slide	
Swirl Bowl Slide	
Raft Slide	
Family Slide	
Double Drop Slide	
Toddler Slide	
Rockscape w/ waterfalls & built in diving	
Shade in water/Water Bench	
Fountains and Sprays	
Floatables	
Basketball Goal	
Deck Shade Structures	





Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Joint City/County Commissions
From: Paul Lewis, Parks & Recreation Director
Date: July 10, 2014
Cc: Cherise Tieben, City Manager
Ed Elam, County Administrator
Subject: Water Park Procurement Process

A handwritten signature in black ink, appearing to be "P. Lewis", is located to the right of the "From:" line.

RECOMMENDATION: Staff recommends utilizing a hybrid Design/Build process for the development and construction of the new regional water park. The hybrid process is intended to reduce the amount of time required for project development and construction and potentially provide a cost savings over traditional design-bid-build projects.

BACKGROUND: The project schedule for the new water park anticipates a 2015 opening date. Under a traditional design-bid-build scenario, that schedule would not be possible. In an effort to provide a more streamlined process as well as provide potential cost savings, staff recommended a hybrid design-build concept to the Community Facilities Advisory Board (CFAB). CFAB has heard the recommendation and have recommended it for the water park project.

This hybrid process was recently used by the City in the design and construction of the new Wastewater Treatment Plant. The hybrid process deviates from the normal Design/Build process in that the Owner hires a specific Engineer/Architect (EA) to draw the project, produce construction documents and represent the Owner throughout the design and construction. In our situation, the City and County have already contracted with Water's Edge as our representative.

As the project moves forward, the City/County will issue a Request for Qualifications soliciting responses from qualified construction firms. The contractors who respond will be evaluated based on their experience and ability to perform the work. The Joint Commissions will select the contractor based on those proposals and evaluations.

At the same time, the EA will continue developing project plans and specifications. At the 30% complete stage, the contractor will be required to provide a Gross Maximum Price (GMP). Our design team and staff will review the GMP and present the information to the Joint Commissions for their review and approval.

Once approved, the project will move forward to final design and the contractor can arrange for sub-contractors and solicit bids for equipment and materials. He also has the ability to begin work as the plans allow so initial work such as site prep, utility infrastructure, etc. can be completed.

The process includes checks and balances requiring the contractor to bid components of the work and allows the owner to select bids/quotes that represent the best value and to pass along any cost savings reflected in those bids.

JUSTIFICATION: This process can save time and money. It identifies a qualified contractor early in the process and gets them on board to understand the project from the beginning and eliminates some of the waiting period in a design/bid/build process. It allows work to begin at the 30% plan stage prior to the full completion of the construction documents.

There is also potential cost savings. All of the components of the work are still bid out and the contractor is required to pass along cost savings that are realized.

The advantage to the owner over a traditional Design/Build process is the EA is under contract to the Owner. When an issue or question comes up, the EA has a contractual obligation to represent the owner's best interest rather than providing a cost savings to the contractor.

FINANCIAL CONSIDERATIONS: There are no negative financial impacts to this procurement process. The contractor will be required to provide a GMP which will be reviewed by staff and the design team. The Joint Commissions will be required to approve the GMP amount prior to the project moving forward. Potential cost savings identified through the construction process are passed along to the owner.

As part of the overall budget and GMP, contingency amounts are identified, one for the contractor and another for the owner. The contractor's contingency will be in place to protect him in the event a problem arises with one of the component bids. The owner's contingency is in place to allow for changes or improvements that might come up during construction.

PURPOSE/MISSION: This procurement method is consistent with the goal of Working Towards Excellence by utilizing alternative concepts and techniques to provide an important project in a fiscally responsible manner and a concise time frame.

LEGAL CONSIDERATIONS: This hybrid Design/Build process is a legal form of procurement for local entities of government and represents a system utilized by the City on a previous project. All of the requirements for notice and appropriate selection of contractors and bids will be fulfilled.

ATTACHMENTS: N/A



Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Joint City/County Commissioners
From: Paul Lewis, Parks & Recreation Director 
Date: July 11, 2014
Cc: Cherise Tieben, City Manager
Ed Elam, County Administrator
Subject: Optional Enhancements Consideration

RECOMMENDATION: Staff presents additional information regarding optional enhancements to the regional water park project based on CFAB recommendation. At a special meeting of CFAB that occurred Wednesday, July 2nd, consideration was given to potential additional features for the park. Attached with this memo is a list of features under consideration and the estimated cost along with results from the public survey.

BACKGROUND: Going back to the very beginnings of the water park initiative and continuing through this preliminary design phase, there has been considerable discussion regarding the features included in the project scope. Groups have expressed various needs and desires for the project and multiple efforts have been made to solicit public opinion. Following the most recent engagement sessions, the two amenities most consistently brought forward are the 50 meter competition pool and a wave pool.

