

Exhibit 2:

2023 AQUATICS AND FACILITIES MANAGEMENT AGREEMENT

This Agreement is made and entered into on _____, by and between the City of Stockton, a municipal corporation of the State of California, (hereinafter "City"), and _____, (hereinafter "Operator") for the exclusive use of the facilities identified in Exhibit 1: Aquatic Facility Locations for Aquatic Facilities (hereinafter "Facilities"). The City and Operator may be referred to collectively as "Parties" or in the singular as "Party" as the context requires.

City, for and in consideration of the rents, covenants, and agreements contained herein to be performed by Operator, does hereby enter into this agreement with Operator for certain areas together with the facilities and improvements located thereon which are located within the City of Stockton and outlined on the attached list of facilities and maps marked Exhibit 1 for the purpose of operating swimming pools and additional activities associated with conducting a summer swimming program.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and agreements herein contained the parties hereby agree as follows:

ARTICLE 1: TERM AND TERMINATION.

1.1 Term. The term of this Agreement is for one (1) swim season commencing on date attested above and terminating on December 31, 2023. Operator shall have two (2) additional one(1) year options for the 2024 and 2025 swim seasons. Mutual Options for 2024 and 2025 must be agreed upon in writing by December 15, 2023, and December 15, 2024, respectively.

1.2 Termination by Operator. Operator may terminate the Agreement with thirty (30) days written notice to the City ("Termination Notice"). Operator may not issue a Termination Notice from one hundred and twenty (120) days before the first day of any swim season, as detailed at section 5.4, through swim season closeout, as detailed at section 5.6.

1.3 Breach of Obligations by Operator; Right to Cure. In the event the City determines the Operator has substantially failed to fulfill the obligations as provided under this Agreement, City shall provide Operator with written notice detailing specific obligations which City claims Operator has failed to fulfill and notifying Operator that it is deemed to be in breach of the Agreement. If the breach is not cured within the time specified in the Notice, or if the City and Operator cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by City which will be no sooner than ten (10) days from the date of issuance of final notice. In the event this Agreement is terminated by City, Operator shall promptly cooperate with the transition of the Facility to City according to all applicable laws and the terms of the Agreement.

1.4 Termination Due to Catastrophic or Natural Disaster. If, because of any catastrophic or natural disaster, it becomes impossible for Operator to render services and perform under this Agreement, City and Operator shall meet to discuss termination, closure and transition of the Facility to the City within ten (10) days of catastrophic cause, or as soon thereafter as practical.

1.5 Vacation of Premises. Operator agrees to fully vacate the Facilities at the termination of this Agreement. Should Operator fail to vacate as herein provided, Operator agrees that City or its authorized agents may enter upon the premises and remove all personal property and equipment therefrom and that the cost of removal and any temporary storage or disposal shall be billed to the Operator and shall be the responsibility of Operator. The City shall, within its sole discretion, determine whether any such property or equipment shall be stored or disposed of. Nothing herein shall be considered a waiver of the City's rights under the law to demand and obtain possession of the in the event of a violation of Operator's part of any of the terms or conditions hereof.

ARTICLE 2: DEFINITIONS.

In addition to terms defined elsewhere in this Agreement, the following terms have the meanings referred to in this section:

- 2.1 "Agreement"** means this facilities management agreement.
- 2.2 "City"** means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees, and agents.
- 2.3 "Director of Community Services"** means the Director of Community Services of the City of Stockton, CA or the Director's designee.
- 2.4 "Facilities"** means the pool facilities and improvements, located at the related aquatic sites in Stockton, California, also collectively known as the aquatics facilities and as identified in Exhibit 1: Aquatic Facilities Locations.
- 2.5 "Fiscal Year"** means the one-year period from July 1 through June 30.
- 2.6 "Laws"** means all federal, state, local, and municipal regulations, ordinances, statutes, rules, laws, and constitutional provisions.
- 2.7 "Operator"** means the operator the aquatic facilities listed in this Agreement.
- 2.8 "Parties"** means Operator and City of Stockton.
- 2.9 "Prevailing Wage"** means any requirements by the State of California and the Department of Industrial Relations (DIR) by Operator to pay Prevailing Wage rates to all public works contracts as set forth in Labor Codes sections 1720, 1720.2, 1720.3, 1720.4, and 1771.
- 2.10 "Reports"** means all reports identified, including miscellaneous, weekly, and monthly reports for facility to be prepared by Operator as set forth in Article 5.10 and Exhibit 10: Scope of Services.

