



**RESTATEMENT OF  
THE  
FAMILY AQUATIC CENTERS  
OPERATING AGREEMENT  
FOR  
ADMINISTRATIVE BOARD**

ORIGINALLY ADOPTED BY  
FOX VALLEY PARK DISTRICT -- CITY OF AURORA

Adopted September 30, 1989- signed September 5, 1989

First Amended September 17, 1991

and

Restated April 30, 2009

Aquatics Administrative Board By Laws adopted November 2, 1989

Intergovernmental Agreement concerning the West Aurora Treatment Site  
adopted December 20, 1988

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**RESTATEMENT OF THE**  
**FAMILY AQUATIC FACILITIES**  
**OPERATING AGREEMENT**  
**FOX VALLEY PARK DISTRICT – CITY OF AURORA**

THIS RESTATED AGREEMENT made and entered into and between the FOX VALLEY PARK DISTRICT ("PARK DISTRICT"), a special district and existing under the laws of the State of Illinois (70 ILCS 1-1, *et.seq.*), and the CITY OF AURORA ("CITY"), a political subdivision duly organized and existing under the laws of the State of Illinois (65 ILCS 5/1-1-1, *et.seq.*);

W I T N E S S E T H:

WHEREAS, the Board of Trustees of the PARK DISTRICT and the Council of the CITY deem it expedient, advisable and in the best interests of the citizens of both governmental bodies to provide two (2) family aquatic facilities or centers for the joint use by the citizens of both governmental agencies; and

WHEREAS, the Constitution of the State of Illinois 1970, Article VII, Local Government, Section 10, provides for intergovernmental cooperation in and authorizes units of local government to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prescribed by law or ordinance and authorizes use of government to use their credit revenues and other resources to pay costs and to service debt related to activities; and

WHEREAS, the Illinois Park District Code (70 ILCS 8-18) provides that every park district shall have the power and authority to develop, operate, finance and participate in joint recreation programs with contiguous cities and to enter into joint agreements pertaining thereto, including the joint use of facilities and equipment; and

WHEREAS, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et.seq.*) provides that any powers, privileges or authority which may be exercised by an agency of this state may be exercised and enjoyed jointly with any other agency of the state and provides for appropriations and furnishing of property, personnel and services and specifically authorizes intergovernmental contracts; and

WHEREAS, the Board of Trustees of the Park District and the Council of the City jointly commissioned an independent consultant to study and prepare a report on the swimming services currently offered and needs for the future, and such report was completed and accepted by both governmental entities under the original agreement adopted between them designated as the Family Aquatic Centers Operating Agreement for

Administrative Board on September 30, 1989 (the "Original Agreement") relating to the construction of a swimming and water recreation facility at Phillips Park (the "Phillips Park Aquatic Center") and one in the vicinity of Blackberry Farm, which swimming facility is now known as "Splash Country" (the "Splash Country Aquatic Center"; for brevity, hereafter the Phillips Park Aquatic Center and the Splash Country Aquatic Center shall collectively be referred to as the "Aquatic Centers"); and

WHEREAS, the Original Agreement further contemplated a possible third facility which has not been acquired or constructed at this point in time; and

WHEREAS, it was necessary for the Park District and the City in order to finance and maintain the Aquatic Centers, to establish policies which defined the limits and responsibilities among the parties relative to financial, construction, operational and maintenance activities, which policies were embodied in the Original Agreement and amendments thereto adopted on September 5, 1989 and September 17, 1991 (collectively, hereafter, the "Amendments"); and

WHEREAS, the parties hereto have agreed and intend to jointly participate in the costs and obligations of the necessary operations of the Aquatic Centers; and,

WHEREAS, there was indebtedness relating to the original construction of the Aquatic Centers that has been paid by the Park District to the City pursuant to the Original Agreement and Amendments, with the remaining balance thereof to be retired over time as provided herein; and

WHEREAS, the parties desire to restate in its entirety, the Original Agreement and Amendments in order for the Administrative Board to continue the effective policies relative to the operation of the Aquatic Centers and the Operating Agreement of the Administrative Board and to adopt new and updated provisions to provide for more efficient management and operation by the Administrative Board, including a provision to implement a procedure for termination and unwinding of operations between the parties, if so elected at the expiration of the proposed term.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the adequacy and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

## ARTICLE I

### CONTRIBUTION OF THE POLITICAL SUBDIVISIONS

I-1 The City has expended funds for the construction of the Phillips Park Aquatic Center and the Splash Country Aquatic Center and there remains due and owing to the City from the Park District the sum of \$ 1,929,749.98 from the Park District as and for its share of the costs

of such construction, all per the Original Agreement and Amendments thereto adopted. The City and the Park District agree that the third aquatic center contemplated in the Original Operating Agreement has not been acquired nor constructed at this point in time; and, accordingly, the obligations referenced in prior agreements to such third aquatic center are expressly hereby deleted and shall be considered terminated hereby.

