

**AGREEMENT FOR GENERAL SERVICES
WITH THE CITY OF MURRIETA (“CITY”)**

Project Name/Description (“**Project**”): Lifeguard and Swim Lessons

Contract Number: [Click or tap here to enter text.](#)

Contractor Name (“**Contractor**”): The Swimming Swan LLC

Contractor Business Type: Limited Liability Company (LLC)

Contractor Address: 903 Paseo del Lago, Fallbrook, CA 92028

Contractor Representative Name and Title (“**Contractor Representative**”): Melissa Swanson,
President and CEO

Contractor Representative Work Phone and Email: (858)-242-9974
Melissa@theswimmingswan.com

Termination Date: October 31, 2028

Total Not-To-Exceed Contract Amount (“**Contract Sum**”): \$337,064

City Department Contact (“**Department Contact**”): Crystal Arora, Management Analyst,
Community Services Department

Department Contact Work Phone and Email: (951) 461-6119 or CArora@MurrietaCA.gov

Is Federal Funding Being Used to Fund Any Part of The Project (Yes/No): No

RECITALS

The City desires to contract with a Contractor to provide services as more further set forth herein.

The City circulated a Request for Quotes or Proposals for the above-described services.

Contractor submitted a quote or proposal to City to provide the above-described services.

City Staff has reviewed all the proposals and after considering the demonstrated competence of Contractor, the qualifications of Contractor, and the fairness and reasonableness of Contractor's proposed cost, staff has determined that an agreement to provide the required services should be awarded to Contractor.

AGREEMENT FOR GENERAL SERVICES WITH THE CITY OF MURRIETA ("CITY")

THIS AGREEMENT FOR SERVICES ("**Agreement**") is made and entered into and effective on the date executed by the City by and between CITY OF MURRIETA, a California municipal corporation ("**City**") and ("**Contractor**"). City and Contractor may be referred to individually as "**Party**" or collectively as "**Parties**." In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

- 1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the "**Scope of Services**" attached hereto as Exhibit A and incorporated herein by this reference, which may be referred to herein as the "**services**" or "**work**" hereunder. As a material inducement to City entering into this Agreement, Contractor represents and warrants: a) it has the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement b) all services set forth in the Scope of Services will be performed in a competent and satisfactory manner; c) all materials used for services will be both of good quality as well as fit for the purpose intended; and, d) Contractor shall follow the highest professional standards and practices in performing the services required hereunder.
- 1.2 Contractor's Proposal.** The Scope of Services shall include the scope of services or work included in Contractor's proposal or bid, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal or bid, and this Agreement, the terms of this Agreement shall govern. No other terms and conditions from Contractor's proposal or bid, other than description of scope of services or work, shall apply to this Agreement, unless specifically agreed to by City in writing.
- 1.3 Compliance with Law.** All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its officers, employees and agents, shall not be liable at law or in equity for failure of Contractor to comply with this Section.
- 1.4 Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

- 1.5 Familiarity with Work.** By executing this Agreement, Contractor represents and warrants Contractor: a) has thoroughly investigated and considered services to be performed, b) has carefully considered how services should be performed, and c) fully understands the facilities, difficulties and restrictions attending performance of services under this Agreement.
- 1.6 Software and Computer Services.** If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Contractor represents and warrants that it is familiar with and/or has inspected City's current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Contractor under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of City. Contractor acknowledges that City is relying on this representation by Contractor as a material consideration in entering into this Agreement.
- 1.7 Prevailing Wages.** If services include any "public work" or "maintenance work," as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Contractor shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws.
- 1.8 Special Requirements.** Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

- 2.1 Contract Sum.** Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the rates specified in the "Schedule of Compensation" attached hereto as **Exhibit C** and incorporated herein by this reference. The total compensation for all work, including reimbursement for actual expenses, shall not exceed the Contract Sum set forth above. Compensation may include reimbursement, for actual and necessary expenditures, if both are specified in the Schedule of Compensation, as well as approved by City in advance.
- 2.2 Invoices.** Unless some other method of payment is specified in Exhibit C, Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the first business day of such month, Contractor shall submit to City, in a form approved by City's Finance Director, an invoice for services rendered prior to the date of the invoice. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of this

