

TOWN OF WHITESTOWN, INDIANA
ACQUATICS CENTER SCOPING AGREEMENT

This Town of Whitestown, Indiana Aquatics Center Scoping Agreement (hereinafter referred to as “Agreement”), entered into by and between the Town of Whitestown, Indiana, (hereinafter referred to as “Whitestown” or “Town”), and The Skillman Corporation (hereinafter referred to as “Developer”), is executed pursuant to the terms and conditions set forth herein.

RECITALS

WHEREAS, on or about June 19, 2023, the Whitestown issued a certain Request for Proposals/Qualifications to design, build, operate, maintain, and transfer an aquatics center and related improvements in Whitestown (the “RFPQ”);

WHEREAS, pursuant to the RFPQ, Whitestown sought offers to design, build, furnish, operate, maintain, and transfer to Whitestown a public aquatics park facility with both outdoor and indoor pools and other aquatic features and related facilities and infrastructure (the “Project”), and all pursuant to a public-private agreement between Whitestown and the selected offeror in accordance with Ind. Code § 5-23 et seq., (the “Act”);

WHEREAS, in response to the RFPQ, Developer submitted a proposal and statement of qualifications to Whitestown for completing the Project;

WHEREAS, Developer prepared and provided its proposal and statement of qualifications (“PSOQ”) to design, develop, build, operate, transfer, and/or maintain the Project on August 21, 2023;

WHEREAS, Whitestown determined that Developer is reasonably susceptible of being selected for a public-private agreement (“Public-Private Agreement”) in accordance with Act;

WHEREAS, the RFPQ Selection Committee recommended to Town Council (“Board”) that the Board accept Developer as the party selected for continued negotiation, scoping, and eventually completing the Project; and

WHEREAS, the Board accepted that recommendation on October 11, 2023;

WHEREAS, consistent with and pursuant to the RFPQ and the Act, Whitestown and Developer desire to enter into this Agreement for Developer to cause to be completed the Scoping Services defined herein;

WHEREAS, the purpose of this Agreement is to enable Developer to complete the next steps of design so as to take the plans from concept designs to final construction plans, to set the expected milestones for the Project, to ensure that all plans/designs are owned by Whitestown, and to further refine the Project so that the parties can enter into a Public-Private Agreement, and move the Project forward; and

WHEREAS, any capitalized term not specifically defined herein shall have the meaning ascribed to such term in the RFPQ.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Whitestown and Developer agree as follows:

AGREEMENT

1. **RECITALS.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.

2. **MUTUAL ASSISTANCE.** The Parties agree, subject to further proceedings required by the Laws (as defined herein), to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

3. **SCOPING SERVICES.** In consideration and as a material inducement for Whitestown's consideration of Developer for a Public-Private Agreement and the additional consideration described herein, Developer shall deliver, complete, and/or cause to be completed all services, work and components thereof described in Section 5 and **Exhibit A** of this Agreement to Whitestown's satisfaction (collectively, the "Scoping Services").

4. **DEFINITIONS.**

- a. **Claims** shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.
- b. **Concept Plan** shall mean the concept plan for the Project developed by the Developer after meeting(s) with Whitestown and its review panel, as designed by Whitestown (collectively, the "Town Parties") to determine the floor plan, size, scale and program of space to be included in the Project.
- c. **Construction Drawings** shall mean construction drawings with respect to the construction of the Project.
- d. **Construction Schedule** shall mean the portion of the project plans comprised of the construction schedule, which Construction Schedule shall reflect Substantial Completion date to be included as part of the Public-Private Agreement, with separate bid packages to be released to allow for commencement of construction not later than (TBD).
- e. **Design Development Documents** shall mean detailed design development documents for the Project, which documents shall be consistent with the Schematic Design Drawings and the Laws.

- f. **Laws** shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the Town's Unified Development Ordinance and any zoning regulations related to the Project.
- g. **Project** shall mean collectively the Project, and related, incidental, and/or necessary infrastructure improvements related thereto.
- h. **Property Inspection** shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments and geotechnical reviews and assessments.
- i. **Schematic Design Drawings** shall mean the schematic design drawings for the Project that are consistent with the Site Plan and as needed for the Town to proceed with the Plan Refinement process and the Laws.
- j. **Site** shall mean property approximately located at 7060 South Indianapolis Road, Whitestown, IN 46075. The anticipated site is expected to be approximately 5 to 8 acres.
- k. **Site Plan** shall mean a site plan for the Project that is consistent with the Concept Plan and the Laws.

