



ORDINANCE NO. 2002-142

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN AQUATIC CENTER OPERATIONS AGREEMENT BY AND BETWEEN THE CITY OF DENTON, TEXAS AND THE DENTON INDEPENDENT SCHOOL DISTRICT AMENDING AN INTERLOCAL AGREEMENT DATED MAY 15, 2001; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton ("CITY") and Denton Independent School District ("DISD") have previously entered into an Interlocal Agreement dated May 15, 2001 (the "Interlocal Agreement") to provide for the construction, maintenance and operation of an Aquatic Center consisting of a natatorium, an outdoor swimming pool, related aquatic facilities, and infrastructure necessary to serve said facilities (the "Aquatic Center"); and

WHEREAS, THE CITY and DISD desire to enter into an Aquatic Center Operations Agreement which amends the Interlocal Agreement to provide for the maintenance, management, operation, and usage of the Aquatic Center after it is constructed, a copy of which is attached hereto and made a part hereof by reference (the "Operations Agreement"); and

WHEREAS, the City Council finds that the Operations Agreement is in the public interest, NOW, THEREFOR,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Mayor, or in her absence the Mayor Pro Tem, is hereby authorized to execute, on behalf of the City, the Operations Agreement.

SECTION 2. The expenditure of funds as set forth in the Operations Agreement is hereby authorized.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 14<sup>th</sup> day of May, 2002.

Euline Brock  
EULINE BROCK, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: Jennifer Walters

APPROVED AS TO LEGAL FORM:  
HERBERT L. PROUTY, CITY ATTORNEY

By: [Signature]

AQUATIC CENTER  
OPERATIONS AGREEMENT

THIS AGREEMENT is made and entered into by and between the DENTON INDEPENDENT SCHOOL DISTRICT (hereinafter "DISD"), organized and existing under the laws of the State of Texas, and the CITY OF DENTON, TEXAS, a Texas Municipal Corporation (hereinafter "CITY"), acting by and through, and under the authority of their respective governing bodies; and

WHEREAS, DISD and CITY have heretofore entered into that certain Interlocal Agreement dated May 15, 2001 to provide for the construction of an Aquatic Center (the "Interlocal Agreement"); and

WHEREAS, DISD and CITY have entered into this agreement in order to amend the Interlocal Agreement to provide for the maintenance, management, operation, and usage of the Aquatic Center (the "Operations Agreement" or "Agreement"); and

WHEREAS, DISD and CITY are local governmental entities both of whom have the authority to perform the services set forth in this Operations Agreement individually and who mutually desire to enter into this Operations Agreement, which is authorized by Chapter 791 of the Texas Government Code (Vernon 1994), Section 45.109 of the Texas Education Code, and Chapter 332 of the Texas Local Government Code, in order to maximize the benefits derived from each taxpayer dollar; and

WHEREAS, DISD and CITY desire to pool their resources, avoid unnecessary or duplicitous expense, and take advantage of maximizing economies of scale, resulting in cost savings to their respective taxpayers; and

WHEREAS, the DISD and CITY agree that all payments made in connection with the governmental functions provided for by this Agreement shall be made from current revenues available to the paying party and the payments received are adequate and fairly compensate the parties for the services performed; and

WHEREAS, the Interlocal Cooperation Act, now contained in Chapter 791 of the Texas Government Code (Vernon 1994), authorizes the DISD and CITY to enter into this Agreement for the purpose of achieving the governmental functions and providing the services represented by this collective, cooperative undertaking.

NOW THEREFORE, the DISD and CITY, for and in consideration of the premises and the mutual covenants set forth herein do hereby AGREE as follows:

ARTICLE I  
INCORPORATION OF PREAMBLES

All matters and recitations stated in the preamble of this Agreement are true and correct and are hereby incorporated by reference into the provisions of this Agreement for all purposes.

ARTICLE II  
PURPOSE

The purpose of this Agreement is, as described in the preamble, is to evidence the agreement of the DISD and CITY to provide for the operation, management, maintenance, and usage of the Aquatic Center as defined in the Interlocal Agreement.

