MEETING AGENDA

JCPRD Administration Building Boardroom  
7900 Renner Road, Shawnee Mission, KS  66219  
August 5, 2019  
5:00 pm

CALL TO ORDER/ROLL CALL

DISCUSSION & ACTION

A. Bid Award-Site Improvements MASC and MAWSC Complexes – Jim Wilson, Project Manager

B. Olathe “Out of School Time” Office Space MOU – Rhonda Pollard, Superintendent of Recreation

C. Shawnee Mission School District Aquatic Center Agreement – Rhonda Pollard, Superintendent of Recreation

OTHER BUSINESS

ADJOURNMENT
JOHNSON COUNTY PARK AND RECREATION DISTRICT
BOARD OF PARK AND RECREATION COMMISSIONERS

BRIEFING SHEET

Presented to: Recreation Committee
Meeting Date: 08/04/2019

Project Name/Identification: Bid Award-Site Improvements MASC and MAWSC Complexes

Contact: Jim Wilson, Project Manager
Phone: 913-826-3426

**ISSUE:** Consider approval of bid in the amount of $4,018,500 including Base Bids for Item1, Item 2, Irrigation Allowances for Item 1, Item 2, Add Alternates #1C, 2C, and #1D, #2D for sports complex improvements at Mid America Sports Complex (MASC) and Mid America West Sports Complex (MAWSC) and award a contract in this amount to Empire Netting and Fence.

**BACKGROUND:** The JCPRD Board funded sports complex improvements at MASC and MAWSC with a bond issuance of $4,000,000 in 2019. The goal of the project is to provide new fencing, backstops, dugouts, bleachers, and bleacher covers at these two facilities. Part of the backstop replacement requires the re-location of the bases, infield arc, and pitcher’s mounds on each field. Additionally, the fence replacements include a continuous concrete mow strip around each field perimeter that will facilitate the potential installation of synthetic turf in the future. Eight backstops at MAWSC have been replaced in early 2019 with other project funds. The four remaining backstops at MAWSC were replaced in mid-2019 with advance funding from this project. The balance of project funds for the remaining scope of work is $3,890,244. The bids for the work came in higher than the remaining funding for the project. If the Board chooses to accept Alternate Items #1C & #2C (bleacher shade canopies), then the bids will exceed the remaining funding for the project. Some of this is due to bidders having limited knowledge of existing conditions and utilities on site, and some of this is due to including the concrete mow strip in this portion of the project. Installation of the concrete mow strip is most efficient with the fence installation as the fence post footings and concrete mow strip interface with each other.

The project program presented to the JCPRD board and bond counsel included backstop replacement, new field fencing, dugouts, bleachers, and bleacher covers. Additional field enhancements included in the project include upgrades to black-coated fencing, on-field bullpen caps, new outfield fence safety caps, side warning tracks, taller outfield and side alley fencing, and additional protective netting height above the dugouts to protect pedestrian walkways from sliced and hooked foul balls.

**ANALYSIS:** In order to facilitate both the project program included in the bond issuance and the additional enhancements that are best sequenced along with this work (mow strips, base anchors, infield arc re-location, warning tracks, and bullpens), staff are requesting additional funding to be allocated by the JCPRD board. Additional funding for the project may be obtained by re-allocating the funds remaining from the Shawnee Mission Park Tennis Court Replacement project into the project funds for the MASC-MAWSC field improvements project fund. The balance of funds for the tennis project is $484,205 which is nearly equal to the shortfall for the funds necessary to complete all of the field improvements and enhancements in the project. This will allow JCPRD to award the base bids and allowances, keep the black fencing upgrade, purchase the bleacher covers and provide the backstop padding as part of this contract. JCPRD will have remaining project funds to procure new ADA bleachers under a separate bid or alternate delivery process and maintain an adequate contingency for unknown conditions.

**FUNDING REVIEW:** Are there funding implications involved? ☑ No ☐ Yes If Yes, explain: JCPRD staff are requesting the JCPRD Board to terminate the SMP Tennis Court Replacement project and transfer $484,205 from that project fund into the MASC – MAWSC Field Improvements Project.
**ALTERNATIVES:**

- Recommend consent approval as recommended by staff .......................................................... x
- Recommend consent approval as determined/modified by committee ......................................
- Recommend discussion and action by the full Board at Board Meeting ....................................
- Recommend denial of request ..................................................................................................
- Table for additional consideration ........................................................................................
- Take no action ........................................................................................................................
- Other: ......................................................................................................................................

  *If other, explain:*

  **Consequences or additional Information (if any):**

**LEGAL REVIEW:** Is legal counsel review required?  ❌ No  ❑ Yes  *If yes, explain:* The project was bid on the standard construction procurement front end, legal counsel will review the final contract as to form prior to execution by the JCPRD Board Chair. The JCPRD board has the discretion to re-allocate CIP funding as necessary to achieve their priorities.

**SUGGESTED RECOMMENDATION/MOTION:**

It is the consensus of the committee to recommend board consent approval to terminate the SMP Tennis Court Replacement project and re-allocate the remaining fund balance of $484,205 to the MASC – MAWSC Field Improvement project. It is also the consensus to approve the bids from Empire Fence and Netting in an amount of $4,018,500. JCPRD staff will procure the bleachers under a separate bid or delivery method.

**SUPPORTING DOCUMENTATION:**

1. Bid Tabulation: Site Improvements – Mid America and Mid America West Sports Complexes.
**Johnson County Park & Recreation District**

**Bid Tabulation**  
Final

**Project Name:** Site Improvements: Mid-America and Mid-America West Sports Complexes  
**Bid Request Number:** PRK-2019-0016  
**JCP RD Administration Building,** 7900 Renner Road, Shawnee, Kansas

**Bid Opening Date/Time:** July 18, 2019 @ 2:00 PM

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<table>
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<tr>
<th>Company</th>
<th>MAWSC Item 1 Base Bid</th>
<th>Irrigation allowance</th>
<th>Alternate 1A</th>
<th>Alternate 1B</th>
<th>Alternate 1C</th>
<th>Alternate 1D</th>
<th>MASC Item 2 Base Bid</th>
<th>Irrigation allowance</th>
<th>Alternate 2A</th>
<th>Alternate 2B</th>
<th>Alternate 2C</th>
<th>Alternate 2D</th>
<th>Item #3</th>
<th>Item #4</th>
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*Items indicated in red cannot be accepted because they exceed the landscape architect's estimated cost.*

**List of Bid Items**

- **MAWSC Item 1**  
  Field fencing, dugouts, bullpens, side warning tracks, bases, foul poles, new infield arc and mow curb at MASC  
  Time and materials allowance to re-configure infield edge irrigation due to infield moving outward  
  Deduct cost of black PVC coated fencing and provide galvanized fencing products  
  Add cost to supply 2 new bleacher units at each field  
  Add cost to provide and install new bleacher shade canopies at each field  
  Add Cost to provide backstop padding behind the catcher at each backstop

- **Irrigation Allowance Item 1**  
  Time and materials allowance to re-configure infield edge irrigation due to infield moving outward

- **Alternate 1A**  
  Deduct cost of black PVC coated fencing and provide galvanized fencing products

- **Alternate 1B**  
  Add cost to supply 2 new bleacher units at each field

- **Alternate 1C**  
  Add Cost to provide and install new bleacher shade canopies at each field

- **Alternate 1D**  
  Add Cost to provide backstop padding behind the catcher at each backstop

- **MAWSC Item 2**  
  Field fencing, dugouts, bullpens, side warning tracks, bases, foul poles, new infield arc and mow curb at MASC  
  Time and materials allowance to re-configure infield edge irrigation due to infield moving outward  
  Deduct cost of black PVC coated fencing and provide galvanized fencing products  
  Add cost to supply 2 new bleacher units at each field  
  Add Cost to provide and install new bleacher shade canopies at each field  
  Add Cost to provide backstop padding behind the catcher at each backstop

- **Irrigation Allowance Item 2**  
  Time and materials allowance to re-configure infield edge irrigation due to infield moving outward

- **Alternate 2A**  
  Deduct cost of black PVC coated fencing and provide galvanized fencing products

- **Alternate 2B**  
  Add cost to supply 2 new bleacher units at each field

- **Alternate 2C**  
  Add Cost to provide and install new bleacher shade canopies at each field

