

**CITY OF PALM DESERT  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this **12<sup>th</sup> day of OCTOBER, 2023**, by and between the City of Palm Desert, a municipal corporation organized under the laws of the State of California with its principal place of business at 73-510 Fred Waring Drive, Palm Desert, California 92260-2578, County of Riverside, State of California ("City") and **SPORTS FACILITIES MANAGEMENT**, a **LIMITED LIABILITY COMPANY**, with its principal place of business at **600 CLEVELAND STREET, SUITE 910, CLEARWATER, FL 33755** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

**2. RECITALS.**

**2.1 Project.**

The City is a public agency of the State of California and is in need of professional services for the following project:

**PALM DESERT AQUATIC CENTER MANAGEMENT AND OPERATIONS**

(hereinafter referred to as "the Project").

**2.2 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant is duly licensed and has the necessary qualifications to provide such services.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from **NOVEMBER 1, 2023, to JUNE 30, 2029**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than **5 additional one-year terms**. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

**3.2 Responsibilities of Consultant.**

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services shall not be employees of the City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees, or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall

pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: **MICHAEL KELLY, BRUCE RECTOR, KEN COBB, ASHLEY WHITTAKER, JIM ARNOLD, JASON CLEMENT, BOB STOUT, AND TAMI SWANSON.**

3.2.5 City's Representative. The City hereby designates **SHAWN MUIR, COMMUNITY SERVICES MANAGER**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the scope of services or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **KEN COBB, ACCOUNT MANAGER**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants, and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling

necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Period of Performance. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.2.10 Laws and Regulations; Employee/Labor Certification. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.2.10.1 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement and shall not violate any such law at any time during the term of the Agreement.

3.2.10.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer, and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, physical disability, ancestry, sex, age, marital status, gender, gender identity, gender expression, sexual orientation, reproductive health decision making, veteran or military status, or any other consideration made unlawful by federal, state, or local laws. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.3 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

### 3.2.11 Insurance.

3.2.11.1 Minimum Requirements. Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

(A) General Liability Insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$5,000,000 per occurrence, \$6,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(B) Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident. The City's Risk Manger may modify this requirement if it is determined that Consultant will not be utilizing a vehicle in the performance of his/her duties under this Agreement.

(C) Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the

effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

(D) Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, volunteers and representatives.

(E) Umbrella or Excess Liability Insurance. Consultant may opt to utilize umbrella or excess liability insurance in meeting insurance requirements. In such circumstances, Consultant shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- (1) A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- (2) Pay on behalf of wording as opposed to reimbursement;
- (3) Concurrency of effective dates with primary policies; and
- (4) Policies shall "follow form" to the underlying primary policies.
- (5) Insureds under primary policies shall also be insureds under the umbrella or excess policies.

(F) Fidelity Coverage. Consultant shall provide evidence of fidelity coverage on a blanket fidelity bond or other acceptable form. Limits shall be no less than \$1,000,000 per occurrence.

(G) Cyber Liability Insurance. Consultant shall procure and maintain Cyber Liability insurance with limits of \$1,000,000 per occurrence/loss, which shall include the following coverage:

- (1) Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination, or use of the confidential information.
- (2) Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
- (3) Liability arising from the failure of technology products (software) required under the contract for Consultant to properly perform the services intended.

- (4) Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.
- (5) Liability arising from the failure to render professional services

If coverage is maintained on a claims-made basis, Consultant shall maintain such coverage for an additional period of three (3) years following termination of the Agreement.

(H) Pollution Liability Insurance. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to the City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

(I) Sexual Abuse and Molestation Liability Insurance. Consultant shall procure and maintain Sexual Abuse and Molestation Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability insurance, Professional Liability insurance; or as a separate policy.

### 3.2.11.2 Other Provisions or Requirements.

(A) Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(B) Duration of Coverage. Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, his/her agents, representatives, employees or subconsultants.

