



January 3, 2013

Mr. Tim S. James, P.E.
City Manager
City of Burkburnett
501 Sheppard Road
Burkburnett, Texas 76354

Via email: tjames@burkburnett.org

Re: *New Outdoor Family Aquatic Center*

Dear Mr. James:

The Scope of Services as outlined on the following pages is based upon our understanding of your project needs as per our discussions to date.

Project Understanding

Kimley-Horn and Associates, Inc. (the "Consultant") understands that the City of Burkburnett, Texas (the "Client") intends to prepare a Conceptual Design and Feasibility analysis for a New Outdoor Family Aquatic Center.

The following scope of services and associated fees are based on our recent discussions:

Professional Services

The Consultant will provide services as set forth below:

Task 1 Conceptual Design (Trip One)

Evaluate Existing Pool Facility and Site

The Consultant will meet with the Client representatives ("Staff") and perform a visual inspection of the existing outdoor pool, bathhouse, and site to document and discuss utility service locations and options; ADA accessibility requirements; parking availability, requirements, and options; and pool expansion/relocation options. The findings of this discussion will be documented for consideration in preparing conceptual design options for the new outdoor family aquatic center.

Finalize the Conceptual Design

A. Programming Work Session:

Meet with the Client representatives (Park Board, Staff, and/or Aquatic User Group Representatives) involved in the project, to verify and finalize the needs and objectives and design features.

The initial list of desired features from the Client may include a new leisure pool and lap lane swimming, aquatic play structures, water slides, play features, diving board, office/bathhouse, filtration enclosure, concrete decks, fencing, sun bathing areas, pipes and plumbing, filters, lockers, shade structures, and pool furniture.

Other related site improvements may include parking and sidewalks and other items of work required to complete the project.

The Consultant will lead a discussion including images and /or video presentations with commentary on features of other new similar outdoor family aquatic centers, background information on historic and contemporary issues in the industry, costs, and an open-forum question-and-answer session to discuss priorities and needs of the representatives attending the meeting. From this discussion, a matrix of program activities will be developed and discussed to prioritize programming and facility features.

B. Community Meeting:

The Consultant will participate in early evening meeting with the public to present the initial findings in a PowerPoint presentation format from the design programming sessions and to solicit and document public comments and support. Following the meeting, the Consultant will verify with the Client any modifications to the final design program prior to preparing conceptual design options and opinions of probable cost.

C. Conceptual Design

Following then Programming Work Session and Community Meeting, the Consultant will develop three or four conceptual designs of the new outdoor family aquatic facility with features identified through the needs analysis and programming of budgets from approximately \$1.5M to \$2.5M. The purpose of these plans will be to illustrate ways to organize the spaces in a functional arrangement and to confirm that the facility footprint will contain the areas proposed in the design program.

The quantity, size, and type of features from the design program matrix will influence the different budget amounts. (For example: combining a leisure pool with a competitive pool in the same body of water will impact the budget differently when compared to planning these two areas in separate bodies of water.)

The concepts will be presented to the Client in an internet meeting. The pros and cons of each option will be discussed as well as generic budget considerations for construction, operations, and potential revenue. The Client will then select the concept that appears the most suitable to meet the needs and objectives of the community so that a final conceptual design plan and opinion of probable cost can be prepared.

Meetings: One Trip w/ Three In-Person Meetings and One Internet Meeting

Task II Feasibility Analysis

Once the concept is set, a financial feasibility analysis will be developed as an opinion of the facility financial performance and an opinion of suggested operations for the planned facility. The study will include the following elements:

A. Economic Impact:

- 1) This part of the study incorporates an analysis of the economic impact of the facility to the City. In this segment of the study the following will be researched, analyzed, and reported:
 - a. Demographic research will be completed to appropriately evaluate the proposed facility. Analysis will include population and age distribution, income, weather analysis, and local economic considerations that could affect the project's viability.
 - b. An opinion of probable expenses will be developed and it will include demands on labor, contract services, supplies, utilities, maintenance, and funds needed for future repair.
 - c. An opinion of revenue will be developed. Market area demographics for population, age, and income will be analyzed to understand the economics of the region and the level of discretionary income that may be used for leisure and competitive aquatic activity.
 - d. Revenue projections will be derived from the likely market penetration, special user groups through creative programming, and the potential of income. The analysis may include a study of the influence of the tourism. This analysis will incorporate an opinion of attendance and offer recommendations of a competitive fee structure for all facilities.

B. Operational Impact

- 1) This part of the study incorporates an analysis of the operational impact of the facility to the City. In this segment of the study the following will be researched, analyzed, and reported:
 - a. A facility management outline will be completed that includes a facility operating schedule, facility capacity limits, staffing requirements, and a wage structure for all employees.
 - b. User groups (lessons, lap lane users, recreational swimmers, and group party rentals) will be identified and contribute to filling available capacity in the facility.

The Feasibility Analysis findings will be presented to the Client in an internet meeting for comments. Following the meeting, any final modifications to the will made and inserted into a final presentation.

Meetings: One Internet Meeting

Task III Final Presentation (Trip Two)

Once the above items are complete, the Consultant will make a final formal presentation to the Client at a City Commission Meeting of the final conclusions of the conceptual design and feasibility study findings.

The information will be presented in PowerPoint presentation to the City Commission so that the Commissioners can decide how they want to move forward on the project...

The Consultant will deliver one electronic copy of the presentation and ten (10) printed and bound copies.

Meetings: One Trip with One In-Person Meeting

Task IV Construction Documents

In the event that the Client is successful in obtaining a funding mechanism for the project, the Consultant will develop a scope and fee with the Client for the construction documents and proceed (upon authorization) with that portion of the work.