5. **PLAN REFINEMENT.** The following Plan Refinement Process shall govern development and construction of the Project:

a. **Meetings.** Within ten (10) business days of the Effective Date, Developer shall meet with Whitestown concerning Whitestown's desired outcome for the design and construction of the Project. As needed and typically at least every ten (10) business days throughout the Plan Refinement Process, the Developer and Whitestown shall continue to meet to complete the Plan Refinement Process, which the goal of the process is to be completed no later than December 15, 2023 for Phase 1 and Phase 2 as described in Exhibit A, subject to Whitestown's approval and comment requirements set forth in Section 5(c) and any extension of Scoping Services by written amendment. Moreover, upon request by Whitestown or Developer, the other Party shall make every effort to schedule additional planning meetings to discuss, review, revise or seek comment on documents provided or to be provided as part of the Plan Refinement Process.

b. **Plan Refinement Process.** Throughout the Plan Refinement Process, the Developer shall submit for review and approval the following documents, which documents shall be submitted to Whitestown in the order listed below, with respect to the Project:

- i. Concept Plan - November 15, 2023
- ii. Site Plan - November 15, 2023
- iii. Schematic Design Drawings - December 1, 2023

- iv. Design Development Documents - TBD by written amendment to this Scoping Agreement
- v. Construction Drawings - TBD by written amendment to this Scoping Agreement
- vi. Construction Schedule and Budget – TBD by written amendment to this Scoping Agreement

As part of the Plan Refinement Process, Whitestown and/or Developer may select subcontractors including subcontractors that are different than those submitted in the PSOQ and may add new or additional subcontractors to the Project including those that may be different than those submitted in the PSOQ.

c. **Approval of Submitted Document.** Within seven (7) days after Whitestown Administration receives each of the Concept Plan, Site Plan, the Schematic Design Drawings, Design Development Documents and Construction Drawings (each a “Submitted Document”) as agreed to in the Scoping Services or any written amendment thereto, Whitestown shall deliver to Developer written notice that it approves or rejects the Submitted Document; provided that, if Whitestown rejects all or any part of a Submitted Document, then such notice shall: (A) specify the part or parts that Whitestown is rejecting; and (B) include the specific basis (which may be any reason, in Whitestown’s sole discretion) for such rejection. Subject to Section 5(e), Upon Whitestown’s approval of a Submitted Document, such document shall be deemed final. Each Submitted document shall be generally consistent with the immediately preceding Submitted Document approved by Whitestown. For example, and without limitation, the Design Development Documents shall comply with the Laws and shall be generally consistent with the Schematic Design Drawings. Each Submitted Document approved by Whitestown shall become an “Approved Document.”

d. **Resubmitted Documents.** If, at any stage of the Plan Refinement Process, Whitestown, rather than approving any Submitted Document, instead notifies Developer that it rejects a Submitted Document then, within fourteen (14) days after the Developer receives written notice from Whitestown that it has rejected the Submitted Document (each, a “Rejected Document”), Developer shall promptly: (i) revise the Rejected Document; and (ii) resubmit the foregoing to Whitestown. Whitestown shall follow the review procedure described in the foregoing subsection 5(c) of this Agreement, and Developer shall revise and resubmit any Rejected Submitted Document in accordance with the preceding sentence until such Rejected Document is approved. Upon approval of any Resubmitted Document, the Resubmitted Document shall become an Approved Document. Notwithstanding the involvement of Whitestown in the Plan Refinement Process, Developer shall be fully responsible for properly completing each of the documents including in the Plan Refinement Process and ensuring that Resubmitted Documents approved by Whitestown in writing are implemented as an Approved Document; the failure of which shall be a default hereunder by the Developer.

e. **Permitting, Zoning & Planning Processes.** Developer expressly acknowledges and agrees that each step of the Plan Refinement Process is in addition and supplemental to applicable zoning, planning and permitting processes (for example, and without limitation, approvals of the Plan Commission or other bodies with approval authority for projects similar to

the Project). Whitestown's approval of any document presented to it as part of the Plan Refinement Process shall not negate or impact Developer's obligation to complete applicable review processes, obtain all applicable permits, complete all applicable reviews and inspections and otherwise continuously maintain compliance with Whitestown ordinances, including, without limitation, its Unified Development Ordinance ("UDO"), as amended. The parties acknowledge and agree that the scope of the services provided under this Agreement shall include the design work specified herein and shall not include permitting or any other work (other than the site planning set forth herein) which will be provided for and described in the Public-Private Agreement.