(C) Primary/Non-Contributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(D) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications, or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will

withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may terminate this Agreement.

(E) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(F) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, volunteers, and representatives or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its elected or appointed officers, agents, officials, employees, volunteers and representatives and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(G) Enforcement of Contract Provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(H) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(I) Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(J) Additional Insured Status. General liability, automobile liability, and if applicable, pollution liability, cyber liability, and sexual abuse and molestation policies shall provide or be endorsed to provide that the City and its officers, officials, employees, agents, volunteers and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement, under such policies. This provision shall also apply to any excess/umbrella liability policies.

(K) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(L) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately

to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(M) Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the Project who is brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subconsultants, subcontractors, and others engaged in the Project will be submitted to City for review.

(N) City's Right to Revise Specifications. The City and the City's Risk Manager reserve the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation. If the City reduces the insurance requirements, the change shall go into effect immediately and require no advanced written notice.

(O) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(P) Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(Q) Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Services.

3.2.12 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies of this Section.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall



not exceed **ONE MILLION, FOUR HUNDRED AND FIFTY-EIGHT THOUSAND, SEVEN HUNDRED AND SIXTY-SEVEN DOLLARS (\$1,458,767.00)** without written approval of the City Council or City Manager, as applicable.

3.3.2 Payment of Compensation. Consultant shall submit to City monthly invoices which provide a detailed description of the Services and hours rendered by Consultant. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Consultant shall submit its final invoice to City within thirty (30) days from the last date of provided Services or termination of this Agreement and failure by the Consultant to submit a timely invoice may constitute a waiver of its right to final payment. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City or included in Exhibit "C" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

### **3.4 Labor Code Requirements.**

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, agents, volunteers and representatives, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with

all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of Services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, agents, volunteers, and representatives free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.3 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

### **3.5 Accounting Records.**

3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.6 General Provisions.**

#### **3.6.1 Termination of Agreement.**

3.6.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.6.1.3 Early Termination. Notwithstanding any provision herein to the contrary, if for any fiscal year of this Agreement the City Council fails to appropriate or allocate funds for future payment under the Agreement after exercising reasonable efforts to do so, the City may upon thirty (30) days' written notice, order work on the Project to cease. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation.

**Contract No.** \_\_\_\_\_

3.6.1.4 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:               SPORTS FACILITIES MANAGEMENT, LLC  
600 CLEVELAND STREET, SUITE 910  
CLEARWATER, FL 33755  
ATTN: KEN COBB

City:                        City of Palm Desert  
73-510 Fred Waring Drive  
Palm Desert, CA 92260  
ATTN: SHAWN MUIR, COMMUNITY SERVICES  
MANAGER

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1               Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.6.3.2               Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.6.3.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents, and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment, or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.6.3.4 Indemnification – Documents and Data. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers, agents and representatives free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.6.3.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.6.3.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, agents, volunteers and representatives from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.6.4 Cooperation; Further Acts. The Parties shall fully cooperate with one

another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.5 [Reserved]

3.6.6 Indemnification.

3.6.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, agents, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, volunteers, or representatives.

3.6.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.6.7 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements.

3.6.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.6.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.6.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.12 Assignment; Subcontracting. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in

this Agreement.

3.6.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, volunteers and representatives except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.6.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.6.16 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

3.6.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN THE CITY OF PALM DESERT  
AND SPORTS FACILITIES MANAGEMENT, LLC**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

**CITY OF PALM DESERT**

**SPORTS FACILITIES MANAGEMENT  
LIMITED LIABILITY COMPANY**

By: \_\_\_\_\_

L. Todd Hileman  
City Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

Printed  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Anthony J. Mejia  
City Clerk

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

Printed  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Best Best & Krieger LLP  
City Attorney

**QC:** \_\_\_\_\_

Insurance: \_\_\_\_\_

\_\_\_\_\_  
Initial Review

\_\_\_\_\_  
Final Approval



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**General Scope:**

The Consultant will provide management and operations services for City of Palm Desert in accordance with the Contract Documents at the Palm Desert Aquatic Center (PDAC), located at 73751 Magnesia Falls Drive, Palm Desert, CA 92260.