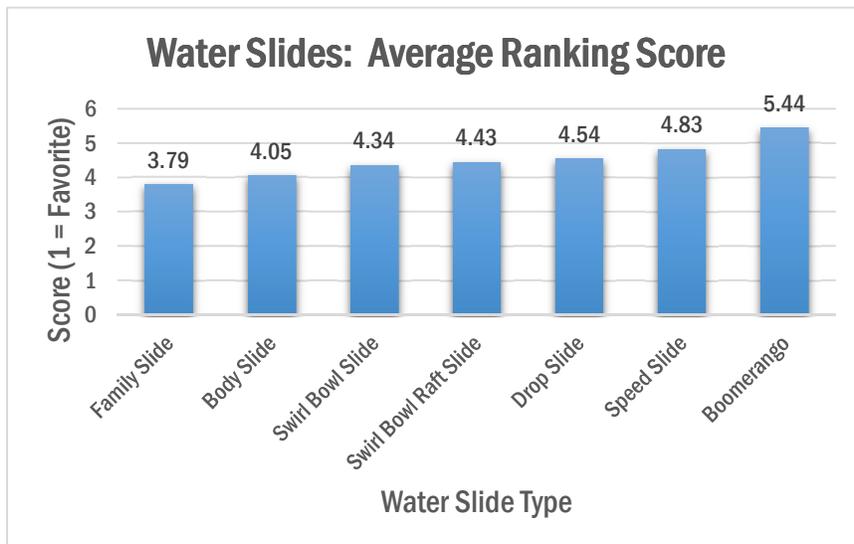
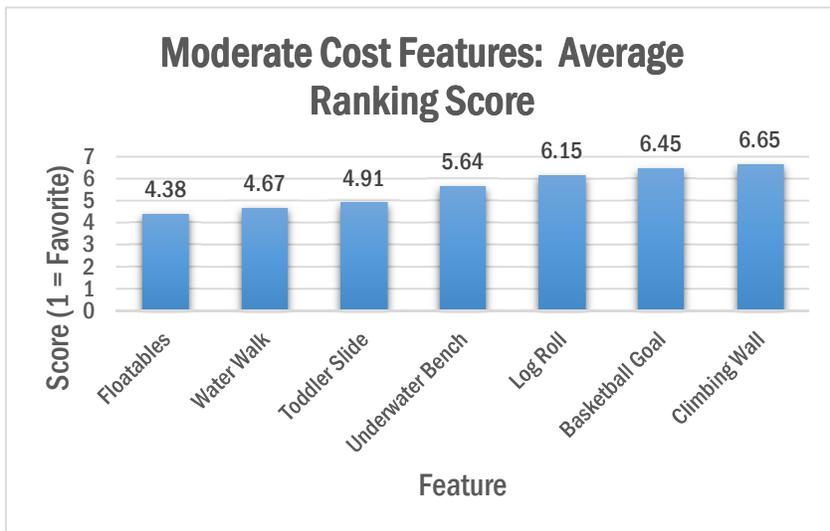
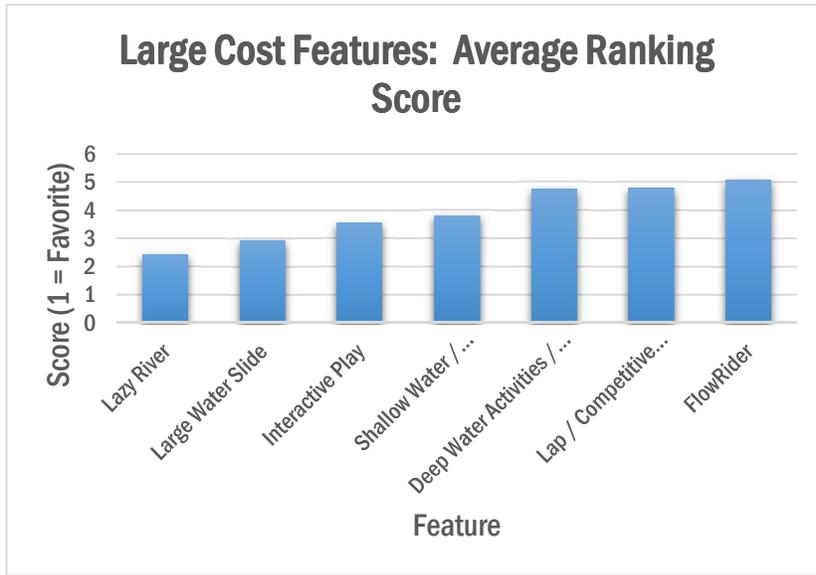
At their July 2nd meeting, CFAB discussed and established priorities for additional enhancements to the water park project should additional funding is available. Based on voting conducted at the meeting, CFAB set the 50 meter pool expansion as priority #1 and a wave pool as #2.

It is important to consider that a decision on these optional enhancements does need to be made now in order for design work to continue effectively.

FINANCIAL CONSIDERATIONS: Both projects individually represent in the neighborhood of 1.3 to 1.7 million dollar enhancements to the project scope. Both projects will also have direct impact on annual operating expenses. The Sales Tax Fund can accommodate the proposed \$10,000,000 construction budget and anticipated operating subsidy. Additional funding will have to be identified to cover construction costs and added operational expenses.

LEGAL CONSIDERATIONS: N/A

ATTACHMENTS: Optional Enhancements List
Survey Tabulation



Regional Water Park

Optional Enhancements

Enhanced competition/lap pool	
Option a) 50 Meter long course	1,300,000
Option b) 50 Meter long course w/ 75' wide	1,600,000
Option c) Future Expansion 25 yd. to 50 meter	1,700,000
Option d) 10 Lane Short Course	300,000
Air Suspension Dome over 50 meter	2,700,000
Add waves to existing lazy river plan	120,000
Expand shallow play pool	100,000
Flow Rider	1,600,000
Wave Pool	1,700,000
Party Shelters (3)	75,000



Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Joint City/County Commissioners
From: Paul Lewis, Parks & Recreation Director
Date: July 11, 2014
Cc: Cherise Tieben, City Manager
Ed Elam, County Administrator
Subject: Contract Final Design Approval

A handwritten signature in black ink, appearing to be "P. Lewis", is located to the right of the "From:" line.