- **Alternate 2D**  
  Add Cost to provide backstop padding behind the catcher at each backstop

**Staff Recommendation:** Staff Recommend accepting Base Bids for Item 1, Irrigation Allowances for Item 1, Item 2, Add Alternates #1C, 2C, and #1D, #2D from Empire Netting and Fence and awarding a contract the amount of $4,018,500 for the Site Improvements at Mid America and Mid America West Sports Complexes.
Presented to: Recreation Committee  Meeting Date: 08/05/2019

Project Name/Identification: Olathe Out of School Time (OST) Office Space Agreement with Johnson County Government

Contact: Rhonda Pollard, Superintendent of Recreation  Phone: 913-826-3020

**ISSUE:** Consider approval of the Olathe Out of School Time Office Space Agreement with Johnson County Government.

**BACKGROUND:** JCPRD has been selected to provide Out of School Time services for all 36 elementary schools in the Olathe School District, beginning the fall of 2019. The structure of OST staffing is a director in each school, with support staff, and 4 specialists overseeing 9 schools each to ensure proper curriculum, staffing levels, and training. These specialists and their administrative assistant need office space outside of the school environment, but in close proximity, to meet any needs Olathe OST staff may have throughout the school year, and to conduct the business affairs and operations of the Olathe OST program.

**ANALYSIS:** OST programs will be provided at 36 locations in the Olathe School District, requiring supervisory JCPRD staff to office in close proximity to these schools and their appropriate directors and support staff. Per licensing requirements, specific staffing levels must be adhered to and often these specialists are required to step in to meet ratio when OST staff are ill or on vacation. Having office space in the general area of these Olathe schools is paramount to the success of these programs, ensuring needed support is close. JCPRD currently does not have facilities within the Olathe area that can accommodate this staff. However, Johnson County Government leases the Johnson County Operations Center at 19310 W. 159th Street, Olathe, Kansas and this facility has room for the JCPRD specialists, administrative assistant, and IT support necessary to ensure the success of this program. The County has offered this space free of rent, with all utilities paid.

**FUNDING REVIEW:** Are there funding implications involved?  ☒ No  ☐ Yes  If Yes, explain:

**ALTERNATIVES:**

- Recommend consent approval as recommended by staff ........................................................................... ☒
- Recommend consent approval as determined/modified by committee .......................................................... ☐
- Recommend discussion and action by the full Board at Board Meeting ......................................................... ☐
- Recommend denial of request ......................................................................................................................... ☒
- Table for additional consideration .................................................................................................................. ☐
- Take no action .................................................................................................................................................. ☐
- Other: ............................................................................................................................................................. ☐

  If other, explain:

  Consequences or additional Information (if any):

**LEGAL REVIEW:** Is legal counsel review required?  ☐ No  ☒ Yes  If yes, explain: Legal Counsel has approved as to form.

**SUGGESTED RECOMMENDATION/MOTION:**

It was the consensus of the committee to recommend Board consent approval at the Regular Board Meeting on August 21, 2019, of the Olathe Out of School Time Office Space Agreement with Johnson County Government.

**SUPPORTING DOCUMENTATION:**

- Olathe Out of School Time Office Space Agreement with Johnson County Government.
USE AGREEMENT

THIS USE AGREEMENT ("Agreement"), is made and entered into as of the _____ day of August, 2019, by and between the BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, ("County"), and the JOHNSON COUNTY PARK & RECREATION DISTRICT ("District"), each party having been duly organized and now existing under the laws of the State of Kansas.

WITNESSETH:

WHEREAS, the County has leased the land, building, and other improvements located at 19310 W. 159th Street, Olathe, Kansas, commonly known as the Johnson County Operations Center (collectively the “Facility”), to the Public Building Commission of Johnson County, Kansas, a municipal corporation of the State of Kansas (“PBC”), and the PBC has leased the Facility to the County, all in support of the PBC’s issuance of certain lease purchase revenue bonds; and

WHEREAS, District has requested to use a portion of the Facility and the County is agreeable to such request.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the County and the District do hereby covenant and agree as follows:

1. Term. The term of this Agreement shall be three (3) years beginning on August 1, 2019 and ending on July 30, 2022, unless sooner terminated as hereinafter provided. This Agreement may be renewed for additional successive terms of one (1) year each upon written agreement of the parties. The County Manager and the Executive Director of the District shall be and are hereby authorized to negotiate, approve, and execute such renewals on behalf of the respective parties.

2. Office Space. During the term of this Agreement and any renewals thereof, the County grants to the District a non-exclusive license, without charge and free of rent, to use and occupy a portion, approximately 1,365 square feet, of the Facility as more fully shown on the floor plan ("Floor Plan") attached hereto as Exhibit A, which is more specifically described on the Floor Plan as JCPRD Room 1100 ("Premises"). The County further grants the District a non-exclusive license to access and use the Common Areas of the Facility and the break room as shown on the Floor Plan. The Premises shall only be used for general office purposes in support of and for the purpose of conducting the business affairs and operations of the District’s after school program and will be occupied by District employees responsible for program operations. The Premises will not be used for programming space and no students will be on site. The District shall not use the Premises for any other purpose.

3. Equipment & Furniture. The County shall provide furnished workstations and card access to the space as identified in Exhibit A. The District shall be responsible for costs to configure and install systems furniture, provide telephones, computers, printers, and any other supplies or personal property for the Premises.
4. **Use of the Premises.**

4.1 **Restrictions on Use.** The District acknowledges that the Facility will remain and be used primarily and predominantly for archive, warehouse, and county government purposes. The District shall not use the Premises in a manner that will disturb, disrupt, or interfere with the other uses and occupants of the Facility. The District shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Premises and the Facility.

4.2 **Tax Exempt Bonds.** The District will not make, or cause or permit to be made, any use of the Premises or Facility that would cause the interest on any tax-exempt bonds issued by or on behalf of the County or the PBC to become subject to federal income taxation. The District will comply with and will take all action reasonably required by the County in order to comply with, all other applicable requirements of the Internal Revenue Code until all of the tax-exempt bonds are paid in full. The District will provide to the County such certificates and other documentation as reasonably requested by the County from time to time, necessary to establish compliance with this covenant.

5. **Utilities and Services.** The County agrees to furnish water, heat, air conditioning, electricity, light bulbs and tubes, janitorial services, refuse disposal, pest control, and snow and ice removal to the Premises at such times as the County normally furnishes these services to the Facility. An interruption of these utilities shall not render the County liable in any respect for damages to person, property or business, nor relieve the District from fulfillment of any covenant or agreement hereof.

6. **Repairs and Alterations.** The County shall keep the Facility in good working condition and repair. The District shall keep the Premises clean and free from waste and nuisance. At the termination of this Agreement, the District shall deliver up the Premises in good repair and condition, reasonable wear and tear excepted. The District shall not make any alterations or physical additions in or to the Premises without the prior written consent of the County. The District shall not in any manner damage the Facility and shall pay the cost of repairing any damage done to the Facility by the District or the District’s agents, contractors, employees, volunteers, visitors, and invitees.

7. **Common Areas.**

7.1 **Common Areas Defined.** “Common Areas” shall mean all areas within the Facility that are available for the common use of all occupants of the Facility and their visitors, employees, agents, and the public, and are not leased or held for the exclusive use of the County including but not limited to parking areas, driveways, sidewalks, loading areas, access roads, landscaping, planted areas, entrances and exits, hallways, stairways, elevators, and public restrooms.

7.2 **Use of Common Areas.** The District shall have the nonexclusive right (in common with all others to whom the County has granted or may grant such rights) to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as the County may establish from time to time. The District shall abide by such rules and regulations and shall use its best efforts to cause its agents, contractors, employees, volunteers, visitors, and invitees to
abide by such rules and regulations. The District shall not interfere with the rights of the County or any other person entitled to use the Common Areas.

8. **Access.** The County shall provide the District with access to the Common Areas and Premises during the established regular operating hours of the Facility, as amended from time to time. The County shall have the right to enter the Premises (a) at all reasonable hours to inspect the same or make repairs or alterations or additions as the County may deem desirable or necessary, and (b) during business hours.

