

**CITY OF OCEANSIDE
CALIFORNIA**



**REQUEST FOR PROPOSALS
FOR
OPERATION OF SWIMMING PROGRAMS AT
MARSHALL STREET SWIM CENTER**

December 6, 2011

**PROPOSALS DUE: THURSDAY, MARCH 8, 2012, AT 3:00 PM
In the Office of the Property Management Division
City Hall South 300 North Coast Highway
Oceanside, CA 92054**

**CONTACT: WILLIAM F. MARQUIS
(760) 435-5171**

**RECOMMENDED PRE-PROPOSAL WALKTHROUGH:
Date and Time: Tuesday, January 24, 2012, at 10:00 a.m.
Location: Marshall Street Swim Center
1404 Marshall Street, Oceanside, CA**

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NEIGHBORHOOD SERVICES DEPARTMENT
PARKS AND RECREATION DIVISION

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We create community through people, parks and programs.

Strengthen community image and sense of place *Support economic development
Strengthen safety and security *Promote health and wellness *Foster human development
Increase cultural unity *Protect environmental resources *Provide recreational experiences
Facilitate community problem solving

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I. INVITATION

The City of Oceanside ("City") is seeking proposals from qualified individuals or organizations interested in entering into a long-term lease agreement to provide swimming programs, at the Marshall Street Swim Center, 1404 Marshall Street, Oceanside, California. The selected swimming program operator will be responsible for the maintenance of the swim pool, facilities, equipment and machinery (building maintenance, janitorial services, water clarity, filtration, heating, vacuuming, etc.).

II. CITY OBJECTIVES

The City of Oceanside is well known for excellence in customer service and fiscal responsibility. The City seeks a swimming program operator who shares these essential values and who will incorporate them into the swimming programs at the Marshall Street Swim Center. The City's specific objectives in selecting a swimming program operator are noted below:

A. To enter into a long-term business relationship with an effective entity to operate the Marshall Street Swim Center aquatics and swimming programs. (The City prefers to enter into a lease agreement with a single provider.)

B. To provide a safe, cheerful, wholesome, comfortable and service-friendly atmosphere in which patrons can enjoy swimming activities.

C. To establish an equitable, fair and just level of financial return to the City.

D. To establish appropriate staffing levels, qualifications and responsibilities to ensure the provision of safe, quality programs.

III. INSTRUCTIONS TO PROPOSERS

A. Submission of Proposals - Proposers shall submit an original plus five (5) copies of the proposal. Proposals should be submitted in a sealed envelope, clearly marked "Request for Proposals Operation of Swimming Programs at Marshall Street Swim Center " prior to Thursday, March 8, 2012, at 3 p.m. to:

City of Oceanside
Property Management Division
3rd Floor City Hall South
300 North Coast Highway
Oceanside CA 92054

B. Pre-Proposal Walkthrough – A pre-proposal walkthrough of the Marshall Street Swim Center swim pool facility located at 1404 Marshall Street, Oceanside, California, will be held on Tuesday, January 24, 2012, at 10:00 a.m. ***Attendance is not mandatory, but highly recommended.*** The purpose of the walkthrough is to discuss City objectives, to allow proposers to examine the facility, to answer proposer questions, and/or to clarify the City's

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requirements, if necessary. Written addenda may be issued to all prospective proposers if deemed appropriate and necessary by the City. Those who wish to participate in the walkthrough should meet at the pool site promptly at 10:00 am.

The City shall presume that any proposer who submits a proposal is thoroughly familiar with all specifications and requirements of the Request for Proposals (RFP). The failure or omission to examine any form, instrument or document or to examine the existing facility and/or equipment and furnishings shall in no way relieve the proposer from any obligation in respect to the proposal.

C. Proposal Preparation – The proposal should clearly describe proposer's expertise and experience in the provision of swimming programs and services. The proposal must closely adhere to the requirements of this RFP and must be presented in the established format. Failure to comply with RFP requirements may result in rejection of a proposal.

D. Questions about Proposal Procedures or Specifications – Questions regarding the specifications or proposal procedures, etc., should be addressed to William F. Marquis, Proposal Contact, at (760) 435-5171. All information provided in the Request for Proposals and its supporting documents is based on information from a variety of sources. No representation or warranty is made with respect thereto. Additional feasibility and marketing studies, etc., are the responsibility of the proposer.

E. Late Proposals – Any proposal received after the proposal deadline cannot be considered.

F. Rights Reserved by the City – The City reserves the right to:

1. Postpone the date and time announced for receipt of proposals by issuance of an Addendum at any time prior to the deadline for receipt of proposals;
2. Reject any proposal that is conditional in any way or that contains erasures or irregularities of any kind, items not called for, items not in conformity with applicable law, changes, additions, alternate proposals, or any other modifications of the proposal form which are not in accordance with the proposal documents;
3. Make such investigations as deemed necessary to determine the ability of proposer to perform the specified services;
4. Reject any proposal if the evidence submitted by or investigation of the proposer or City's past experience with proposer under another contract fails to satisfy the City that the proposer is properly qualified to successfully perform the obligations of the lease;
5. Reject any or all proposals and to waive any informality in any proposal;

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6. Determine the proposal(s) most advantageous to the City;
7. Consider proposals for a period of sixty (60) days following the deadline for receipt of proposals before deciding which proposal, if any, to accept.
8. Waive any informality in any proposal.
9. Modify the terms of the eventual agreement as the result of a City Council study issue regarding the services described in this RFP.

G. Modification or Withdrawal of Proposals

1. **Before Date and Time for Receipt of Proposals** - Proposals that contain mistakes discovered by a proposer before the date and time for receipt of proposals may be modified or withdrawn by written notice to the City's Proposal Contact received prior to the deadline. Any modification shall be clearly identified as such and shall be made in writing, executed and submitted in the same form and manner as the original proposal.
2. **After Date and Time for Receipt of Proposals** - A proposer alleging a mistake in a proposal may be permitted to withdraw its proposal if the proposer alleges that the mistake made proposal pricing materially different than intended, provided that the proposer gives written notice of the mistake and the manner in which it occurred to the City's Proposal Contact within five (5) calendar days following the deadline for receipt of proposals and the City's Proposal Contact deems it to be in the best interest of the City.

H. Cost of Proposal Preparation – The City of Oceanside will not pay costs incurred by the proposer in proposal preparation. All such costs shall be borne by the proposer. All submitted materials shall become the property of the City of Oceanside.

I. Exceptions to the RFP – Any exceptions to RFP specifications, terms and conditions must be clearly stated in the proposal.

J. Proposal Evaluation and Award – This is a Request for Proposals for qualified proposers with expertise and experience in the provision of swimming programs. A review board composed of City staff will evaluate written proposals. Scoring by the review board will identify the proposer most likely to meet the City's needs.

<u>Evaluation Criteria</u>	<u>Maximum Points Possible</u>
Completeness of Proposal and Adherence to Specified Format	10
Proposed Services	30
• Proposer background information	
• Proposed swimming programs or services and proposed staffing	

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<ul style="list-style-type: none">• Proposal for use and/or remodel of swim building and facility• Proposal for replacement of equipment and furnishings• Safety Plan• Start up strategy (if appropriate)	
Financial and Longevity Aspects of Proposal	60
<ul style="list-style-type: none">• Financial return to the City (amount and whether equitable throughout the lease agreement term)• Yearly Operations Summary (clarity and completeness of business plan and whether plan is realistic)• Start up strategy (completeness of financial statements and whether proposer is capable of supporting future obligations)• How long proposer has been in business• Length of time for proposed agreement	
Maximum Points Possible	100

Proposers may be required to make an oral presentation before the City review board at a City site.

The selection process will conclude with City's identification of the proposer whose proposal is most likely to meet the City's needs. Lease negotiations will closely follow. Should lease negotiations fail to conclude with an agreement acceptable to both parties, the City will release, at its own discretion, the first considered proposer and begin negotiations with subsequent candidate(s).

To the greatest extent provided by law, all proposals shall be held in strict confidence by the City until the conclusion of negotiations and the execution of a lease agreement with the successful proposer.

K. Non-Collusion Certification – By submitting a proposal, the proposer is certifying that he/she has not directly or indirectly been collusive with any other proposer in the preparation and submission of the proposal. If at any time it shall be found that the person, firm or corporation engaged in collusive activity, the person, firm or corporation shall be liable to the City for all loss or damage which the City may suffer as the result of the collusive activity, including but not limited to, the cost of advertising and awarding a replacement lease for the service. This does not restrict the ability to collaborate with other individuals or groups to submit a joint proposal.

L. Proposal Opening; Granting of Lease – Proposals will be publicly opened on Thursday, March 8, 2012, at or shortly after 3 p.m. in the Oceanside City Hall South 3rd Floor, 300 North Coast Highway, Oceanside, CA 92054. Only the names and addresses of proposers will be read aloud at that time. A lease will be granted through a lease agreement with the proposer whose proposal is determined to be the most advantageous for the City.