ARTICLE 3: COMPENSATION AND REVENUE.

3.1 Compensation. Operator shall receive \$_____ subsidy for operation of facilities for the term of this agreement for each year , paid upon invoice and receipt of data according to Exhibit 8: Compensation Schedule. Invoices received by Operator shall be paid via City purchase order as follows:

50% of contract will be paid upon receipt of invoice with copy of business license, receipt of approved insurance certs and endorsements, program plan signature of compliance of HR 40 fingerprinting and disqualifying criminal convictions to be paid via purchase order after contract is attested. (Estimated time frame May 1 of each year).

The second payment of due August 1 shall be paid upon receipt of Operator invoice and invoice backup: weekly and monthly statistics and reports for May, June, and July.

3.2 Revenue. Operator shall receive 100% of the proceeds from all income producing activities associated with the Facilities, including, but not limited to the following: swim lessons, aquatic program fees, free swim, snack bar sales, special event rentals, fund raising, etc. One exception is rentals to swim teams where percentage of income kept shall be negotiated.

ARTICLE 4: INDEMNIFICATION, INSURANCE.

4.1 Insurance Requirements. Operator must obtain and shall always maintain in force during the duration and performance of this Agreement, the policies of insurance specified in Exhibit 2.

4.2 Proof of Insurance. Operator shall provide proof of insurance in the required form to the City's Risk Manager prior to contract attest as evidence that it has complied with the insurance requirements set forth in Exhibit 2

4.3 Indemnity and Hold Harmless. With the exception that this section shall in no event be construed to require indemnification by Operator to a greater extent than permitted under the public policy of the State of California, Operator shall, indemnify, protect, defend with counsel approved by City and at Operator's sole cost and expense, and hold harmless City, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law, or ordinance, or City Policy, by Operator or Operator's officers, agents, employees, volunteers, or subcontractors. Operator shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Operator to City, the

intent hereunder is to provide the maximum defense and indemnity obligations allowed by Operator under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Operator to a greater extent than permitted under the public policy of the State of California, the parties agree that Operator's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by Operator or Operator's officers, agents, employees, volunteers, or subcontractors. Operator's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined. Operator shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant, and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of active negligence or willful misconduct on the part of the City, City will then reimburse Operator for amounts paid more than Operator's proportionate share of responsibility for the damages within thirty (30) days after Operator provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Operator is not obligated to defend or indemnify City in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Operator to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Operator shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, agents employees, and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Operator, regardless of whether such claim may be covered by any applicable workers' compensation insurance. Operator's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Operator under workers' compensation acts, disability acts, or other employee benefit acts.

4.4 Tender of Claims. Operator shall accept tender of any third-party claim submitted to it by City because of Operator's obligation herein within thirty (30) days of such tender.

4.5 Use of Contractors/Subcontractors Operator. If the Operator uses Contractors or Subcontractors for performance of its obligations pursuant to this Agreement, the Contractor/Subcontractor agrees to be bound to the Operator and City in the same manner and to the same extent as Operator is bound to the City under this Agreement, including all Indemnification and Insurance requirements. As to any Subcontractor, it shall be as to the extent the Indemnification and Insurance requirements apply to the scope of the Subcontractor's work. A copy of this Agreement will be furnished to the Contractor and Subcontractor upon request.

ARTICLE 5. MANAGEMENT RESPONSIBILITIES.

5.1 Management Responsibilities. Operator owes to City the duty to perform its obligations under this Agreement and to conduct the management, operation, and daily maintenance of the Facilities at all times with integrity and good faith efforts consistent with the well-being of the greater Stockton community in a manner consistent with industry practices and all applicable laws, permits, and requirements. Operator shall follow policies and guidelines established by the City that are applicable to the operation and maintenance of the Facilities. Operator shall not enter any material contracts which extend beyond the term of this Agreement and any extensions thereto. Operator shall be responsible and comply with the terms and conditions of this Agreement; operating the Facilities with a full understanding of the standards and guidelines as well as in full compliance with laws, regulations and other legal requirements that apply to the Facilities.

5.2 Operator Control of Facilities. After inspection by the County and the City, the Operator takes possession of the Facilities to clean, prepare, and train staff for the current swim season by a day as mutually agreed upon in April. Final date will be no later than October 31, the exact date shall be mutually agreed upon and be confirmed in writing by both parties.