The City is seeking a partner who embodies high quality standards, emphasizes excellent customer service, and has the ability to maintain consistently high standards while operating the Aquatic Center. The City desires to select a qualified firm to operate the Aquatic Center who can deliver optimal value, enhance safety, and deliver the customer service expected from PDAC patrons.

The City hereby requests Proposers to demonstrate their ability to provide and perform services for the Aquatic Center including, but not limited to, management, operations, marketing, programming, concessions, and janitorial services relating to the Aquatic Center as described in this Scope of Services. The Aquatic Center consists of the following amenities:

- 50-Meter Pool with Diving Area
- Recreation / Therapy Pool (with slides)
- Children's Pool with Water Play Structure
- Concessions Area (675 Sq. Ft.)
- Men's and Women's Locker Rooms
- Family Restrooms and Changing Areas
- Lifeguard Room / First Aid Room
- Administration Offices
- Multi-Purpose Room (842 Sq. Ft.)
- Storage Room
- Mechanical Room
- Chemical Storage Areas

The City contracts the major pool mechanical maintenance of the Aquatic Center to a third-party contractor and will work closely with the successful Proposer to ensure prompt service to the facility. All utilities will be directly billed and paid for by the City.

All services provided by the Proposer must be performed to the industry standards and compliant with all applicable local, county, state, and federal laws.

All Bidders are encouraged to submit alternatives or other creative options to **ANY** of the Services to be Performed with the intent of meeting or exceeding the requirements set forth.

### History of Operations

The following chart describes the financial and programming history of the Palm Desert Aquatic Center from 2019-2022. These numbers may be used as a reference when formulating a business and operations plan.

	2019	2020	2021	2022
Revenue	\$ 829,554.00	\$ 532,540.00	\$ 316,980.00	\$ 670,230.00
Expenses	\$ 1,539,485.00	\$ 1,327,421.00	\$ 1,244,318.00	\$ 2,321,139.00
Total	\$ (709,931.00)	\$ (794,881.00)	\$ (927,338.00)	\$ (1,650,909.00)
% Re-capture	54%	40%	25%	29%
Attendance				
Swim Lessons				

### Services to be Performed

The Consultant will provide services, plans and procedures as described below for the day-to-day management and operations of the facility:

- Perform maintenance, cleaning, and minor repairs of all pools, equipment, and facilities.
- Perform daily safety and compliance checks of all pools, decks, pool amenities, and facilities. Notify City staff of all urgent issues immediately and routine concerns within one business day.
- Complete daily inspection report form for water slides and applicable attractions when in use and maintain on file.
- Ensure the pool and support facilities meet cleanliness and hygiene standards.
- Ensure all pools meet applicable Riverside County Health Department standard compliance (chemicals, flow, filtration, etc.).
- Manually check and record water chemistry in each pool every 2 hours (minimum) and adjust chemicals as needed.
- Maintain industry standards for water clarity and cleanliness on all pools.
- Inspect and maintain records of all pools and equipment.
- Monitor inventory levels of chemicals and other pool maintenance supplies for the purpose of ensuring the availability of supplies as needed.
- Prepare and process purchase orders for the purpose of securing needed supplies according to City of Palm Desert purchasing policies and requirements.
- Provide regular KPI data and reports as required for assigned equipment and programs.
- Maintain equipment and chemical rooms to be free of non-essential equipment, used parts, clutter and chemical spills.