M. Lease Documents - The lease documents will consist of this Request for Proposals; its attachment(s), if any; the successful proposer's signed proposal; and a lease agreement executed by the parties.

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IV. BACKGROUND

A. Background - For a number of years, the Oceanside Parks and Recreation has provided a diverse and extensive variety of swimming programs to the public. These swimming programs have been offered at the Brooks Street Swim Center and Marshall Street Swim Center pools.

The general economic downturn in recent years has caused the City of Oceanside, like other public agencies at all levels of government, to reduce operational costs. The recent closure of Marshall Street Swim Center is but one of the actions taken to reduce expenditures, while continuing to provide public swimming programs at the Brooks Street Swim Center.

In response to public request, the Oceanside City Council has considered several options for optimal public adult, child and family swimming opportunities, including the possible year-round operation of the Marshall Street Swim Center by a private operator.

Council directed staff to proceed with a request for proposals from qualified aquatics program providers to assist in maintaining best possible public swim programs by operating Marshall Street Swim Center through a private operator.

B. Swim Pool Facility – The Marshall Street Swim Center swim facility is located at 1404 Marshall Street and situated at the southeast corner of Marshall Street Park. The main pool has six (6) lanes of 25 yards (75 feet) with 6 four (4) inch lane lines and reel, ranges in depth from three (3) to nine (9) feet, holds 125,000 gallons, and a capacity of 157 persons. The pool also has a 1-meter diving board (additional details are listed in the Fact Sheet (Attachment A)). A wading pool of 13 feet by 24 feet (estimated size) is situated to the south of the main pool. The selected lessee's employees shall maintain the pool facility.

C. Swim Building – The Swim Building, located at the west end of the pool is a 2,400 square foot building (approximate size) consisting of the check-in counter, men's and women's dressing rooms and restrooms, outdoor showers, user group office and a lifeguard control room.

D. Hours of Use – The swim pool facility is available for use daily from 6 a.m. through 9 p.m. The City would prefer, but will not require, the general public have at least four (4) to five (5) hours of use of the pool during all these hours, the designated times shall be negotiated and agreed upon by the City and selected lessee. Lessee may charge patrons market rate fees for the use of the pool during these public use hours.

E. Swim Pool Equipment - Lane lines, reels, pool blankets, diving board, chlorination, filtration, circulation, heating and vacuum equipment are available and will be replaced, when necessary, by the lessee. With the permission of the City, other equipment may be used and/or stored at the facility by the lessee.

F. Issues To Be Considered by Proposer During Proposal Preparation

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1. **Joint Use** – The pool may be a joint use facility with some exclusive use and some joint use time periods. This priority and/or exclusive use will be reiterated in any lease agreement between the City and the successful proposer. Clear and concise communication and coordination between the lessee and City will be essential.
2. **Limited Use** – The use of SCUBA equipment will not be permitted in the pool. The use of any watercraft (row boats, canoes, kayaks, etc.) is also restricted and may only be used in the pool by special written permission from the City. This restriction will also be included in any lease agreement between the City and the successful proposer. The City also retains the rights to utilize any of the City's swim pool use time not specifically identified for use by the lessee.

V. LEASE ELEMENTS

The elements and terms of the lease agreement will be negotiated between the City and the successful proposer. The City has entered into several lease agreements in past years. Each agreement is unique and contains terms and conditions, consideration, and obligations which are specific to the activity and designed to provide a fair distribution of revenue and responsibilities between the parties. Each lease agreement is negotiated in confidence but becomes a public document once executed.

While each lease is unique, all contain certain elements which are standard requirements of the City. These requirements are described in this section and should be considered by proposers when completing their estimates of business operating expenses for submission with the proposal.

A. Indemnification and Insurance - The following paragraphs are typical of those included in all City of Oceanside lease agreements:

1. **Indemnification** - Lessee shall indemnify, defend, and hold harmless the City of Oceanside, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, orders, decrees or judgments for injury or death or damage to any person or property, loss, damage and liability occasioned by, growing out of or arising out of, or resulting from any act or omission on the part of lessee, its agents, or employees, or arising from the use of any improvements thereon or therein by any person or persons, or arising out of the operation or maintenance or dangerous or defective condition of the swim pool facility, or any structure, facility or thing erected or placed thereon or therein, except only for those claims arising from the sole negligence or sole willful misconduct of the City, its officers, agents, employees or authorized volunteers. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its

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officers, agents, employees or authorized volunteers in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officials, officers, agents, employees or authorized volunteers.

- 2. Insurance** - At a minimum, Lessee shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Oceanside, Attention Property Management, 300 North Coast Highway, Oceanside, CA 92054; fax (760) 435-5169.

Lessee shall take out and maintain during the life of the contract Workers' Compensation and Employer's Liability Insurance for its employees. The amount of insurance shall not be less than \$2,000,000 per accident for bodily injury or disease.

Lessee shall take out and maintain during the life of the contract such Commercial General Liability Insurance as shall protect Lessee, the City, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by Lessee, by the City, their officials, officers, directors, employees or agents or by anyone directly or indirectly employed by any of them. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$2,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from Lessee's or City's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5,000 without prior written approval of the City.
- Notice of cancellation to the City's Property Management Division at least thirty (30) days prior to the cancellation effective date. The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:
- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and

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property damage must be eliminated.

- The City shall be named as additional named insured with respect to the services being performed under the contract.
- The coverage shall be primary insurance so that no other insurance effected by the City will be called upon to contribute to a loss under this coverage.

Lessee shall be solely responsible for insuring (if desired and at its own cost and expense) any furnishings, fixtures, equipment, merchandise and supplies provided under the terms of the lease agreement against loss or damage from fire, theft, or any other cause.

B. Utilities and Maintenance

1. **Utilities** - The charges for water, sewer, gas, electricity, telephone, garbage, and all other utilities or services provided to the premises shall be the responsibility of the lessee.
2. **Maintenance** - Lessee shall be responsible for costs associated with the following:
 - a. Chemicals, and repairs, replacements, maintenance and operation of the swim pool, including, but not limited to, heaters, filters, pumps, vacuums and pump houses;
 - b. Maintenance, repair and replacement of all improvements, fixtures, furnishings, equipment and supplies as prescribed in the lease agreement and for paying any penalties for failure to discharge those duties.
 - c. Furnishing and paying for janitorial services. Janitorial services furnished and paid by lessee shall include, but not limited to, the cleaning of windows (inside and outside), toilets, urinals, hand sinks, showers, dressing rooms, floor coverings and walls, and cleaning of the pool/deck, and restocking paper products;
 - d. Keeping the swim building and deck area in a clean and sanitary condition and reasonably free from rubbish at all times to the satisfaction of the City;
 - e. Training its staff on maintenance procedures for all City equipment used by lessee;
 - f. Maintaining, repairing and replacing anti-entrapment devices and main drain and suction ports; and

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- g.** Cost for replacement of lost keys or re-keying of locks at City's discretion.

The City expressly reserves the right to inspect the facility at all times by and through its authorized representatives.

C. Financial and Service Level Reporting - Lessee shall maintain accurate financial books and records for the operation of its business provided at or from the premises. Any and all records and accounts shall be available to City for inspection at all reasonable times.

D. Compliance with Laws; Inspections

- 1.** Lessee shall be in full compliance with the Oceanside Municipal Code and all other rules, regulations, policies and ordinances of the City; and all applicable laws of the County of San Diego, the State of California and the United States of America.
- 2.** Lessee shall, at all times during the term of the lease, maintain City of Oceanside Business License, County Health and Facility Permits for public swimming pool and comply with all State and County regulations pertaining to the operation and maintenance of public swimming pools, including, but not limited to, water clarity, anti-entrapment regulations, and lifeguard training and certification.
- 3.** Within fifteen (15) days of occurrence, lessee shall provide to the City copies of any and all reports of inspections conducted by fire and/or health regulatory agencies, including any recommended and/or required actions contained in the reports.

E. Performance Deposit - Prior to exercising any of the privileges and rights of the lease, lessee shall deposit with the City a minimum of \$5,000 to guarantee full and faithful performance of all lease requirements. City may make withdrawals from this performance deposit to cover the cost of lessee's failure to fully and faithfully perform all requirements of the lease agreement. Lessee shall deposit additional monies to replenish the performance deposit upon being billed by City for any withdrawals. Any balance remaining shall be returned to lessee upon the termination of the lease.

F. Termination

- 1.** City reserves the right to terminate any lease granted as the result of this RFP under, but not limited to, the following conditions:

 - a.** Lessee is in default of any payment due the City or in the performance of any duty or obligation contained in the lease agreement and fails to correct such a default within five (5) days of receipt of written notice from the City.

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- b.** Lessee fails to keep in full force and effect the policies of insurance or performance deposit required by the lease agreement and fails to correct such a default within five (5) days of receipt of written notice from the City.
- 2.** Should either of the conditions stated above or any other condition of default of the lease terms exist, the lease agreement and all rights and privileges granted by the agreement shall immediately (without any demand or notice from the City, written or oral) cease and become void; and representatives of the City may immediately enter and take immediate and sole possession of the premises. Such an action shall not prejudice City's right to recover from lessee any payment due the City.