5.3 Pre-Season Inspection. Operator shall be prepared for a City final operations inspection of facilities and staff training on Thursday before Memorial Day Weekend in preparation for the Memorial Day weekend opening.

5.4 First Day of Swim Season. Operator shall open Facilities for swim season the Friday of Memorial Day weekend for a full weekend of services (Friday-Saturday-Sunday) before resuming approved weekly Facilities schedule according to Exhibit 10: Scope of Services and Exhibit 11: Swim Schedule by Aquatic Facility.

5.5 Hours of Operation for Each Swim Season. The following schedule as identified in Exhibit 11: Swim Season by Aquatic Facility has been mutually agreed upon by City and Operator. Any deviation from this schedule must be communicated to City with 24-hour prior notice to City.

5.5.1 Memorial Day Weekend: Facilities shall be open Saturday, Sunday, and Monday of Memorial Day weekend. Pool shall then begin the regular June schedule. Optional Water Safety Days shall occur as mutually agreed upon by Operator and City.

5.5.2 Weekly Schedule for Aquatic Locations: Pools shall be open according to the schedule set by Operator and as listed in Exhibit 11: Swim Schedule by Aquatic Facility. This Exhibit may be updated from time to time by mutual agreement of City and Operator.

5.6 Swim Season Close Out. City and Operator will tour and inspect Facilities on the second week of September (or as mutually agreed upon) to complete close out inspection and return keys if appropriate.

5.7 Possessory Interest, Taxes, Assessments, Permits, Fines. Operator shall pay all taxes, including possessory interest, assessments, permits, or fines related to all aspects of operation of the Facilities. For clarity, Operator shall pay such costs related to Facilities operations only.

5.8 Expense Obligation. Except as set forth elsewhere herein regarding maintenance, repairs, chemicals and the like, Operator agrees to pay 100% of all costs and expenses related to Operator's operation of the Facilities without limitation. In the event the Operator incurs costs related to the operation and use of the Facilities, the City will not be required to pay any part of any such expense, and the Operator shall not have any claim against the City on account of any costs or expenses related to the operation or repair of the Facilities.

5.9 Qualified Personnel. Operator shall abide by standards set by City as to the number of supervisory personnel required at each aquatic location when the pool is in operation. Operator shall use certified lifeguards with training from any reputable trainer and minimum staffing standards in alignment with state requirements, City policy, and as may be mutually agreed upon.

5.10 Weekly and Monthly Reports. Operator shall provide the following reports as required:

5.10.1 Programming Plan: Annually, Operator shall provide a program operation plan for City's review and approval to include, but not limited to, general operating hours by day, fees for each type of activity, special events, public use, and any other services generally offered to the public. This shall be provided to City before May 1 of each term, or an alternate date as mutually agreed upon.

5.10.2 Weekly and Monthly Participation Reports: Reports for actual daily use (participants and spectators) number of rentals, schedule of programs, program fees, listing of programs offered. The participant and spectator numbers should tie to program totals. Note: Statistics should be provided on daily use by activity, summarized in weekly report which correlates to monthly reports. The reports should be updated weekly and available in an online format as mutually agreed upon.

5.10.3 Daily Chemical logs: Operator shall maintain one Chemical log which will report all mandatory activities regarding water quality. Log shall be hourly, kept in a location for water quality vendor to review as needed; copies provided to city weekly during weekly inspection.

5.10.4 Operator Inventory Report: List of Operator owned equipment on site to be provided at season start up inspection and verified at season close inspection, as identified in Exhibit 5: Facilities Inventory

5.10.5 City Inventory Report: List of City owned equipment and materials on site which shall be provided at season start up inspection and verified at season close inspection as identified in Exhibit 5: Facilities Inventory

5.10.6 List of Certificates: Summary of all staff that worked during the week and copies of appropriate and valid certificates for Facility personnel shall be required during weekly inspection.

5.10.7 Pre-Season Site evaluation and Recommendation Report: as further clarified in Exhibit 10: Scope of Service

5.10.8 Post Season Closure Report: As further clarified in Exhibit 10: Scope of Service

5.11 Day to Day Management of Facilities. Operator shall have sole responsibility for the day-to-day management of Facilities operations and programming.

5.12 Oversight by Operator. Operator shall provide an agreed upon minimum level of staffing and qualified management to provide the day-to-day management of Facilities as contemplated in this Agreement. Operator shall also establish and provide management policies and procedures to adequately operate Facilities pursuant to this Agreement. Copies of lifeguard certificates, first aid certificates, and Certified Pool Operator certificate(s) for all applicable personnel must be submitted to the Community Services Department prior to the first day of operation. In addition, Operator shall provide a Certified Pool Operator (CPO) to maintain all aspects of pool maintenance including chlorine levels, Ph levels, and equipment for hours of operation. Any changes to personnel or policies should be documented and provided to the City weekly during inspection.

