

RESOLUTION NO. 1266

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLDEN
AUTHORIZING AN AGREEMENT WITH CREATIVE COMMOTION,
LLC FOR MARKETING SERVICES FOR CITY RECREATION
ACTIVITIES**

WHEREAS, the City of Golden Parks and Recreation Department offers many programs and facilities for the citizens of Golden and customers from surrounding areas; and

WHEREAS, the competition from like-facilities in surrounding communities has greatly impacted Community Center Revenues; and

WHEREAS, the City of Golden is constructing a new Recreation Campus to include a golf course and a family aquatic park; and

WHEREAS, the proper marketing, branding, and identity of the campus is critical for future success and marketing of the Recreation Campus; and

WHEREAS, marketing the Community Center was one of the top recommendations included in the 2001 Community Center Business Plan; and

WHEREAS, the City of Golden, in accordance with City Policies, used the Request for Proposal process to solicit proposals for marketing services; and

WHEREAS, the City received 26 proposals for marketing services and interviewed the top six candidates; and

WHEREAS, Creative Commotion, LLC ("Commotion") was the only firm proposing to work for a performance-based compensation plan; and

WHEREAS, Commotion has extensive and proven background in the branding and naming of products; and

WHEREAS, Commotion has extensive and proven abilities in marketing services; and

WHEREAS, Commotion is committed to the Golden community and the success of its programs; and

WHEREAS, the marketing firm Commotion, was selected to provide marketing and branding services for the City of Golden.

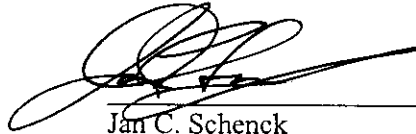
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. City staff, working with the City Attorney, is directed finalize negotiations of a performance-based marketing services agreement for the marketing of City recreational activities to include naming and branding of the new Recreation Campus.

Section 2. The agreement with Creative Commotion, LLC attached hereto as Exhibit "A", is approved in substantially the form attached hereto.

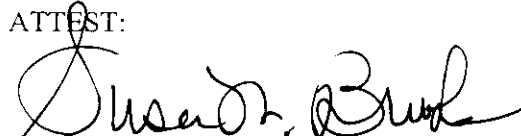
Section 3. The Mayor is authorized to sign the agreement on behalf of the city, upon approval of the form of the agreement by the City Attorney.

Adopted the 13th day of December 2001.



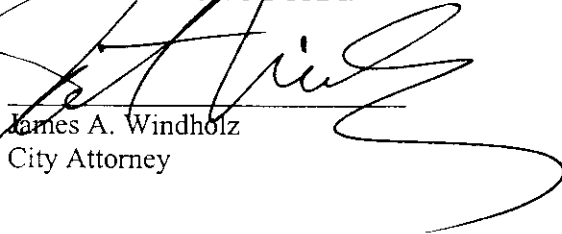
Jan C. Schenck
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:

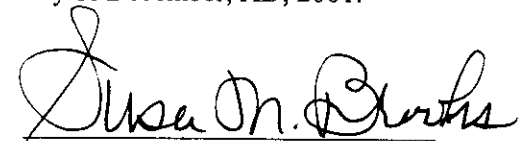


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 13th day of December, AD, 2001.

(SEAL)

ATTEST:



Susan M. Brooks, City Clerk of the
City of Golden, Colorado

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICE

THIS AGREEMENT is made and entered into this 15th day of December, 2001, by and between the CITY OF GOLDEN (hereinafter referred to as "GOLDEN") and _____
Creative Commotion, LLC (hereinafter referred to as "CONSULTANT").

WITNESSETH:

WHEREAS, GOLDEN requires professional consulting services in connection with the Marketing Services - Marketing of City of Golden Recreation Activities and the Branding, Naming and Identity of the Recreation Campus (hereinafter referred to as "PROJECT"); and

WHEREAS, CONSULTANT has held itself out to GOLDEN as having the requisite, resources, expertise and experience to perform the required work for the Project.