G. Payments; Considerations

1. Lessee shall pay all amounts due to the City in a timely fashion.
2. The payment arrangement which will be considered by the City includes, but is not limited to, rents paid to the City on a monthly or quarterly basis for rights to occupy and operate the premises as leased by the City.

VI. PROPOSAL FORMAT

Proposals shall include the specific information identified below. To expedite review by the City, information must be presented in the following sequence and format by number.

A. Proposer Background Information

1. Legal structure of entity submitting proposal; i.e. sole proprietor, partnership, corporation, etc. If a partnership or corporation, indicate the ownership, rights and roles of each member of the partnership or corporation. Preference will be given to a single proposal providing multiple programs or services. Single proposers, consisting of consortiums, joint ventures, or other partnership ventures, must clearly establish that all lease negotiation responsibilities will rest solely with one individual, firm or legal entity.
2. All principals of entity submitting proposal and a contact person with contact address and phone number.
3. Business and personal references of all principals as well as for the proposing entity, if applicable.
4. Related experience of principals, including number of years, type of business, positions held, special training, certifications, level of authority, etc.

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5. Proof of financial ability to fulfill probable lease commitments, including ability to provide future equipment and furnishing replacements per lessee's schedule.
6. Whether the proposer has been or is the subject of a bankruptcy or insolvency proceeding or subject to assignment for the benefit of creditors.
7. Any additional information that will assist the City in evaluating the proposal.

B. Proposed Swim Program Services - Proposal shall include a detailed description of the proposed services, including, but not limited to:

1. Intended use of various areas of the facility;
2. Type(s) of services or programs offered;
3. Qualifications of proposer's staff and the number of employees proposer will provide for each program or service;
4. Safety plan covering the various types of swim programs and activities included in this proposal;
5. Number of hours, lanes occupied and participants planned for each program or service;
6. Proposed fee schedule for programs or services and pricing for any sales items;
7. Type and extent of advertising and/or promotions (including City publications);
8. Involvement of principal(s)/owner(s) in operations;
9. Proposed lease term, such as five years with an opportunity to extend in five year increments if both parties agree;
10. Proposer's approach to scheduling. (The City encourages creativity); and
11. Other information, as necessary, to fully describe proposed services.

C. Swim Building Maintenance - The proposal shall specify the identity and qualifications of the proposer's staff or outside service provider who will perform the duties and the methods that will be employed pertaining to routine maintenance of the City's swim building, facilities and enclosures, including, but not limited to:

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1. Proposer's approach to providing janitorial services and cleaning so that the buildings and facilities are maintained and kept in a safe, decent, clean and sanitary condition to ensure the safety of the public; and
2. Proposer's approach for routine building maintenance to ensure the buildings and facilities are kept in a good, decent and safe condition, state of repair and functionality.

D. Swimming Pool Maintenance – The proposal shall specify who will perform and what methods will be employed for routine maintenance of the swimming and wading pools so as to ensure that they are maintained in a safe and healthful condition, including, but not limited to:

1. Proposer's approach pertaining to the operation, maintenance, and use of a public swimming pool and surrounding deck space, including the quality and purity of the water, and other measures to ensure the safety of bathers, including anti-entrapment procedures, and measures to ensure personal cleanliness of bathers;
2. Proposer's methods for maintaining records, including County Health Pool Permit and County Health Facility Permit, logs of pool operation, disinfection residual, pH levels and cyanurates, and maintenance procedures, storage of chemicals and other supplies;
3. Proposer's approach to the provision, maintenance, repair and replacement of lifesaving devices and first aid equipment, lane lines, reels, pool covers and required signage; and
4. Proposer's plan for the maintenance of pumps, filters, heaters, timers, meters and gauges, chlorinators and other disinfectors, electrical, safety equipment and enclosures.

E. Staffing, Lifeguards and Instructors – Proposer shall identify the persons, the qualifications and certifications held by each person, who would be providing services for users and bathers at Marshall Street Swim Center, including, but not limited to:

1. **Pool Operator/Supervisor** – Person who shall be and is fully capable of, and shall assume responsibility for, compliance with all requirements relating to pool operations and maintenance, lifesaving and other safety measures for bathers, routine operating procedures, and operation and maintenance of mechanical and electrical equipment, as deemed reasonably necessary and appropriate for the proper and professional management, operation and maintenance of the Swim Center and its improvements. (Persons in this capacity shall meet the qualifications of Lifeguards, as well as certifications required by all local, state and federal requirements, regulations and laws pertaining to the functions performed

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during the execution of assigned duties.)

2. **Lifeguard Services** – “Lifeguards” shall be persons in attendance at the pool during periods of use, who possess proper lifesaving certificates, or have equivalent qualifications and who are trained to administer first aid, including but not limited to, cardiopulmonary resuscitation.
3. **Instructors** – Persons who will provide swimming lessons, coaching, or overseeing water contact sports, or providing water safety instructions to participants in private or group sessions.

F. Use and/or Remodel of Swim Building and Facility - The proposal shall indicate if the proposer intends to invest in the remodel or alteration of the swim building, facility, or additional equipment, including the proposed amount of lessee investment, and if the intent is to combine the proposer's investment with City capital funding. Proposal should indicate swim building use requirements (including exclusive use) and a plan for maintenance of the building, both interior and exterior, (whether by proposer, by City or by a combination of both).

G. Equipment and Furnishings - The proposal shall include a list of the existing equipment and furnishings that will be required for the proposed programs or services. The proposal shall also include a replacement schedule for the existing equipment and furnishings due to normal wear and tear or for any other reason, including the source of equipment replacement capital. Proposal should include what, if any, additional equipment will be required and who will be responsible for purchasing, maintaining and replacing that equipment.

H. Yearly Operations Summary (Business Plan) - The proposal shall include a Yearly Operations Summary (completed Attachment B) for each year of the proposed term of the lease. For example: If a five-year lease is proposed, five Yearly Operations Summary Forms must be completed and submitted with the proposal. The proposed operations plan shall address and will be evaluated based upon:

- The Proposed Return to the City
- Budget Plan
- Financial Stability

I. Start Up Strategy - The proposal shall include a description of the proposed start up strategy and all related costs, including, but not limited to:

1. Required furnishings and floor coverings;
2. Required expendable equipment, including kick boards, pace clocks, pull buoys, and starting blocks, etc.;
3. Supplies and materials required in the operation of services and programs;

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4. Staffing level, including a resume of the person who will manage the operation, all required positions and number of staff in each position, qualifications, functions, and pay rates;
5. Proposed staff training;
6. Proposed marketing plan (including proposed City publications);
7. Proposed written revenue handling procedures and policies;
8. Proposed written safety procedures and policies; and
9. Other information, as necessary, to fully describe start up strategy.

J. Signature - The proposal must be signed by either the proposer or an officer, partner or other representative duly authorized to sign such proposals on behalf of the proposer. The name of the signatory shall be typewritten or printed below the signature line. The type of legal entity shall be included in the name of the signatory (Examples: individual, sole proprietorship, general partnership, limited partnership, corporation) and in accordance with the following instructions to signatories.

The name and title of all individuals signing for the entity shall be typewritten or printed below the signature line. A Notary Public, using the California All-Purpose Acknowledgement format, must notarize all signatures.

The legal entity of the signatory(ies) shall provide evidence that the individual(s) signing the document is authorized to bind the legal entity of the signatory. The notary acknowledgement does not constitute such proof unless the signatory is signing as an individual.

The following are acceptable forms of evidence of the signatory's authorization to bind the legal entity:

1. For a Sole Proprietorship. Either a Fictitious Business Name Statement or a City of Oceanside Business License is sufficient to establish the authority of a signatory to bind the sole proprietorship.

2. For a Corporation. Proof of authorization shall be established (pursuant to Corporation Code Section 313) if one of the corporate officers listed in column A below and one of the corporate officers listed in column B below both sign the document:

A
Chairman of Board
or
President
or
Vice President

and

B
Secretary
or
Assistant Secretary
or
Chief Financial Officer
or

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Assistant Treasurer

For any other combination of signatures of corporate officers, a copy of the Board minutes, resolution, or articles of incorporation may be submitted to prove that the individuals have the authority to bind the corporation.

3. For a Limited Liability Company ("LLC"). Proof of authorization shall be established (pursuant to Corporations Code section 17154) if one of the LLC officers listed in Column A above and one of the LLC officers listed in Column B above both sign the documents (see Corporation section).

For any other combination of signatures of LLC officers or managers, a copy of the Operating Agreement may be provided to prove that the individual(s) or entity has the authority to bind the LLC.

4. For a Partnership. If the entity is a Limited Partnership, a Certificate of Limited Partnership (State form LP-1) is sufficient to establish the authority of a single General Partner to bind the Limited Partnership.

If the entity is a General Partnership, a Certificate of General Partnership or General Partnership Agreement is sufficient to establish the names of all general partners of a General Partnership.