5.13 After-Hours Facility Emergencies. For after-hours facility emergencies, Operator shall contact Public Works regarding the emergency via an after-hours phone at (209) 937-8341.

5.14 Promotion of Facilities. The City and Operator will actively cooperate to promote Facilities. City and Operator shall work together to promote Facilities through City avenues to market activities.

5.15 Responsibilities to Operate, Maintain, Permit and Provide Supplies. Except as set forth elsewhere herein regarding maintenance, repairs chemicals and the like, Operator shall be responsible for the management, operation, and routine daily maintenance of the Facilities including but not limited to, full scheduling of programs, staffing, marketing, and daily janitorial maintenance of Facilities, concession sales, rental, and daily cleaning and maintenance of all areas contained within the Facilities.

Operator shall keep facilities in clean and sanitary condition, performing routine daily maintenance, including but not limited to hosing down the pool decks, shower area and bathrooms, routine daily and hourly cleaning of bathrooms and floors, sinks, and toilets, picking up of trash and litter in and around the pool area, and other routine janitorial maintenance (including spot inspections) to insure total cleanliness of the entire Facilities.

City will obtain permits from the San Joaquin County for pool operations. City will obtain permits and inspections, if any, for chemical storage plus any additional permits required to meet City and county or state requirements for the operation of Facilities as contemplated

under this Agreement. Operator covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

At the conclusion of this Agreement, Operator is responsible for returning the Facilities to the condition in which it began operations.

5.16 New Hire, Recruitment, and Staffing Guidelines. Operator shall hire, supervise, and manage all personnel (paid or volunteer) necessary for the management, operation, and routine daily maintenance of Facilities and shall comply with City's administrative directive with respect to fingerprinting Operator employees and volunteers. Any individual who has been convicted of certain criminal offenses as set forth below, is not eligible to work or volunteer under this Agreement.

Operator shall comply with the relevant portions of City's Administrative Directive HR-40 (Exhibit 3) regarding who must be fingerprinted and what offenses or disqualifiers will prohibit an individual from working at Facilities. Operator employees and volunteers, if applicable, are required to submit fingerprints in a manner authorized by the State of California Department of Justice. Operator and all applicable employees/volunteers shall submit fingerprints prior to start of work. Operator is responsible for all costs of fingerprinting and background check. Any individual who has been convicted of certain criminal offenses (disqualifiers) is not eligible to work at Facilities. The disqualifying criminal convictions are as follows: Any of those offenses identified in Public Resources Code, section 5164 except for Penal Code sections 211, 215, 236, or 240, provided, however, that any individual who has been convicted of violating Penal Code sections 211, 215, 236, or 240 may, in the sole discretion of the Operator or the City, nevertheless be ineligible to work or volunteer at the Facilities under this Agreement. In addition, if any of the Operator's employee(s)/volunteer(s) assigned is/are subsequently found to have a disqualifying conviction, that/those individuals shall be immediately removed from the Facilities and shall not be allowed to perform any further work under this Agreement. If the Operator is subsequently found to have a disqualifying conviction, the contract may be immediately terminated by City. The Operator shall certify in writing to City before the first day of each season of operation that neither the Operator nor any of Operator's employees have been convicted of any of the offenses specified in California Public Resources Code section 5164 or City of Stockton Administrative Directive HR-40.

5.17 Signature of Compliance for HR-40. Operator shall confirm, in writing, prior to each swim season (see Exhibit 4: Signature of Compliance for HR40) to City that Operator employees/ volunteers have been fingerprinted and not convicted of any of the offenses specific in California Public Resources Code section 5164 or City of Stockton Administrative Directive HR40, Fingerprinting

5.18 Snack Bar Sales. Operator is granted the exclusive right to sell food and merchandise at the Facilities at the sole cost and expense of the Operator. Operator shall retain all revenue from concession sales. Operator shall provide copies of all related concession licenses for City review if requested. It shall be the sole responsibility of Operator to ensure that all food and beverage products sold by Operator, or its concessionaire(s) shall conform to all applicable federal, state and local laws, including the

California Health and Safety Code, and other requirements. Operator is responsible to timely report and pay all sales tax.