NOW, THEREFORE, for and in consideration of the promises and covenants herein appearing, the parties agree as follows:

I. SCOPE OF SERVICES.

Services Description:

- Recommendations regarding marketing opportunities for Community Center and existing recreational activities
- Recommendations regarding overall brand development, growth strategies, and long range planning for city-wide recreational activities
- Recommendations to and coordination with the Parks and Recreation Advisory Board and City recreation staff regarding marketing and cross-promotional activities
- Recommendations regarding the desired integration of all recreational marketing efforts into one cohesive communications plan
- Recommendations regarding budgeting and annual operations planning

II. GOLDEN OBLIGATIONS/CONFIDENTIALITY.

GOLDEN shall provide CONSULTANT with information, reports and such other data as may be available to GOLDEN and reasonably required by CONSULTANT to perform hereunder. No Project information shall be disclosed by CONSULTANT to third parties without prior written consent of GOLDEN or pursuant to a lawful court order directing such disclosure. All documents provided by GOLDEN to CONSULTANT shall be returned to GOLDEN. CONSULTANT is authorized by GOLDEN to retain copies of such data and materials at CONSULTANT's expense.

III. OWNERSHIP OF WORK PRODUCT.

Upon payment to CONSULTANT pursuant to this Agreement, all work, data, drawings, designs, plans, reports, computer programs (nonproprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed for this Project, are and shall be the sole and exclusive property of GOLDEN. However, any reuse of the documents by GOLDEN without prior written authorization by CONSULTANT other than for the specific intended purpose of this Agreement will be at GOLDEN's sole risk. The CONSULTANT will provide GOLDEN with a ten (10) day written notice prior to disposal of Project documents it has retained during which time GOLDEN may take physical possession of same at the storage site.

IV. COMPENSATION.

Upon execution of this Agreement, Client owes Commotion \$2,000 for services rendered in October 2001. Client shall maintain payments of \$2,000 monthly through December 31, 2001 renewable annually subject to annual appropriation. Payments are due on the 1st of each month. In addition to monthly compensation, performance based metrics are in place and will be compensated for as described in the Service & Compensation Description Addendum(Exhibit A).

Commotion's compensation shall be computed and become payable as set forth in the applicable Exhibit A. Except as otherwise provided in any Service & Compensation Description Addendum, payments for Services and Reimbursable Expenses shall be made monthly, and shall be due and payable 20 days from the date of Commotion's invoice.

Reimbursable and Expenses are in addition to compensation for Commotion's Services and include expenses incurred by Commotion and its employees and Commotions directly related to the Services, such as: (a) Authorized out-of-town travel and subsistence, and electronic communications; (b) document duplication, postage, handling and delivery of documents and materials used in connection with the Services; and (c) renderings, models and mock-ups requested by the Client. Any single expense in excess of \$250.00, or a series of related expenses aggregating at least that amount, shall require the prior approval of the Client's Project Manager. Each statement from Commotion shall account separately for all Reimbursable Expenses, which shall be reimbursed to Commotion in an amount equal to the expenses actually incurred by Commotion. Records of Reimbursable Expenses shall be accurately maintained by Commotion and shall be available to Client at mutually convenient times. Notwithstanding any provision of this Agreement to the contrary, Client shall have no obligation to pay any Reimbursable Expense for which Commotion fails to provide accurate documentation within five days after a written request for the same from the Client.

Production Expenses are in addition to compensation for Commotion's Services and include expenses incurred such as: (a) printing and production; (b) production and placement of ads; (c) other fulfillment of marketing expenses. Any single expense in excess of \$250.00, or a series of related expenses aggregating at least that amount, shall require the prior approval of the Client's Project Manager. Commotion will reserve the right to include standard industry mark-up margin and

commission rates of 25% and 15% respectively. Records of Production Expenses shall be accurately maintained by Commotion and shall be available to Client at mutually convenient times. Notwithstanding any provision of this Agreement to the contrary, Client shall have no obligation to pay any Production Expense for which Commotion fails to provide accurate documentation within five days after a written request for the same from the Client.

Sponsorship agreements for City recreational activities sought and secured by Commotion shall require City approval. Terms and conditions surrounding sponsorship agreements shall be negotiated separately on a case-by-case basis. Commotion will not accept revenues on the City's behalf without prior approval by the City. Expenditures and revenues associated with sponsorship agreements shall be accounted for and reported separately.

Detailed monthly invoices shall be rendered by CONSULTANT, and shall be due and payable thirty (30) days after date of receipt. Invoices will be itemized and include hourly breakdowns for all personnel and other charges. The maximum fee specified hereunder shall include all fees and expenses incurred by CONSULTANT in performing all services hereunder GOLDEN reserves the right to withhold final payment until such time as the work is complete.

V. COMMENCEMENT OF WORK.

Within seven (7) days of receipt from GOLDEN of a Notice to Proceed, CONSULTANT shall commence work on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice.