9. **Indemnity.** The District shall protect, defend, indemnify and hold harmless the County and its officers, employees, and agents from any and all claims, demands, liabilities, costs, and actions of any kind (including attorneys' fees) occurring or allegedly occurring in, on or about the Premises or Facility during the term of this Agreement caused by or attributable to the negligence, omission, misconduct, or intentional acts of the District, its agents employees, contractors, or invitees, or any breach, violation, or non-performance of any covenant hereof on the part of the District or the District’s agents, contractors, employees, or invitees, and the District shall defend the County in any action or proceeding brought thereon. The foregoing indemnity and obligation to defend shall not apply to claims resulting from the gross negligence or willful misconduct of the County, or its respective agents and employees. The County shall not be liable for any loss or damage to any personal property of the District in or about the Premises or Facility from any cause whatsoever, or for any loss, damage or inconvenience which may arise through repair, maintenance or alteration of any part of the Facility, or failure to make repairs.

10. **Insurance.** The County and the District shall carry and maintain in force for the duration of this Agreement appropriate and sufficient insurance coverage or self-insurance fund as determined by each party. Each party is responsible for insuring its real and personal property.

11. **Termination.** Either party may terminate this Agreement by providing 60-days written notice of intent to terminate.

12. **Notices.** All notices required or desired to be given hereunder shall be in writing and shall be deemed duly served and delivered for all purposes if personally delivered or if sent by certified mail, postage prepaid, return receipt requested, addressed to the County or the District at the following addresses:

**County:** Board of County Commissioners  
c/o Director of Facilities Management  
111 S Cherry, Suite 2100  
Olathe, KS 66061-3441

**District:** Johnson County Park & Recreation District  
c/o Executive Director  
7900 Renner Road  
Shawnee Mission, KS 66219-9723

All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.
14. **Assignment.** The District shall not assign, transfer, convey, subcontract, resell or otherwise dispose of this Agreement or any of the rights and obligations hereunder without the prior written consent of the County.

15. **Miscellaneous.**

15.1 The waiver of any breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of the same or other provisions herein.

15.2 This Agreement contains the entire understanding between the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof.

15.3 Any modification or waiver of any provision in this Agreement shall not be effective unless made in writing.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BOARD OF PARK AND RECREATION COMMISIONERS
JOHNSON COUNTY PARK AND RECREATION DISTRICT

By: ____________________________  By:  ________________________________
Steven Baru, Chair                                                       Ed Eilert, Chairman

APPROVED AS TO FORM:    ATTEST:
_____________________________  ___________________________________
Fred J. Logan, Jr., JCPRD Legal Counsel  Lynda Sader, Deputy County Clerk

APPROVED AS TO FORM:
_____________________________
Cynthia Dunham
Deputy Director of Legal
PRESENTED TO: Recreation Committee
MEETING DATE: 08/05/2019

PROJECT NAME/IDENTIFICATION: Comprehensive Management Agreement for Shawnee Mission School District Aquatic Center Management Services

CONTACT: Rhonda Pollard, Superintendent of Recreation
PHONE: 913-826-3020

ISSUE: Consider for approval the Comprehensive Management Agreement for Aquatic Center Management Services.

BACKGROUND: On January 27, 2015, 80.17% of participating voters in the Shawnee Mission School District (SMSD) approved the issuance of bonds for certain capital projects, including the construction of competition-level, high quality natatorium or aquatic center. On March 29, 2016, SMSD issued RFQ #16-021 for Aquatic Center Management. On August 17, 2016, SMSD and JCPRD entered a “Memorandum of Understanding for Aquatic Management Services” at the planned Aquatic Center. The MOU stated in Recital H, “Because of JCPRD’s demonstrated expertise in the management and use of aquatic facilities, SMSD also selected JCPRD to (1) consult with SMSD on the design of the Aquatic Center and (2) assuming that SMSD determines that it is feasible to construct the Aquatic Center on the property to then manage the Aquatic Center once the facility is constructed by the SMSD at its expense.”

ANALYSIS: JCPRD agreed to collaborate with the Shawnee Mission School District to create an Aquatic Center that was a premier competitive natatorium capable of serving SMSD students and attracting community, state, regional, and national swimming events, with high quality programming such as Learn to Swim, Master’s Swim, Water Safety classes and much more, along with efficient facilities operations. Entering into this agreement will allow provisions of valuable programs and services to the community, sustain employment of several full-time JCPRD employees, provide revenue to JCPRD, and the opportunity for successful community collaboration.

FUNDING REVIEW: Are there funding implications involved? ☑ No ☒ Yes  If Yes, explain: Program fees, swim meet fees, and swim team lane rentals will cover all expenses associated with the aquatic center.

ALTERNATIVES: Staff Recommendation

- Recommend consent approval as recommended by staff .......................................................... ☒
- Recommend consent approval as determined/modified by committee ..................................... ☑
- Recommend discussion and action by the full Board at Board Meeting ................................... ☑
- Recommend denial of request ....................................................................................................
- Table for additional consideration ..........................................................................................
- Take no action ..........................................................................................................................
- Other: ........................................................................................................................................
  If other, explain:

Consequences or additional Information (if any):

LEGAL REVIEW: Is legal counsel review required? ☑ No ☒ Yes  If yes, explain: Legal Counsel has approved as to form.

SUGGESTED RECOMMENDATION/MOTION:

It was the consensus of the committee to recommend Board consent approval at the Regular Board Meeting on August 21, 2019, of the Comprehensive Management Agreement for Shawnee Mission School District Aquatic Center Management Services.

SUPPORTING DOCUMENTATION:

- Comprehensive Management Agreement for Aquatic Center Management Services.
COMPREHENSIVE MANAGEMENT AGREEMENT FOR AQUATIC CENTER MANAGEMENT SERVICES

This Comprehensive Management Agreement for Aquatic Center Management Services (the “Agreement”) is entered into this ____________ day of ________________, 2019, by and between Shawnee Mission Unified School District No. 512, Johnson County, Kansas, with administrative offices located at 8200 W. 71st Street, Shawnee Mission, Kansas 66204 (SMSD) and the Johnson County Park & Recreation District of Johnson County, Kansas, with administrative offices located at 7900 Renner Road, Shawnee, Kansas 66219 (JCPRD), each a “Party” and together the “Parties.”

RECITALS

A. SMSD is a unified school district organized under the laws of the state of Kansas and is authorized to enter into this Agreement by the powers vested in it by Article 6, Section 5 of the Kansas Constitution and K.S.A. 72-801 et seq.

B. SMSD is committed to assisting every student to achieve academic success through a challenging, relevant personalized learning plan; to develop and utilize personal resilience while mastering essential competencies that lead to college and career readiness; and to develop interpersonal skills to be an engaged, empathetic member of the local and global community. SMSD is committed to strategically focusing resources to support state-of-the-art-facilities that will help students meet those objectives and that will support SMSD’s mission.

C. JCPRD is a government agency of Johnson County, Kansas, organized under the laws of the state of Kansas and is authorized to enter into this Agreement by the powers vested in it by K.S.A. 19-2859 et seq.

D. JCPRD is committed to providing high-quality parks, recreational facilities, and leisure opportunities to the citizens of Johnson County; to promoting public safety and awareness in the use of those park and recreational facilities; and to emphasizing the highest standards for its services and programs.

E. On January 27, 2015, 80.17% of participating voters in the Shawnee Mission School District approved the issuance of bonds for certain capital projects, including the construction of a competition-level, high quality natatorium or aquatic center (the “Aquatic Center”). The Aquatic Center will be located at 17251 W. 87th Street Parkway, Lenexa, Kansas 66219 (the “Property”).

F. On March 29, 2016, SMSD issued RFQ # 16-021 for Aquatic Center Management (the RFQ).

G. On August 17, 2016, SMSD and JCPRD entered into a “Memorandum of Understanding for Aquatic Management Services” (the “MOU”) at the planned Aquatic Center. The MOU stated in Recital H, “Because of JCPRD’s demonstrated expertise in the management and use of aquatic facilities, SMSD has selected JCPRD to (1) consult with SMSD on the design
of the Aquatic Center and (2) assuming that SMSD determines that it is feasible to construct the Aquatic Center on the Property, to then manage the Aquatic Center once the facility is constructed by SMSD at its expense.”

