

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into as of the 24 day of November, 2010
(Effective Date) by and between **OGDEN CITY CORPORATION**, a municipal corporation
of the State of Utah, hereinafter "City," and Hotel & Leisure Advisors, LLC, hereinafter
"Contractor."

WITNESSETH:

WHEREAS, City has established a need for certain professional services; and

WHEREAS, Contractor has proposed to provide such professional services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements
stated herein and of the payments for services hereinafter described, the parties hereto do
mutually agree as follows:

1. **Performance of Services.** City hereby agrees to engage Contractor, and
Contractor hereby agrees to perform the services set forth in Exhibit "A," incorporated
herein by reference. Contractor methodology is set forth in Exhibit "B" in two phases. Any
services not specifically described therein but which may be fairly implied as required
thereby or necessary to complete the work for the use or purpose intended, shall be within
the scope of services to be provided hereunder.

2. **Time of Performance.** This Agreement shall commence on the Effective Date
entered above, and shall terminate thirty-five days from Effective Date, subject to
budgetary appropriations by the Ogden City Council, unless sooner terminated as
hereinafter set forth.

3. **Compensation.** For such services, Contractor shall be paid \$38,000. Said total

shall constitute full payment for services rendered and costs incurred by Contractor in performing this Agreement.

4. Termination of Agreement for Cause. If, through any cause, Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to Contractor of such termination and specifying the effective date thereof. In the event of termination for cause, Contractor shall be entitled to receive only the pro rata share of the total compensation which is equal to any satisfactory work completed as of the date of termination. Upon termination, Contractor shall reimburse the City for any prepaid payments received in excess of the pro rata share earned by Contractor. Notwithstanding the above, Contractor shall not be relieved of liability to City for damages sustained by City by virtue of any breach of the Agreement by Contractor, and City may withhold any payments to Contractor for the purpose of setoff until such time as the exact amount of damages due City from Contractor is determined.

5. Termination for Convenience. The City or Contractor may terminate the Agreement at any time by giving written notice to the other and specifying the effective date thereof. If the Agreement is terminated by City as provided herein, City shall pay Contractor a percentage of the established fee for work performed up to the time of such termination. Said percentage shall be based on the ratio of work completed to the total work required.

6. Non-assignability. Contractor shall not assign nor transfer any interest in this Agreement without the prior written consent of the City thereto.

7. Interest of Contractor. Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that in the performance of this Agreement no person having such interest shall be employed.

8. Indemnification. Contractor agrees to indemnify, and save harmless City and its authorized agents, officers and employees from and against any and all claims, damages, demands, actions, costs and charges arising out of or by reason of Contractor's performance or failure to perform this agreement.

9. Attorney's Fees. In the event either party institutes litigation to enforce its rights under this Agreement, the prevailing party in such litigation shall be entitled to an award of its reasonable attorney's fees and costs.

10. Notice. Any notice, or notices, required or permitted to be given pursuant to this Agreement, may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

City: Ogden City Corporation
Administration
2549 Washington Boulevard, Suite 910
Ogden UT 84401

Contractor: David J. Sangree
Hotel & Leisure Advisors, LLC
14805 Detroit Avenue, Suite 420
Cleveland OH 44107
216-228-7000

11. Independent Contractor. Contractor is independent of the City and shall perform all services according to its own methods without being subject to the control of the City except as to the results obtained. The City shall not carry Worker's Compensation insurance or any health or accident insurance to cover Contractor. The City shall not pay nor be responsible for any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Contractor, as an independent contractor, shall provide and be responsible for any and all of Contractor, and its employees or agents, Worker's Compensation contributions, federal and state withholding, unemployment compensation contributions and social security tax withholding, etc. Contractor agrees to report and pay any contributions for taxes, unemployment insurance, Social Security and other benefits.

12. When Rights and Remedies Not Waived. In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of conditions or any default which may then exist, or while any such breach or default shall exist, in no way impair or prejudice any right or remedy available to City with respect to such breach or default.