VI. CHANGES IN SCOPE OF SERVICES.

A change in the Scope of Services shall constitute any change or amendment of services or work which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective, or paid unless authorized by written amendment executed by the City Manager or his designee of GOLDEN. If CONSULTANT proceeds without such written authorization, then CONSULTANT shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee or representative of GOLDEN shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY.

CONSULTANT hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

The work performed by CONSULTANT shall be timely performed in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

VIII. COMPLIANCE WITH LAW.

The work and services to be performed by CONSULTANT hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

IX. INDEMNIFICATION.

The CONSULTANT agrees to indemnify and hold harmless GOLDEN, and its officers and its employees, from and against all liability, claims demands, and expenses, including court costs and reasonable attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the work to be performed under this Agreement, if such injury, loss, or damage is caused by, or is claimed to be caused by, the negligent act or omission, error, professional error, mistake, accident, or other fault of the CONSULTANT, any Subcontractor of the CONSULTANT, or any officer, employee, or agent of the CONSULTANT. The obligations of this Section IX shall not apply to damages which GOLDEN shall become liable by final judgment to pay to a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the City of Golden.

X. INSURANCE.

A. The CONSULTANT agrees to procure and maintain in force during the term of this Agreement, at her own cost, the following coverages:

1. Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers' Liability Insurance.
2. Commercial General or Business Liability Insurance with minimum combined single limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) general aggregate.
3. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for any one occurrence, with respect to each of the CONSULTANT's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event the CONSULTANT's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of the CONSULTANT who utilizes an automobile in providing services to GOLDEN under this Agreement.

4. Professional Liability Insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each claim and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) general aggregate.

B. If approved by GOLDEN, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

C. CONSULTANT shall procure and maintain, and shall cause any Subcontractor of the CONSULTANT to procure and maintain, the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to GOLDEN. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the CONSULTANT pursuant to Section IX of this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

D. A Certificate of Insurance shall be completed by the CONSULTANT's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by GOLDEN prior to commencement of any services under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to GOLDEN. The completed Certificate of Insurance shall be sent to:

City of Golden
911 10th Street
Golden, CO 80401
Attn: Risk Management

E. Failure on the part of the CONSULTANT to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which GOLDEN may immediately terminate this Agreement, or at its discretion G may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by GOLDEN shall be repaid by the CONSULTANT to GOLDEN upon demand, or GOLDEN may offset the cost of the premiums against any monies due to CONSULTANT from GOLDEN.

F. GOLDEN shall have the right to request and receive a certified copy of any policy and any endorsement thereto.

G. The parties hereto understand and agree that GOLDEN, its officer, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental

Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to GOLDEN, its officers, or its employees.

XI. NON-ASSIGNABILITY.

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

XII. TERMINATION.

This Agreement shall terminate at such time as the work in Section I is completed, on December 31, 2002, or upon GOLDEN's providing CONSULTANT with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by GOLDEN's issuance of said written notice or intent to terminate, GOLDEN shall pay CONSULTANT for all work previously authorized and completed prior to the date of termination. If, however, CONSULTANT has substantially or materially breached the standards and terms of this Agreement, GOLDEN shall have any remedy or right of set-off available at law and equity.

XIII. DEFAULT/ATTORNEY FEES.

In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.

XIV. VENUE.

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Jefferson, State of Colorado.

XV. INDEPENDENT CONTRACTOR.

CONSULTANT is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by CONSULTANT to perform work under the terms of this Agreement shall be, and remain at all times, employees or agent of CONSULTANT for all purposes. CONSULTANT shall make no representation that she is the employee of GOLDEN for any purposes.

XVI. NO WAIVER.

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by GOLDEN shall not constitute a waive of any of the other terms or obligations of this Agreement.