H. In the MOU, SMSD and JCPRD agreed to collaborate to create an Aquatic Center that was a premier competitive natatorium capable of serving SMSD students and attracting community, state, regional, and national swimming events, with high quality programming and efficient facilities operations.

I. SMSD has in fact designed and is constructing such an Aquatic Center and the Parties have collaborated to ensure that the Aquatic Center will be a premier competitive natatorium.

J. Now that construction of the Aquatic Center is nearing completion, the Parties desire to enter into the Agreement for management of the Aquatic Center described in section 3.02 of the MOU.

K. The Parties accordingly enter into this Agreement, subject to the terms, conditions and subsequent agreements described herein.

AGREEMENTS

1.0 Recitals incorporated by reference in this Comprehensive Management Agreement. The Recitals set forth above are incorporated by reference in this Agreement.

2.0 Term; Renewal. The Parties enter this Agreement for an initial term of ten consecutive years (“Initial Term”) starting on the ___ day of _________________, 2019 (“Effective Date”) and terminating on the ___ day of _________________, 2029. The Parties may renew this Agreement for additional consecutive five-year renewal terms (each one a “Renewal Term”) by executing a Memorandum of Renewal not less than one hundred eighty (180) days before the expiration or termination of the then-current Initial Term or Renewal Term. The Agreement may be terminated by a Party upon 180 days advance written notice to the other Party.

3.0 Description, Uses, and Oversight of Facilities in the Aquatic Center and on the Property; Appointment of Advisory Board. The Property includes the Aquatic Center structure, the Aquatic Center’s interior spaces (“Interior”), and the exterior spaces and landscape (“Exterior”). SMSD and JCPRD agree to establish their respective obligations for operations, maintenance, and management of the Interior and Exterior of the Aquatic Center and the Property. SMSD intends to utilize the Aquatic Center’s natatorium and pools for swim and diving activities for SMSD students, including competitions, meets, practices, and training (“SMSD Swim”), as well as for employees, patrons, educational purposes, and other SMSD-sponsored events (as defined below in Section 5.3) (“Other SMSD Usage”). JCPRD intends to Manage and operate Aquatic Center swim and/or activities programming for both SMSD and non-SMSD individuals and groups, including public patrons (“Public Swim”) and third-party...
Competition Events (as defined below in Section 6.3). SMSD and JCPRD agree to appoint an equal number of members to an Advisory Board as defined in Section 9 below that will meet on at least a quarterly basis to review Aquatic Center operations and to make recommendations to the Parties on the operations and maintenance of the Aquatic Center.

3.1 **Aquatic Center Interior Spaces.** The following interior spaces exist inside the Aquatic Center.

A. **Pool Deck.** The Pool Deck is the location of areas designated for swimming in the Aquatic Center. The Pool Deck includes a Competition Pool, Training Pool, Diving Wells, walkways around the pools, and associated fixtures and improvements, including lifeguard stands, safety equipment, and digital board for score and timekeeping. SMSD shall furnish and provide all necessary fixtures and improvements associated with the Pool Deck, as determined by the Advisory Board.

1. **Competition Pool.** The Competition Pool is an 8-lane, 50-meter indoor competition pool, 25 yards in width.

2. **Training Pool.** The Training Pool is a 4-lane, 25-yard pool and serves for individualized or small group training, warm-ups, and swimming. The Training Pool is on the Pool Deck and adjacent to the Competition Pool.

3. **Diving Well.** The Diving Well is part of the Competition Pool and consists of four diving boards, two 3-meter boards and two 1-meter boards.

B. **Spectator Seating.** Spectator Seating overlooks the Pool Deck with seating for patrons and spectators. Spectator Seating also includes a seating area upstairs on the south end mezzanine. Spectator Seating includes seating for able-bodied persons and persons with disabilities. Spectator Seating seats and bleachers are fixtures installed and maintained as the property of SMSD.

C. **Locker Rooms.** Locker Rooms contain restrooms, showers, changing facilities, and locker storage for Aquatic Center patrons and swimmers. Locker Rooms are accessible from and adjacent to the Pool Deck. SMSD shall furnish and maintain all Locker Room fixtures, improvements, and property.

D. **Concession Area.** The Concession Area is located outside the area of the Pool Deck. The Concession Area is a location for serving refreshments and includes food storage, preparation, and service fixtures and equipment. JCPRD shall furnish and provide all Concession Area fixtures, equipment, and materials. JCPRD shall always maintain control and oversight of the Concession Area and related services, including SMSD Swim. Third-party organizations or individuals, including SMSD Swim booster clubs or parent organizations, are not permitted to operate the Concession Area. Upon separate agreement with third-party organizations or individuals, JCPRD shall agree to either share a portion of SMSD Swim Meet Concession Area profits with such third-party SMSD Swim booster clubs or parent organizations as applicable, or allow third-party SMSD Swim booster club or parent organizations to sell food
items in designated areas during SMSD Swim activities/events as agreed upon by the Advisory Committee.

E. Training Rooms and Timing Rooms. Training Rooms and Timing Rooms are located adjacent to the Pool Deck and are available for use by swimmers, patrons, and qualified training personnel. SMSD shall furnish Training Rooms and Timing Rooms with equipment and items typical for competition-level natatoriums. SMSD shall have exclusive access to the Training Rooms and Timing Rooms during SMSD Swim and periods immediately preceding and following SMSD Swim. SMSD shall provide all furnishings and equipment for the Training Rooms and Timing Rooms.

F. Administrative Offices. Administrative Offices are occupied by staff and employees necessary for the Operation and Management of the Aquatic Center by JCPRD. Administrative Offices contain offices, meeting, and work spaces typical for administration of a recreation facility, including furniture, equipment, and technology hardware for Administrative Office furnishings. SMSD shall provide the telephone system and service for the Administrative Offices. JCPRD shall otherwise provide all furnishings and equipment for the Administrative Offices.

G. Reception Area. The Reception Area is the Aquatic Center entryway and foyer. Reception Area includes a built-in reception desk provided by SMSD to receive Aquatic Center patrons and guests and general seating and wait areas. SMSD shall purchase general seating furniture for the Reception Area. JCPRD shall provide staff office chairs and any computer or technology equipment necessary to receive patrons at the desk in the Reception Area. Third-party organizations and individuals, including SMSD Swim booster clubs and parent organizations, are permitted to sell merchandise related to SMSD Swim events and activities in a designated space in the Reception Area.

3.2 Aquatic Center Exterior. SMSD shall be responsible at its own cost for maintenance, landscaping, and general upkeep of the Aquatic Center Exterior. The Aquatic Center Exterior includes the Aquatic Center walls, plantings, grass, and vegetation on the Property, sidewalks and pedestrian or vehicle rights-of-way, line-out and line-in facilities and equipment for utilities, and other improvements associated with the Aquatic Center on the Property.

3.3 Parking Garage. A two-story Parking Garage on the Property serves the Aquatic Center. SMSD shall maintain and be responsible for the Aquatic Center share of the cost of the maintenance and operation of the Parking Garage. SMSD may cooperate with the City of Lenexa and Lenexa City Center development community members for use of the Parking Garage for purposes unrelated to the Aquatic Center.

4.0 Building and Capital Facilities Maintenance and Cleaning. Except where provided otherwise in this Agreement, the Parties agree SMSD shall be solely responsible for all costs and activities related to the maintenance and improvement of the Aquatic Center structure, improvements, and fixtures on the Property (“Capital Facilities”). SMSD shall maintain the
Aquatic Center and associated Capital Facilities in good working order for continued operation and Management of the Aquatic Center.

4.1 **Capital Facilities.** Capital Facilities means all Aquatic Center Exterior and Interior improvements for structural integrity, utilities line-in and line-out service, HVAC, plumbing, and electrical. SMSD shall be responsible for maintaining and furnishing all Capital Facilities necessary for the proper functioning and operation of Aquatic Center.

4.2 **Utilities.** SMSD shall be responsible for all line-out and line-in facilities and equipment for utilities service of the Property and Aquatic Center (“Utilities”), including those located on the Property Exterior and the Aquatic Center Interior. SMSD shall ensure the Aquatic Center Utilities are connected and operable as necessary for Management of the Aquatic Center by JCPRD. JCPRD shall operate and maintain its internet services.

4.3 **Janitorial Services.** SMSD shall provide or cause to be provided all routine janitorial and cleaning services at the Aquatic Center, and all supplies and equipment for the Locker Rooms, including paper towels, soap, and floor scrubbers. Janitorial Services coverage includes, but is not limited to, cleaning Spectator Seating, Locker Rooms, Public Restrooms, Concession Area, Training Rooms, Timing Rooms, Administrative Offices, Reception Area, all Common Areas, and Aquatic Center Exterior trash receptacles and facilities.

4.4 **Trash Removal.** SMSD shall remove or cause to be removed daily all trash and waste from waste receptacles located in the Aquatic Center Interior and the Aquatic Center Exterior and deposit all such trash and waste in disposal containers on the Property provided by SMSD or a third-party waste disposal service provider.

4.5 **Pool Deck and Pool Cleaning.** JCPRD shall be responsible for routine cleaning of the Pool Deck. JCPRD shall be responsible for cleaning and vacuuming the Competition Pool, Training Pool, and Diving Wells on a regular basis to keep clear any debris to maintain cleanliness and health in accordance with local, state, and industry standards and regulations for permits and licensing. JCPRD shall monitor and administer chemical levels in the Competition Pool, Training Pool, and Diving Wells. SMSD shall be responsible for costs associated with the purchase of water treatment chemicals and chemical testing equipment, and for the initial purchase of pool cleaning equipment. Replacement and repair of pool cleaning equipment is the responsibility of JCPRD. When equipment is replaced by JCPRD, it shall be the property of JCPRD.

4.6 **Routine Maintenance.** Except where provided otherwise in this Agreement, SMSD shall be responsible for the performance and/or oversight of all routine maintenance work on the Aquatic Center and its fixtures, improvements, and equipment. Routine Maintenance includes ordinary repairs of facilities inclusive of grounds maintenance and landscaping on the Property.

5.0 **Scheduling, Usage, and Fees.** JCPRD and SMSD shall cooperate to ensure effective and efficient scheduling of programs at the Aquatic Center that promote SMSD and public
recreation, swim, and activities. JCPRD shall use its reasonable best efforts with SMSD consultation, and as provided in this Agreement, to efficiently schedule the Aquatic Center and Pool Deck in a way that facilitates SMSD Swim activities while maximizing revenue-generating opportunities with Public Swim.

5.1 SMSD Swim Priority Scheduling. SMSD shall have priority in scheduling use of the Aquatic Center for SMSD Swim. SMSD shall make available the SMSD Director of Athletics and Student Services (title subject to change) (“Director of Athletics”) to serve as SMSD point of contact for Aquatic Center scheduling matters. JCPRD shall direct all inquiries regarding Aquatic Center usage for SMSD students and schools, including SMSD Swim, to the Director of Athletics. SMSD shall communicate on scheduling issues with the JCPRD Aquatic Manager. SMSD will coordinate with JCPRD to reschedule events as a result of inclement weather or unforeseen circumstances.

5.2 Public Swim or Non-SMSD Scheduling. JCPRD intends to offset JCPRD’s operational and Management expenses by using revenue from Public Swim. SMSD shall work with JCPRD to ensure that SMSD Swim scheduling is handled in a timely manner that affords JCPRD the opportunity to schedule non-SMSD groups in a way that maximizes use of the Aquatic Center.

5.3 Other SMSD Usage. SMSD employees and their families shall receive lap swimming privileges at the Aquatic Center during scheduled lap swimming days/times, and in addition, SMSD may use the Aquatic Center for educational purposes and other SMSD-sponsored special events (“Other SMSD Usage”). This Other SMSD Usage must be scheduled with JCPRD in light of the considerations described in Section 5.2 above for Public Swim. Eligibility and etiquette guidelines shall follow those already established for the SMSD Fitness Center.

5.4 SMSD Student Assessments/Swim Lessons. JCPRD will work cooperatively with SMSD to develop a plan allowing for all students of a single, specific grade level as identified by SMSD to receive swim assessments and/or swim lessons at a reduced rate.

5.5 SMSD Usage Fee. SMSD shall pay no usage or pool rental fees for SMSD or SMSD Swim or Other SMSD Usage of the Aquatic Center. This includes events sponsored by an SMSD team. SMSD shall reimburse JCPRD for certain SMSD program expenses that exceed expenses incurred in the day-to-day operation and Management of the Aquatic Center. Such reimbursement shall not be for common SMSD Swim expenses, such as SMSD teams and swimmers accessing the pool for practice, but instead shall be for additional staffing, supplies for SMSD swim meets, SMSD curriculum-based classes, and special events. For example, if SMSD hosts two SMSD Swim meets in one day, one in the morning and one in the evening, requiring additional, irregular JCPRD staffing for the front desk, then JCPRD shall submit an invoice for costs associated with the additional, irregular staffing of the SMSD Swim meets.

5.6 Public Swim Usage Fee. The Parties agree that all non-SMSD organizations and patrons using the Aquatic Center shall pay a usage or rental fee for Public Swim. SMSD shall consult with JCPRD to determine the amounts of Public Swim fees based on usage, costs, and
impact on Management for various activities. SMSD agrees that Public Swim fees shall be set at amounts sufficient to provide revenue to cover JCPRD’s associated Management expenses. The Parties shall utilize the Advisory Board to annually renew or reassess the Public Swim fee amounts.

5.7 **Competition Event Usage Fee.** With the exception of competition events hosted by SMD (for example, high school state and regional events), JCPRD shall negotiate agreements with third-party organizations for Competition Events to be held at the Aquatic Center. JCPRD is authorized to recruit and secure such Competition Events, with payment of usage fees determined by JCPRD.

5.8 **Scholarships.** JCPRD is committed to providing recreational opportunities for those participants qualifying for financial assistance in accordance with the JCPRD Scholarship Policy (“Policy”), which is incorporated in this Agreement by reference. Certain Public Swim activities and programs require usage fees for participation. Pursuant to the Policy and the terms of this Agreement, JCPRD shall make available scholarship opportunities for Public Swim activities to individual SMD students and patrons to offset the costs of Public Swim usage fees.

6.0 **JCPRD Management Responsibilities.** JCPRD shall manage the Aquatic Center for operation of SMD Swim programs for SMD student-athletes, Other SMD usage, recreational swim programs and opportunities for Public Swim patrons of JCPRD, and competition swimming events for third party swim organizations (“Management” or “Manage”). Management includes operating programs, overseeing non-SMD patrons, and promoting and marketing non-SMD programs and events. SMD shall cooperate with JCPRD for JCPRD’s Management of the Aquatic Center pursuant to JCPRD’s judgment, best practices, and industry standards, in accordance with the terms of this Agreement.

6.1 **Day-to-Day Operations.** As part of JCPRD Management, JCPRD shall open and close the Aquatic Center for normal, daily hours of operation. Hours of operation shall be determined by mutual agreement of SMD and JCPRD. SMD and JCPRD shall cooperate to ensure the Aquatic Center is in proper working order to accept public patrons and SMD patrons for activities.

6.2 **Staffing and Employees.**

A. JCPRD shall ensure human resources management by providing adequate staff for Aquatic Center Management. JCPRD shall employ persons or shall contract with a third party for such staff, as necessary. Subcontractors for services as part of JCPRD management does not relieve JCPRD of obligations to SMD to perform all Management and other duties in this Agreement. JCPRD shall provide SMD copies of any such subcontracts associated with the Aquatic Center upon request. JCPRD shall employ full-time management, supervisor, and programming staff for overseeing Management of the Aquatic Center. Pre-employment background checks will be conducted on all JCPRD employees who work at the Aquatic Center.
In connection with the employment of JCPRD employees, JCPRD shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and workers' compensation. JCPRD shall indemnify and hold harmless SMSD from all costs, expenses, claims or damages resulting from any failure of JCPRD to comply with this Section.

6.3 Marketing and Promotion. JCPRD shall manage marketing and promotion of the Aquatic Center, in partnership with SMSD.

A. Competition Events. Part of JCPRD Management includes promoting the Aquatic Center to local, state, regional, and national third-party public and private organizations and governing swim bodies for booking premier swimming competitions, meets, and practices at the Aquatic Center (“Competition Events”). JCPRD and SMSD shall cooperate to promote and facilitate third party reservations of the Aquatic Center for Competition Events.

B. Marketing and Public Relations. JCPRD will utilize a marketing and public relations plan to enhance the Aquatic Center’s presence in the community. JCPRD shall use online and traditional media advertising and public relations, including JCPRD staff speaking opportunities to interested organizations, meeting with private swim teams and competition-level swim organizations about Aquatic Center rental, showcasing the Aquatic Center programming in JCPRD publications, maximizing advertising and sponsorship sales, and developing and managing the Aquatic Center’s website and social media presence.

C. Corporate Sponsors and Partners. JCPRD and SMSD recognize that corporate sponsors and partners may be beneficial to offset operational costs of the Aquatic Center. SMSD retains the right to solicit and secure scoreboard sponsors with such revenues going to SMSD. In the event that, per SMSD’s request, JCPRD participates in soliciting and securing scoreboard sponsors, this revenue shall be shared equally between JCPRD and SMSD, with JCPRD’s share being applied to operational costs. All additional sponsorship revenues resulting from JCPRD efforts shall be retained by JCPRD. The parties shall cause the Advisory Board to develop sponsorship parameters, which shall include defining appropriate sponsors, building areas to be identified for sponsor opportunities, and sponsorship rates. The parties agree to communicate and work cooperatively to secure and retain all sponsors and partners.

D. SMSD Promotion. SMSD shall promote through its marketing channels, including the SMSD website and newsletters, the Aquatic Center, SMSD Swim programs, Public Swim programs, and Competition Events.

6.4 Financial Management. JCPRD and SMSD shall cooperate to ensure the efficient operation and Management of the Aquatic Center by minimizing operating expenses and maximizing operating revenues. JCPRD shall maintain responsible internal cash handling
and reporting procedures to ensure compliance with all federal, state, and local laws. JCPRD shall oversee budget preparations, which shall be conducted annually, and projections for day-to-day operations and future projections in accordance with Generally Accepted Accounting Principles (GAAP). JCPRD shall properly account for all Aquatic Center revenues, including usage and pool rental fees.

7.0 **Information Technology Services.** The Parties shall cooperate to ensure adequate information technology services (“ITS”) throughout the Aquatic Center.

7.1 **JCPRD ITS Responsibilities.** JCPRD shall be responsible for the installation and maintenance of JCPRD staff and personnel computer hardware and software in JCPRD Administrative Offices and non-Pool Deck Areas of the Aquatic Center. To the extent needed, JCPRD shall be responsible for the installation and maintenance of its own fiber-optic network service and fiber-optic cable. JCPRD shall be responsible for the installation and maintenance of its own network communications equipment including, but not limited to network switches and routers housed within equipment racks owned by SMSD. SMSD shall provide JCPRD staff a guest login for staff and for large event administrators who need WIFI access.

7.2 **SMSD ITS Responsibilities.** SMSD shall be responsible for the installation, maintenance, and support of voice service and telephones for JCPRD personnel and staff and all areas of the Aquatic Center. SMSD shall provide and maintain a secure segregated network structured cabling infrastructure, one solely for use by SMSD and one solely for use by JCPRD, including equipment racks, patch panels, and data drops. SMSD shall provide JCPRD ITS personnel with unescorted access to Aquatic Center, including all areas containing JCPRD technology equipment. SMSD shall install, service, and maintain wireless internet access points for use by SMSD students and staff.

8.0 **Expenses, Payments, Management Fee, and Revenue.** Except as otherwise provided herein, the Parties agree (1) SMSD shall pay all expenses and costs directly associated with Management, operation, and maintenance of the Aquatic Center and (2) JCPRD shall pay all expenses and costs directly associated with program operations. JCPRD shall be responsible solely for costs related to the operation, scheduling, Management, and oversight of Public Swim programming and events.

8.1 **SMRD Costs and Expenses.** SMSD shall directly pay the following expenses directly associated with the operation, maintenance, and Management of the Aquatic Center:

1. Electricity
2. Natural Gas/Propane
3. Water
4. Sewer
5. Trash Hauling & Related Services
6. Local Telephone and Long-Distance Telephone Services and Hardware
7. Pest Control
9. Inspections
10. Laundry
13. Building Repair
14. Interior Building Maintenance
15. Equipment and Furnishings and Maintenance
   a. Pool Deck
   b. Spectator Seating
   c. Locker Rooms
   d. Training Rooms
   f. Reception Area
   g. Aquatic Center Exterior
16. HVAC Equipment and Maintenance
17. Equipment
18. Chemicals – including for safe Pool Deck operations and function
20. Janitorial Supplies
21. HVAC Maintenance & Equipment Parts
22. Janitorial Services and Equipment
23. Nursery Stock
24. Landscaping and Groundskeeping
25. Snow Removal and Sidewalk Treatment
26. Safety Supplies and Equipment for Aquatic Center and Pool Deck
27. Government Permits, Licenses and Taxes Associated with Aquatic Center
28. Information Technology Services hardware under Section 7.1
29. Custodial Staff

8.2 **JCPRD Costs and Expenses.** JCPRD shall directly pay the following expenses directly associated with Aquatic Center Management, including compensating any JCPRD employees or personnel staffing the Aquatic Center or assisting in Aquatic Center Management:

1. JCPRD Personnel and Staff related to Aquatic Center management and operations

2. Contractual Services related to Aquatic Center management and operations
   a. Postage Via US Postal
   b. Meals & Tips – Overnight Travel
   c. Mileage Reimbursement
   d. Advertising
   e. Memberships/Dues
   f. Bank Charges
   g. Management Services of Third-Party Contractor for Programming
   h. CPE Continuing Professional Education
   i. Non-CPE Continuing Professional Education
   j. Printing or Copying Services
   k. Rental or Leasing
1. Copier Equipment Lease

3. Materials & Supplies related to Aquatic Center management and operations
   a. Office and Administrative Supplies
   b. Books
   c. Uniforms
   d. Food for Concession Area
   e. Kitchen & Food Service Supplies
   f. Concessions Area Furnishings and Equipment and Maintenance
   g. Recreational & Craft Supplies
   h. Operating Supplies
   i. Administrative Offices Furnishings and Equipment and Maintenance
   j. Information Technology Services Software and Hardware as provided in Section 7.2
   k. License for Operation of Concession Area
   l. JCPRD License for Operation of Pool Deck with Johnson County, Kansas Department of Health and Environment

**8.3 Management Fee.** The Parties agree that it is the desire of both SMSSD and JCPRD that JCPRD Operate and Manage the Aquatic Center on at least a break-even basis. SMSSD shall pay to JCPRD a fee in the sum of forty-eight thousand dollars ($48,000.00) annually ("Management Fee"), paid in twelve installments of four thousand dollars ($4,000.00) on the first day of each month. The Parties may agree to payments on an annual, biannual, or quarterly basis. The Parties shall regularly monitor JCPRD Costs and Expenses and Aquatic Center revenues to ensure JCPRD achieves its break-even expectations. Review of the Management Fee and budget is conducted by the Advisory Board as provided in Section 9.2. The Parties agree the Management Fee shall be reviewed and adjusted not less than once annually from the date of this Agreement for the Initial Term to ensure the Management Fee provides sufficient funds for JCPRD to at least break-even on Management expenses. Should an annual adjustment be warranted during the Initial Term or Renewal Term, this amount shall be determined by April 1 of the year preceding the fee adjustment. The Parties shall determine the first annual amount of the Management Fee during Renewal Terms not less than one-hundred (180) days before expiration of the then-current Initial Term or Renewal Term.

**8.4 Revenue Sharing.** The Parties agree to share any annual net revenue in the event annual revenues exceed annual operating expenses. In the event that annual net revenues in a calendar year exceed operating expenses in that year, JCPRD shall first reimburse SMSSD for the Management Fee paid by SMSSD to JCPRD. Once the Management Fee has been fully reimbursed, the Parties shall share in the excess net annual revenues over operating expenses ("Profit") in the following proportions: twenty-five percent (25%) to JCPRD and seventy-five Percent (75%) to SMSSD. In the event of an end-of-year Profit for the Aquatic Center, JCPRD shall invest not less than twenty-five percent (25%) of its portion of the Profit share back into Aquatic Center Management and program costs.
9.0 **Cooperation and Advisory Board.** The Parties shall cooperate to ensure the Aquatic Center is ready for daily operations as agreed upon by SMSD and JCPRD. The Parties shall continue in the spirit of cooperation to ensure acceptable operations, maintenance and Management of the Aquatic Center.

9.1 **Advisory Board.** SMSD and JCPRD shall assign representatives to participate in and oversee Aquatic Center Management, operations, and performance ("Advisory Board"). The Parties agree the Advisory Board shall meet on a regularly scheduled basis during the Initial Term to facilitate communication and cooperation regarding Aquatic Center Management and performance. The Parties shall always make available to the Advisory Board financial records, including a yearly budget prepared by JCPRD, and reporting pertaining to Aquatic Center Management and performance.

10.0 **Operation of Pool Deck.** The Pool Deck is the primary hub of activity in the Aquatic Center. The mode and programming and operation of the Pool Deck is dependent on the activities and programs scheduled for Pool Deck, including SMSD Swim, Other SMSD Usage, Public Swim, and Competition Events. The Parties agree to establish their respective responsibilities and actions during such activities and programs.

10.1 **SMSD Swim.** SMSD shall be solely responsible for enforcement of Pool Deck rules during SMSD Swim. SMSD shall assume all liability associated with SMSD Swim, including the safety and oversight of SMSD Swim participants, coaches, personnel, and spectators. SMSD shall give advance notice to JCPRD of reasonable requests for SMSD Swim patrons or Management accommodations by JCPRD, including but not limited to Aquatic Center staffing, Concessions Area operations, or hours of operation.

10.2 **Public Swim.** JCPRD shall be responsible for enforcement of Pool Deck rules during Public Swim and during Other SMSD Usage. JCPRD shall ensure sufficient safety precautions and lifeguard staffing are undertaken in compliance with all local, state, and national safety regulations and standards.

10.3 **Competition Events.** With the exception of competition events hosted by SMSD (for example, high school and state regional events), JCPRD shall be responsible for enforcement of Pool Deck rules during Competition Events. With respect to all Competition Events not hosted by SMSD, JCPRD shall ensure that sufficient safety precautions and lifeguard staffing are undertaken in compliance with all local, state, and national safety regulations and standards.

10.4 **Safety and Standards.** SMSD and JCPRD shall work in cooperation to ensure compliance with all relevant local, state, and national health and safety standards pertaining to natatoriums and indoor swim facilities in the Management and operation of the Aquatic Center. JCPRD shall implement safety and emergency rescue preparedness trainings, including lifeguard certification.
11.0 **Permits and Licensing.**

11.1 **Responsibilities of Parties.** JCPRD and SMSD shall cooperate to obtain and maintain all necessary licenses and permits for Management, operation, and ownership of the Aquatic Center and Pool Deck, including as follows:

A. SMSD shall obtain and maintain the Johnson County, Kansas Department of Health and Environment permit for operation of the Pool Deck, showing SMSD as the owner of the Aquatic Center and JCPRD as operator of the Pool Deck;

B. JCPRD shall obtain and maintain the Johnson County, Kansas Department of Health and Environment Pool Operator License, or a nationally-recognized swimming pool operator license as acceptable by the Johnson County, Kansas Department of Health and Environment;

C. JCPRD shall obtain and maintain a concessions license for operation of the Concession Area; and

D. SMSD shall obtain all licensing related to ownership of Aquatic Center fixtures and Capital Facilities necessary for operation and Management of the Aquatic Center, including proper permits as applicable from Johnson County Health and Environment, Johnson County Wastewater, and the Kansas Department of Agriculture, as applicable.

11.2 **Maintenance of Standards.** JCPRD shall Manage and SMSD shall operate and maintain the Aquatic Center in a manner that meets the rules and regulations of those regulatory agencies listed in this Section and any applicable recognized certifications and standards.

12.0 **Parking.** SMSD and JCPRD shall cooperate in making parking available on the Property in the Parking Garage and off-site at Lenexa City Center or nearby for patrons and participants in SMSD Swim, Other SMSD Usage, Public Swim, and for JCPRD staff and personnel.

12.1 **JCPRD Parking.** SMSD shall make available daily to JCPRD five parking stalls in the Parking Garage for regular staffing requirements during Public Swim and JCPRD Swim. These five parking stalls shall be marked as reserved for JCPRD Aquatic Center staff and personnel. JCPRD shall have access to the five reserved stalls at no charge or fee from SMSD.

12.2 **Parking During Public Swim.** The Parties acknowledge that Competition Events may draw capacity crowds, including spectators. SMSD shall make available Lenexa Hills Elementary School, 8650 Haven St, Lenexa, Kansas 66219, for Aquatic Center parking during hours when school is not in session and when such parking additional to the Parking Garage is necessary to accommodate Public Swim events as reasonably determined by JCPRD. JCPRD shall give SMSD adequate notice of Public Swim scheduling to ensure Parking Garage and off-site parking access is available to patrons, participants, and spectators of Public Swim events and activities in the Aquatic Center. However, the Parties acknowledge that all parking in the
Parking Garage is available to the public free of charge and is not subject to reservation for any events.

12.3 **SMSD Swim Parking.** JCPRD and SMSD shall cooperate on advising SMSD Swim patrons on parking options but the Parties acknowledge that all parking in the Parking Garage is available to the public free of charge and is not subject to reservation for any events.

13.0 **Security of the Aquatic Center Building.** The Parties shall cause the Advisory Board to develop and maintain a Comprehensive Security Plan that incorporates best practices for the Security of the Aquatic Center Building.

14.0 **Representations and Warranties.**

14.1 **Representation of SMSD.** SMSD represents and warrants to JCPRD that it possesses the resources to ensure the on-going financial support and maintenance of the Aquatic Center. SMSD represents that it has taken all necessary and/or appropriate action to authorize it to execute, deliver and perform this Agreement. In the event of unexpected or major facility capital improvements or projects above and beyond the scope of services in this Agreement, SMSD may seek advisory consultation from JCPRD. JCPRD is not expected to conduct project management on or be responsible for major facility capital improvements or projects.

14.2 **Representation of JCPRD.** JCPRD hereby represents and warrants to SMSD, that JCPRD is capable of providing the Management services outlined in this Agreement. JCPRD represents that it has taken all necessary and/or appropriate action to authorize it to execute, deliver and perform this Agreement.

14.3 **Standard of Operation.** JCPRD represents and warrants to SMSD that it will maintain efficient and high-quality Management of the Aquatic Center, comparable to other similar facilities in Johnson County, Kansas. SMSD represents and warrants to JCPRD that its ownership will promote efficient and high-quality Management and operations of the Aquatic Center and that SMSD will use its reasonable best efforts to support JCPRD’s objective to Manage the Aquatic Center on at least a break-even financial basis.

15.0 **Termination; Default, Right to Cure.**

15.1 **Event of Default.** It shall be an event of default ("Event of Default") hereunder if either Party:

A. Fails to pay or deposit sums due by one party to the other within three days after written notice by the other of such failure, or

B. Fails to perform or comply with any other obligation of such Party hereunder within seven days after written notice by the other of such failure (which
notice shall specify, in sufficient detail, the specific circumstances so as to give the defaulting party adequate notice and the opportunity to cure the same); provided however, that if the default is of a nature that it cannot be cured within seven days, then the defaulting party shall not be deemed in default hereunder if it commences to cure the default within three (3) days after the effective date of the notice of such default and diligently proceeds to cure such default within fifteen (15) days after the effective date of notice.

15.2 Termination for Default. Either Party may terminate this Agreement if the other is in default, and has not met the deadlines for curing, or undertaking steps to cure the default. In the event of default, the non-defaulting party shall provide the defaulting party with seven business days’ notice of its intention to terminate this Agreement due to the uncured default. In the event of early termination for any reason, SMSD shall pay to JCPRD all amounts owing hereunder and accrued through the date of termination.

15.3 Damage to and Destruction of Aquatic Center. If all or part of the Aquatic Center is rendered unusable by damage from fire and/or other casualty which, in the opinion of SMSD, cannot be substantially repaired under applicable laws and governmental regulations within thirty (30) days from the date of such casualty (employing normal construction methods without overtime or other premium), then SMSD shall notify JCPRD. In such case, SMSD may elect to terminate this Agreement as of the date of such casualty by written notice delivered to JCPRD not more than thirty (30) days after receipt by JCPRD of SMSD’s notice concerning the reconstruction.