ARTICLE III  
TERM

The term of this Agreement shall commence on the date on which all parties hereto have executed this Agreement (the "Effective Date") and shall continue until terminated in accordance with the provisions of the Interlocal Agreement.

ARTICLE IV  
DEFINITIONS

The following terms shall have the meanings provided in the Interlocal Agreement and as amended as set forth below:

*Project* includes the operation, management, maintenance and usage of the Aquatic Center

ARTICLE V  
PROJECT OPERATION

5.1 Project Operation and Management. Subject to the terms and conditions contained in this Agreement, the City will be the managing partner of the Aquatic Center. This includes the direct oversight of programming, scheduling, fiscal operations, personnel, and the operation and maintenance of Aquatic Center.

5.2 Natatorium Committee. The Natatorium Committee (the "Committee") shall consist of five members. Two members shall be employees of the CITY appointed by the City Manager or his/her designee, and two members shall be employees of the DISD appointed by the Superintendent of Schools of the DISD. The fifth member shall be appointed by the mutual consent of the City Manager and Superintendent of Schools. The Committee shall not be responsible for the day to day operations of the Natatorium or the management and operation of the Natatorium, but shall be responsible for setting usage policies and procedures for the implementation of the allocation of usage of the Natatorium between the CITY and DISD. In

setting such allocation of usage policies the Committee shall be subject to the Usage Polices set forth in Section 5.3 below. The Committee shall meet as needed, and will develop an annual schedule and time allocation for the Natatorium. Deviations from or additions to the annual schedule during the course of the year is an operational function affecting the annual operating budget. Therefore such deviations and additions are under the control of and must be approved by the City as the managing partner of the Aquatic Center. Prior to the opening of the Aquatic Center, the Committee will meet and develop usage policies, procedures, rules and regulations that balance the needs of both the CITY and DISD.

5.3 Usage Policies. The Aquatic Center shall be operated in accordance with the following requirements:

5.3.1 The Outdoor Aquatic Facilities are intended for CITY activities open to the general public in accordance with such policies and procedures as may be adopted by the CITY.

5.3.2 The Committee's schedule of use of the Natatorium shall allow for flexibility for the student day and the school calendar.

5.3.3 DISD is granted the right to use the Natatorium during the DISD school year (first day of school through last day of school) and at such other times sanctioned by the DISD for swim team meets, practices, swimming lessons and events. The DISD swim program may in the future be expanded to include such uses as Middle School UIL swim team programs or Learn To Swim School Curriculums. After the annual schedule and time allocation is set by the Natatorium Committee, reasonable requests for additional hours for the swim team or other DISD sponsored activities must be approved by the CITY.

5.3.4 During periods of joint use of the Natatorium by CITY and DISD the Committee will provide for rules and procedures that will allow the DISD to maintain its statutory duties to protect students during school operation or school sponsored events as provided under Sections 37.105 and 37.124 of the Texas Education Code.

5.3.5 The schedule and time allocation must balance DISD's need to serve its students and meeting the goals of the Business Plan. The CITY will be allowed the opportunity to provide programs and services to the community, and to generate revenue in order to offset operation and maintenance costs.

5.3.6 DISD may host swim meets provided any direct costs associated with hosting the event shall be paid by DISD. "Direct costs" shall mean those costs for providing officials or other personnel (excluding DISD employees) required by the UIL for hosting said meets. DISD shall reimburse CITY for direct costs incurred by CITY, if any, to staff swim meets such as lifeguards, building attendants, etc. These costs will be scheduled and approved prior to the event by DISD and the CITY. DISD may utilize all parts of the Natatorium and surrounding grounds, including classrooms, multi-purpose rooms, etc.

and available parking at no charge for DISD sponsored events. DISD shall be responsible for storage of all equipment/materials, etc. used for the facilitation of all DISD sponsored events at the conclusion of each event. This may include but not be limited to lane lines, timing mechanisms, tables, chairs, etc.