Agreement. Except as provided in Sections 7.3, 7.4 and 7.5, City shall pay Contractor for all expenses stated thereon which are approved by City pursuant to this Agreement generally within thirty (30) days, and City will use its best efforts to make payment no later than forty-five (45) days, from the submission of an invoice in an approved form. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Review and payment by City for any invoice provided by Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Each invoice is to include (unless otherwise specified by City): 1) line items for all personnel describing the work performed, the number of hours worked, and the hourly rate; 2) line items for all materials and equipment properly charged to the Services; 3) line items for all other approved reimbursable expenses claimed, with supporting documentation; and 4) line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

ARTICLE 3. PERFORMANCE SCHEDULE

3.0 Time of Essence. Time is of the essence in the performance of this Agreement.

3.1 Term. The Agreement shall commence upon the Effective Date set forth above and will continue until the Termination Date. This Agreement may be extended for up to two, additional one-year periods upon the mutual agreement in writing of both parties.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of any ongoing services, which shall be no later than the Termination Date set forth above. Notwithstanding the foregoing, the Indemnification and Insurance provisions set forth in Article 5 shall survive the termination of this Agreement.

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed from City and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as **Exhibit D** and incorporated herein by this reference.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor shall within ten (10) days of the commencement of such delay notify City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be

entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of this Agreement pursuant to this Section.

ARTICLE 4. COORDINATION OF WORK

- 4.1 Representative of Contractor.** The Contractor Representative is authorized to act on Contractor's behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.
- 4.2 Department Contact for City.** The Department Contact (or other person designated by the City Manager) shall be the primary person on behalf of City responsible for the administration of the Agreement. It shall be Contractor's responsibility to assure that the Department Contact is kept informed of both the progress of the performance of the services as well as any decisions which must be made by City.
- 4.3 Approvals from City.** City approvals or actions, pursuant to the authority of this Agreement, are to be made (unless otherwise specified) either by the Contract Manager, City Manager or by their delegate as provided for in writing.
- 4.4 Independent Contractor.** Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Contractor, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Contractor shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Contractor represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Contractor's exclusive control and direction. No City employee benefits shall be available to Contractor, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Contractor or any officer, employee, agent, or subcontractor of Contractor providing services under this

Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Contractor shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Contractor, or any officer, employee, agent, or subcontractor Contractor used to provide services under this Agreement, is/are employees of City.

- 4.5 Subcontracting or Assignment.** The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without express written approval of City, Contractor shall not contract with any other City to perform in whole or in part services required hereunder without express written approval of City, and neither this Agreement nor any interest herein may be transferred or assigned. No approved transfer shall release Contractor, or any surety or insured of Contractor, of any liability hereunder without express written consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

- 5.1 Insurance Coverages.** Prior to commencement of any services under this Agreement, and without limiting Contractor's indemnification obligation to City, Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts set forth in the "Insurance Requirements" attached hereto as **Exhibit E** and incorporated herein by this reference.

5.2 Indemnification.

(a) General Obligations. Contractor agrees, to the full extent permitted by law, to indemnify, defend and hold harmless City and its elected and appointed officers, employees and agents (each an "**Indemnitee**" and collectively, "**Indemnitees**") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or City arising out of or in connection with the performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or City for which Contractor is legally liable (each an "**Indemnitor**" and collectively, "**Indemnitors**"), and in connection therewith: 1) Contractor will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys' fees, incurred by Indemnitee(s) in connection therewith; and, 2) Contractor will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s) harmless therefrom.