13. Integrated Document. This Agreement embodies the entire agreement between City and Contractor for the scope of services and the terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be

considered as unofficial information and in no way binding upon City.

14. Compliance with Laws. Contractor shall comply with all laws, ordinances, regulations, rules, etc., of the federal, state and local governments in connection with the performance of this Agreement.

15. Furnishing of W-9. Payment under this Agreement is contingent upon Contractor furnishing City with a completed W-9 IRS tax form, which shall be attached hereto and incorporated herein. Contractor shall cooperate with City in furnishing any additional information City may need to comply with rules and regulations of the Internal Revenue Service.

16. Employment Status Verification. Contractor shall register and participate in the Status Verification System and comply with Utah Code Ann. Section 63G-11-103 of the Utah Identity Document and Verification Act.

17. Severability of Provisions. If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

18. Modifications. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

19. Governing Law. This Agreement, its terms and conditions, shall be governed by Utah law. The forum or venue for litigation of any dispute arising from or related to this agreement shall be the courts of the State of Utah.

IN WITNESS WHEREOF, the parties hereto execute the foregoing instrument as of the day and year first above written.

CONTRACTOR:

By: David J. [Signature]

Social Security # 54-2181316
NYLA Tax ID

OGDEN CITY CORPORATION

By: [Signature]

Its authorized representative

ATTEST:
City Recorder

[Signature]



EXHIBIT A

SCOPE OF SERVICES

The goal is to have a unique, regional draw that will be able to pay for its operating costs without any debt service. We want the end product to tell us how we can structure this so that it can self-sustain operationally, including ongoing maintenance and capital replacement. Contractor shall perform the following market feasibility and financial analysis study that will include the following major components:

- Detailed financial analysis, including estimating probable operating revenue and expenses (including impact of offering local area resident discounts).
 - Estimated operating costs and suggestions on how to minimize such costs.
 - If the initial conclusion of your analysis is that there is not a feasible way to make it cash flow, we want to understand that before the final product is created so that we can provide more ideas on changing the bottom line. If we are still unable to find a way to make it operationally sustaining, then we want the report to identify the gap.
- Analysis of market demand for each component with patron pricing analysis.
 - Analysis and proforma of demand and pricing structure for all elements of this project: Walking track, running track, tennis, swimming, indoor water park, velodrome, indoor field, etc., with special emphasis on the indoor water park to provide various options for profit maximization from local hoteliers, annual passes for locals, variable pricing structure to maximize profitability.
- Recommendations concerning the sizing of and amenities for.
 - The indoor water park and Olympic-size pool features to maximize utilization and profits.
 - The proposed indoor field house, indoor velodrome and other features including tennis and running track.
 - The overall property, including the size and type of food and beverage facilities and size and type of the facilities, such as picnic areas.
 - Analysis and proforma of food concession opportunities with optimal revenue calculations.
 - Analysis and proforma of all other revenue opportunities with the facility including but not limited to: locker rentals, bike rentals, special events, competitions, room rentals, classes, personal training, party rentals etc., including other retail opportunities.
- Expansion possibilities for the property.
- Amenities the property could use to attract additional demand.
- Whether the property should be independent or have a franchise affiliation.
 - Suggesting management models for this structure, focusing mainly but not exclusively on potential partnerships with the private sector, especially potential local partners.

EXHIBIT B

Phase I – Market Feasibility Study & Financial Analysis Methodology

Project Definition: Before beginning our study, we will confer with you to determine the exact scope of the project and address specific issues or requests you may have. In defining the project we will:

- Review with you the overall business objectives and goals for the proposed indoor water park and recreation center development.
- Identify project issues and opportunities.
- Discuss with you the development concepts, including sizes and level of investment. Defining the proposed scope of the concept will serve as a basis for refining the potential market for the project and provide a framework of assumptions to use in our feasibility analysis.
- Obtain from you a list of people with whom you wish for us to consult during our research.
- Obtain from you relevant data concerning the subject, such as development budget, financial forecast, architectural plans, tax and zoning information, etc.
- Confer with you to identify any confidentiality issues.
- Review previous market research and information developed for the concept.
- Review the overall development master plan and projected development within the neighborhood.
- Review our previous work and relationships in the submarket of the proposed indoor water park and recreation center.