I-2 The Park District has been repaying to the City and shall continue to repay the City the foregoing amount at the rate of \$200,000 per year, payable by each December 31 for the proceeding fiscal year operating season until fully paid (the "Annual Repayments"). The parties acknowledge that as of the date hereof, the outstanding balance due to the City is reflected on Exhibit 4 attached hereto and the repayment schedule of such amount as contemplated by the Operating Agreement shall be made according to the repayment schedule attached hereto as Exhibit 5. In the case of an annual operating deficit, the 50% proportionate share owed by the City will be deducted from the annual \$200,000 re-payment made by the District to the City and the District will be credited as if full payment were made. The City's portion for the 4% administrative services and 50% operating deficit in the amount of \$94,292.14, for the four-month aquatics operating period of January 1, 2007-April 30, 2007, which occurred during the transition of the fiscal year, will be deducted from the 2009 repayment amount

I-3 The City has provided and will continue to provide a \$100,000 cash reserve balance for each of the Aquatic Centers to be held in the aquatics fund earmarked for capital costs related to major additions, improvements, repairs and replacements to be determined at the discretion of the Aquatics Administrative Board during the annual budget and capital improvement planning process. The City and the Park District shall each contribute one-half (1/2) of all costs incurred with respect to the operation and routine repairs, maintenance, replacement and improvement projects at the two family aquatic centers, together with the capital costs for new improvements or additions to the facilities as approved through the adoption of the annual budget; subject to approval of capital improvements by the City and Park District to the extent the capital improvements in any year exceed the cash reserve amount.

I-4 Each party agrees that all real estate and all other personal property at each of the Aquatic Centers shall be titled in the names of the City and the Park District, each to own an undivided one-half interest.

I-5 The Park District shall receive payment from the City in an amount equal to four percent (4%) of the total aquatic operating expenditure budget each year to cover general administrative management, accounting, data processing services, personnel and employee benefit administration, and other indirect service costs provided by the Park District, but not otherwise paid for through the aquatic operating budget. Such amount shall be deducted from the annual repayments made by the District to the City and the District will be credited as if full payment were made.

## ARTICLE II FACILITY OPERATION

II-1 The Park District agrees to be fully responsible for all daily operations including management and administration of the Aquatic Centers and shall pay all indebtedness incurred by the operation and maintenance from general funds or other funds available and to make appropriations for payment of same. It is expressly understood that the Park District may utilize outside services for rendering management, operation, or recreational services for the operation and maintenance of the facilities.

II-2 The Park District shall be responsible for maintaining a separate aquatic fund for the Aquatic Centers. Any annual operating surplus derived from the Aquatic Centers shall be expended by the Park District only for aquatic activities in the community. Annual operating deficits from the Aquatic Centers shall be borne equally by the City and the Park District with the City's fifty percent (50%) share being from the annual repayments made by the District to the City as noted in paragraph I-2. In the event the City's deficit share exceeds \$200,000, the City shall remit such excess deficit payment to the District after notification by the District of such amount.

II-3 The Aquatic Centers shall be accounted for as an independent aquatic fund exclusive of general administrative expenses, depreciation and amortization, but including all payroll-related expenses such as pension, health insurance, workmen's compensation and unemployment insurance premium, FICA, and employee welfare benefits. Such accountings shall be performed by Park District personnel and an annual audit of the accounting records shall be conducted by a certified independent accounting firm with copies of the audit report furnished to the Aquatics Administrative Board. The fiscal year of operations for accounting purposes shall end April 30 of each year.

II-4 The Park District will provide routine facility security to include Park District Police Patrol. It is expressly understood that the City of Aurora police will also provide for daily patrol of each facility and any other assistance as may be requested by the Park District.

## ARTICLE III AQUATICS ADMINISTRATIVE BOARD

III-1 The Park District and the City established a five-member board serving without compensation, known as the Aquatics Administrative Board (hereafter sometimes referred to for brevity as the "Board").