Further Provisions. The indemnity obligation herein shall be binding on successors, assigns and heirs of Contractor and shall survive termination of this Agreement. Contractor shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Contractor fails to do so Contractor shall be fully responsible to indemnify City hereunder therefor. Failure of City and/or City Parties (collectively "City" for solely this Section 5.2(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. Payment of invoices by City is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Contractor and City, as to whether liability arises from the sole negligence or willful misconduct of City, Contractor will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating City as solely negligent or responsible for willful misconduct. Contractor will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION

- 6.1 Records.** Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder ("**books and records**") as shall be necessary to perform the services required by this Agreement and enable City to evaluate the performance of such services. Any and all such books and records shall be maintained in accordance with generally accepted accounting principles, shall be complete and detailed, and shall be readily accessible. City shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained for a period of three (3) years following completion of the services hereunder. City shall have access to such books and records in the event any audit is required. Contractor shall fully cooperate with City in providing access to any and all Contractor records and documents if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.
- 6.2 Ownership of Documents.** All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials ("**documents and materials**") prepared by Contractor, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of City and/or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Contractor may retain copies of such documents and materials for its own use. Contractor shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents and materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages

resulting therefrom. Moreover, with respect to any Contractor documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for City.

- 6.3 Confidentiality and Release of Information.** All information gained or work product produced by Contractor in its performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from City. Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Contractor immediately gives City notice of such court order or subpoena. If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Contractor’s conduct. As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Contractor shall immediately notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party; b) City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding; and, c) Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor, however, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

- 7.1 California Law.** This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Riverside, State of California.
- 7.2 Suspension, or Termination, Prior to Expiration of Term.** This Section shall govern any termination of this Agreement except as specifically provided in Section 7.4 for termination for cause. City reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without

cause, upon ten (10) days' notice to Contractor, except that where termination or suspension is due to the fault of Contractor, the period of notice may be such shorter time as determined by City. Upon receipt of any notice of termination or suspension, Contractor shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by City. Upon submittal of an invoice consistent with Section 2.2, Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension and for any services authorized by City thereafter in accordance with the Schedule of Compensation, or such as may be approved by City, except as provided in Section 7.5. In event of termination, or suspension, without cause pursuant to this Section, there is no need to provide opportunity to cure pursuant to Section 7.3.

- 7.3 Default of Contractor and Opportunity to Cure.** In the event that Contractor is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively ten (10) days, but may be extended, or reduced, if circumstances warrant, as determined by City. During the period of time that Contractor is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices, without liability for interest. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default by conclusion of noticed timeframe, City may immediately both terminate this Agreement with notice to Contractor as well as pursue the remedy in Section 7.4, without prejudice to any other remedy to which City may be entitled at law, in equity or under this Agreement. Any failure on the part of City to give notice of Contractor's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.
- 7.4 Termination for Default of Contractor.** If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Contractor for the purpose of set-off or partial payment of the amounts owed City therefor.
- 7.5 Retention of Funds.** Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third

party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Contractor to insure, indemnify, and protect City as elsewhere provided herein.

- 7.6 Waiver.** Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement of this Agreement imposes no additional obligations on City nor does it waive any rights hereunder. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.
- 7.7 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.
- 7.8 Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.
- 7.9 Attorneys' Fees.** If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, Contractors' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such

litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION

- 8.1 Non-liability of City Officers and Employees.** No officer or employee of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.
- 8.2 Conflict of Interest.** Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Contractor written notice describing the conflict. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects their financial interest or the financial interest of any corporation, partnership or association in which they are, directly or indirectly, interested, in violation of any State statute or regulation. Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.
- 8.3 Covenant Against Discrimination.** Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

ARTICLE 9. MISCELLANEOUS PROVISIONS

- 9.1 Notices.** Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of

City addressed to City Clerk at City of Murrieta, 1 Town Square, Murrieta California 92562, and in the case of Contractor, to the person(s) at the address designated on the cover page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

- 9.2 Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.
- 9.3 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.
- 9.4 Integration; Amendment.** This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and by City.
- 9.5 Severability.** Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.
- 9.6 No Undue Influence.** Contractor declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City has or will receive compensation, directly or indirectly, from Contractor, or from any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to remedies in Section 7.4 and any and all remedies at law or equity.
- 9.7 Corporate Authority.** The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party,

(iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

- 9.8 Federal Funding.** If federal funding is being utilized to fund any part of the Project, as indicated on the Cover Page of this Agreement, the terms of **Exhibit F** are hereby incorporated herein by this reference. If no federal funding is being utilized, Exhibit F may be omitted.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF MURRIETA, a California municipal corporation

By: _____

Kim Summers, City Manager

Date:

ATTEST:

Cristal McDonald, City Clerk

Date:

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Tiffany Israel, City Attorney

Date:

CONTRACTOR:

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) Appropriate attestations shall be included as may be required by the bylaws, articles of incorporation or other rules or regulations applicable to Contractor's business City.

By: _____

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date:

By: _____

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date:

EXHIBIT "A"

SCOPE OF SERVICES

Contractor will perform the following Services:

The Contractor will report to the Recreation Supervisor responsible for Aquatics. The Contractor will work directly with the Recreation Supervisor and City staff in performance of daily duties in the operation of the pool. The general responsibilities of the Contractor (or staff of the Contractor) include, but are not limited to, the following and shall be considered to be services covered by this Agreement:

A. Operations: The operating hours for the pool facility are outlined in Exhibit "D," attached hereto. The operating hours may be adjusted by City staff at any time. Notice will be provided to the Contractor with as much advance notice as possible.

B. Personnel:

i. The Contractor shall recruit, screen, and hire staff with the following American Red Cross or industry equivalent certifications:

Lifeguard: Lifeguarding, CPR, AED, and First Aid

Swim Instructor: Lifeguarding, Water Safety Instructor (WSI), CPR, AED, and First Aid

Manager: Lifeguarding, CPR, AED, and First Aid

ii. Contractor shall provide two (2) certified, trained lifeguards and one (1) Manager for the duration of pool operation days and hours. Hours and number of staff may be adjusted upon mutual agreement of City staff and Contractor.

iii. Contractor shall ensure all interactions between Contractor's staff and patrons and City staff is courteous and professional.

iv. In the event a regularly scheduled lifeguard is unable to make their assigned shift due to medical or personal reasons, Contractor will be responsible for replacing the personnel with another certified lifeguard from its staffing division for the specified shift.

v. All staff hired by Contractor will adhere to a cohesive uniform policy which includes clearly labeled "Lifeguard" shirts to provide clear identification.

vi. All staff hired by Contractor must pass criminal background checks and shall be trained in mandatory reporting requirements pursuant to California Penal Code Section 11165.9. Contractor shall bear the costs of all such testing and training.

C. Safety:

i. Contractor shall track patron attendance and ensure adherence to all pool and facility rules and safety regulations.

ii. Contractor shall provide lifesaving and CPR/First Aid training for the designated lifeguard staff in accordance with the American Red Cross standards or other appropriately recognized and accredited lifesaving organization.

iii. Lifeguard staff will enforce all facility rules and regulations and report to City staff any patrons who repeatedly act in an unsafe and/or unlawful manner when using the pool. Reasonable attempts, within the scope of the Lifeguard training, will be used to ensure safety. However, unmanageable situations will be directed to and handled by City staff should such an issue arise.

iv. The Contractor will provide all equipment required for the aquatics center in alignment with the American Red Cross, and/or other appropriately recognized and accredited life-saving organization.

v. The Contractor will ensure that their lifeguard staff are regularly up to date in their trainings and certifications.

vi. All lifeguards will undergo in-service training at least once every two weeks to remain current on all safety procedures required by Contractor, City or any certification, as well as to continue to stay current on facility specific Emergency Action Plans (EAP).