Exclusions

Any items requested by the Client that are not outlined in the above scope will be considered excluded from this contract and may be provided only if requested and authorized in writing by the Client.

Client Responsibilities

Services to be provided by the Client will primarily consist of furnishing all available data for the proposed site and any existing City aquatic facilities (if available), including:

- A. Any previous aquatics studies.
- B. A verbal report on existing construction or equipment problems and on-going maintenance problems with the existing pool.
- C. Any existing operating and maintenance manuals (if available).
- D. A verbal report on recent work completed on the pool or spray station.
- E. A verbal report of the loss of pool water in a 24 hour period at the pool.
- F. A copy of any accident reports at the existing facility (by the Staff) or a list of perceived safety hazards to the user or staff.
- G. A summary of attendance at the existing pool.
- H. A copy of the current City of Burkburnett, Texas Parks and Recreation Master Plan (if available).
- I. Any existing surveys, plans, and geo-technical investigations of the pool site.

Schedule for Rendering Services

The Consultant has prepared an initial project schedule for the performance of services (See Project Schedule - Exhibit "C" – Attached.) This schedule is fast track and may have to be adjusted to conform to the availability of the meeting participants or to respond to delays or other causes beyond the Consultant's reasonable control.

Additional Services

Any items requested by the Client that are not outlined in the above scope will be considered as additional services to this contract and may be provided only if requested and authorized in writing by the Client.

Fee and Billing

The Consultant will perform the services described in the Scope of Services for the amounts shown in 'Professional Fees and Expenses' (See Exhibit "B" – Attached) for a Lump Sum fee of \$30,000 inclusive of expenses.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. (See Exhibit 'A' – Attached.)

If you concur in the foregoing and wish to direct us to proceed, please execute two copies of this agreement in the spaces provided below, retain one copy, and return the other copy to us.

Fees and times stated in this agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these professional services to the City of Burkburnett, Texas.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Mark C. Hatchel, ASLA
Vice President/Senior Project Manager

Eric Z. Smith
Assistant Secretary

*Attachments: Exhibits "A" Standard Provisions
Exhibit "B" Professional Fees and Expenses
Exhibit "C" Project Schedule*

AGREED to on the _____ day of _____, 2013.

City of Burkburnett, Texas

By: _____

Carl Law - Mayor



Exhibit "A"

STANDARD PROVISIONS

City of Burkburnett, Texas – New Outdoor Family Aquatic Center

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's stated hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.10 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.

(c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, zoning or other land use regulations, etc., upon all of which the Consultant may rely.

(d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.

(e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.

(f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.

(g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require or the Consultant may reasonably request in furtherance of the project development.

(h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope and timing of the Consultant's services or any defect or noncompliance in any aspect of the project.

(i) Bear all costs incident to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work within 10 calendar days after receipt of an executed copy of this Agreement and will complete the services in a reasonable time. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions

due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

(a) Invoices will be submitted periodically, via regular mail or email, for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 30 days at the rate allowed by State Statute per annum beginning on the 30th day. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services until all amounts due are paid in full.

(b) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing.

(c) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.

(d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Any authorization or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Client and the Consultant. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Only printed copies of documents conveyed by the Consultant may be relied upon. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or

competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any material change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and sub-consultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and sub-consultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for lost profits or consequential damages, for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(12) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(13) **Hazardous Substances and Conditions.**

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are limited to those tasks expressly stated in the scope of services. In any event, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with its services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

(14) **Construction Phase Services.**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(15) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the

sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(16) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(17) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Texas and venue will be in Wichita County. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.



Exhibit "B"

PROFESSIONAL FEES AND EXPENSES
City of Burkburnett, Texas – New Outdoor Aquatic Facility

Basic Services

Task I	Concept Development and Costs	\$12,500
Task II	Financial Impact Study	\$12,500
Task III	Final Presentation	<u>\$3,000</u>
	Sub Total (Fee Only)	\$28,000

Expenses

Expenses will be billed on a lump sum basis. \$2,000

Total Lump Sum Fee (Including Basic Services and Expenses) \$30,000

Note: Expenses include two (2) one or two day trips for three team members including travel costs, miscellaneous phone, fax, delivery, and printing..

The Consultant shall submit monthly invoices based upon the services completed at the time of billing.

Deliverables shall include 10 bound copies of the final presentation; and one complete electronic copy.

Additional Services

The following hourly rates, or a negotiated fee may be utilized as the basis for additional services should they be authorized by the Client:

Associate / Principal	\$175 / Hour
Analyst / Park Planner	\$125 / Hour
Secretarial	\$75 / Hour

The following additional site visit rates will be utilized as the basis for additional site visits should they be authorized by the Client:

Senior Associate / Principal	\$1,500.00 / Day plus Travel Expenses
Analyst / Park Planner	\$1,000.00 / Day plus Travel Expenses



Exhibit "C"

PROJECT SCHEDULE

City of Burkburnett, Texas – New Outdoor Aquatic Facility

Phase One – Conceptual Design and Feasibility Study

January 7, 2013	Signed Contract and Notice to Proceed
January 15, 2013	Task I Trip and In-Person Meetings
January 23, 2013	Task I (Conceptual Design) Internet Meeting
February 8, 2103	Task II (Feasibility Study) Internet Meeting
February 11-15, 2013	Finalize Presentation
February 18, 2013	Task III Trip and In-Person Meeting

Note: This schedule is tentative and may have to be adjusted to meet the availability of the meeting participants or due to other factors beyond the Consultant's reasonable control.

Phase Two – Construction Documents

T.B.D	Only Upon Authorization by City at Future Date
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