- Follow all required safety precautions when using hazardous materials, assigned tools, and machinery.
- Set up and/or move equipment (e.g., starting blocks, bleachers, diving boards etc.) for the purpose of ensuring availability for patrons and programs.
- Maintain cleanliness of all facilities within the aquatic center: pools, drains, deck, locker rooms, etc.
- Perform facility painting and retouches as necessary to maintain a high-quality facility facade.
- Promote and exemplify City of Palm Desert Mission, Vision, and Core Values.
- Exercise excellent customer service. Follow up on complaints, questions, and concerns; respond to internal and external customer needs in a friendly, timely and efficient manner.
- Administer regular customer feedback and satisfaction surveys.
- Comply with local jurisdictional requirements and industry standards as applicable including but not limited to: California Pool Code, Model Aquatic Health Code, OSHA Hazardous Communications Standard and OSHA Bloodborne Pathogens Standard.

## **Business Plan**

Consultant shall provide a Business Plan to include the following:

- Hours of operation (*subject to change if approved in writing by the City*)
  - May through September
    - Monday – Friday 5:30 am – 7:00 pm
    - Saturdays 7:00 am - 7:00 pm
    - Sundays 8:00 am – 7:00 pm
  - October through April
    - Monday – Friday 5:30 am – 7:00 pm
    - Saturdays 7:00 am - 5:00 pm
    - Sundays 8:00 am – 5:00 pm
- Personnel requirements
- Fiscal management plan and budgeting methods
- Communication and marketing program
- Guidelines for policy development for programs and facility
- A DRAFT version of the business plan should be submitted along with the RFP submission. The DRAFT version is intended to outline the understanding of the RFP and the operations of the facility along with anticipated Revenue and Expense goals. It is not intended to be a fully thought-out Business Plan and is expected to be amended.

- **The City has a goal of decreasing the current subsidy of PDAC and is open to considering creative solutions to increase revenue and/or decrease expenses to reach its goals.**

### **Preventative Maintenance Plan**

The Consultant shall adhere to the established comprehensive Preventative Maintenance Plan provided by the City that includes, but is not limited to the following:

- A. Facility Inspection Program
  - 1. Details of facility inspections
  - 2. Frequency of facility inspections
- B. Routine Maintenance to be performed.
- C. Expected Capital Improvement Items

The City will provide the following to be included in the Preventative Maintenance Plan:

- A. Available PDAC As Built Plans
- B. Mechanical Equipment Inventory
  - 1. Name and Model #
  - 2. Manufacturer and contact info.
  - 3. Local Vendor (as applicable)
  - 4. Replacement and service details
- C. Equipment Manuals
  - 1. In the event an equipment manual is not available, the City shall attempt to provide a satisfactory replacement from the equipment manufacturer.
  - 2. If no manual is available, the Consultant shall provide a written document outlining the standard operating procedures for maintaining and operating the applicable piece of equipment.

### **Safety Plan**

The Consultant shall provide and maintain a facility Safety Plan that includes, but is not limited to the following:

- A. Facility Staffing Plan
  - 1. Code Compliance Staffing Plan
  - 2. Zones of Patron Surveillance
  - 3. Rotation Procedures
  - 4. Alternation of Tasks
  - 5. Supervision Protocols
- B. Emergency Action Plans
  - 1. Emergency procedures for anticipated emergencies at the aquatic center
  - 2. Methods of communication

3. Required emergency equipment.
4. Emergency closure requirements
- C. Biohazard Action Plan
  1. Fecal vomit and blood contamination of the pool and facility surfaces
- D. Pre-Service Training Plan
  1. Facility policies and procedures to be included in training.
  2. Demonstration of required Safety Team skills specific to PDAC
  3. Documentation of training
- E. In-Service Training Plan
  1. In-service training frequency. A minimum of 4 hours of in-service training monthly is required of all staff that regularly, or MAY perform lifeguard duties.
    - a. Makeup in-services may be held for approved absences and must comply with the original in-service plan missed.
    - b. Lifeguards who do not meet the monthly in-service training requirement must undergo Pre-Service Training prior to returning to Lifeguard duties.
  2. In-service documentation
  3. Certification maintenance
  4. Demonstration of Lifeguard Skill Proficiencies
  5. Competency Demonstration Plan
    - a. Ability to reach the furthest edge of Zones of Surveillance within 20 seconds.
    - b. Ability to perform required emergency response skills.
    - c. Ability to perform Resuscitation and First Aid skills.