5.19 Emergency Contacts. Operator shall provide City with emergency phone numbers of key staff and Board Members. Operator shall ensure that City representatives could communicate with said persons twenty-four hours a day when emergency conditions occur.

5.20 Facility Use Agreements. Operator shall be responsible for entering into Facility Use Agreements with all renters and users of the Facilities for aquatic and rental activities. Operator shall be responsible for developing the form of each Agreement and complying with all requirements established by City Risk Services and contract compliance requirements for users of the Facilities.

5.21 Compatible Use. Operator agrees not to make use of Facilities and property in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use of the Facilities as they are intended and according to the terms and conditions of this Agreement and general use of an Aquatic Facilities.

5.22 Summer Youth Programs. Operator shall operate a summer youth camp at the following locations directly adjacent to the Facilities as listed in Exhibit 1: Aquatics Facilities Locations. City will not pay Operator for the program, and the Operator shall not share revenue with the City. Operator shall manage the camps with the same general terms and conditions of this agreement and the additional terms and conditions as follow:

5.22.1 Picnic Areas: Operator shall not use group picnic areas or any other rentable space without making reservations and payment of those ancillary services.

5.22.2 Summer Camp: The Summer Camp may operate weekdays. The City does not provide these services at these locations as regular business.

5.22.3 Summer Camp: The Summer Camp may operate weekdays. The City does not provide these services at these locations as regular business.

5.22.4 Performance: The City will not have any control over how Operator performs. Operator shall perform services in a manner commensurate with childcare best practices and standards.

5.22.5 Insurance: There shall be no work on site before obtaining and providing insurance for these activities and ancillary areas and this area and duty shall be included on the certificate of insurance with the same requirements as Exhibit 2: Insurance

5.22.6 Staffing Ratio: Staffing ratio is one counselor per 15 campers.

5.22.7 Bathroom supervision: Campers shall be supervised when accessing the park or pool facility bathrooms.

5.22.8 Supervised Swim: Campers shall have daily access to supervised swim with their counselors.

5.23 Summer Meal Programs.

Operator may offer summer meal programs if offered by Stockton Unified School District (SUSD) Child Nutrition Program, or any other officially authorized meals program. If Operator enters into an agreement with summer meals provider, Operator must meet all additional food handling requirements, food safety, and sanitation standards, in addition, this activity shall be identified on insurance certificates in accordance with Exhibit 2: Insurance. All terms and conditions of this agreement also apply to this program activity.

5.24 Sponsorship of Programming. The Operator has the right to establish a sponsorship program for operational activities at each location to offset the cost of those programs. Sponsorships can be identified on flyers, website, and banners. Any publication of sponsorship should identify and provide limiting language that the activities are supported by the sponsor. City and Operator can work together to find mutually agreeable language for sponsors.

ARTICLE 6. MAINTENANCE, JANITORIAL, AND SECURITY OF FACILITIES

6.1 Acceptance of Condition of Facilities. Operator accepts the Facilities and all equipment hereunder in their present 'as is' condition, without warranty by City or any duty or obligation on the part of the City to maintain the facilities other than as set forth herein. At the end of the term of this Agreement or its earlier termination, Operator shall surrender to the City, the Facilities in the same condition as when received, less reasonable use and wear and tear, damage caused by an act of god or by the elements excepted. Operator shall remove all equipment and personal property of the Operator, except, however, the City may approve, in writing, any deviation from this requirement. If Operator fails to remove its property after notice by City, Operator agrees that City may remove said property and bill the cost of removal and/or storage, if necessary, to Operator, who agrees to be responsible for such costs.

6.2 Improvements. Operator is not granted permission to construct improvements on the Facilities.

6.3 Prevailing Wage. It shall be the responsibility of the Contractor to comply, when applicable, with the prevailing wage rates in accordance with the State of California Department of Industrial Relations. It shall further be the responsibility of the Contractor to monitor the prevailing wage rates as established by the California Department of Industrial Relations for any increase in rates during the term of this Agreement and adjust wage rates accordingly.

CONTRACTOR REGISTRATION REQUIREMENTS- Pursuant to Labor Code Section 1771.1(a): A Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. Department of Industrial Relations- Contractor Registration information and web link: <https://www.dir.ca.gov/public-works/publicworks.html>. In compliance with Senate Bill 854 and the California Labor Code, all Bidders shall include with their Bid proof of registration from the Department of Industrial Relations (DIR) that includes the contractor's Legal Name, Registration Number, License Type/Number, Registration Date and Expiration Date, for every contractor and subcontractor, regardless of tier.