III-2 Two (2) Board members shall be appointed by the Park District Board of Trustees and two (2) Board members shall be appointed by the City. The fifth member hereinafter called the "rotating Board member" shall be appointed in alternating even and odd years by the Park District (even years, i.e., 2008) or the City (odd years, i.e., 2009). The rotating Board member shall be appointed annually for a **one year term**, but each appointment of a **regular member of**

**the Board shall be for a two-year term**, with each term being staggered with each other regular Board member appointment by the respective entity. Accordingly, it is intended that the three-member representation on the Board shall alternate even and odd years between the City and the Park District, so at the close of each year the minority representation shall become the majority for the succeeding year.

III-3 The present Board shall continue through its current appointment periods. Each Aquatics Administrative Board appointment shall be effective upon appointment and shall continue through to October 1 of the respective term year of the appointment or until the reappointment is made.

III-4 Members of the Board may be members of the Park District Board of Trustees or the City council or members of the community. Each member must reside within the community or district which he represents.

III-5 Vacancies on the board caused by resignation, change of residence, death or for other reasons, shall be filled for the balance of the vacant Board member term by the entity which originally appointed such Board member. In the event of a vacancy, the City or the Park District, as the case may be, shall advise the Board of the replacement Board member being appointed for the balance of the vacant Board member term within a 30 day period from the date the vacancy arises.

III-6 The Board shall meet a minimum of 4-times per year. Minutes of the meeting shall be kept and made available to the public. The Board shall adhere to the requirements of the Open Meetings Act (5 ILCS 120/1, et. seq.) and all other laws pertaining to such agencies.

III-7 The Board shall provide for its procedural rules and bylaws, which rules and bylaws shall be submitted to and approved by each governmental unit a party to this agreement. Such rules and bylaws shall not conflict with the provisions of this agreement. The existing procedural rules and bylaws shall apply to this restated agreement unless and until modified by the administrative Board and approved by each governmental unit as aforesaid.

#### ARTICLE IV POWERS AND DUTIES OF THE AQUATICS ADMINISTRATIVE BOARD

IV-1 The Board shall be responsible for approving a budget for the Aquatic Centers' administration, maintenance and capital improvements by February 28 of each year. The budget will be prepared by the Park District.

IV-2 The Aquatics Administrative Board shall annually approve a schedule of admission fees for the Aquatic Centers.

IV-3 The Board shall annually review and revise, as necessary, all by-laws, rules and regulations which are set to govern use of the Aquatic Centers and to recommend to each governmental unit any changes to same as may be appropriate from time to time.

IV-4 The Board shall be responsible for hiring the aquatics manager-director as the employee responsible for aquatics in the community and district to serve as an employee of the Park District and work in accordance with the administrative policy manual of the Park District. All other employees shall be hired according to Park District policies. In the alternative, rather than having a manager-director as an employee of the Park District, the administrative Board may authorize the Park District to enter into a management service agreement with a third party management service provider under terms acceptable to the administrative Board.

IV-5 Any contracts for concessionaires shall be approved by the Board.

#### ARTICLE V AMENDING THE OPERATION AGREEMENT

V-I This Agreement may be amended by agreement and official action of the PARK DISTRICT and the CITY.

#### ARTICLE VI TERM AND TERMINATION PROVISIONS

VI-1 The term of this Operating Agreement shall commence on the date hereof and shall continue for a term of ten (10) years through and including December 31, 2019. It is anticipated that the parties shall renew this Operating Agreement and continue the synergetic relationship between them relative to the aquatic facilities governed by the terms hereof for many more years beyond the term above stated; accordingly, this agreement shall be deemed to renew for an additional term to and through December 31, 2029, unless notice of intent to terminate is given by one party to the other on or before July 31, 2019. In the event timely notice of intent to terminate is given, then this Operating Agreement shall terminate on December 31, 2021 and the parties shall undertake, during the intervening time between July 31, 2019 and December 31, 2021, good faith reasonable efforts to cause the unwinding of the operations and ownership of the real estate and improvements then constituting the aquatic facilities governed by the terms hereof. Such unwinding shall include, but not be limited to transfers of real estate by deed to or between the parties, delivery of bills of sale for equipment and improvements, settling and payment of final amounts provided for herein to be borne by and between the parties, and taking such other and further steps as may be reasonable and necessary to otherwise divide the assets and operations relating to the aquatic facilities in an equitable manner between them. Further, an accounting for the operating provisions as set forth herein shall be undertaken for the period of the winding up and amounts determined to be due and payable by and to the respective party shall then be paid.