### **Recruitment and Hiring Plan**

- A. Recruitment and Hiring
  1. Consultant will submit a written process for recruitment and hiring.
- B. Organizational Chart and Staffing Levels

Consultant will provide and maintain an organizational chart depicting the management approach and general staff responsibilities. Staffing levels will be maintained at a minimum required based on the submitted and approved staffing plan (Safety Plan – Section 1) and Zone Evaluation documentation.

Staffing and salary ranges are to be provided annually to the City of Palm Desert Director of Public Works for approval.

Alternative organization and staffing plans that meet safety and operating requirements may be submitted by the Consultant. All alternate staffing plans must be approved by the City of Palm Desert before they are instituted.

- C. All personnel will be easily identifiable by approved uniforms at all times while on duty.

- D. Janitorial services for the facility will be completed by the Consultant and is typically performed by Lifeguards and other staff on duty.
1. Regular locker room checks are expected to be performed throughout the day.
  2. Locker room check sheets may be utilized at the discretion of the Consultant.
- E. Position Descriptions
1. Descriptions for key positions listed above will be developed and maintained by the Consultant.

### **Staff Training**

- A. PDAC staff will maintain the following minimum training credentials:
1. Aquatic Director / Manager
    - a. Certified Pool Operator (CPO) or Aquatic Facility Operator (AFO) or approved equal.
  2. Aquatic Director / Manager, Aquatics Coordinator, Facility Operations Manager, or other staff
    - a. Lifeguard Instructor Certification (LGI)
  3. Facility Operations Manager
    - a. Certified Pool Operator (CPO) or Aquatic Facility Operator (AFO) or approved equal.
  4. Aquatics Front Desk & Concessions Manager
    - a. Food Manager Certification (must be from a school recognized by the Riverside County Department of Environmental Health: <https://rivcoeh.org/sites/g/files/aldnop361/files/migrated/Portals-0-PDF-Foods-31-09-DES-Food-Manager-Certification.pdf>)
  5. Lifeguards
    - a. Lifeguarding with Bloodborne Pathogens Training, Administering Emergency Oxygen, Asthma Inhaler Training, Epinephrine Auto Injector, First Aid for Public Safety Personnel (Title 22) (American Red Cross or approved equal)

### **Operations Procedures**

The Consultant will develop and maintain standard procedures that must be performed for the proper maintenance and operations of the facility. These include but are not limited to:

- Pool Chemical Parameters
- Chemical Room Emergency Procedures
- Hazard Identification and Communication
- Safety and First Aid Equipment
- Facility and Pool Cleanliness

- Health Regulations
  - Discipline
  - Child Abuse Prevention
  - Lost and Found
  - Media Communication
  - Pool Water Contamination and Response
  - Biohazard Disposal
  - Report Writing
1. The designated shift supervisor oversees the facility and staff.
  2. The minimum age for a lifeguard to lifeguard a body of water alone is 16 years of age.
  3. Facility may not open to the general public without a minimum of 3 lifeguard certified staff members present.
  4. At the start of their shift, all certified staff members must be ready to perform assigned duties.
  5. All schedules are posted in their respected offices and emailed to the staff in a timely manner.
  6. Deck Lifeguards:
    1. During high use times lifeguards will rotate regularly.
    2. Lifeguards leaving the deck must perform regular locker room checks.
    3. Elevated lifeguard stations shall be utilized as the standard for most lifeguard zones.
      - a. Ground level stations may be utilized where appropriate.
      - b. Roving stations may not be utilized as a primary surveillance position. Roving stations may be utilized as secondary lifeguards to a zone when necessary.
    4. Rescue hip packs must be worn by all trained lifeguards at all times. Packs will be adequately supplied with a resuscitation mask appropriate for adults and a mask appropriate for children, or a universal mask and non-latex exam gloves.
  7. Backup Duty Lifeguard:
    1. When not needed on deck or to assist customers, Backup Duty Lifeguards shall:
      - a. check locker rooms for behavior issues or horseplay,
      - b. assist in rendering first aid to injured persons,
      - c. assist deck lifeguard as needed,
      - d. or perform cleanup and maintenance activities.
  8. If a full complement of staff is not needed, the supervisor on duty may release excess lifeguards from work.