6. PROPERTY INSPECTIONS. During Plan Refinement or as otherwise determined by Developer based on its industry expertise, Developer shall cause to be completed all Property Inspections necessary to complete the Project, including, without limitation, all studies and investigations necessary to obtain any required permits. For the avoidance of doubt, Property Inspections are the sole responsibility of Developer, and all necessary Property Inspections shall be completed to determine the suitability of the Site for the Project. Developer shall have the right to enter upon the Site at reasonable times to perform the Scoping Services upon the express written consent of Whitestown.

7. CONSIDERATION & SCOPING COSTS. The Parties expressly acknowledge and agree that Developer shall complete Scoping Services described herein in consideration and as a material inducement for Whitestown considering Developer for a Public-Private Agreement. The cost of performing the Scoping Services described in this Agreement shall not exceed the amounts set forth in Exhibit A (the "Scoping Costs"). Developer shall provide Whitestown a summary of costs incurred during the preceding month for Scoping Services as they are performed. The Scoping Costs shall be paid within thirty (30) days in accordance with the Terms of Payment set forth in Exhibit A. If Developer is selected for a Public Private Agreement with the Town, all Scoping Costs, including those costs included in Exhibit A and any and all costs of additional Scoping Services that the parties may agree to by written amendment to this Agreement, shall be included in and applied toward the total cost to construct the Project and financed consistent with the financing requirements included the Public-Private Agreement; unless Whitestown determines, in its sole discretion, to separately pay such costs. If, however, Developer is not awarded a Public-Private Agreement, Whitestown shall, within thirty (30) days of completion of the Scoping Services or earlier termination of this Agreement, compensate Developer for the Scoping Services or any portion thereof completed which were not previously paid for; provided, however, if the Scoping Services are not completed, Whitestown shall be liable for a prorated amount of the Scoping Costs relative to the value of the Scoping Services completed.

8. OVERSIGHT AND MANAGEMENT. For purposes of delivering the Scoping Services, Developer shall serve as the Project Manager and oversee, direct and coordinate the work of all individuals and entities providing the Scoping Services, including, without limitation, causing the completion of all necessary inspections and obtaining the any required permits.

9. CHANGES IN SCOPE. Whitestown may, without invalidating this Agreement, request in writing changes in the scope of the Scoping Services consisting of additions, deletions or other revisions. In such event, the Developer shall provide to Whitestown suggested methods and adjustments to the Budget and Construction Schedule on the basis of reasonable expenditures and savings of those performing the work attributable to the changes (whether concerning the Budget or Construction Schedule, the "Proposed Change(s)"). Whitestown shall review any Proposed

Change and determine whether to accept it. If any such Proposed Change is accepted, the Proposed Change shall be automatically incorporated into and become a part of Approved Documents deemed final for the stage of the preconstruction services to which the Proposed Change applies.

10. RECOMMENDATION FOR PUBLIC-PRIVATE AGREEMENT. Within thirty (30) days of Developer completing the Scoping Services, Whitestown shall determine whether to recommend the Developer for a Public-Private Agreement; provided, however, Whitestown and Developer acknowledge and agree that Whitestown may make such determination at an earlier time to the extent authorized by Indiana § 5-23 *et. seq.*

11. INSURANCE. Developer shall procure and maintain throughout completion of the Scoping Services, the policies of insurance described on **Exhibit B.** Each such policy shall: (a) be written by a company reasonably acceptable to Whitestown; and (b) provide that it shall not be modified or canceled without written notice to Whitestown at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name Whitestown as an additional insured. Developer shall deliver to Whitestown certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies prior to execution of this Agreement and, in no event, less than five (5) days after Effective Date.