Data Collection:

- Review and analyze the performance of other similar water park and recreation center properties in the region, taking into account monthly and daily trends.
- Review and analyze the performance of other indoor waterpark properties in the Midwest and Northeast, including standalone facilities and those connected to hotels, taking into account monthly and daily trends.
- Examine the market area and competing markets for the proposed project.
- Prepare a site analysis for the proposed project, including traffic counts, access, visibility, proximity and travel time, nearby visitor attractions, nearby corporate and group demand generators, and access to residential neighborhoods relative to competitive properties.
- Identify primary leisure attractions and organizations within the market to identify growth and changes in the market.
- Collect demographic information concerning the number of children, families, and households within a variety of distances from the subject site.

Interviews:

- Conduct interviews with 15 to 20 potential users concerning their interest in the proposed water park and recreation center.

- Meet with managers or owners of existing competitive water park and recreation center properties.
- Confer with people on contact list provided by the client.
- Interview representatives of various water park companies to determine performance of area water parks and proposed new supply additions.
- Interview representatives of theme attractions and family entertainment centers to determine usage and new supply additions.
- Meet with representatives of Convention and Visitors Bureau, Chamber of Commerce, and assessor's office, as well as city officials, county officials, and economic development officials to collect information concerning proposed site and region.
- Confer with other relevant parties who are knowledgeable about the market.

Analysis:

- Analyze national trends in the water park industry through reviewing various publications and databases.
- Assess the economic and demographic factors of the general area to determine the economic environment of the subject and the sources from which business is generated within the area. This will include a review of the local and larger region's population, household growth, employment, income levels, transportation, etc.
- Analyze demographic and economic information within a 10- to 60-mile radius of the subject by reviewing the number of children and families, and by looking at household income and other population statistics.
- Analyze visitation figures in the area, including a review of the number of families visiting the area with children.
- Examine current hotel supply and review any packages that the indoor water park could have with the existing and proposed hotels.
- Compare and contrast the proposed indoor water park and recreation center facilities with other facilities across the United States, and profile various facts and figures of these resorts.
- Examine current amusement and water park real estate supply, and review the impact of any recent amusement facility openings on the existing market and their projections for future demand.
- Perform detailed analyses of population growth and residential household growth within the market to determine the number of families moving into the area or leaving the area that may have interest in the proposed water park and recreation center.
- Compare and contrast the proposed water park facilities with other facilities across the region by profiling various facts and figures related to these facilities.
- Analyze the proposed indoor field house, velodrome, and tennis courts and project usage levels for each of these components.
- Quantify the performance of similar properties in similar markets throughout the region compared to the subject.
- Determine new water parks and recreation centers that are under construction, planned, or proposed in the market.

- Analyze retail and family entertainment center components to include with the indoor water park and recreation center.
- Evaluate trends in the supply of and demand for waterparks to estimate the future supply and demand situation.
- Utilize our detailed water park supply and demand computer model to analyze the historical performance of the market and make projections for the market and the subject property.
- Analyze pricing and usage at other water parks and recreation centers. We will make projections for usage of the water park and recreation center from the local users living within the community, as well as visitors to the region.
- Review sizing and potential usage of the water park and recreation center by reviewing other comparable facilities in the region.

Prospective Financial Analysis: Utilizing the results from the market analysis, we will estimate the probable future operating performance of the water park and recreation center for the standard holding period. In preparing the financial analysis, we will draw on various resources including:

- Available operating results of similar existing properties in the market area for comparison
- Analysis of historical operating statements of other water park resorts
- Our database of actual financial statements of comparable water parks and recreation centers
- Water park-related operating data from industry publications, including World Waterpark Association and International Association of Amusement Parks and Attractions
- Experience of our consultants and their daily interaction with industry contacts

This analysis will reflect the effects of estimated future inflation on the revenues and expenses and will arrive at the estimated cash flow from operations. We will estimate usage levels, average ticket prices, and financial projections for an 11-year holding period for the proposed indoor water park and recreation center. The financial analysis report will include detailed comparisons with actual operating statements of other similar properties and will provide a line-by-line discussion of each of the major departments of a waterpark.