5. For Multiple Entities. If the individual or individuals signing the document are signing on behalf of an entity other than the signatory, and that other entity is authorized to bind the legal entity of the signatory, then documentation must be submitted which establishes that the individuals have the authority to bind the other entity, and that the other entity has the authority to bind the legal entity of the signatory.

VIII. AGREEMENT FORMAT

A. Lease Agreement. The elements and terms of the lease agreement will be negotiated between the Authority and the successful proposer. The City has entered into several similar agreements in past years. Each agreement is unique and contains terms and conditions, consideration, and obligations which are specific to the transaction and designed to describe the elements of the transaction and responsibilities between the parties. Each agreement is negotiated in confidence but becomes a public document once executed.

While each disposition and acquisition agreement is unique, all contain certain elements which are standard requirements of the City. These requirements are described in (the "Draft Agreement") attached hereto as "Attachment C", and made a part of this RFP and incorporated herein by reference.

CITY OF OCEANSIDE
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ATTACHMENT A

FACT SHEET

Pool and Equipment

Gallons	125,000
Dimensions	42' X 75' w/ six lanes
Capacity	157 persons
Depth	3' - 9'
Lane Lines	6 - 4" lane lines w/reel
Filtration	Sand
Pump	30 HP
Stranrol	System 5
Heater	Lochinvar Cpn1440
Sanitizer	Liquid Cl2

Utilities and Chemicals *

Water and Sewer	\$5000 - \$5200 per mo.
Gas	\$1500 - \$2000 per mo.
Electric	\$1000 - \$1500 per mo.
Acid	100 - 150 Gal per wk.
Chlorine	200 - 300 Gal per wk.
Trash and Waste Disposal	Contract Rate

*Estimated costs and quantities

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ATTACHMENT B

Yearly Operations Business Plan Summary

Gross Revenues:	
Activity Fees	\$
Rentals	\$
Miscellaneous Sales/Services	\$
Year _____ Total Gross Revenues	\$
Gross Operating Expenses:	
Labor/Management	\$
Office Supplies	\$
Expendable Equipment	\$
General Supplies	\$
Maintenance/Repairs	\$
Insurances and Misc. Expenses (taxes, interest, etc.)	\$
Marketing/Publicity	\$
Return to City (rent, %, etc.)	\$
Year _____ Total Gross Operating Expenses	\$
Year _____ Net Operator Profit or (Loss)	\$
Debt Retirement:	
Year _____ Total Debt Retirement	\$

Business Plan for Year ____ of a ____-year agreement for Operation of Public Swimming Programs at Marshall Street Swim Center.

**CITY OF OCEANSIDE
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ATTACHMENT C



PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

FOR THE LEASE OF REAL PROPERTY

LOCATED AT

**1404 MARSHALL STREET, OCEANSIDE, CA
(MARSHALL STREET SWIM CENTER)**

DATED

**CITY OF OCEANSIDE
NEIGHBORHOOD SERVICES DEPARTMENT
PARKS AND RECREATION DIVISION**

**CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
(MARSHALL STREET SWIM CENTER)**

THIS PROPERTY LEASE AGREEMENT, herein after called "Lease", dated as of _____, 2012 solely for identification purposes, is made and entered in by and between the **CITY OF OCEANSIDE**, a California Charter City, hereinafter called "City", and _____, hereinafter called "Lessee". Notwithstanding the date set forth above, the effective date of this Lease shall be the date the Oceanside City Council approves the Lease ("Effective Date").

R E C I T A L S

WHEREAS, City is the owner of that certain real property commonly known as Marshall Street Swim Center, located at 1404 Marshall Street in the City of Oceanside, County of San Diego, State of California;

WHEREAS, Lessee is a duly authorized _____ in the business of developing, operating, managing and maintaining public swimming pools and facilities;

WHEREAS, City and Lessee are desirous of leasing the Marshall Street Swim Center to Lessee to enable Lessee to operate, manage and maintain the facility and provide a broad array of swim and aquatic opportunities thereon together with related activities to Oceanside citizens and the general public; and

WHEREAS, City and Lessee are mutually committed to act in good faith to see that the Marshall Swim Center is operated, managed and maintained in accordance with the terms and condition as set forth herein;

NOW THEREFORE, the parties in consideration of the terms, conditions, covenants and provisions contained herein and other valuable consideration do mutually agree as follows:

SECTION 1: PREMISES AND USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as Marshall Street Swim Center located at 1404 Marshall Street. The main pool has six (6) lanes of 25 yards (75 feet) with 6 four (4) inch lane lines and reel, ranges in depth from three (3) to nine (9) feet, holds 125,000 gallons, and a capacity of 157 persons. The pool also has a diving board. A wading pool of 13 feet by 24 feet (estimated size) is situated to the south of the main pool. The Swim Building, located at the west end of the pool is a 2,400 square foot building (approximate size) consisting of the check-in counter, men's and women's dressing rooms and restrooms, outdoor showers, user group office and a lifeguard control room. A pump house and chemical storage shed are located at the northeast corner of the premises. Said real property and improvements are hereinafter referred to as the "Premises" and at times the "Marshall Street Swim Center" and "Swim Center".

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1.02 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purpose of the provision of publicly offered aquatic related programs and for no other purpose whatsoever. Lessee is granted the exclusive right to provide all public swimming programs at the Marshall Street Swim Center Pool other than those provided by City or its employees in connection with programs authorized and mutually agreed to by the Director and Lessee. The hours of operation will be daily between 6:00 a.m. and 9:00 p.m. with specific pool use, including shared or exclusive use times as outlined in this Lease, except during times of closure due to maintenance and repairs or as modified by written agreement of the parties.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God. Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Lessee shall not use the Premises in any manner which disrupts the reasonable quiet enjoyment of surrounding property owners' use of their property.

1.03 Definitions. As used in this Lease, the words and phrases noted, unless provided otherwise, shall have the following meanings:

a. The term "City" means the City of Oceanside, California, its officers, officials, boards, commissions, agents, employees, and authorized volunteers.

b. The term "City Council" means the City Council of the City of Oceanside.

c. The term "City Manager" means the City Manager of the City of Oceanside.

d. The term "Department" means the Neighborhood Services Department of the City of Oceanside.

e. The term "Director" means the Director of the Neighborhood Services Department of the City of Oceanside.

f. The term "Lessee's Employee" means any person employed by and paid solely by Lessee, for any of the following purposes: (1) responsible for the maintenance and operation of the Marshall Street Swim Center; (2) to supervise or give lessons and instructions in swimming, and providing life guard services; (3) to assist in the day-to-day operation of the swimming programs, pool or related activities, including collection of monies; or (4) any other aquatic related activity conducted by Lessee from the

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Premises.

g. The term "Marshall Street Swim Center" means the Marshall Street Swim Center, together with the Pool Building, Pool, all improvements, structures, fixture, furniture, equipment and machinery appurtenant thereto, located at 1404 Marshall Street, Oceanside, California.

h. The term "Parks and Recreation Division Manager" means Manager of the Parks and Recreation Division of the Neighborhood Services Department of the City of Oceanside.

i. The term "Pool" means the Marshall Street Swim Center Swim Pool, having six (6) lanes of twenty-five (25) yards and includes the wading pool.

j. The term "Pool Building" means a single-story structure, located at the west end of Marshall Street Swim Center (approximately 2,800 sq. ft. in size consisting of the check-in counter, men's and women's dressing rooms and restrooms, outdoor showers, user group office and a lifeguard control room) located at 1404 Marshall Street, Oceanside, California.

k. The term "Swimmers" or "Bathers" means members of the public using the pool facilities and participating in water contact activities.

l. The term "Shall" is mandatory.

1.04 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however, the City specifically retains the following rights:

a. Subsurface Rights. City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. Easements. City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

City will not reimburse Lessee for damages, if any, to the permanent improvements, located on the Premises resulting from the City exercising the rights reserved in this Lease. City will pay or cause to be paid the costs of the maintenance and repair of all City or non City-owned installations made pursuant to these reserved rights. City's use of the Premises is paramount to that of the Lessee's use.

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SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of ____ **(xx)** years commencing on _____, **2012**, and expiring _____, **20**__.

2.02 Renewal Options. Provided Lessee is not in default or breach of any term, condition or covenant of this Agreement, Lessee may request not more than _____ **(x)** ____-**year** extensions of the term of the lease by providing the City Manager with its written request to extend the term hereof no later than **ninety (90) days** prior to the expiration of the term hereof, or any extension term. Said written request shall be delivered to City in the same manner as notices as set forth in Section 13.01, below. The City Manager or his designee shall notify Lessee not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the City Council for approval, at which time the City Manager shall provide Lessee with the City's determination of the rental amount it is willing to accept for Lessee's use and occupation of the Premises during the extension time. City's failure to provide the new rental amount within said timeframe shall not defeat City's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute City approval of the extension request. The City Manager in his capacity as the City's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to Lessee not later than **thirty (30) days** from receipt of the request for extension. Lessee may not request more than one, _____-year extension at a time. The City Council, at its sole discretion, may approve or deny any extension of the term of this Lease. In the event the City Council is unable to consider the renewal request in sufficient time as to provide Lessee with thirty (30) days notice of termination in the case of denial, the Lease shall be extended for a period not to exceed thirty days, to allow for such thirty (30) day notice of termination.