9. No lifeguard will be scheduled to work more than 8 hours in one day.
10. Lifeguards will be trained to complete injury report forms for all injuries to be submitted to the Aquatic Manager.
11. The Aquatic Manager shall notify the City of all required incidents.
12. The Lead Lifeguard is required to check and record pool chemistry every 2 hours.
13. Water chemistry shall be checked in the morning in enough time to adjust chemicals prior to opening to the public.
14. Water chemistry shall be checked at closing and necessary chemical adjustments made prior to staff leaving.
15. All staff will receive communications training, including verbal and non-verbal hand signals, whistle blasts, radio contact, and written communication. Signs and brochures at the front desk communicate safety rules. Management will share information at regular meetings and Supervisors will convey information through in-service trainings or other methods as needed.
16. The concession stand adheres to all Riverside County health codes and regulations. All staff handling unpackaged food must maintain current Riverside County Food Handler cards and be overseen by a Food Safety Manager. A minimum of one Food Safety Manager shall be on staff during the concession operation.
17. Locker rooms are monitored periodically by lifeguards. No food or drink is allowed in the locker rooms. Towel snapping, running, or rough play is not allowed. Children 5 years of age and older are required to use the locker room of their own sex. Family changing rooms are also available.
18. Any commercial advertisements, press releases, articles, or other media information using the City's name and/or logos shall be subject to the prior approval of the City.
19. All advertisements at the Aquatic Center are subject to approval by the City.

## **Financials**

The Consultant shall develop and maintain financial procedures, including but not limited to:

- Budget development
- Payroll
- Collections
- Reporting
- Revenue and expenditure accounting
- Monthly reconciliations for all asset and liability accounts



- Purchasing
- Accounts payable

The Consultant shall keep complete and accurate books of account and will make all records available to the City upon request. Books and records for the PDAC shall be maintained separately from other facilities operated by the Consultant. The Consultant shall maintain accounting books and records for a period of at least three years after the expiration or earlier termination of the Agreement, and the City shall have the right to inspect and audit such books and records during such period.

Financial and daily records shall meet the following criteria:

- Record of all sales by means of a cash register, which will display the amount of each sale and automatically issue a customer's receipt. Beginning and ending cash register readings shall be made a matter of daily record.
- Entry of each and every Aquatic Center user's name on entry log.\*
- A total count of Aquatic Center users at the end of each day and reconciliation of fee category totals on cash register detail reports.
- Ability to differentiate resident vs. non-resident visits.
- Maintenance of a daily logbook detailing the number of Aquatic Center users by fee category and total amount of cash collected by fee category.
- Ability to record and report the number and type of discounts provided.
- Monthly and annual statements of gross revenues, including a budget comparison, a variance report, and such other customary reports as may reasonably be requested by the City.

\*Except non-resident drop-in for recreation and lap swim. Groups or families must provide only the primary/head of household or group lead's contact information.

## **Policies**

The Consultant will develop and maintain policies and procedures, including but not limited to:

- Pool Use and Safety Rules
- Lifeguard Policy and Procedure Manual
- Equipment Rental Procedures
- Facility Rental, Group Use Requirements, and Fee Structure
- Swim Testing
- Signage Standards

## **Program Development**

The Consultant shall develop a program plan to be reviewed and approved by the City. The Program Plan shall include at a minimum.