5.3.7 The CITY shall not be responsible for any interrupted or canceled use of the Natatorium due to circumstances beyond its control including but not limited to mechanical failure, weather, act of God, or other natural disasters. The CITY shall provide alternative days or portions thereof in the event of interruption of use due to such circumstances if DISD deems it necessary to complete DISD sponsored activities.

5.3.8 When using the Natatorium, DISD's use includes access to and use of the Natatorium, classrooms, multi-purpose rooms, parking areas, and other areas that are associated with the particular DISD event or use, at no additional charge above the cost allocation provided for in Section 6.2 and the Direct Charges provided for in Subsection 5.3.7.

5.3.9 CITY and DISD shall be entitled to use each others timing systems, equipment, and furnishings at the Aquatic Center, subject to the provisions of 5.5.2.

5.3.10 The use of the Natatorium must at all times be in compliance with applicable laws, ordinances, and regulations pertaining thereto.

5.3.11 No alcoholic beverages shall be sold, consumed, or possessed in or at the Aquatic Center or on property surrounding the Aquatic Center that is owned by DISD or the CITY.

5.4 Other DISD Use: DISD may, subject to availability, and upon payment of applicable fees, use the Outdoor Aquatic Facilities for DISD functions or events or utilize CITY staffing and administration for DISD functions or events at the Aquatic Center.

#### 5.5 Project Maintenance.

5.5.1 After completion of construction of the Project, notwithstanding each party's ownership interest in the Project, the CITY, as managing partner, shall be responsible for the direct operation and maintenance of the Project. The CITY shall operate and maintain the Aquatic Center in such a manner so as to ensure the continued safe operation of the facilities. The CITY shall be responsible for the daily pickup of trash and litter on the exterior grounds. The CITY shall be responsible for the repair and maintenance of the exterior grounds and landscaping for the Project Site, including but not limited to, all landscaped open areas, plants, shrubbery, trees, grass areas, picnic areas or rest areas, and irrigation systems. The CITY shall be responsible for the repair and maintenance of all improvements located on the Project, including but not limited to all buildings, permanent structures, lighting, sidewalks and any other paved or improved area. All landscaping shall be maintained in a neat and orderly manner at all times. The

exterior grounds shall be kept free of trash , litter, weeds, and other material or plants not a part of the landscaping. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.

5.5.2 Notwithstanding the above, DISD shall be responsible for the repair of any damage, other than ordinary wear and tear, to the Aquatic Center, equipment and furnishings directly attributed to DISD's use, including its patrons, invitees, officials, agents, and/or representatives. CITY shall be responsible for the repair of any damage, other than ordinary wear and tear, to the Aquatic Center, equipment and furnishings directly attributed to CITY's use, including its patrons, invitees, officials, agents, and/or representatives.

## ARTICLE VI PROJECT COSTS AND REVENUES

6.1 Aquatic Center Revenue. Subject to the provisions of this Section 6.1, the CITY shall be entitled to retain all income and revenue generated by the Aquatic Center except for revenues raised by booster groups for competitive aquatic programs or revenues generated from a DISD competitive aquatic program event. Any revenue exceeding direct costs will be used to offset the operating costs of the Aquatic Center. Revenue from the operation and use of the Aquatic Center will be used to offset the operating deficit, if any, of the Aquatic Center. All revenues over expenses, if any, shall be retained by the CITY to be held in reserve for routine capital maintenance. The reserve may also be used for future project expansions associated with the Aquatic Center to be used at the sole discretion of the CITY. The Director of the Parks and Recreation Department will be responsible for setting all fees at the Aquatic Center, except for DISD supervised events.

6.2 Aquatic Center Costs.

6.2.1 Subject to the provisions of this 6.2, the CITY is responsible for the ongoing maintenance and operational costs of the Aquatic Center. Attached hereto and made a part hereof as Exhibit "A" is a preliminary estimate of operations and maintenance costs (the "Preliminary Cost Estimate") based on the Business Plan which is attached hereto and incorporated herein by reference as Exhibit "B" (the "Business Plan"). The Preliminary Cost Estimate is based on a typical full 12 calendar month year of operation. At the end of the CITY's fiscal year (September 30), the CITY will determine if there is a net profit or loss. If there is a deficit, the CITY will provide DISD with written notice of such deficit within 90 days after the end of the CITY's fiscal year (December 31). DISD will reimburse the CITY for 50% of the deficit within 30 days after the beginning of DISD's next fiscal year (June 30).