2.03 Termination Provisions. City reserves the right to terminate this Lease:

a. If at any time Lessee is in default in the payment of any fees or any other monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein (time expressly declared to be of the essence), upon **five (5) days** written notice to Lessee and Lessee fails to correct such default within the **five (5) day** period; provided, however, that:

i. Lessee shall not be entitled to and expressly waives any other form of demand or notice (written or oral);

ii. City shall have the full right, at its election, to enter the Premises and take immediate and sole possession thereof;

iii. City shall have the right to bring suit for and collect all monies required to be paid to City and which shall have accrued up to the time of entry described above;

iv. Upon such termination, this Lease and all rights and privileges herein agreed to shall become void to all intents and purposes whatsoever; or

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b. If Lessee fails to keep in full force and effect at any time the policies of insurance or faithful performance deposit required above upon **five (5) days** written notice to Lessee and Lessee fails to correct such default within the **five (5) day** period.

c. Either party may terminate this Lease for any reason upon 120 days written notice to the other.

2.04 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall pay the sum of: 1) the minimum monthly rent for the preceding annual term, and 2) a prorated amount of percentage rent for the extent of the holdover period. In addition to the minimum and percentage rent, Lessee shall, in the event of any holding over beyond **90 days**, pay an increase in the minimum rent or percentage rent equal to the product of: 1) the minimum rent or percentage rent, whichever is the higher amount, and 2) **five percent (5%)** per year for each year of the term of Lease counting from the original commencement date of the Lease to the expiration or termination date of the Lease.

2.05 Abandonment by Lessee. Even though Lessee has breached the Lease and abandoned the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

2.06 Quitclaim of Lessee's Interest. On the expiration or earlier termination of this Lease for any reason, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within **five (5) days** after receiving written demand therefor. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Lease and all Lessee's rights to the Premises.

2.07 Surrender of Premises. Upon expiration of the term of this Lease, or upon the sooner termination of such term from whatever cause, Lessee:

a. May remove any and all furnishings, fixtures, equipment, merchandise and supplies installed or purchased by Lessee; provided, however, that:

i. Any item of personal property described above not so removed shall be deemed abandoned by Lessee to City and absolute title thereto shall vest in City immediately;

ii. Lessee is not then in default in the payment of any fees, portion of gross revenue or any other required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein;

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iii. Lessee shall leave the Pool and Pool Building appurtenances in good order, condition and state of repair, reasonable wear and tear and damage by the elements excepted, together with any alterations, changes, additions or improvements thereto; and

iv. Lessee shall be responsible for any damage to the Pool or Pool Building and occasioned by the removal of any furnishings, fixtures or equipment; and for such damage, if any, City shall have lien on the items of personal property until such damages be paid.

b. Shall peaceably and quietly leave, surrender and yield up to City and District the Pool and Pool Building.

c. In the event of termination of this Lease, because of the default of Lessee upon any of the grounds set forth herein or in the event of the automatic termination of this Lease, City reserves the right to remove any personal property belonging to Lessee from the Pool and Pool Building and to store such personal property at the sole cost and expense of Lessee, and City shall have a lien on such personal property for and until all and any storage charges are paid.

2.08 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: RENT

3.01 Time and Place of Payment. The Lessee shall make all Minimum Rental payments monthly in advance to City, without demand, on or before the **first (1st) day** of each new month, in lawful money of the United States of America. In the event the commencement of this Lease is after the first day of the month, the first month's minimum rent shall be prorated based on a **30-day** proration formula. The Lessee shall make all Percentage Rent payments monthly in arrears to City, without demand, no later than **ten (10) days** following the end of each calendar month of the term of this Lease.

Checks should be made payable to the City of Oceanside and delivered to the **City of Oceanside, Attention Cashiers, 300 North Coast Highway, Oceanside, CA 92054**. The place and time of payment may be changed at any time by City upon **30-days** written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional **\$15**, or the current rate charged by the City's bank or financial institution, whichever is the greater amount, for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent. The total monthly rent amount shall be equal to the Minimum Rent (as defined by Subsection 3.02a and 3.02b) or the Percentage Rent (as defined by Subsection 3.02c).

a. **Initial Minimum Rent Amount.** The annual Minimum Rent amount for the use, occupation and operation of Marshall Street Swim Center by Lessee during the **first**

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(1st) year of the term of this Lease shall be ___ Dollars (\$___.00), and shall be payable monthly in advance, without demand from City, at the rate of ___ Dollars (\$___.00) on or before the **first (1st) day** of each new month.

b. Minimum Rent Adjustment Date. Commencing on the first anniversary date of the term hereof and each successive anniversary date of this Lease the annual Minimum Rent shall increase as follows:

<u>Term Year</u>	<u>Annual Minimum</u>	<u>Monthly Minimum</u>
Second	\$XX	\$XX
Third	\$XX	\$XX

c. Monthly Percentage Rent. The monthly Percentage Rent shall be the total applicable percentages of the gross income, (as defined in Subsection 3.02d), less the monthly minimum rent paid by Lessee for the month during which the monthly Gross Income was calculated. The applicable percentages are as follows:

<u>Term Year</u>	<u>Monthly Percentage</u>
First	X%
Second	X%

The monthly percentage rent shall be payable to City monthly in arrears not later than **ten (10) days** following the end of each calendar month of the term of this Lease as required in Section 3.01 hereinabove.

d. Gross Income. Gross Income as used herein shall mean all income received by Lessee from use charges, admission, cover charges, rentals, and any other fares or charges, whatsoever, the sale of goods or services on or from the Premises or any other income received by Lessee as a result of occupancy of the Premises. Gross Income shall include the amount of any manufacturer's or importer's excise tax included in the price of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Gross Income. Gross Income shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Lessee. Gross Income shall include income received by Lessee or by any sublessee, Lessee or licensee, or their agents, and all Gross Income received by any sublessee, Lessee, licensee, or other party as a result of any occupancy or operations conducted on or from the Premises. The monthly Gross Income shall be calculated at the end of each month of the term of this Lease. The first monthly Gross Income calculation shall be made after the first full month following the commencement date of this Lease. In the event the commencement of this Lease is after the

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first day of the month, the first month's Gross Income calculation shall be made and included with the first full month calculation.

3.03 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained on an accrual basis in accordance with good accounting practice and standards within the industry. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

a. All retail sales shall be recorded by means of cash registers which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers provided such system is approved in writing by the City Manager. In addition to the above, in the event of admission, cover charges, rentals, and any other fares or charges, whatsoever, Lessee shall also issue serially numbered tickets for each such charge and keep an adequate record of said tickets, both issued and unissued.

b. Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the City's offices, at City's sole discretion as to location, and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by City shall be deemed a default of this Lease. These records shall include, but are not limited to, Federal quarterly and annual income tax statements, the California State Board of Equalization income statements, sales statements, cash register tapes, purchase invoices, or other pertinent documentation, and all other generally accepted business books, documents, and records. City shall have the discretion to require the installation of any additional accounting methods or controls it may deem necessary.

c. Lessee shall maintain all such books, records and accounts for the term of this Lease, and a minimum period of five (5) years thereafter. This provision shall survive the expiration or sooner termination of this Lease.

3.04 Delinquent Rent. If Lessee fails to pay the rent when due, Lessee will pay in addition to the unpaid rents, **five percent (5%)** of the delinquent rent. If the rent is still unpaid at the end of 15 days, Lessee shall pay an **additional five percent (5%)** [being a total of **ten percent (10%)**] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with

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respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

a. In the event that the City audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of **five percent (5%)** of the total required rent, then Lessee shall pay City the cost of the audit plus **ten percent (10%)** per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due City as compensation to City for administrative costs and loss of interest as previously described herein. Lessee agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that City will incur from Lessee's late payment. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this lease.

3.05 Security Deposit. Lessee, before exercising any of the privileges and rights set forth in this Lease, and at its own costs and expense, shall deposit and maintain with City at all times a security deposit in the minimum sum of **Five Thousand Dollars (\$5,000.00)** in cash or bond, to guarantee full and faithful performance of all the duties, obligations, covenants and agreements contained in this Lease to be performed by Lessee or any employee of Lessee, including, but not limited to, payment of monies required to be paid to City at the times and in the manner specified in this Lease. City may make withdrawals from this guarantee fund to cover the cost of failure to fully and faithfully perform as stated above, or to reimburse City monies required to be paid to City which are not so paid. Lessee shall deposit additional monies to replenish the guarantee fund within **five (5) days** after being billed by City for withdrawals from the fund. Any balance remaining shall be returned to Lessee upon the termination of this Lease, provided that Lessee or any employee of Lessee is not in default in the payment of any monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein. The security deposit or balance thereof, if any, together with an itemized accounting of withdraws, shall be mailed to Lessee at its last known address within **fourteen (14) days** of surrender of premise, or as reasonably soon thereafter.