XVII. ENTIRE AGREEMENT.

This Agreement and the attached Exhibits are the entire Agreement between CONSULTANT and GOLDEN, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

XVIII. NOTICE.

Any notice or communication between CONSULTANT and GOLDEN which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

City of Golden
911 10th Street
Golden, CO 80401
Attn: City Manager

CITY OF GOLDEN

City Manager

ATTEST:

City Clerk

CONSULTANT:

By: _____
Title:

APPROVED AS TO FORM:

James A. Windholz
Attorney for City of Golden



Service & Compensation Description Addendum

Services Description:

- Recommendations regarding marketing opportunities for Community Center and existing recreational activities
- Recommendations regarding overall brand development, growth strategies, and long range planning for city-wide recreational activities
- Recommendations to and coordination with the Parks and Recreation Advisory Board and City recreation staff regarding marketing and cross-promotional activities
- Recommendations regarding the desired integration of all recreational marketing efforts into one cohesive communications plan
- Recommendations regarding budgeting and annual operations planning

Compensation Description:

	<u>Amount</u>
Monthly Fee Through 2002 Due on 1 st of each month	\$ 2,000

PERFORMANCE BASED METRICS:*

	<u>Fee</u>	<u>plus</u>	<u>Exceed %</u>
Meet budget on <u>Daily Use/Punch Cards</u> :	\$ 500		25%
Meet budget on <u>Annual/Charter Memberships</u> :	500		25%

Recreation Fees, Aquatic Fees, Facility Rentals, Vending, Brochure:

	<u>Fee</u>	<u>plus</u>	<u>Exceed %</u>
Meet budget on one line item:	\$ 250		10%
Meet budget on two line items:	500		15%
Meet budget on three line items:	750		20%
Meet budget on four line items:	1,000		25%
Meet budget on five line items:	1,500		25%

*Payable by the 15th of the following month

Naming of Golf Course and Aquatics Center, identity development (i.e. logo) for each	\$10,000
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Pro Shop	1998	333	6%	547	9%	767	13%	554	10%	381	7%	658	11%	846	15%	466	8%	316	5%	315	5%	287	5%	349	6%	5,819
	1999	464	9%	509	10%	573	11%	573	11%	480	9%	514	10%	617	12%	428	8%	287	5%	294	6%	290	6%	261	5%	5,270
	2000	400	5%	500	7%	573	8%	373	5%	289	4%	584	8%	469	6%	469	6%	334	4%	413	5%	2,632	35%	541	7%	7,577
	2001	555	7%	672	8%	695	9%	606	8%	613	8%	822	10%	1,055	13%	732	9%	385	5%	451	6%	1,070	13%	384	5%	8,039
	Projected 2002	735	7%	935	9%	1,107	10%	903	8%	745	7%	1,072	10%	1,253	11%	864	8%	542	5%	606	6%	1,608	15%	629	6%	11,000

Facilities Rentals	1998	8,623	9%	12,002	12%	9,868	10%	7,410	7%	5,073	5%	7,658	8%	7,222	7%	6,438	6%	9,047	9%	8,768	9%	11,786	12%	6,279	6%	100,174
	1999	8,219	8%	4,663	4%	13,790	13%	7,813	7%	8,018	7%	12,219	11%	9,260	9%	7,300	7%	12,168	11%	7,852	7%	7,440	7%	8,788	8%	107,530
	2000	9,453	10%	9,159	10%	6,967	8%	6,160	7%	7,111	8%	8,695	10%	14,180	16%	1,180	1%	6,010	7%	7,540	8%	3,893	4%	10,275	11%	90,623
	2001	6,935	7%	5,554	6%	6,500	7%	21,765	23%	4,677	5%	4,597	5%	4,600	5%	11,730	13%	4,752	5%	5,991	6%	7,706	8%	8,447	9%	93,255
	Projected 2002	10,236	9%	9,714	8%	11,200	9%	13,440	11%	7,615	6%	10,060	8%	10,920	9%	8,129	7%	9,622	8%	9,240	8%	9,373	8%	10,451	9%	120,000

Vending	1998	1,002	5%	1,971	12%	1,171	7%	971	6%	1,646	10%	1,148	7%	1,167	7%	2,281	14%	1,226	7%	1,476	9%	1,019	6%	1,344	8%	16,422
	1999	970	8%	977	8%	1,973	15%	980	8%	1,875	15%	1,040	8%	1,259	10%	2,086	16%	(683)	-5%	558	4%	674	5%	1,117	9%	12,826
	2000	1,263	13%	1,104	11%	1,218	13%	1,041	11%	975	10%	942	10%	692	7%	692	7%	(67)	-1%	324	3%	823	8%	690	7%	9,717
	2001	730	5%	814	9%	1,116	13%	635	7%	642	7%	1,066	12%	1,288	15%	475	5%	(349)	-4%	429	5%	839	10%	1,050	12%	8,755
	Projected 2002	968	9%	1,108	10%	1,314	12%	867	8%	1,155	11%	1,023	9%	1,066	10%	1,174	11%	(70)	-1%	583	5%	811	7%	990	9%	11,000