6.2.2 The CITY will include in the annual operating budget for the Aquatic Center, funding for minor repairs and maintenance of equipment and facilities. Routine capital

maintenance, such as recirculation and filtration systems, landscape replacement, etc., will be funded from reserves of any revenues (over expenses) available at the end of the fiscal year. Non-routine capital maintenance, such as structural repairs, replacement of HVAC systems, etc. will be funded outside of revenue generated by the Aquatic Center through other financing sources deemed appropriate by the CITY and DISD. If the non-routine capital maintenance is related only to the outdoor aquatic facilities, the CITY will be solely responsible for the funding. If the non-routine capital maintenance is related only to the natatorium, DISD will be solely responsible for the funding.

## ARTICLE VII NAMING OF FACILITIES

The CITY is authorized to name the Outdoor Aquatic Facilities and DISD is authorized to name the Natatorium. The naming of the Aquatic Center shall be approved by the CITY and DISD.

## ARTICLE VIII MISCELLANEOUS

7.1 Alterations: No party shall make any alterations to the Project without the prior written consent of the other party. Notwithstanding, neither party shall be required to obtain the other party's consent to perform such party's required maintenance hereunder.

7.2 Books and Records: The City Manager shall cause to be prepared full and accurate books of accounts reflecting the condition of the business and finances of the Project (the "Project Records"). DISD shall have access to Project Records and shall be entitled to examine the same during normal business hours. At the end of each fiscal year, the City Manager shall cause to be prepared a statement of operations and a statement of financial operations (using generally accepted accounting principles) for the year. A preliminary statement of operations shall be provided to the DISD no later than 60 days following the last day of the prior fiscal year. The final statement of operations shall be provided to DISD within 10 days after it is completed.

7.3 Joint Continued Use: Upon expiration of the fifty (50) year term, DISD and CITY may enter into a mutually acceptable agreement regarding the terms and conditions for the continued joint use and operation of the Aquatic Center.

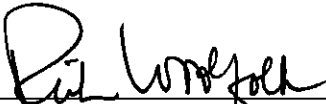
7.4 All other terms and conditions of the Interlocal Agreement not amended or revised by this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Denton Independent School District has caused this Interlocal Operations Agreement to be executed by its duly authorized President of the Board of



Trustees; and the City of Denton, Texas has caused this Interlocal Operations Agreement to be executed by its duly authorized Mayor on this the 14<sup>th</sup> day of May, 2002.

DENTON INDEPENDENT  
SCHOOL DISTRICT

By:   
Rick Wolfolk  
President of the Board of Trustees

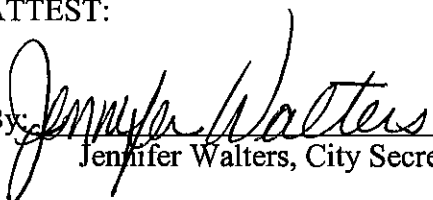
ATTEST:

By:   
Jean B. Schaake,  
Member of the Board of Trustees

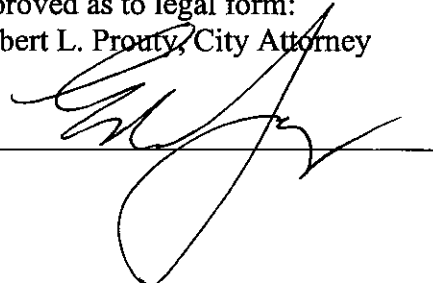
CITY OF DENTON

By:   
Euline Brock, Mayor

ATTEST:

By:   
Jennifer Walters, City Secretary

Approved as to legal form:  
Herbert L. Prouty, City Attorney

By: 