The provisions of this Section 3 shall survive the expiration or earlier termination of this Lease.

SECTION 4: LICENSES AND TAXES

4.01 Licenses and Permits. Lessee shall perform each duty and obligation imposed herein in full compliance with the Oceanside Municipal Code and other ordinances and rules of City, and all applicable laws of the County of San Diego, State of California and the United States of America applying to the operation of public swimming pools regardless of whether or not the same are stated herein, and for the purpose of this Lease such rules regulations, ordinances codes and laws are incorporated herein and made a part hereof as if set forth herein in their entirety. Specifically, without limitation, Lessee shall:

a. **Business License and Permits.** Pay for and obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the

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full term of this Agreement, and any and all permit(s) or license(s) required for Lessee's operation of a public swimming pool under this Agreement and any applicable City, County, State, or Federal rule, code, ordinance, regulation or law. Lessee shall be responsible for and pay all penalties assessed, including late fees, resulting from Lessee's failure maintain current any license, certificate or permit required by any local, state or federal code, regulation, rule, ordinance or law pertaining to conducting business and operation of a public swimming pool.

b. Taxes. Pay any and all taxes including, but not limited to, personal property taxes, and sales and use taxes assessed against Lessee, or any possessory interest in the Premises, including inventories used in performing the duties and obligations under this Lease.

i. Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes prior to delinquency.

SECTION 5: SCOPE OF PROGRAMMING

5.01 General Programming. Lessee shall provide, to the degree that it can be accomplished within the context of market-based programming, a broad array of swim opportunities as opposed to a narrow scope of programs and all other services customarily provided by a swim professional, either by _____ personally or by a qualified Lessee Employee, such as:

a. General Swim Programs. Organize, offer, establish and conduct fee-based swimming programs which include swim lessons for all ages, recreational/family swim opportunities, water exercise classes, safety and training classes, and other aquatic related activities;

b. Lessons and Instructions. Provide, at an acceptable level to the public, swimming lessons and instructions and all related services as required by the Director;

c. Swim Meets. If possible under market conditions, schedule swim meets for special interest groups so as to assure the best overall, well-rounded swim program for the community;

d. Management. Operate, manage and supervise activities, programs and services provided at the Marshall Street Swim Center to ensure safe and enjoyable swimming and aquatic activities for individuals, families, and groups.

SECTION 6: SWIM PROGRAMS

6.01 Bather Supervision and Lessee's Employees. With regard to operating, managing, and supervising the swim programs, Lessee shall ensure the Marshall Street Swim Center operate and maintain in a sanitary, healthful and safe manner, and:

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a. Lessee covenants that all Lessee Employees providing aquatic instruction, including, but not limited to, swimming instruction, water safety instruction, water contact activities, and competitive aquatic sports, shall possess an American Red Cross Emergency Water Course certificate, or have equivalent qualifications, as determined by the State Department of Health. In addition, these persons shall be certified in standard first aid and cardiopulmonary resuscitation (CRP). All of these persons shall meet these qualifications. Persons who only disseminate written materials relating to water safety, are not persons providing aquatic instruction within the meaning of this Subsection. The requirements of this Subsection shall be waived under either of the following circumstances: (a) when one or more aquatic instructors possessing an American Red Cross Emergency Water Course certificate or its equivalent are in attendance continuously during periods of aquatics instructions; or (b) when one or more lifeguards meeting the requirements of Section 116028 of California Health and Safety Code are in attendance continuously during periods of aquatic instruction.

b. Lessee covenants that the swim programs shall be supervised and conducted by professional personnel i.e. Lifeguards, all of whom will have current and legally approved training, including, but not limited to, certification in cardiopulmonary resuscitation, use of AED equipment and certification in lifeguarding (and/or water safety instruction) for the purposes of supervising public swimming activities i.e. Lifeguard Services. "Lifeguards" shall be persons in attendance at the pool during periods of use, who possess, as minimal qualifications, current Red Cross advanced lifesaving certificates or Y.M.C.A. senior lifesaving certificates, or have equivalent qualifications and who are trained to administer first aid, including but not limited to, cardiopulmonary resuscitation in compliance with Section 217 and the regulations promulgated thereunder, and who have no duties to perform other than to supervise the safety of participants in water contact activities. "Lifeguard Services" includes the supervision of the safety of participants in water contact activities by lifeguards who are providing swimming lessons, coaching, or overseeing water contact sports, or providing water safety instructions to participants when no other persons are using the facilities unless those persons are supervised by separate lifeguard services.

c. Lessee shall perform all services as may be deemed necessary by Lessee including, but not be limited to, the following:

i. Selecting, training, supervising and assuming responsibility for conduct, appearance and performance of Lessee's employees;

ii. Providing such equipment and teaching aids as may be necessary pertaining to the operation, maintenance, and use of a public swimming pool, including the quality and purity of the water, lifesaving and other measures to ensure the safety of bathers, and measures to ensure personal cleanliness of bathers shall apply;

c. Employment, in connection with providing swimming and aquatic activities under this Lease, Lessee shall, at Lessee's sole cost and responsibility, employ, train and maintain a qualified staff in adequate size and number, to City's reasonable satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the

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Premises; provided, however, that:

i. Within **ten (10) days** following receipt of written notice from City that a particular Lessee Employee is not satisfactory to City for good cause, Lessee shall dismiss that employee forthwith;

ii. When performing duties for the Lessee, no Lessee Employee shall be deemed to be an employee, agent or representative of City at any time or for any purpose whatsoever;

iii. Lessee shall require all its employees to be neatly dressed and courteous at all times, and to refrain from boisterous or objectionable conduct or littering around and about the Marshall Street Swim Center premises; and

iv. Lessee shall require and be responsible for any and all background checks and fingerprinting necessary to comply with City requirements and applicable state law.

d. For the purpose of tracking service levels, Lessee shall provide the City accurate number of monthly participants in various swim programs offered by Lessee and its employees at the Marshall Street Swim Center by the **tenth (10) day** of the following the preceding month.

e. Lessee and Lessee's Employees shall be responsible for enforcing all rules and regulations to ensure an enjoyable and safe swimming and aquatic activities experience while utilizing the facilities at Marshall Street Swim Center, including regulating the swimming and conduct of bathers.

d. Lessee shall promptly notify the Director, or designee, of any incident, accident or injury involving removal from the facility of any member of the public, whether a participant in water contact activities, a spectator, Lessee Employee or any other person, by ambulance, police or fire personnel.

SECTION 6: FACILITY SUPERVISION

6.01. General Supervision. Lessee shall designate at least one "Responsible Person" who shall be responsible for operating, managing and supervising the Swim Center, and the safety of bathers. The name(s) and 24/7 contact information of the Responsible Person (who may be the same person as the "Pool Operator" as defined in Section 7, below) shall be given to the Director, or designee, for contact in case Pool issues or emergencies occur. Duties of the Responsible Person shall include, but not be limited to:

a. Responsible for the employment, training, supervision and discharge of all personnel, contractors, professional or otherwise, as deemed reasonably necessary and appropriate for the proper and professional management, operation and maintenance of the Swim Center and its improvements, establishing operational procedures, ensuring necessary

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lifesaving devices, equipment and measures are in place at all times the Pool is open, posting and maintaining proper warning signs, and preserving order, maintaining cleanliness and providing for security of the Premises, including keeping trespassers off of the Premises and preventing injury to the Pool and Pool Building by swimmers and others.

b. Keeping the Pool and Pool Building open for the specified minimum number of hours.

c. Keeping Pool Building, dressing rooms and lavatories open at all times that the Pool is open by Lessee for public swimming or related business and keeping Pool Building and gate openings closed and locked at all other times.

d. During operating hours, inspecting and maintaining dressing rooms, showers and lavatories to assure clean and operational conditions that meet health codes and is acceptable for providing public activities.

e. Maintaining Pool Building in a safe, clean, sanitary and acceptable condition for dealing with the public, reasonably free from trash and rubbish.

f. Repairing and replacing any equipment as required in order to maintain Pool Building in good condition.

g. With the permission of the City, other aquatic-related equipment may be used and/or stored at the Premises by the Lessee.

h. Ensuring that lifesaving equipment is located in clear view of bathers and is easily accessible in the event of a rescue, such equipment shall include a life ring with an outside diameter of 17 inches and a rope attached that is long enough to span the widest part of the pool and a 12-foot reaching pole with a body hook securely attached.

i. Responding to concerns raised by the public in a timely, professional and helpful manner which will involve having a responsible Lessee Employee at the Premises, or readily available to answer questions and provide information at all times the Pool is open for public use.