Narrative Report: We will reach a determination as to the potential performance of the water park and recreation center. Our analysis will confirm the strength and growth of available markets, trends in usage patterns, utilization levels, and other factors important to the success of comparable water park and recreation center properties. We will estimate attendance levels and average ticket rates for an 11-year holding period for the proposed water park and recreation center including each of the major components: water park, indoor field house, tennis, velodrome, and Olympic-size pool. We will recommend the aquatic area size, number of rides, major facility components, food and beverage facilities, meeting facilities, amenities for the water park, other facilities, and any expansion potential for the property. We will suggest possible amenities that the property could offer to attract additional demand.

We will communicate our findings in a full narrative market study report that will indicate recommended facilities and prospective financial analysis for the proposed water park and recreation center.

Phase 2

Contract with VanZeben Architecture for \$5,000 to develop a building plan and elevations based on the recommendations of the report.

MEMORANDUM

To: Mark L. Johnson, Purchasing Agent
From: Matthew R. Godfrey, Mayor 
Date: January 11, 2011
Re: Waiver and Justification for Hotel and Leisure Advisors Professional Services Agreement

Pursuant to section 4-2B-9(G), I hereby waive the competitive selection process of Ogden City Code Chapter 2, Article B, as a necessary prerequisite for the procurement of professional services from Hotel and Leisure Advisors ("HLA"), for a market feasibility and financial analysis study for the proposed field house.

A Request for Proposals was initially prepared and the city evaluated one other potentially qualified bidder, Lewis Young Robertson & Burningham. Once it was realized that HLA was uniquely qualified to perform the desired services, a contract was entered into with HLA on or about November 24, 2010. The study that was the subject of this procurement was required to be completed expeditiously in order to move forward with potential funding sources for the field house.

This waiver is justified on the basis that HLA has unique skills, knowledge, and experience in appraisals, feasibility studies, property condition assessments, impact analyses, and economic impact studies focused specifically on Indoor Waterpark Resorts, Waterparks & Amusement Parks, which will be a significant component of the proposed field house. HLA's President, David J. Sangree, MAI, CPA, ISHC, will serve as chief coordinator for this study. Mr. Sangree is a recognized national expert on indoor waterpark resorts and has visited most of the open waterpark properties in the United States and Canada. Mr. Sangree has been a featured speaker and roundtable participant at industry conferences sponsored by the World Waterpark Association, International Association of Amusement Parks and Attractions, Aquatics Magazine and the International Society of Hospitality Consultants. He has performed more than 200 studies of hotels and resorts with indoor waterparks since 1999 when indoor waterparks were just beginning to be proposed outside of Canada and the Wisconsin Dells in the United States. HLA has analyzed a range of outdoor waterparks and amusement parks with annual attendance levels ranging from 50,000 to over two million. In addition, HLA brings the following resources to the project: it is a member of the World Waterpark Association and the International Association of Amusement Parks and Attractions, which provides extensive data and research concerning indoor and outdoor waterparks and amusement parks; it maintains a database of financial information from existing indoor waterpark resorts, outdoor waterparks and amusement parks; it frequently updates a list of new indoor waterpark resorts proposed in the U.S. and Canada; it has solid contacts with a range of waterpark developers, waterpark operators, amusement park operators, lenders and architects.

Thus, it was reasonably expected that no other available provider exists that could bring the same or greater benefits for this procurement as HLA. Therefore, direct negotiation, rather than competitive bidding, was utilized to produce the most efficient and cost-effective terms for the desired procurement.

I direct that a copy of this waiver and justification be filed with the office of the City Council, as required by Ogden City Code section 4-2B-9(G).