RECOMMENDATION: Based on the anticipated earlier approval for the preliminary design for the water park project, staff requests authorization to direct Water's Edge Design to proceed to Phase II-Final Design.

BACKGROUND: At a previous Joint City/County Commission meeting, the design contract with Water's Edge was approved with the understanding that work would not proceed to Phase II until the Commission's reviewed and approved the preliminary design. With the adoption of the preliminary design and to keep the project moving forward it is necessary to authorize the continuation of the work to Final Design.

JUSTIFICATION: All parties are working diligently to keep this project moving forward in a timely fashion. Work is in progress to gain approval from the Corp of Engineers to relocate the holding ponds on the water park site, collaborative efforts occur on a frequent basis with the partner developer that will construct the hotel and other amenities in this location, and efforts continue to finalize and complete other regulatory issues associated with the project. In order to keep the entire project progressing on compatible paths, it is essential to approve the next step of the water park design.

FINANCIAL CONSIDERATIONS: Phase II of the contract for Final Design will authorize another four of the 7.5% of the overall contract which amounts to \$399.750 in fees. Any expenses incurred will be reimbursed from bond proceeds.

PURPOSE/MISSION: This project is consistent with the City's Core Value of Ongoing Improvement and the purpose of the Why Not Dodge program to develop recreational opportunities that attract tourists and enhance the local economy.

LEGAL CONSIDERATIONS: N/A

ATTACHMENTS: N/A

Agreement for Professional Engineering Services

This is an agreement effective as of the date of last signature below between Water's Edge Aquatic Design, LLC ("ENGINEER") and Ford County, Kansas and the City of Dodge City, Kansas (collectively the "OWNER").

The OWNER intends to plan, design, and construct a new outdoor aquatic center, including support buildings, site work, and appurtenances ("PROJECT").

OWNER is authorized and empowered to contract with ENGINEER for the purpose of furnishing engineering services in connection with the PROJECT, and necessary funds for payment of said services are available.

OWNER and ENGINEER in consideration of their mutual understanding as set forth herein agree to the following scope of work, methods of delivery, fee basis, general conditions, and related issues ("Agreement"). This Agreement includes the following attached Appendices:

- Appendix A - Terms and Conditions
- Appendix B - ENGINEER's Services
- Appendix C - OWNER's Responsibilities
- Appendix D - Insurance
- Appendix E - Billing Rates

Terms and conditions of this Agreement are described in Appendix A. ENGINEER agrees to perform engineering design services in accordance with the Scope of Services described in Appendix B. OWNER's Responsibilities are described in Appendix C. Insurance information is listed in Appendix D.

The OWNER hereby agrees to give the ENGINEER all its planning and design criteria, OWNER design and construction standards, and full information as to the OWNER's requirements for the PROJECT.

This Agreement represents the entire and integrated agreement between the ENGINEER and the OWNER, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the ENGINEER and the OWNER. In Witness whereof, the parties hereto have executed this Agreement, the Effective Date of which is indicated by the date of the last signature below.

Water's Edge Aquatic Design, LLC "ENGINEER"

By: David W. Schwartz

Print Name: David W. Schwartz

Print Title: Principal

Date: 3-5-14

City of Dodge City, Kansas "OWNER"

By: E Kent Smo II

Print Name: E Kent Smo II

Print Title: MAYOR

Date: 4-2-14

Ford County, Kansas "OWNER"

By: Chris Boys

Print Name: Chris Boys

Print Title: Chairman County

Date: 4-2-14

Appendix A - Terms and Conditions

1 SERVICES OF ENGINEER

1.1 Scope

- A. ENGINEER will provide concept planning, preliminary design, final design, bidding, construction administration, and post construction services for the PROJECT.
- B. ENGINEER will serve as OWNER's professional engineering representative in those phases of the PROJECT to which this Agreement applies and will give consultation and advice to OWNER during the performance of its services.
- C. ENGINEER will provide the Basic Services outlined and described in this Agreement.
- D. ENGINEER will provide Additional Services following authorization by the OWNER.

2 OWNER'S RESPONSIBILITIES

2.1 Scope

- A. OWNER shall have the responsibilities set forth in this Agreement.

3 TIMES FOR PROVIDING SERVICES

3.1 General

- A. ENGINEER's obligation to provide services hereunder will be for a period of time that may reasonably be required for the completion of said services.
 - 1. If OWNER requests changes in scope, extent, or character of the PROJECT, the time of performance and compensation for ENGINEER's services shall be adjusted equitably.
 - 2. OWNER understands that ENGINEER cannot guarantee a construction completion date because construction activities are the Contractor's responsibility.
 - 3. The OWNER and ENGINEER are aware that many factors outside the ENGINEER's control may affect the ENGINEER's ability to complete the services to be provided under this Agreement. The ENGINEER will perform these services with reasonable diligence and expediency consistent with sound professional practices.