SECTION 7: POOL AND EQUIPMENT MAINTENANCE

7.01 Pool Operator. The "Pool Operator" shall be a person, in the position of supervision over, who is fully capable of, and shall assume responsibility for, compliance with all local, state and federal rules, codes, regulations and laws relating to public swimming pool operations and maintenance, and safety of bathers in a sanitary, healthful and safe manner through routine (e.g., daily and weekly) operating procedures, and operation, maintenance and repair/replacement of mechanical and electrical equipment, keeping daily record of information regarding operation, including readings of disinfectant residual, pH and maintenance procedures such as cleaning of filters and quantity of chemicals used. (The person(s) in this capacity shall meet the qualifications of Lifeguards, as well as a Certified Pool Operator, or

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possess equivalent pool operation experience and education pertaining to the functions performed during the execution of assigned duties).

7.02 Pool and Pool Building Maintenance. Lessee, through the Pool Operator, shall perform routine maintenance of the Pool and Pool Building so as to insure that they are maintained in a safe and healthful condition, including, but not limited to:

a. Water Chemistry. Maintain a minimum of 1.0 ppm free chlorine residual and maintain the pH stability between 7.0 and 7.6 and Cl_2 level between 1.0 and 3.0, chemicals shall be stored in a dry, secure area and non-compatible chemicals stored separately.

b. Water Clarity. Eliminate cloudiness and maintain pool water in a clean and clear condition, so that main drain is clearly visible from pool deck.

c. Cleanliness of Pool. Remove floating scum, sputum, leaves, debris and fecal accidents, from pool. The bottom and sides of the Pool shall be cleaned as often as necessary to be kept in a clean condition. The bottom and sides of the Pool and decking shall be kept free of slime and algae. Maintain vacuum pumps, repair/backwash/replace filter, and repair/replace vacuum hoses and equipment as needed. Animals shall not be allowed on the Premises.

d. Lane Lines and Pool Covers. Maintain, repair and replace lane lines, pool covers and reels as needed. Remove and replace swim pool blankets daily, and payment of any penalties due to failure to replace the swim pool blankets.

e. Recirculation/Disinfection. Provide minimum required water turnover rate; recirculation system must be operated whenever pool is in use, repair/replace recirculation, Cl_2 , grit, and strantro pumps, maintain proper water level, and proper continuous operation of chemical feeders and chlorinators.

f. Heater. Maintain, repair and replace the pool heater or parts to ensure proper working order.

g. Anti-Entrapment. Secure, maintain, repair and place all anti-entrapment devises to ensure proper working condition.

h. Logs and Records. County Health Pool Permit and Facility Permit Lessee shall provide the Director, or designee, copies of all such permits within **five (5) days** of Lessee's receipt of said permits from the issuing authority. Lessee shall maintain daily log of pool operation, disinfection residual, pH and maintenance procedures, and monthly log for cyanurates, if needed. Copies of all daily and monthly logs shall be provided to the Director, or designee, by the **tenth (10th) day** of the following month. Data collected by Lessee pursuant to this provision shall be maintained, at the Premises, at least **one (1) year** for inspection by the enforcing agent, or shall be submitted to the enforcing agent upon request.

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i. **Pool Appurtenants.** Maintain the Pool and appurtenant structures, including but not limited to, pool deck, pump house, chemical storage shed, diving board, stands, ladders, bleachers, posts and poles, lighting and electrical systems, plumbing, drains and other plumbing systems, and fences and gates, consistent with best management practices;

j. **Structural Elements.** Be responsible for maintaining the structural elements and systems of the Pool and Pool Building, including the roof, in an as good or better condition existing at the time the Lessee takes possession of the Premises, excepting normal wear and tear. "Structural elements and systems" includes roofing, skylights, foundation, footings, floor slab, flooring, structural walls, and plumbing including fixtures, faucets, showerheads, etc., electrical and heating systems, Pool heating, pumps, filters, disinfectant and chemical feeders, flow indicators, gages and all related parts for pool water purification and circulation, and related mechanical and electrical equipment. All structural elements and systems shall be maintained in working order and a state of good repair. If any structural elements and systems fall in to a state of disrepair (except normal wear and tear) due to the action of the Lessee, its agents, employees or clients, and City is required to make repairs to the Premises as a result of a failure of Lessee to properly maintain and repair the Premise and make any necessary repairs after notice of such defect or disrepair from City, the costs for making such necessary repairs or replacements shall be charged to Lessee as additional rent.

k. **Janitorial Services.** Janitorial services shall include, but not limited to, the cleaning of windows (inside and outside); toilets, urinals, hand sinks, showers, dressing rooms, floor coverings, ceilings, walls, partitions, doors and counter tops, and the pool deck, and restocking paper products. All parts of the Pool and related pool facilities shall be maintained in good repair. Floors shall be kept free from cracks and other defects. Walls, ceilings, partitions, doors, lockers and similar surfaces and equipment shall be refinished as often as necessary to be kept in a state of good repair. Hoses shall be provided for regular flushing and cleaning. The whole pool area shall be kept clean, sanitary and free of litter and vermin. Toilets, urinals wash basins and other plumbing fixtures shall be maintained in a clean condition and in good repair. Lessee shall repair and replace all broken windows within the Pool Building.

l. **Keys and Locks.** Lessee, at Lessee's own expense, may with the written approval of City change the locks on the doors and gates. If Lessee chooses to change the locks, two (2) master keys must be submitted to City immediately upon making such change. If the City is or becomes responsible for ongoing maintenance of the building interior, Lessee will make available to the City the necessary number of keys for maintenance personnel. The City, at its option, may make copies of the master keys for maintenance and emergency purposes.

SECTION 8: SCHEDULE AND FEES

8.01 Program Schedule. With regard to schedules and fees, Lessee shall be responsible for:

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- a.** Providing City with a six-month schedule of Pool use (December through May and June through November) by November 1 and May 1 for each following six-month period, for each year this Lease is in place.
- b.** Establishing all fees on an annual fiscal basis (July 1st through June 30th), including a potential range or percentage increase, through a market-based approach and consistent with the City's enterprise philosophy, including resident/non-resident fee differentials and other subsidies where appropriate. The fees are subject to approval by the City.
- c.** Posting and notifying the public of fees and changes to fees.
- d.** Collecting and depositing all fees, charges and receipts for individual participation, for individual and group swim instruction, and for all swim reservations of the Pool and Pool Building.
- e.** Honoring the rights of participants to waiver of fees, upon presentation by participants of an authorized City of Oceanside fee waiver form. Lessee shall keep accurate records of all fee waivers and shall provide City with such records not later than **ten (10) days** after the end of each calendar quarter for reimbursement and not later than **June 25th** for the last quarter (fee waivers are not valid beyond **June 15th** of each fiscal year).

SECTION 9: PROHIBITED ACTIVITIES

9.01 Prohibited Activities of Lessee. Lessee shall not do any of the following without having first obtained the written consent of City:

- a.** Install or permit installation or use of any pinball machine, video game or similar equipment.
- b.** Except on approved bulletin boards, attach, hang or otherwise affix any sign or advertising matter on the exterior or interior of the Pool or Pool Building.
- c.** Allow any newspaper rack, vending machine or other sales device to be placed and maintained outside the Pool or Pool Building whether attached or freestanding, or anywhere in the Pool and Pool Building, except as authorized herein.
- d.** Permit third parties to distribute or sell goods, wares or merchandise either within the interior or exterior of the Pool or Pool Building, or anywhere on the Marshall Street Park property, as such activities relate to Lessee's operations under this Lease.
- e.** Commit, permit or allow any nuisance or waste in, or injury to the Pool or Pool Building or any portion of either, or to permit the use of the Pool or Pool Building for any illegal or immoral purpose.

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f. Have any financial or other interest in the control, operation or promotion of any other swim program or establishment located within three (3) miles from the Marshall Street Swim Center, it being the intent of the City of Oceanside that the management and operation of the Pool and Pool Building shall be the sole swimming program offered by the Lessee within the immediate area, unless otherwise agreed upon by the parties.

g. Owners or Directors of Lessee or site manager/supervisor, without permission from the City, become an officer or member of any swim club or organization of swimmers formed or to be formed at the Marshall Street Swim Center or in any organization in which participation would conflict or create the perception of conflicting, with the City's desire to provide reasonable public access to a broad array of aquatic programs held at the Pool, particularly in situations involving the granting of swimming privileges.

h. Bind or attempt to bind City to any contracts or other obligations of any nature.

i. Use or instruct in the use of any SCUBA equipment in the Pool. The use of any watercraft (row boats, canoes, kayaks, etc.) is also restricted and may only be used in the pool by special written permission from the City.

j. Offer or provide any discount, special privileges or service to a City employee that is not also available to the general public.

SECTION 10: DUTIES OF CITY

10.01 City Responsibilities. City shall, in conjunction with Lessee's service, do or have done by the City, the following:

a. Publicize the Lessee's swim program in the Department's Parks and Recreation "Activities Guide".

b. Reimburse the Lessee for waivers of fees honored pursuant to SECTION 8.f on a quarterly basis.

c. Work with the Lessee in the promotion of swim meets and swim programs as related to Department-sponsored or special agreement swim programs.

d. Repair and repave the parking lot, jointly used by the Marshall Street Swim Center and Park, said maintenance shall be at City's sole and absolute discretion. Use of the parking lot shall be on a first-come, first-served basis, without any reservation of spaces for any individual, except designated handicap parking.