16.0 Insurance.

16.1 Workers Compensation Insurance. JCPRD will provide all JCPRD employees and workers compensation and employer’s liability insurance as specified by Kansas law with limits not less than $1,000,000 per event.

16.2 General Liability Insurance. JCPRD and SMSD shall purchase and maintain during this contract, commercial general liability insurance on a per occurrence basis with limits of liability not less than $1,000,000 per occurrence and $2,000,000 in aggregate for Bodily Injury, Personal Injury, and Property Damage. Policy coverage shall include Aquatic Center and Property Premises and Operations, Products and Completed Operations, less inclusive and no more restrictive than the coverage provided by a standard Commercial General Liability Policy form (ISO CG 00 01 96) with standard Bodily Injury and Property Damage exclusions, and standard Personal and Advertising Injury exclusions. Any additional exclusion shall be clearly identified on the Certificate of Insurance and shall be subject to the approval of SMSD and JCPRD. The insurance required by this Agreement shall be written by non-assessable insurance companies licensed to do business as an admitted carrier in the State of Kansas and currently rated "A" or better by the A.M. Best Company.

16.3 Automobile Liability Insurance. During this Agreement, JCPRD and SMSD shall purchase and maintain automobile liability insurance on a per occurrence basis with either a
combined limit of at least $1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this Agreement by JCPRD or its employees and SMSD or its employees. The insurance required by this Agreement shall be written by non-assessable insurance companies licensed to do business as an admitted carrier in the State of Kansas and currently rated "A" or better by the A.M. Best Company.

16.4 Umbrella and Excess Liability Insurance. JCPRD shall purchase and maintain during this Agreement an umbrella and excess insurance policy on a per occurrence basis with limits of liability of not less than $2,000,000 per occurrence and $2,000,000 in aggregate. Any umbrella and excess insurance shall be written on a per occurrence basis on a pay on behalf form providing the same coverage and endorsements required of the primary policies.

16.5 Property Insurance. SMSD will maintain property insurance coverage on the Aquatic Center itself and Property. JCPRD shall assume all risks for loss of or damage to its own property and equipment at the Aquatic Center and JCPRD may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.

16.6 Subcontractors. JCPRD shall require all its subcontractors who perform work under this Agreement to meet insurance requirements as reasonably required by SMSD.

16.7 Professional Liability Insurance. JCPRD shall purchase and maintain professional liability insurance coverage, at its expense, throughout the Initial Term and any Renewal Terms of this Agreement, and for twelve (12) months after termination of this Agreement, in the minimum amount of $1,000,000.

16.8 Proof of Insurance. JCPRD shall furnish SMSD with Certificates of Insurance and a copy of the policies if requested by SMSD. SMSD shall furnish JCPRD with Certificates of Insurance and a copy of all policies if requested by JCPRD. All insurance shall remain in effect during the life of this Agreement.

16.9 Insurance Cancellation or Material Change Notice. The certificates of insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage or limits. The notice will be sent to SMSD and JCPRD, via certified mail.

16.10 Releases. JCPRD and SMSD expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the Management or operation of the Aquatic Center caused by fire or other perils, but only to the extent covered by insurance. Each insurance policy procured by JCPRD and SMSD shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

16.11 Insurance Cost. The costs of maintaining the insurance required under this Section 16 shall be an expense to each party, and one party may not charge or pass on such costs
to the other party. JCPRD’s cost of providing insurance hereunder shall be an expense to JCPRD covered in part by the Management Fee.

16.12 Insurance Terms. Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

17.0 Hold Harmless.

17.1 JCPRD Indemnification. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, JCPRD shall indemnify and save harmless SMSD, their officers, directors, trustees, its agents, representatives and any affiliated or related entities, from all liability arising out of the negligent acts or omissions of JCPRD.

17.2 SMSD Indemnification. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, SMSD shall indemnify and save harmless JCPRD, their officers, directors, trustees, its agents, representatives and any affiliated or related entities, from all liability arising out of the negligent acts or omissions of SMSD.

18.0 Notices. Any notice, request, approval, demand, instruction, or other communication to be given to either party hereunder, unless specifically stated otherwise herein, will be in writing and will be conclusively deemed to be delivered (i) when personally delivered, (ii) when deposited in the U.S. mail, sent by certified mail return receipt requested, (iii) when sent by overnight courier, or (iv) when sent by facsimile with a confirmed receipt, but in all cases addressed to the Parties as follows:

To SMSD: Dr. Michael Fulton, Superintendent 7235 Antioch Road Overland Park, Kansas 66204 Phone: 913-993-6200 Fax: 913-993-6230 Email: mikefulton@smsd.org

With a Copy to: Rachel England, General Counsel 7235 Antioch Road Overland Park, Kansas 66204 Phone: 913-993-6200 Fax: 913-993-6230 Email: rachelengland@smsd.org

To JCPRD: Jill Geller, Executive Director 7900 Renner Road Shawnee, Kansas 66219 Phone: 913-438-7275 Fax: 913-492-7275 Email: jill.geller@jocogov.org
19.0 **Miscellaneous.**

19.1 **Relationship of Parties.** This Agreement does not constitute a joint venture between the Parties. JCPRD is an independent contractor of SMSD and shall not be deemed to be an employee or partner of SMSD. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third-party beneficiary.

19.2 **Jurisdiction.** The Parties agree that any court proceeding related to any claim or proceeding arising out of or related to this Agreement shall be brought in the District Court of Johnson County, Kansas. The Parties submit to the personal and subject matter jurisdiction of said court.

19.3 **Non-waiver.** The failure of either Party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such Party thereafter to enforce each provision hereof.

19.4 **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether written or oral, covering the same subject matter. This Agreement may be modified or amended only upon written instrument executed by the Parties required to consent to such amendment.

19.5 **Choice of Law.** The laws of the State of Kansas shall govern the rights and obligations of the Parties under this Agreement.

19.6 **Severability.** Any provision of this Agreement decreed invalid by a court of competent jurisdiction will not invalidate the remaining provisions of this Agreement.

19.7 **Force Majeure.** Neither Party shall be obligated to perform hereunder, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Aquatic Center, labor dispute, or any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.

19.8 **Section Headings.** Section headings in this Agreement are for convenience only and shall have no effect on the interpretation of this Agreement.
19.9 **Assignment.** Neither SMSD nor JCPRD may assign this Agreement without the prior written approval of both Parties.

19.10 **ADA Compliance.** Titles II and III of the Americans with Disabilities Act ("ADA") prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, and places of public accommodation (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38. SMSD and JCPRD shall comply with the ADA in the Management, operation, and ownership of the Aquatic Center.

19.11 **Nondiscrimination.** Neither SMSD nor JCPRD will discriminate on the grounds of race, color, creed, national origin, sex, disability, or age in the performance of all work performed under this Agreement, including selection and retention of subcontractors, procurements of materials, and employment practices. SMSD and JCPRD shall comply with applicable local, state, and national non-discrimination statutes and authorities.

19.10 **Counterparts and Signatories.** The Parties may execute this Agreement in counterparts. The Parties represent and warrant that each respective signatory is fully authorized to enter into and to execute this Agreement on behalf of the named Party.

19.11 **No Limitation of Authority.** Nothing in this Agreement shall be construed as a limitation on the powers, rights, authority, duty and responsibilities conferred upon either Party under Kansas law.

[Remainder of page intentionally left blank. Signature pages follow.]
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year first above written.

BOARD OF EDUCATION OF SHAWNEE MISSION
UNIFIED SCHOOL DISTRICT NO. 512

By: Brad Stratton, President

Attest:

Secretary or Clerk of the Board

APPROVED AS TO FORM:

[Remainder of page intentionally left blank. JCPRD signature page follows.]
BOARD OF PARK AND RECREATION
COMMISSIONERS
JOHNSON COUNTY PARK & RECREATION
DISTRICT

By: ____________________________________
Steven Baru, Chair

Attest:

_____________________________________
Secretary

APPROVED AS TO FORM:

_____________________________________
Fred J. Logan, Jr., JCPRD Legal Counsel

[Remainder of page intentionally left blank.]