3.2 Suspension

- A. The OWNER agrees that the ENGINEER is not responsible for damages arising directly or indirectly from any delays for causes beyond the ENGINEER's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in a timely manner; failure of performance by the OWNER or the OWNER's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

4 PAYMENT TO ENGINEER

4.1 Compensation

- A. General: In addition to other requirements of this Agreement, compensation is based on the following:
1. A traditional design-bid-build delivery process with one prime contractor.
 2. Fees for sub consultants (e.g. architect, civil engineer, mechanical engineer, electrical engineer, plumbing engineer, structural engineer, landscape architect, sound system consultant, and irrigation system consultant are included in base compensation. If other consultants are required, fees for such services will be negotiated based on the required scope of work.
 3. ENGINEER will furnish sets of the plans and specifications to the OWNER required for permitting, OWNER's review, bidding, or for construction at the cost of reproduction upon request and paid for those making the request (e.g. OWNER, Bidders, or Contractor).
 4. Time for site visits by ENGINEER and ENGINEER'S sub-consultants is included in the Base Compensation. Expenses will be billed at cost for the visits.
- B. BASE COMPENSATION: The OWNER agrees to compensate the ENGINEER for the consulting services provided under this Agreement based on the following:
- Percentages of Construction Costs:
- | | |
|--|-------|
| Phase I - Preliminary Design | 0.5% |
| Phase II - Final Design | 4.0% |
| Phase III - Bidding or Negotiating | 0.25% |
| Phase IV - Construction Administration | 2.5% |
| Phase V - Post-Construction Services | 0.25% |
- C. Following the Preliminary Design Phase, compensation will be adjusted to fixed amounts based upon the percentages listed for the agreed upon budget.
- D. Expenses: Direct expenses will be billed separately in accordance with the rates shown in Appendix E. The total reimbursable expenses is estimated to be \$20,000 for travel. Printing cost for bid documents will be invoiced at our costs.
- E. Compensation for design services requested by OWNER during Phases IV and V will be based on Appendix B, Section 2 - Additional Services, unless agreed to otherwise.

4.2 Other Payment Provisions

- A. Invoices will be prepared using ENGINEER's standard practices and shall clearly identify the level of progress claimed.
- B. Payment Due: Invoices shall be submitted by the ENGINEER monthly in proportion to services provided, are due upon presentation, and shall be considered past due if not paid within thirty (30) calendar days of the due date.
- C. Interest: If payment in full is not received by the ENGINEER within thirty (30) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principle.
- D. Suspension of Services: If the OWNER fails to make payments when due or otherwise is in breach of this Agreement, the ENGINEER may suspend performance of services upon seven (7) calendar days' notice to the OWNER. The ENGINEER shall have no liability whatsoever to the OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by the OWNER. Upon payment in full by the OWNER, the ENGINEER shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the ENGINEER to resume performance. In the event of any

termination of this Agreement, ENGINEER will be entitled to invoice the OWNER and will be paid for all services performed or furnished and all reimbursable expenses incurred through the effective date of termination.

- E. If the OWNER objects to any portion of an invoice, the OWNER shall so notify the ENGINEER in writing within seven (7) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement.
- F. Payments to the ENGINEER shall not be withheld, postponed or made contingent on the construction, completion or success of the Project or upon receipt by the OWNER of offsetting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the ENGINEER's compensation for any reason unless the ENGINEER has been found to be legally liable for such amounts.
- G. In the event of any termination of this Agreement, ENGINEER will be entitled to invoice the OWNER and will be paid for all services performed or furnished and all reimbursable expenses incurred through the effective date of termination.
- H. In the event legal action is necessary to enforce the payment terms of this Agreement, the ENGINEER shall be entitled to collect from the OWNER any judgment or settlement sums due.

5 OPINIONS

5.1 Opinions of Probable Construction Cost

- A. ENGINEER's opinions of probable construction costs for the PROJECT will be made on the basis of ENGINEER's professional judgment and experience.
- B. The OWNER understands that the ENGINEER has no control over the cost or availability of labor, materials, equipment, or services provided by others, or over Contractor's methods of determining prices, or over market conditions.
- C. ENGINEER makes no warranty, express or implied, that bids, the negotiated cost of the PROJECT or actual construction costs will not vary from opinions of probable construction cost prepared by ENGINEER.

5.2 Opinions of Facility Operating Expenses and Revenue Projections

- A. ENGINEER's opinions of facility operating expenses and revenue projections for the PROJECT will be made on the basis of ENGINEER's professional judgment, experience, and historical data obtained from other similar facilities.
- B. The OWNER understands that the ENGINEER has no control over the cost or availability of labor, utilities, supplies, materials, equipment, or services provided by others, or over market conditions.
- C. ENGINEER makes no warranty, express or implied, that actual operating expenses or projected revenues will not vary from opinions of facility operating expenses and revenue projections prepared by ENGINEER.

6 GENERAL CONSIDERATIONS

6.1 Performance Standards

- A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill normally furnished by members of the ENGINEER's profession practicing under similar circumstances at the same time and in the same locality.
- B. ENGINEER and OWNER shall comply with applicable laws and regulations that are in effect as of the date of this Agreement and OWNER-mandated standards. Changes to these requirements after the effective date of this Agreement may be the basis for modifications to the OWNER's responsibilities or to ENGINEER's scope of services, compensation, or times of performance.
- C. As used herein, the word certify shall mean an expression of the ENGINEER's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the ENGINEER.

6.2 Project Representatives

- A. At the start of the PROJECT, ENGINEER and OWNER shall designate specific individuals to act as Project Representatives with respect to the services to be performed or furnished by the ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have the authority to transmit instructions, receive information, and render decisions relative to the PROJECT, on behalf of each respective party.