# DRAFT

## 5.9 Proforma Projection

### Denton Aquatics Complex Proforma Projection

# EXHIBIT A

	Natatorium		Waterpark		Combined Totals
<b>ATTENDANCE</b>					
Day Use Resident					
Regular		2903		19090	25,787
Child		1,303		5338	8,434
Senior		435		356	1,028
Day Use Non-Resident					
Regular		2,542		15845	20,746
Child		1,452		4582	7,097
Senior		484		382	1,028
Block Pricing		8,186		2,230	10,416
Annual Pass Resident		1,939		7,135	11,013
Annual Pass Non-Resident		484		5,352	6,644
Instructions/Lessons		872			1,163
Instructions/Lessons NR		310			387
Exercise/Therapy		1,204		535	2,083
Exercise/Therapy NR		375		178	694
Camps/Day Care				892	892
Birthday Parties		4,500		4,460	8,960
Special Events		5,162		11,149	16,311
		<u>32,151</u>		<u>77,524</u>	<u>122,683</u>
<b>SALES</b>					
Day Use Resident	Per Cap		Per Cap		
Regular	5.95	17,273	6.95	132,676	149,944
Child	3.95	5,147	4.95	26,423	31,569
Senior	3.95	1,718	4.95	1,762	3,479
Day Use Non-Resident					
Regular	7.95	20,209	8.95	141,813	162,023
Child	5.95	8,639	6.95	31,845	40,482
Senior	5.95	2,880	6.95	2,655	5,535
Block Pricing		18,750		6,000	24,750
Annual Pass Resident	50.00	24,238	70.00	124,863	149,100
Annual Pass Non-Resident	80.00	9,680	80.00	107,040	116,730
Instructions/Lessons	40.00	34,880		0	34,880
Instructions/Lessons Non-Resident	50.00	15,500		0	15,480
Exercise/Therapy	45.00	54,180	35.00	18,725	72,905
Exercise/Therapy Non-Resident	55.00	20,625	40.00	7,120	27,760
Camps/Day Care	100.00	0	100.00	89,200	89,200
Birthday Package	11.00	49,500	11.00	49,060	98,560
Special Events/Groups Package	10.00	51,620	10.00	111,490	163,110
<b>Gate Subtotal:</b>		<u>334,839</u>		<u>850,671</u>	<u>1,185,516</u>
Food and Catering	0.59	18,840	1.52	129,201	148,042
Retail		0	0.15	1,675	1,672
Rentals	0.12	3,768	0.25	21,242	25,018
Sponsorship		<u>5,000</u>		<u>16,000</u>	<u>21,000</u>

	<b>Gross Sales:</b>	362,447	1,018,788	1,381,248
<b>COST OF SALES</b>				
Food and Catering		7,913	54,265	62,177
Retail		0	837	836
Rental		565	3,186	3,753
	<b>Cost of Sales:</b>	8,478	58,288	66,766
<b>GROSS PROFIT</b>		353,969	960,500	1,314,482
<b>OPERATING EXPENSES</b>				
Personnel-Full		208,845	174,138	382,983
Personnel-Part-time		102,409	149,586	251,995
Advertising		10,000	35,000	45,000
Dues/Subscriptions		250	250	500
Medical Supplies		1,000	1,500	2,500
Office Supplies/Repair		2,000	4,000	6,000
Pool Supplies		50,000	60,000	110,000
Postage		1,000	3,000	4,000
Printing		2,000	7,000	9,000
Repair/Maintenance		27,500	60,000	87,500
Special Events		10,000	35,000	45,000
Park Supplies/Trash Removal		5,000	6,000	11,000
Telephone		3,000	5,000	8,000
Training		2,000	2,500	4,500
Travel/Entertainment		1,000	1,000	2,000
Uniforms		1,500	3,000	4,500
Utilities		225,000	90,000	315,000
	<b>Operating Expense:</b>	652,504	636,974	1,289,478
<b>Net Operating Income:</b>		(298,535)	323,526	25,004
<b>% of Gross Sales:</b>		-82.37%	31.76%	1.81%

**DRAFT**