12. GENERAL PROVISIONS.

a. **Independent Contractor.** The parties agree that Developer is an independent contractor as that term is commonly used and is not an employee of Whitestown. As such, Developer is solely responsible for all taxes and none shall be withheld from the sums paid to Developer. Developer acknowledges that it is not insured in any manner by Whitestown for any loss of any kind whatsoever. The Developer has no authority, express or implied, to bind or obligate Whitestown in any way.

b. **Subcontracting.** The parties agree that Developer shall not subcontract, assign or delegate any responsibility to perform services to be performed pursuant to this Agreement without prior written approval of the Town Manager of Whitestown or his/her designee. In the event that Whitestown approves of any such subcontracting, assignment or delegation, Developer shall remain responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. Whitestown shall have no obligation whatsoever toward such persons. Developer shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Developer of any responsibility for performing under this Agreement. Developer shall be responsible for a background, criminal history, and e-verify check on any additional person involved in performing services pursuant to this Agreement, and the Developer and any additional persons shall have the duty to report an arrest or the filing of criminal charges against them in writing to the Town Manager of Whitestown.

c. **Necessary Qualifications.** Developer certifies that it will furnish to Whitestown, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of Whitestown, other units of local government, the State of Indiana, and the United States. Developer further certifies that it is now and will remain

in good standing with such governmental agencies and that it is now and will maintain all licenses, permits, registrations, authorizations, or certifications, as applicable to the services in force during the term of this Agreement.

d. **Confidentiality of Whitestown Information.** Developer understands that the information provided to it or obtained from Whitestown during the performance of its services may be confidential and may not, without prior written consent of Whitestown, be disclosed to a person not in Whitestown's employ except to employees or agents of Developer who have a need to know in order to provide the services. Further, Developer's Work Product generated during the performance of this Agreement is confidential to Whitestown. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon Developer shall provide notice to Whitestown prior to such disclosure. Developer shall not, under any circumstances, release information provided to it by, or on behalf of, Whitestown that is required to be kept confidential by Whitestown pursuant to Indiana law, except as contemplated by this section.

e. **Records; Audit.** Developer shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Developer shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from termination or the date of final payment under this Agreement for inspection by Whitestown or any other authorized representative of Whitestown. Copies thereof, if requested, shall be furnished at no cost to Whitestown.

f. **Ownership of Documents and Materials.** All documents, including records, programs, data, film, tape, articles, memos, and other materials, created or developed under this Agreement, shall be considered "work for hire" and the Developer transfers any ownership claim to Whitestown and all such matters will be the property of Whitestown. Use of these materials, other than related to contract performance by the Developer, without the prior written consent of Whitestown, is prohibited. During the performance of the services specified herein, the Developer shall be responsible for any loss or damage to these materials developed for or supplied by Whitestown and used to develop or assist in the services provided herein while the materials are in the possession of the Developer. Any loss or damage thereto shall be restored at the Developer's expense. Full, immediate, and unrestricted access to the work product of the Developer during the term of this Agreement shall be available to Whitestown. Notwithstanding the foregoing, Developer shall be entitled to retain a set of its work papers in accordance with professional standards. In the event the Whitestown subsequently uses the documents or materials without retaining the services of Developer, Whitestown releases the Developer only from claims and causes of action arising from such subsequent use, but not under the services of this Agreement. Whitestown, to the extent permitted by law, further agrees to indemnify and hold harmless the Developer from claims and causes of action asserted by any third person or entity to the extent such arises from the Whitestown's subsequent use of the documents or materials under this Section. Notwithstanding the foregoing, it is understood and agreed that Developer shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by Developer prior to, or acquired by Developer during the

performance of this Agreement and the same shall not be deemed to be Work Product or Work For Hire and Developer shall not be restricted in anyway with respect thereto.

g. Term and Termination for Cause or Convenience.

i. This Agreement shall be in effect until the Scoping Services described in this Agreement are fully and satisfactorily performed and Whitestown has paid Developer for applicable services, unless earlier terminated in accordance with this Agreement. If this Agreement is not otherwise terminated by Whitestown, this Agreement shall automatically terminate if and when Whitestown and Developer enter into a Public-Private Agreement for the Project.

ii. If Developer becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then Whitestown may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing. In determining the amount of final payment to be made to Developer upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by Whitestown to be incurred by reason of Developer's default.

iii. This Agreement may be terminated in whole or in part in writing by Whitestown for Whitestown's convenience. If Whitestown effects termination for convenience, Developer's compensation shall be equitably adjusted.

iv. Upon receipt of a termination action for default or for Whitestown's convenience, Developer shall (a) promptly discontinue all services affected, unless the termination notice directs otherwise, and (b) deliver or otherwise make available to Whitestown all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by Developer in performing this Agreement, whether completed or in process.