SECTION 11: INDEMNIFICATION AND INSURANCE

11.01 Indemnification. Lessee shall indemnify, defend, and hold harmless the City of Oceanside, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, orders, decrees or judgments for injury or death or damage to any

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person or property, loss, damage and liability occasioned by, growing out of or arising out of, or resulting from any act or omission on the part of Lessee, its agents, or employees, or arising from the use of any improvements thereon or therein by any person or persons, or arising out of or resulting from the performance of any services required herein to be performed by Lessee or arising from the use of the Swim Center by Lessee, or its agents, clients or employees, or arising from the use of any buildings or improvements thereon or therein by any person or persons, or arising out of the operation or maintenance of dangerous or defective condition of the Pool or Pool Building, or any other structure, facility or thing erected or placed in the Pool or Pool Building and under the control or supervision of the Lessee, or the operation or maintenance or dangerous or defective condition of the Swim Center, or any structure, facility or thing erected or placed thereon or therein, except only for those claims arising from the sole and active negligence or sole willful misconduct of the City, its officers, agents, employees or authorized volunteers. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, employees or authorized volunteers in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officials, officers, agents, employees or authorized volunteers.

11.02 Insurance. Lessee shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit per Occurrence	\$2,000,000
General Aggregate	\$3,000,000

Contractual Liability

A contractual liability endorsement shall be included in each insurance policy, extending coverage to include the liability assumed under this Section 11

Errors and Omissions

Professional liability or errors and omissions coverage covering all Lessee's operations and obligations under this Lease

Workers Compensation

Workers Compensation Insurance and Employers Liability Insurance for all of Lessee employees in statutory limits

Deductible amounts for all types of insurance coverage provided by Lessee shall not exceed \$5,000 without prior written approval of the City.

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b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease. Lessee shall furnish (or cause to be furnished) a certificate of insurance, with proper endorsements, countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate (and endorsement) shall name the City, its officers, agents, and employees as additional insured under the policy. Coverage provided hereunder to the City as additional insured by Lessee shall be primary insurance and other insurance maintained by the City, its officers, agents and/or employees, shall be excess only and not contributing with insurance provided pursuant this Section 11.02, and shall contain such provision in the policy(s), certificate(s) and/or endorsement(s). The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City.

c. All insurance companies affording coverage to the Lessee shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide **thirty (30) days** written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

f. Lessee shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Agreement.

g. Maintenance of insurance by the Lessee as specified in this Agreement shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be considered as extra rent and paid by Lessee on the **first (1st) day** of the month following the notice of payment by City.

i. City, at its discretion, may require the revision of amounts and coverage at anytime during the term of this Agreement by giving Lessee **sixty (60) days** prior written

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notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.

j. Notwithstanding the preceding provisions of this Section 11.02, any refusal or failure by Lessee to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

k. Lessee shall have the sole responsibility of insuring (if it so desires and at its own cost and expense) any furnishings, fixtures, equipment, merchandise and supplies required to be provided under the terms of this Lease against loss or damage from fire, theft or any other cause.

11.03 Accident Reports. In the event of a serious accident or incident involving a response by emergency personnel (police, fire, ambulance) or an event deemed to potentially involve a lawsuit against the Lessee or City, the Lessee shall contract the Director immediately following the conclusion of any emergency actions or procedures.

a. Lessee shall fill out and forward to the City a comprehensive accident report on any injury deemed to be serious or potentially involving a law suit that takes place in and around the Pool or Pool Building within **two (2) working days** (a working day being typically Monday through Friday but not including those holidays during which City Offices are closed).

SECTION 12: IMPROVEMENTS/ALTERATIONS/REPAIRS

12.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that the Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises.

12.02 Waste, Damage, or Destruction. Lessee shall give notice to City of any fire or other damage that occurs on the Premises within **48 hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a lawful manner and satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises or any appurtenants to the condition or better condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted by Lessee to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and

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restoration, or rebuilding of the Premises.

12.03 Maintenance. As part of the consideration for the leasing thereof, Lessee agrees to assume full responsibility and cost for the operation, maintenance, including painting, and repair of the Premises, throughout the term of this Lease and without expense to City. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

a. For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within **ten (10) days** after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than **ten (10) days** after City's written demand therefor. City shall not be required at any time to perform maintenance, or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

12.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

12.05 Utilities. Lessee agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the Premises, such utilities and services shall include, but not be limited to, water and sewer, gas and electric service, trash disposal, telephone, cable, internet or any other audio or visual services, and alarm and security services which relate to the Lessee's use of the Pool and Pool Building.

12.06 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to

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exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

12.07 Encumbrance. Upon receiving prior consent by the City Manager, Lessee shall not encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee. Any encumbrances on the Premises or on any permanent improvements thereon, shall have prior approval in writing of City Manager. Such encumbrances shall be for the exclusive purpose of development of the Premises or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

12.08 Signs. Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and device(s) shall conform to all City of Oceanside and City ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within **24 hours** of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

12.09 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by Lessee, excepting such fixtures which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, City shall so notify Lessee in writing **thirty (30) days** prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by Lessee by the date of the expiration or termination of this Lease. Any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to

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the remaining improvements on the Premises, Lessee shall repair all such damage.

12.10 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

a. Total Taking. In the event the entire Premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. Partial Taking. In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

i. In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

c. Award. All monies awarded in any such taking of the Premises shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. Transfer. City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this lease.

e. No Inverse Condemnation. The exercise of any City right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

SECTION 13: GENERAL PROVISIONS

13.01 Notices. All notices required to be delivered under this Agreement to the other party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in

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the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other party hereto:

To City:

City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054

With Copy to:

City of Oceanside
City Attorney
300 North Coast Highway
Oceanside, CA 92054

And Courtesy Copy to:

City of Oceanside
Neighborhood Service Department
Parks and Recreation Division
300 North Coast Highway
Oceanside, CA 92054

To Lessee:

With Copy to:

13.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Lease, which does not result in a change to this Lease, the City Manager delegates authority to the City's Real Estate Manager or his designee. For the purposes of directing Lessee with regard to aquatic related programs, the City Manager delegates authority to the City's Neighborhood Services Director and/or the Parks and Recreation Manager.

13.03 Nondiscrimination. Neither Lessee nor any officer, agent, or employee thereof shall discriminate in the employment of persons to perform any service or activity at the Premises, or discriminate against any person in the use or access to the Pool or Pool Building on account of race, color, national origin, ancestry, religion, sex, sexual orientation, physical handicap, or medical condition in violation of any law, or on account of any other basis for discrimination prohibited by law.

13.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, color, religion, sex or national origin. Lessee shall certify in writing to City that Lessee is in compliance

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and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

a. Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

13.05 Entire Agreement. This Lease comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

13.06 Interpretation of the Agreement. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

a. The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

b. Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

a. This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

b. No assurances or inducements of any kind not specifically set forth in the Lease have been made to Lessee by anyone authorized by City to cause Lessee to execute this Lease.

c. This Lease does not constitute a contract of employment and the relation of master and servant, employer and employee, does not and shall not exist between City and Lessee or any of its employees. Lessee is and at all times shall be deemed to be an independent Lessee.

13.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

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13.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the real property constituting the Premises is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

13.09 Attorney's Fees. In the event an suit is commenced by City against Lessee to enforce payment of rent due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

13.10 Assignment and Subletting - No Encumbrance. This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

13.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within **five (5) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **five (5) days** after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or **30 days** after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. In such event this Lease and all rights and privileges herein shall immediately (and without any demand or notice written or oral) cease, determine, come to an end, and become void, and the City immediately may enter Premises, Pool and Pool Building

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and take immediate and sole possession thereof, without prejudice to the right of City to recover from Lease all unpaid monies required to be paid to City and which shall have accrued up to the time of the entry described above. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

13.12 Bankruptcy. In the event Lessee at any time during the term of this Lease becomes insolvent, or if proceedings in bankruptcy shall be instituted by or against Lessee, or if Lessee shall be adjudged bankrupt or insolvent, or if a receiver or trustee in bankruptcy or a receiver of any property of Lessee shall be appointed in any suit or proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any action is taken against or suffered by Lessee under any insolvency or bankruptcy act, reorganization, arrangement, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

13.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

13.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 14: SIGNATURES

14.01 Signatories. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Lease Agreement to be executed as of, but not necessarily on the Effective Date hereof, by setting hereunto their signatures on the day and year respectively written hereinbelow.

City:
THE CITY OF OCEANSIDE

By: _____
City Manager

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Date: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Attorney

Lessee:

By: _____
Its:

Date: _____

By: _____
Its:

Date: _____

NOTARY ACKNOWLEDGMENT OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED