



March 24, 2022

Todd McCoy  
Parks and Recreation Director  
City of Grand Island  
**VIA ELECTRONIC MAIL TO: TODDM@GRAND-ISLAND.COM**

Re: Facility Evaluation & Master Plan – Agreement for Services

Dear Mr. McCoy:

Thank you for selecting our team to perform the Facility Evaluation & Master Plan. We appreciate the opportunity to offer our services to you. This document is intended to serve as the agreement of services for the study. A summary of the anticipated scope as listed in the original proposal and requested fees follow below.

**Scope of Work**

We will perform the scope of work as identified in the RFP and our submitted proposal, which is attached to this letter. This includes:

- Project kickoff & research
- Market and demographic analysis
- Facility assessment
- Aquatic trends
- Public input
- Facility programming/planning
- Concept development and costs
- Operating projections
- Final report

**Meetings**

- Up to three (3) in-person visits
- Virtual meetings as needed to conduct a thorough study

**Deliverables**

- Provide promotional support information to assist the City with social media, website, and other public communications
- Color plan view drawings of pool concept layouts (2-D)
- Capital and operational costs for the final layout
- Documentation and final report

**Requested Information and support from the City of Grand Island**

- Provide space for meetings and presentations
- Pool plans, as-builts, and/or construction documents of the existing swimming pool
- Any past studies or plans (e.g., 2004 Aquatic Facilities Report, Parks and Rec Master Plan, etc.)



**Fee Proposal**

For our services and scope of work listed above and in the submitted proposal, we request a lump sum fee of \$49,200\*, including our direct expenses such as travel, printing, copying and related items.


An alternative add-on for 3-D renderings of the final concept would add a cost of \$4,500 to the lump sum as identified above. This can be added on at a later time if desired.

*\*This fee includes high level study of the concession stand. If after kickoff and learning your goals it is identified that an architect or other concession specialist is needed to study the concession area above and beyond our team's expertise, we will work with you on scope and fee for conducting an analysis of the concession stand.*


Please feel free to contact me with questions about this proposal. We look forward to working with you.


Terms and conditions are described in the following two pages. This letter represents the agreement between WATERS EDGE AQUATIC DESIGN and the CITY OF GRAND ISLAND, NEBRASKA, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties. In Witness whereof, the parties hereto have executed this Agreement, the Effective Date of which is indicated below.

**Accepted By: Waters Edge Aquatic Design, LLC**

By:   
Name: Jeff Bartley  
Title: Principal  
Date: March 24, 2022

**Accepted By: City of Grand Island, NE**

By:   
Name: Roger G. Steele  
Title: Mayor  
Date: 4/13/2022

  
Interim City Attorney

## Terms and Conditions

- A. **Times for Providing Services:** 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 and will perform these services with reasonable diligence and expediency consistent with sound professional practices.
- B. **Suspension:** The OWNER agrees that the ENGINEER is not responsible for damages arising 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 their contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by the ENGINEER to perform its services, the ENGINEER shall be entitled to a reasonable adjustment in schedule and compensation.
- C. **Payment Provisions:** Invoices shall be submitted 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. 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 (1.0) 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.

OWNER shall notify ENGINEER if they object to any portion of an invoice 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.

**Suspension of Services:** If the OWNER fails to make payments when due, the ENGINEER may suspend performance of services upon seven (7) calendar days' notice to 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.

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.

- D. **Opinions of Cost:** Opinions of probable construction costs for the PROJECT will be made on the basis of ENGINEER's professional judgment and experience. 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. 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.
- E. **Performance Standards:** 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. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- F. **Use of Documents:** 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. 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.

If the ENGINEER for any reason is not allowed to complete all the services called for by this Agreement, the ENGINEER shall not be held responsible for the accuracy, completeness, or constructability of the construction documents prepared by the ENGINEER if used, reused, changed or completed by the OWNER or by another party. Accordingly, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees, and subconsultants (collectively, ENGINEER) from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from such use, change or completion by any other party of any construction documents prepared by ENGINEER.

- G. **Insurance:** ENGINEER will procure and maintain insurance as set forth in the attached certificate. 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 insureds with respect to such liability and other insurance purchased and maintained by Contractor for the PROJECT.
- H. **Termination:** 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. 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: Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party; 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; Suspension of the Project or the ENGINEER's services by the OWNER for more than ninety (90) calendar days, consecutive or in the aggregate; 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.

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.

- I. **Successors, Assigns, and Beneficiaries:** Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys 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.
- J. **Third-Party Beneficiaries:** 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.
- K. **Controlling Law:** This Agreement is to be governed by the law of the state in which the project is located.
- L. **Dispute Resolution:** 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. OWNER and ENGINEER agree to use mediation for dispute resolution if the previously described negotiation process is not successful. 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.
- M. **Allocation of Risks:** To the fullest extent permitted by law, ENGINEER and OWNER agree to indemnify and hold harmless each other against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, where such fees are recoverable under applicable laws, to the extent caused by their own negligent acts of performance of professional services under this Agreement.  
  
In recognition of the relative risks and benefits of the PROJECT to both the OWNER and the ENGINEER, the risks have been allocated such that the OWNER agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER to the OWNER for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the ENGINEER to the OWNER shall not exceed the ENGINEER's total fees for services rendered on this PROJECT. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
- N. **Survival:** All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
- O. **Severability:** 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.
- P. **Waiver:** 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.