6.3 Use of Documents

- A. All Documents are instruments of service in respect to this PROJECT, and ENGINEER will retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the PROJECT is completed.
- B. OWNER may make and retain copies of Documents for information and reference in connection with use on the PROJECT by OWNER for use, maintenance and repair of the PROJECT. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other project.

6.4 Insurance

- A. ENGINEER will procure and maintain insurance as set forth in Appendix D.
- B. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER to be listed as additional insured's with respect to such liability and other insurance purchased and maintained by Contractor for the PROJECT.
- C. All policies of property insurance shall contain provisions to the effect that ENGINEER's interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured's or additional insured's thereunder.

6.5 Termination

- A. In the event of termination of this Agreement by either party, the OWNER shall, within fifteen (15) calendar days of termination, pay the ENGINEER for all services rendered and all reimbursable costs incurred by the ENGINEER up to the date of termination, in accordance with the payment provisions of this Agreement.
- B. The OWNER may terminate this Agreement for the OWNER's convenience and without cause upon giving the ENGINEER not less than seven (7) calendar days written notice.

- C. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons.
 - 1. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party.
 - 2. Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party.
 - 3. Suspension of the Project or the ENGINEER's services by the OWNER for more than ninety (90) calendar days, consecutive or in the aggregate.
 - 4. Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.
- D. In the event of any termination that is not the fault of the ENGINEER, the OWNER shall pay the ENGINEER, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the ENGINEER in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

6.6 Successors, Assigns, and Beneficiaries

- A. OWNER and ENGINEER each is hereby bound to the other party in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this Agreement without the written consent of the other, except to the extent mandated or restricted by law.

6.7 Third-Party Beneficiaries

- A. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the ENGINEER. The ENGINEER's services under this Agreement are being performed solely for the OWNER's benefit, and no other party or entity shall have any claim against the ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. The OWNER and ENGINEER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

6.8 Fiduciary Responsibility

- A. OWNER confirms that neither the ENGINEER nor any of the ENGINEER's subconsultants or subcontractors has offered any fiduciary service to the OWNER and no fiduciary responsibility shall be owed to the OWNER by the ENGINEER or any of the ENGINEER's subconsultants or subcontractors, as a consequence of the ENGINEER's entering into this Agreement with the OWNER.

6.9 Jobsite Safety

- A. Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees and subconsultants at a construction/project site, shall impose any duty on the ENGINEER, nor relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the General Contractor shall be solely responsible for jobsite and worker safety and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the General Contractor shall defend and indemnify the OWNER, the ENGINEER and the ENGINEER's subconsultants. The OWNER also agrees

that the OWNER, the ENGINEER and the ENGINEER's subconsultants shall be made additional insured's under the General Contractor's policies of general liability insurance.

6.10 Controlling Law

- A. This Agreement is to be governed by the law of the State of Kansas.

6.11 Dispute Resolution

- A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to other provisions of this Agreement, or under law.
- B. OWNER and ENGINEER agree to use mediation for dispute resolution if the previously described negotiation process is not successful.
- C. In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, each party shall pay their own legal expenses, including staff time, court costs, attorney's fees and all other related expenses in such litigation.

6.12 Hazardous Environmental Conditions

- A. OWNER represents to ENGINEER that to the best of its knowledge a hazardous environmental condition does not exist at or near the PROJECT Site.
- B. Both parties acknowledge that the ENGINEER's scope of services does not include any services related to the presence or removal of any hazardous or toxic materials.

6.13 Allocation of Risks

- A. Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

6.14 Survival

- A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.15 Severability

- A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision that comes as close as possible to expressing the intention of the stricken provision.

6.16 Waiver

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.17 Code Compliance

- A. The ENGINEER shall put forth reasonable professional efforts to comply with applicable laws, codes, and regulations in effect as of the date of the execution of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the ENGINEER to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.

6.18 Betterment

- A. When a Change Order is necessitated by an act or omission of ENGINEER or an error in the design of the Project, responsibility for such act, omission, or error shall be determined in good faith by OWNER and ENGINEER. To the extent that such act, omission, or error arose out of the lack of quality professional services provided by ENGINEER or of the lack of professional quality deliverables prepared by ENGINEER, OWNER shall be entitled to an amount equal to the difference between the actual cost of the change Work and the estimated cost of the change Work (less added value to the OWNER) if there had been no such act, omission, or error. ENGINEER shall pay such sum to OWNER.

6.19 Construction Management

- A. If the OWNER elects to employ a construction manager, the OWNER will promptly notify the ENGINEER of the duties, responsibilities and authority of the construction manager and their relationship to the duties, responsibilities and authority of the ENGINEER. If the employment of such construction manager by the OWNER results in additional time or expense to the ENGINEER to prepare for, coordinate with or respond to the construction manager, the ENGINEER shall be entitled to an equitable adjustment in fees and time for performance of these services.

6.20 Changed Conditions

- A. If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the ENGINEER are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the ENGINEER may call for renegotiation of appropriate portions of this Agreement. The ENGINEER shall notify the OWNER of the changed conditions necessitating renegotiation, and the ENGINEER and the OWNER shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

6.21 Confidential Communications

- A. The ENGINEER may be required to report on or render confidential opinions about the past or current performance and/or qualifications of others engaged or being considered for engagement directly or indirectly by the OWNER.

6.22 Permits and Approvals

- A. The ENGINEER shall assist the OWNER in applying for those permits and approvals normally required by law for projects similar to the one for which the ENGINEER's services are being engaged. This assistance will consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by the ENGINEER and included in the scope of Basic Services of this Agreement.

6.23 Design With Limited Construction Administration

- A. It is understood and agreed that the ENGINEER's Basic Services under this Agreement includes limited project observation or review of the Contractor's performance or any other construction phase services.
- B. If the OWNER requests in writing that the ENGINEER provide any additional construction phase services and if the ENGINEER agrees in writing to provide such services, then they shall be compensated for as Additional Services as discussed in this Agreement.

7 DEFINITIONS

7.1 Defined Terms

- A. As used herein, the following words and their derivative words or phrases shall have the meaning indicated, unless otherwise specified in this Agreement.
1. CERTIFY, CERTIFICATION: A statement of the ENGINEER's opinion, based on his or her observation of conditions, to the best of the ENGINEER's professional knowledge, information and belief. Such statement of opinion does not constitute a warranty, either express or implied. It is understood that the ENGINEER's certification shall not relieve the OWNER or the OWNER's contractors of any responsibility or obligation they may have by industry custom or under any contract.
 2. COST ESTIMATE: An opinion of probable construction cost made by the ENGINEER. In providing opinions of probable construction cost, it is recognized that neither the OWNER nor the ENGINEER has control over the costs of labor, equipment or materials, or over the Contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on the ENGINEER's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the Contractor's bids or the negotiated price of the Work will not vary from the OWNER's budget or from any opinion of probable cost prepared by the ENGINEER.
 3. DAY, DAYS: A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.
 4. INSPECT, INSPECTION: The visual observation of construction to permit the ENGINEER, as an experienced and qualified professional, to determine that the Work, when completed by the Contractor, generally conforms to the Contract Documents. In making such inspections, the ENGINEER makes no guarantee for, and shall have no authority or control over, the Contractor's performance or failure to perform the Work in accordance with the Contract Documents. The ENGINEER shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor or for the Contractor's safety precautions and programs nor for failure by the Contractor to comply with any laws or regulations relating to the performance or furnishing of the Work by the Contractor.
 5. RECORD DOCUMENTS: Drawings prepared by the ENGINEER upon the completion of construction based upon the drawings and other data furnished to the ENGINEER by the Contractor and others showing significant changes in the Work made during construction. Because Record Documents are prepared based on unverified information provided by others, the ENGINEER makes no warranty of the accuracy or completeness of the drawings. Refer to Appendix B – ENGINEER Services to determine if preparation of Record Documents is part of Basic Services or Additional Services.
- B. Additional terms and definitions are referenced as part of this Agreement in Article 7 – Definitions of the Standard Form of Agreement Between Owner and Engineer for Professional Services Prepared by Engineers Joint Contract Documents Committee EJCDC No. 1910-1 (1996 Edition).

End of Appendix A

Appendix B - ENGINEER's Services

ENGINEER will provide concept planning, preliminary design, final design, bidding, construction administration, and post construction services for the PROJECT as set forth below.

1 BASIC SERVICES

1.1 Phase I - Concept Planning Services

- A. Evaluate potential sites based on visual and other objective information.
- B. Meet to establish project design criteria such as aquatic facility size, features, deck area, concession area, and bathhouse floor plan.
- C. Focus all that we hear into feasible design criteria.
- D. Provide a summary report outlining the project.
- E. Using the design criteria, create two to three alternative concept designs and preliminary cost opinions for public review and comment.
- F. Create summary of features and surface areas for each concept.
- G. A total of 3 meetings are included during this planning phase.

1.2 Phase II - Preliminary Design

- A. ENGINEER will complete the following Preliminary Design Phase tasks:
 - 1. ENGINEER will use available information from the concept design phase as the basis for the pool layout and design criteria.
 - 2. OWNER will review and adjust the aquatic programs together with ENGINEER's design team.
 - 3. ENGINEER will recommend specific aquatic features to satisfy identified needs and community preferences. The final selection of features will help determine the pool size, construction cost, and operating cost for the PROJECT.
 - 4. ENGINEER's work will include pool site development. ENGINEER will coordinate pool facilities within the selected site.
 - 5. The Preliminary Design will include a site drawing that shows the proposed pool facilities relative to existing site amenities. ENGINEER will use the topographic survey, furnished by the OWNER, for the existing site. The plan will show each selected aquatic feature. Construction costs, fees and contingencies will be identified to develop a project cost.
 - 6. When the Preliminary Design is complete, ENGINEER will meet with OWNER to review the drawings and cost information. Based on comments by the OWNER, ENGINEER will adjust the design and prepare the final Preliminary Design documents.
 - 7. At the conclusion of the Preliminary Design phase, ENGINEER will make a final presentation to the City Council or other group designated by OWNER. The presentation will include a summary of the entire PROJECT in a written document as well as a verbal presentation. ENGINEER will create a Power Point presentation that describes the Preliminary Design and summarizes the PROJECT findings. ENGINEER will provide a colored layout drawing for the recommended pool design.

1.3 Phase III - Final Design

- A. After acceptance by OWNER of the Preliminary Design documents, ENGINEER will:
 - 1. On the basis of the above acceptance, prepare final engineering design and construction documents including bidding documents, specifications and drawings indicating the scope,

extent, and character of the work to be performed and furnished by Contractor. Specifications will be prepared in general conformance with the 16-division format of the Construction Specifications Institute.

2. Provide design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the PROJECT and assist OWNER in consultations with appropriate authorities.
 3. Prepare and furnish Final Design Documents for review and approval by OWNER.
 4. The number of prime contracts for work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is one (1).
 5. ENGINEER will provide an updated opinion of probable cost of the PROJECT.
- B. ENGINEER's services under the Final Design Phase will be considered complete on the date when the final documents have been delivered to and accepted by the OWNER.