Brochure	1998	3,287	22%	1,170	8%	2,735	19%	1,255	9%	1,480	10%	1,370	9%	220	2%	1,455	10%	-	0%	760	5%	490	3%	440	3%	14,662
	1999	287	4%	1,407	21%	-	0%	1,007	15%	1,055	16%	920	14%	994	15%	994	15%	-	0%	-	0%	-	0%	-	0%	6,664
	2000	1,390	18%	1,662	22%	720	9%	-	0%	-	0%	680	9%	-	0%	-	0%	701	9%	1,527	20%	163	2%	877	11%	7,720
	Projected 2002	1,677	11%	1,898	13%	1,637	11%	888	6%	972	6%	1,766	12%	616	4%	931	6%	341	2%	936	6%	205	1%	3,113	21%	15,000

1,364,787
1,381,264
1,255,926
1,221,993
1,259,000

City of Golden
Community Center Revenue by Month (ADG Finance System)
2002 Monthly Target Revenue Projections

	January	February	March	April	May	June	July	August	Sept	October	Nov	December	Total
Daily Use/Punch Cards													
1998	65,697	64,924	82,179	60,508	49,967	67,727	66,888	54,958	35,668	47,326	53,399	72,614	721,855
1999	69,634	62,121	80,257	66,611	62,011	63,874	65,097	53,932	33,570	46,472	53,678	61,592	718,849
2000	75,096	66,065	71,965	57,071	54,999	57,765	55,757	41,566	26,517	41,566	39,870	52,592	655,020
2001	50,452	48,341	58,677	40,525	37,258	44,717	50,665	46,728	25,744	41,856	48,982	62,266	556,211
Projected 2002	55,544	51,433	62,270	47,527	43,284	49,616	50,770	45,241	25,832	37,985	42,033	53,465	565,000
	8%	10%	9%	11%	8%	8%	9%	9%	8%	7%	7%	7%	9%
Annual Memberships													
1998	21,375	21,219	20,680	22,080	21,720	22,065	22,576	17,589	21,694	20,799	20,563	21,686	254,046
1999	21,351	21,871	22,450	21,648	875	388	20,990	19,362	23,897	24,363	20,597	59,783	257,595
2000	19,409	19,606	18,383	19,916	19,344	9,325	18,580	18,560	16,707	18,541	18,672	20,185	217,248
2001	18,982	19,160	20,267	20,445	19,758	20,040	18,253	17,289	23,707	19,455	19,944	33,885	251,205
Projected 2002	19,086	19,264	19,196	19,781	14,754	12,131	18,891	17,183	20,093	19,511	18,759	31,352	230,000
	8%	8%	8%	8%	9%	6%	5%	8%	7%	9%	8%	8%	14%
Recreation Fees													
1998	23,724	18,605	12,187	12,952	50,314	8,379	8,667	11,554	17,471	17,504	10,219	17,238	208,914
1999	31,283	1,777	12,631	17,151	42,394	10,563	12,449	7,330	16,985	12,747	12,924	15,475	193,709
2000	33,814	17,029	38,133	10,130	23,702	6,564	18,209	18,209	11,825	1,143	11,483	23,016	213,257
2001	24,182	10,176	39,972	19,871	23,513	13,218	10,317	29,638	10,477	16,978	11,542	18,576	236,051
Projected 2002	32,431	15,328	28,537	17,074	40,562	10,976	14,208	18,397	16,404	13,755	13,212	21,118	242,000
	13%	13%	6%	12%	7%	17%	5%	6%	8%	7%	6%	5%	9%
Aquatic Fees													
1998	741	6,530	5,796	5,016	6,442	13,273	6,983	1,065	2,092	4,867	1,276	266	54,367
1999	5,817	1,007	10,273	4,973	7,086	10,346	10,549	3,878	3,807	3,983	2,965	6,139	70,823
2000	1,801	3,000	8,017	5,625	12,063	7,366	3,462	3,462	3,748	3,739	987	4,560	55,820
2001	5,204	8,235	1,173	4,635	9,251	13,988	3,525	4,281	5,036	2,031	1,743	3,655	60,757
Projected 2002	3,472	5%	6,737	10%	9,534	15%	6,458	3,367	3,937	4,000	1,815	3,793	65,000
	5%	6%	6%	10%	8%	15%	19%	10%	5%	6%	3%	3%	6%