D. Swim Lessons: Contractor shall perform a variety of swim lesson opportunities for the community based on the schedule attached hereto as Exhibit "D." Such opportunities shall include, but not be limited to:

i. Infant and Pre-School Swimming Lessons: In these classes, parents or guardians accompany their infants and preschoolers in the water. The aim is to provide parents with the knowledge and techniques to help their child feel comfortable and safe in the water while also learning basic swimming skills. Skills covered include water adjustment, blowing bubbles, exploring underwater, floating on the front and back, and kicking. Swim pants are preferred over diapers.

ii. Toddler Swimming Lessons: Designed for preschool-age children, these classes mark the child's first independent experience in the pool without a caretaker. The focus is on introducing swimming and water safety skills. Children must be able to listen and follow instructions. Skills taught include water adjustment, bubble blowing, underwater exploration, floating with support, kicking, and basic safety topics. Class size is limited to four participants.

iii. Level 1 Swimming Lessons: For children aged 5 and above who have completed the Toddler class, this course emphasizes further development of basic swimming skills. Participants should be able to perform tasks such as blowing bubbles, floating unassisted, and

following directions. Skills taught include jumping into the water, fully submerging, retrieving items, bobbing, floating, and age-appropriate safety topics.

iv. Level 2 Swimming Lessons: This course builds on skills learned in Toddler and Level 1 classes, focusing on elementary swimming techniques. Participants will learn the front crawl and be introduced to the back crawl. Basic water safety rules and emergency procedures will also be covered.

v. Level 3 Swimming Lessons: Designed to refine fundamental skills from previous levels, Level 3 introduces new techniques such as rhythmic breathing, elementary backstroke, and treading water. Participants should be able to swim approximately 15 feet and float on their stomach before enrolling.

vi. Level 4 Swimming Lessons: This level reinforces skills learned in Level 3 and introduces the breaststroke and sidestroke. Participants should be capable of swimming one width of the pool using rhythmic breathing before enrolling.

EXHIBIT "B"

**SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)**

Click or tap here to enter text.

EXHIBIT “C”

SCHEDULE OF COMPENSATION

- I. It is hereby understood by both parties that swim lessons will be offered directly through the vendor, who will handle all sign-ups and payment collection. All profit associated with swim lessons will be that of the Contractor.**
- II. It is also understood by both parties that all fees associated with lap swim, open swim, and any other water courses offered by the City, and not by the Contractor, will be collected by the City.**
- III. Contractor will be compensated for providing the necessary lifeguards and water safety instructors during pool open hours. City will compensate Contractor per the agreed payment schedule listed below:**

<u>Month</u>	<u>Days of Service</u>	<u>Total Invoice</u>
May	2 Days	\$2,772.73
June	18 Days	\$24,954.48
July	18 Days	\$24,954.48
August	6 Days	\$8,318.16
Grand Total	44 Days	\$61,000.00

- IV. The total compensation for all Services shall not exceed the Contract Sum as provided in the Cover Page of this Agreement.**
- V. This is a multiyear contract. Contractor is held to a maximum annual increase of either CPI, or 5%, whichever is less. Annual contract total increases are to be discussed and agreed upon by both parties upon renewal of agreement, and will not occur automatically.**
- VI. Each renewal year, Contractor shall provide a breakdown for payment for the corresponding season.**

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

- I. Contractor shall perform Services as set forth in Exhibit A.**
- II. Operating hours for the Pool Facility shall be:**
 - A.** Mondays, Wednesdays, Saturdays and Sundays
 - B.** 7 AM - 4 PM on operating days.
- III. Swim Lesson Times shall be:**
 - A.** Swim lessons are to be provided every Monday and Wednesday.
 - B.** A finalized schedule of hours will be decided between the Contractor and City staff before the start of the swim season.

NOTE: With the potential for this agreement to extend over multiple years, dates and hours may be subject to change in the future.

EXHIBIT E

INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- 1. Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000 per occurrence**. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 2. Sexual Abuse or Molestation (SAM) Liability:** If the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, Contractor shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than **\$1,000,000** per occurrence or claim.
- 3. Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- 4. Workers’ Compensation insurance** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if Contractor provides written verification it has no employees)

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Contractor's **insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000

[fill in the amount for your comfort level for the specific Contractor and job – it could be much higher, or in the case of a very small Contractor, you might want it lower] unless approved in writing by City. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior** to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of **five (5) years after completion of work.**

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work,** shall continue coverage for a minimum of 5 years for

Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.