v. If, after termination for Developer's default, it is determined that Developer was not in default, the termination shall be deemed to have been effected for the convenience of Whitestown. In such event, adjustment of the price provided for in this Agreement shall be made as provided in this Agreement and the recovery of such price adjustment shall be Developer's sole remedy and recovery.

h. Termination for Failure of Funding. Notwithstanding any other provision of this Agreement and pursuant to Indiana law, if funds for the continued fulfillment of this Agreement by Whitestown are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then Whitestown shall have the right to terminate this Agreement

without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

i. **Remedies.** Following the occurrence of any default, breach, or other failure to perform requisite services, or an act of negligence or misconduct causing damage to Whitestown, by Developer or any of its employees, agents, or subcontractors, Whitestown shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available to Whitestown. This provision shall survive any termination of this Agreement.

j. **Indemnification.** Developer agrees to indemnify, defend (except in the case of a professional liability claim to the extent prohibited by I.C. § 26-2-5-4), and hold harmless Whitestown and its officers, agents, officials, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent act or omission, error or omission of, or by any recklessness or misconduct by, Developer or any of its officers, agents, employees or subcontractors. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage. Whitestown will not provide such indemnification to the Developer. This provision shall survive any termination of this Agreement.

k. **Notice.** Any notice or other correspondence required to be sent under this Agreement shall be sent to:

To Developer:

The Skillman Corporation
3834 S. Emerson Ave., Bldg. A
Indianapolis, IN 46203
Attn: Dan King, President

To Whitestown:

Town of Whitestown

Whitestown Municipal Complex
6210 S 700 E
Whitestown, IN 46075
Attn: Town Manager

l. **Disputes.** Developer shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with Whitestown. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Developer and Whitestown may otherwise agree in writing. Should the Developer fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by Whitestown or the Developer as a result of such failure to proceed shall be borne by the Developer, and the Developer shall make no claim against Whitestown for such costs. Whitestown may withhold payments on disputed items pending resolution of the dispute.

m. **Non-discrimination.** Developer and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion,

color, sex, sexual orientation, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

n. **Conflict of Interest.** Developer certifies and warrants to Whitestown that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with Whitestown.

o. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds one hundred eighty (180) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

p. **Applicable Laws; Forum.** The Developer agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by Whitestown and the Developer to determine whether the provisions of the Agreement require formal modification. This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinances, Resolutions, Rules, Regulations, or Codes of Whitestown. Suit, if any, shall be brought in the State of Indiana, County of Boone.

q. **Waiver.** Whitestown's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of Whitestown's rights or remedies.

r. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

s. **Attorneys' Fees.** Developer shall be liable to Whitestown for reasonable attorneys' fees incurred by Whitestown in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Developer from Developer's breach of any provision of this Agreement, from Developer's indemnity obligation, or from Developer's failure to fulfill any provisions or responsibility provided herein. This provision shall survive any termination of this Agreement.

t. **Whitestown Officials.** No official, director, officer, employee, or agent of Whitestown shall be charged personally by Developer, its employees, or agents with any liabilities or expenses, or be held personally liable to Developer under any term or provision or because of

the execution of any agreement, or because of any default by Whitestown. This provision shall survive any termination of this Agreement.

u. **Successors and Assigns.** Whitestown and Developer each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Developer shall not assign, sublet, or transfer its interest in this Agreement without the written consent of Whitestown. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Whitestown.

v. **Authority to Bind Developer.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Developer represents that he/she has been duly authorized to execute agreements on behalf of the Developer designated above, and has obtained all necessary or applicable approval from the offices of the Developer to make this Agreement fully binding upon the Developer when his/her signature is affixed and accepted by Whitestown.

w. **E-Verify.** Developer shall enroll in and verify the eligibility status of all newly hired employees of Developer through the E-Verify program as outlined in I.C. § 22-5-1.7; however, Developer shall not be required to verify the work eligibility status of all newly hired employees of Developer through the E-Verify program if the E-Verify program no longer exists. **DEVELOPER AFFIRMS, UNDER THE PENALTIES OF PERJURY, THAT DEVELOPER DOES NOT KNOWINGLY EMPLOYEE AN UNAUTHORIZED ALIEN.**

x. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though Whitestown or Developer are not signatories to the original or the same counterpart.