1.4 Phase IV - Bidding

- A. After acceptance by OWNER of the Bidding Documents, and upon written authorization by OWNER to proceed ENGINEER will:
1. Assist OWNER in advertising for qualified contractors to submit bids for constructing the PROJECT and distribute bidding documents to prospective bidders. Cost for printing and mailing of these documents will be paid for by prospective bidders.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Assist OWNER in evaluating the low bidder's proposal. Furnish and assist in assembling up to four (4) sets of Contract Documents for execution by OWNER and Contractor.
 4. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with the prospective bidder.

1.5 Phase V - Construction Administration

- A. Upon successful completion of the Bidding Phase, ENGINEER will perform the following:
1. General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in performance of Construction Administration of the Construction Contract to the extent provided in this Agreement and said General Conditions.
 2. ENGINEER shall distribute plans and specifications to the selected reproduction company. The reproduction and shipping costs for these documents shall be paid for by OWNER.
 3. Selecting Independent Testing Laboratory. Assist OWNER in the selection of an independent testing laboratory to perform the services needed for the PROJECT.
 4. Visits to Site and Observation of Construction. In connection with observations of Contractor's work while it is in progress:
 - a. ENGINEER will visit the site at intervals appropriate to the stage of construction in order to observe the progress and quality of the work completed by the Contractor. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow ENGINEER, as an experienced professional, to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Contract Documents.
 - b. Based on this general observation, ENGINEER will keep the OWNER informed about the progress of the Work and shall advise the OWNER about observed deficiencies in the Work.
 - c. ENGINEER will not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor the OWNER's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the

- Contractor in accordance with the Contract Documents.
- d. If the OWNER desires more extensive project observation or full-time project representation, the OWNER shall request that such services be provided by ENGINEER as Additional Services in accordance with the terms of this Agreement.
 - e. ENGINEER will not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. ENGINEER does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contract Documents or any applicable laws, codes, rules, or regulations.
5. Defective Work. Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed PROJECT that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed PROJECT as a functioning whole as indicated in the Contract Documents. ENGINEER will advise and consult with the OWNER on correction of Defective work and shall assist the OWNER in testing of work believed to be defective if necessary. Services in connection with the evaluation of and determination to accept Defective work by contractor, including required re-design services, will be paid in accordance with Section 2 - Additional Services.
 6. Clarifications, Interpretations, and Field Orders. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
 7. Change Orders. Recommend Change Orders to OWNER, as appropriate, and prepare Change Orders as required.
 8. Shop Drawing Review. Review and take other appropriate action on the submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. Review of a specific item shall not indicate that ENGINEER has reviewed the entire assembly of which the item is a component. ENGINEER will not be responsible for any deviations from the Construction Documents not brought to the attention of ENGINEER in writing by the Contractor.
 9. Substitutes and "or-equal". Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. If the substitute product requires re-design, the cost for these services will be paid as described in Section 2 – Additional Services.
 10. Inspections and Tests. Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents. ENGINEER will be entitled to rely on the results of such tests.
 11. Applications for Payment. Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that ENGINEER recommends be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents.
 - b. By recommending any payment, ENGINEER will not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to

every aspect of Contractor's work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

12. Contractor's Completion Documents.
 - a. Receive and review maintenance and operating instructions, schedules, and guarantees.
 - b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.
 - c. ENGINEER will transmit these documents to OWNER.
 13. Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire work ready for its intended use, in company with OWNER and Contractor, conduct a site visit to determine if the work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the work Substantially Complete, ENGINEER will deliver a notice of Substantial Completion to OWNER and Contractor.
 14. Final Notice of Acceptability of the Work. Conduct a final site visit to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER will also provide a notice that the work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.
- B. Duration of Construction Phase. The Construction Phase will commence with the execution of the first Construction Agreement for the PROJECT and will terminate upon written recommendation by ENGINEER for final payment to Contractor.

1.6 Phase VI - Post-Construction Services

- A. During the Post-Construction Phase, ENGINEER will:
1. Provide assistance in connection with the testing and adjusting of PROJECT equipment or systems.
 2. Assist in training OWNER's staff to operate and maintain PROJECT equipment, and systems.
 3. Together with OWNER, visit the PROJECT to observe any apparent defects in the work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective work, if present.
 4. If requested by OWNER and in company with OWNER, provide a review of the PROJECT within one month before the end of the Warranty Period to ascertain whether any portion of the work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Appendix, will terminate upon written recommendation by ENGINEER for final payment to Contractor.