- Swim lessons

- Lap swimming
- Arthritis and/or Multiple Sclerosis classes
- Red Cross certification courses
- Yoga, spin, or other group fitness classes
- Water games

The Consultant shall strive to make classes responsive to and/or inclusive to persons with disabilities. A program registration process will be in place.

The Program Plan shall include program attendance goals and shall be reviewed by the Consultant and the City of Palm Desert annually at a minimum.

The PDAC Program Plan may be updated or amended to meet City of Palm Desert goals throughout the contract term. Any changes shall be agreed upon by the City of Palm Desert and the Consultant.

**Key Performance Indicators**

The Consultant shall gather data on a daily basis to report on required Key Performance Indicators (KPIs). Additional KPIs may be utilized and reported on by the Consultant at the Consultant’s discretion. Any change to the KPI list below must be approved by the City of Palm Desert.

KPIs may include but are not limited to:

Financial	Programs	Operations
<ul style="list-style-type: none"> <li>• Attendance/Passes Sold</li> <li>• Member Retention</li> <li>• Concessions Revenue</li> <li>• Rental Revenue</li> <li>• Swim Lesson Revenue</li> <li>• Concessions Per Cap</li> </ul>	<ul style="list-style-type: none"> <li>• Program Attendance</li> <li>• Sessions Held/Canceled</li> <li>• Rentals Held</li> <li>• Special Programs</li> </ul>	<ul style="list-style-type: none"> <li>• Checklist Compliance</li> <li>• Closures</li> <li>• Incidents</li> <li>• Facility Audit Results</li> <li>• Pool Chemical Readings</li> <li>• Customer Satisfaction</li> <li>• Staff Turnover</li> </ul>

## Reporting Standards

The Consultant shall regularly report on all required KPIs and topics according to required timelines. Reporting requirements include but are not limited to the items below:

Subject	KPI/Topic	Reporting Cadence
Monthly Facility Financials	Topic	Monthly
<b>Attendance/Passes Sold</b>	KPI	Monthly
<b>Member Retention</b>	KPI	Monthly
<b>Concessions Revenue</b>	KPI	Monthly
<b>Rental Revenue</b>	KPI	Monthly
<b>Swim Lesson Revenue</b>	KPI	Monthly
<b>Concessions Per Cap</b>	KPI	Monthly
<b>Program Attendance</b>	KPI	Monthly
<b>Sessions Held/Canceled</b>	KPI	Monthly
<b>Rentals Held</b>	KPI	Monthly
<b>Special Programs</b>	KPI	Monthly
<b>Checklist Compliance</b>	KPI	Monthly
<b>Closures</b>	KPI	Monthly
<b>Incidents</b>	KPI	Monthly
<b>Facility Audit Results</b>	KPI	Quarterly
<b>Pool Chemical Readings</b>	KPI	Monthly
<b>Customer Satisfaction</b>	KPI	Monthly
<b>Staff Turnover</b>	KPI	Monthly
Completed Maintenance	Topic	Monthly
<b>In-service Training Compliance</b>	KPI	Monthly
<b>Staff Recruitment</b>	Topic	Quarterly
<b>Programs Held</b>	Topic	Monthly
<b>Upcoming Programs</b>	Topic	Monthly
<b>Marketing Efforts</b>	Topic	Quarterly or as needed
<b>Goal Updates</b>	Topic	Quarterly

The Consultant shall meet with City staff monthly to review operations, KPIs, and other topics. Goals and strategy meetings shall be held on a quarterly basis.

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

The term of this Agreement shall be from **NOVEMBER 1, 2023 to JUNE 30, 2029**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than **5 additional one-year terms**. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

**EXHIBIT "C"  
COMPENSATION**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Management Fee	\$264,000	\$277,200	\$291,060	\$305,613	\$320,894
5-Year Total	\$1,458,767				

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Riverside-San Bernardino-Ontario, CA