13. INTERPRETATION AND INTENT.

a. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between Whitestown and Developer. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by Whitestown or Developer which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both Whitestown and Developer, and following approval of such amended or modified terms by the Whitestown Town Council.

b. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Developer or other rights or obligations of Whitestown or Developer, the document or provision thereof imposing the greater obligation upon Developer and affording the greater right or remedy to Whitestown, shall govern. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against Whitestown solely by virtue of Whitestown or Whitestown's representatives having drafted all or any portion of this Agreement.

c. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

[Signature Pages and Exhibits to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

Town of Whitestown, Indiana

("Whitestown")

By: _____

Printed: _____

Title: _____

Date: _____

The Skillman Corporation
("Developer")

By: _____

Printed: _____

Title: _____

Date: _____

4649074

EXHIBIT A

**SCOPING SERVICES
(REV. 1 OCTOBER 4 2023)**



The SKILLMAN Corporation

AN EMPLOYEE-OWNED COMPANY

September 19, 2022
Rev. 1 (October 4, 2023)

Nathan Messer
Deputy Town Manager of Operations
Town of Whitestown
6210 Veterans Drive
Whitestown, IN 46075

Dear Mr. Messer,

Included please find our detailed proposal for the services provided by The Skillman Corporation and our partners as presented in our RFP response and in the interview.

As an overview, Skillman Corporation will be the single contracting entity with the other firms acting in a consulting role. This document will outline the scope of services and associated fees by each professional firm. The fees are outlined by firm in Exhibit A.

Services Outline: The goal of our team is to help the Town of Whitestown and its various stakeholders to develop a financially viable community multiuse, aquatic facility that aligns with the community's long-term goals and economic development strategies. It is our intent to identify a feasible project matching the Town of Whitestown's budget of \$20 Million Dollars and presenting this as a recommendation to the town council prior to December 15, 2023.

Team Members: The following professional partners will be a part of this services agreement:

- The Skillman Corporation
- Fanning / Howey Associates
- GM Development – As needed
- The Sports Facilities Companies

Services by Company

The Skillman Corporation: Will be the single point of contact for the Town of Pendleton and is responsible for coordinating the efforts of all other team members. Skillman Corporation will also provide:

- Cost estimating for multiple project scenarios
- Design / Construction Schedule
- Value Engineering Recommendations
- Project Draw Schedules – Financial Reporting

GM Development

- Work with the Town legal and financial advisors to develop a viable financing strategy
- Provide legal & accounting framework for BOT models

Fanning / Howey

Participate in meetings with client and user groups to advise on program components and design considerations

- Provide the following deliverables to assist with the Feasibility Study and Schematic Design.
 - Site Plan
 - Building Floor Plan
 - Aquatic designs / programs

The first study provides a Market Opportunity Report (MOR). This will help identify the best options for program, gaps in the market, etc. and provide a financial performance range.

If the MOR comes back positive and the performance range is in line with their expectations, then the next step would be to complete the detailed 5 and 20 year pro-forma along with the economic impact numbers. These pieces are institutional grade/highly detailed.

SF COMPANIES | SCOPE OF SERVICES – PHASE 1 – MARKET OPPORTUNITY REPORT

Step 1: Project Kick-Off Call

In this step, SFC will set up an initial phone call with your team to cover six topics that allow the SFC team to begin its work. Those topics are:

- Introductions
- Project History
- Existing Data
- Potential Partners and Stakeholders
- Key Dates for the Project
- Other Questions & Answers

Step 2: Existing Data Review & Market Analysis

In this step, SFC will review any existing data, documentation, and/or resources you provide related to your project. SFC will then conduct preliminary market research, which will encompass demographics, sports participation in the region, and an analysis of existing service providers (competition).

Step 3: Onsite Development Planning Session (DPS)

In this step, SFC team members will travel to your market to meet with your team, tour the site or potential sites, tour the market, and meet with any key stakeholders the Client identifies.

SFC's time on site will begin with the DPS, which is a "deep-dive" planning and strategy session that will focus on defining success and refining your vision, value propositions, financial resources and core competencies, products and services, strategic alliances, and financial success metrics. During the DPS, SFC will also share data from its preliminary market assessment, including key demographic and socioeconomic factors, participation rates, and other market insights.