2 ADDITIONAL SERVICES

2.1 Scope of Additional Services

- A. ENGINEER will advise OWNER as to the necessity of data or services of the types described in Section 2 – Additional Services, which are not part of ENGINEER’s Basic Services, and assist OWNER in obtaining such data and services.
- B. If authorized in writing by OWNER, ENGINEER will furnish or obtain from others Additional Services of the types listed below. OWNER will pay for these services based on hourly charge rates and direct expenses at cost. All authorized Additional Services shall be paid for over and above the fees for the Basic Services.
 - 1. Preparation of applications and supporting documents for obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the PROJECT.
 - 2. Services to make measured drawings of or to verify the accuracy of drawings or other information furnished by OWNER.
 - 3. Services resulting from significant changes in the scope, extent, or character of the portions of the PROJECT designed or specified by ENGINEER or its design requirements including, any other causes beyond ENGINEER’s control.
 - 4. Services required for the evaluation of and determination to accept defective Work by Contractor including required re-design services.
 - 5. Services required for re-design as a result of substitute products during the construction phase.
 - 6. Services in connection with assistance with or coordination of fund raising efforts, donated items, or items furnished by OWNER or others.
 - 7. Services required as a result of OWNER’s providing incomplete or incorrect PROJECT information with respect to Appendix B.
 - 8. Services during authorized out-of-town travel required of ENGINEER other than for visits to the Site or OWNER’s office.
 - 9. Assistance in connection with Bid protests, rebidding or renegotiating contracts for construction, materials, equipment, or services, only so long as the original work is reasonably consistent with the OWNER’s program or other instruction.
 - 10. Providing construction surveys and layouts to enable Contractor to perform its work.
 - 11. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
 - 12. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on PROJECT annotated record documents received from Contractor.
 - 13. Preparing to serve or serving as engineer or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the PROJECT. Billing rates for expert witness services are higher than standard billing rates and will be furnished upon request.
 - 14. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER.
 - 15. Providing an enhanced or detailed pool operations manual.
 - 16. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

End of Appendix B

Appendix C - OWNER's Responsibilities

The Agreement is amended and supplemented to include the following Agreement of the parties. In

addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

- A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Furnish copies of all design and construction standards that OWNER will require to be included in the Drawings and Specifications. Furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.
- C. Furnish to ENGINEER any other available information pertinent to the PROJECT including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- D. Provide topographic survey for the Site.
- E. Provide geotechnical engineering services in connection with explorations and tests of subsurface conditions at the Site including providing a written report with recommendations.
- F. If demolition of existing facilities is required, provide a building materials assessment for identification of hazardous materials, such as asbestos, and have such materials removed and disposed of properly before start of construction.
- G. Following ENGINEER's assessment of initially-available PROJECT information and data and upon ENGINEER's request, furnish or otherwise make available such additional PROJECT related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services.
- H. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or if any other development that affects the scope or time of performance of ENGINEER's services, or any defect or non-conformance in ENGINEER's services or in the work of any Contractor.
- I. Authorize ENGINEER to provide Additional Services as required by OWNER.
- J. Arrange for safe access to and make all provisions for ENGINEER to enter upon public property as required for ENGINEER to perform services under the Agreement.
- K. Examine all alternate solutions, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or ENGINEER's as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- L. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the PROJECT designed or specified by ENGINEER.
- M. Provide, as required for the PROJECT:
 - 1. Accounting, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the PROJECT as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
 - 3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- N. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate

the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the work with appropriate professional interpretation thereof.

End of Appendix C

Appendix D - Insurance

The Agreement is amended and supplemented to include the following Agreement of the parties. The limits of liability for the insurance required by this Agreement are as follows:

- A. By ENGINEER:
1. Workers' Compensation: Statutory
 2. Employer's Liability:
 - a. Each Accident \$500,000
 - b. Disease, Policy Limit \$500,000
 - c. Disease, Each Employee \$500,000
 3. General Liability:
 - a. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
 - b. Personal and advertising injury \$1,000,000
 - c. Products - completed operations aggregate \$2,000,000
 - d. General Aggregate \$2,000,000
 4. Excess or Umbrella Liability:
 - a. Each Occurrence \$2,000,000
 - b. General Aggregate \$2,000,000
 5. Automobile Liability:
 - a. Combined Single Limit (Bodily Injury and Property Damage and Hired and Non-Owned Auto Liability) Each Accident \$1,000,000
 6. Professional Liability Insurance
 - a. Limits of \$1,000,000 per claim and \$2,000,000 annual aggregate
 - b. Certificate can be furnished upon request.

End of Appendix D

Appendix E - Billing Rates (2013)

The Agreement is amended and supplemented to include the following Agreement of the parties.

The following range of billing rates represent the range of individuals who may work on this project. Billing rates for expert witness services are also included. Billing Rates are subject to change each year.

A.	Expert Witness - litigation	\$275 per hour
	Expert Witness - discovery	\$225 per hour
	Aquatic Design Engineer	\$120 to \$180 per hour
	Aquatic Design Engineer-in-Training	\$105 to \$115 per hour
	Senior Aquatic Design Technician	\$100 to \$120 per hour
	Aquatic Design Technician	\$85 to \$105 per hour
	CAD Technician	\$75 to \$85 per hour
	Business Development	\$65 to \$80 per hour
	Administrative Assistant	\$55 to \$80 per hour

Expenses

- D. Direct project expenses will include basic expenses and special project expenses. Basic expenses include those needed to perform our work and are included in our design fees unless otherwise defined in Appendix A - Terms and Conditions. Special project expenses are those that are requested by the OWNER for their project, such as renderings, models, testing or other special items. The OWNER must authorize any special expense prior to our incurring that expense.
- E. The following items are examples of basic expenses.
1. Travel costs including airfare, rental vehicles, tolls, rental fuel, mileage, and other transportation costs.
 2. Mileage costs are billed at the IRS-approved rate.
 3. Lodging including motel and hotel costs and all related taxes.
 4. Meals including tips.
 5. Printing costs including photocopies, color CAD drawings, mounting and laminating presentation boards, plotting construction drawings and related items.
 6. Postage costs including U.S. Postal fees and fees for Federal Express and other related carriers.

End of Appendix E