Step 4: Market Opportunity and Recommended Facility Report

SFC will prepare an executive summary-level report that outlines your opportunity based on the work completed in Steps 1-3 and additional analysis based on SFC's expertise in the industry. The report will feature five sections:

1. Business Model Overview – definitions of success and business model insights
2. Market Overview - demographics and socioeconomics, participation rates, and competition
3. Facility Overview – facility program (sizes and spaces) and cost of construction
4. Performance Expectations – high-level financial performance ranges based on market factors and national industry benchmarks
5. Conclusion and Next Steps

PHASE 2 – DETAILED FINANCIAL ANALYSIS, FEASIBILITY & ECONOMIC IMPACT REPORT

Step 5: Detailed Financial Forecast (Pro Forma)

In this step, SFC will complete more in-depth research/analysis to produce a 5-year cash flow forecast and 20-year financial outlook. SFC's pro forma documents are detailed, institutional-grade financial forecasts used to support decision-making and financing.

The pro forma will provide insight into the financial potential of the project and will include projections related to construction and start-up costs, revenues/expenses by product/program, EBITDA, net income, facility utilization, and more.

The pro forma will provide you with detailed financial projections related to and based on:

- The ideal business model
- Realistic and/or recommended debt-to-equity mix and debt service
- Right-sized program spaces and space requirements
- Construction and start-up costs based on recent, comparable projects
- Recommended parking
- Revenue by product/program
- Direct/variable costs (Cost of Goods Sold)
- Facility and operating expenses
- Management and staffing model
- Utilization Projections

Step 6: Economic Impact Analysis

In this step, SFC will project the economic impact of the facility on an annual basis. Economic impact is defined as new off-site spending that will occur in the market as a result of tournaments and events held at the facility. This information is used to project economic activity from out-of-town visitors who would not be in the market but for the events that will be held at the facility.

The results, primarily quantified as room nights generated and direct spending, are used by elected officials and private developers alike to understand the impact that the venue will have on the lodging, dining, retail, entertainment, and transportation industries as well as on the tax base of the municipalities that benefit from new spending.

SFC's economic impact projections are developed based on projections for tournaments and events throughout the pro forma and reflective of several key drivers of economic impact, including:

- Number of Events
- Number of Teams
- Number of Participants
- Number of Affiliated Spectators
- Percent of Participants and Affiliated Spectators from Out of Town
- Length of Stay
- Average Daily Rate (ADR)
- Average Daily Expenditures (ADE)

Step 7: Feasibility Report

In this step, SFC will produce a detailed Feasibility report for your project. The Feasibility Report will feature the following sections:

- Executive Summary
- Market Overview
- Facility Overview
- Programs, Products, and Services
- Financial Performance Overview
- Conclusion and Next Steps

SCHEDULE:

It is the intent of the project team to provide the following services no later than December 15, 2023.

Terms and Fees:

The attached exhibit A has all of the fees for services associated with our work up the formal recommendation to the town council in December of 2023. If the contract with our team is cancelled after that date, we would require compensation for all time spent up to the notice of termination.

Exhibit A:

The following are the breakdown and terms of fees and terms for each of the professional partners. The Skillman Corporation will bill on behalf of the various partners as a direct reimbursable.

The Skillman Corporation

Fee for Services:\$22,000
Payable at the conclusion of the project recommendation.

Fanning / Howey & Bill Robertson Pool Design Inc.

Fee for Services:\$42,000
Payable at the conclusion of the project recommendation.

GM Development

Fees for Services:\$0.00
There are no fees until the project BOT is executed.

PHASE 1 - The Sports Facilities Companies

Market Analysis
Fee for Services:\$25,500

*** PHASE 2 - Pro Forma Economic Impact Study – If Applicable**

Fee for Services:.....\$38,500

Terms for Payment

- Payment 1 – (50%) Due 30 days after commencing Scoping Services and prior to delivery of Concept Plan and Site Plan.
- Payment 2 – (30%) To be invoiced and paid to Consultant by Client upon presentation of the draft pro forma to Client. Copy of the draft deliverable(s) to be delivered to Client only upon payment.
- Payment 3 – (20%) To be invoiced upon presentation of the final deliverable(s). Copy of the Final deliverable(s) to be delivered to Client only upon payment.
- Reimbursable Travel Expenses (if applicable): To be invoiced upon completion of travel. Reimbursable travel expenses are due upon receipt of invoice. Travel expenses encompass flights, hotel accommodations, ground transportation and associated

* The first study provides a Market Opportunity Report (MOR). This will help identify the best options for program, gaps in the market, etc. and provide a financial performance range.

If the MOR comes back positive and the performance range is in line with their expectations, then the next step would be to complete the detailed 5 and 20 year pro-forma along with the economic impact numbers. These pieces are institutional grade/highly detailed.