This project may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractors must submit their certified payroll records directly to the Division of Labor Standards Enforcement Compliance Monitoring Unit, as well as the City of Stockton.

6.4 Janitorial Services, Maintenance, and Security of Facilities. Operator shall be responsible to supervise the safety and sanitary conditions of their use of the Facilities and shall remedy without delay any unsafe, dangerous, or unsanitary conditions therein (except that City shall be responsible for the maintenance, repairs and chemicals as described below). If there are any safety or security issues related to water quality or equipment, Operator shall promptly notify the City of any concerns. In addition, Operator shall be responsible for the daily routine maintenance and housekeeping of the facility and all adjacent areas, keeping them in a safe, clean, wholesome, and good condition, and sanitary condition. Operator shall always ensure that during the term of this Agreement that Facilities shall be kept free of trash, garbage, and obstructions of any kind, and ensure that all trash resulting from cleaning shall be placed in appropriate containers. Facility shall be kept in compliance with all applicable present and future laws relating to sanitation, public health, safety, or welfare or any general rules and regulations of any governmental authority in force now, or at any time, during the term of this Agreement. City agrees Operator has no responsibility for any repairs, maintenance, or work to the Facility including but not limited to repairs to any building, fixtures, equipment, plumbing, electrical or mechanical systems, landscaping, or roadways.

6.5 Utilities and Water. City is responsible for and agrees to pay for all utilities (inclusive of gas, propane, electric, water, sewage, wastewater, discharge fees, charges, inspections, reports, communication, and related costs) utility use, including connections and upgrades for Facilities. City is responsible for payment of all charges, reports, inspections, fees, service charges, and other requirements related to the use permits, licenses, and permit requirements. Operator agrees that all water usage and regulations in connection with these Facilities be monitored and adhered to by the Operator. Operator shall immediately contact Municipal Utilities and Community Services Departments if there is any discharge or release of water or materials into the storm drains at Facility.

6.6 Operations, Permits, Licenses. Operator shall, for the conduct of operations of Operator's operations under this Agreement and at its sole expense, obtain and maintain in full force and effect throughout the Term and any extension thereof, all applicable permits and licenses which may be required by any law, including administrative regulations, regulatory requirements, regarding Operator operational requirements. Including without limitation, a City business license.

All users of the Facilities shall be required to adhere to all City and Operator terms and conditions, procedures, rules, and regulations now and hereafter adopted by City for use and control of the Facilities. Operator shall conform to and enforce all rules and regulations now and hereafter adopted for the use and control of the Facilities. This includes all local and state requirements for recreation, health, and public safety.

Operator shall have sole responsibility for enforcing all applicable rules and regulations, including being responsible to ask those individuals who are in violation of the rules to leave the premises immediately.

Operator shall be responsible to report, file and pay all sales and use taxes. The City reserves the right to review all sales and use tax returns.

6.7 State of California and San Joaquin County Hazardous Materials Storage, Reporting, and Safety Plan Requirements. Operator shall train all staff to be familiar with the California Environmental Reporting System (CERS) requirements, and to be able and willing to identify any situation that may not or does not meet the state and local requirements for storage of hazardous materials. Operator shall promptly report any concerns to City. The City is responsible for the reporting of hazardous materials and filing of a Business Plan and or a safety plan if required. City may be required to obtain chemical storage permit as required.

6.8 Certified Pool Operator/Water Quality Assurance. Operator agrees that a Certified Pool Operator (CPO) and water quality specialist shall maintain California Regulatory Title 22 charts and reporting requirements, as described in in Exhibit 6 and Exhibit 7 at all facilities and shall coordinate all water quality issues with City and City Contractor for water quality. If a health concern (fecal event, water contamination or issue of concern) occurs, Operator staff shall immediately close the pool, notify all swimmers to exit the water, and not allow the pool to reopen until City and/or water quality vendor notifies Operator the pool is safe for swimming. During the day, if it becomes necessary, CPO shall notify City Water Quality Vendor of any needs or concerns. CPO and lifeguards under the direction of CPO, shall monitor, and appropriately document pool maintenance and water quality/chemistry per direction by City. Water quality records using the form supplied by City shall be filled out according to policy and kept in a key location at the Facilities, copies of the water quality logs shall be turned in according to Section 5.10 and made available to City and San Joaquin County inspectors upon request. Operating instructions regarding water quality assurance activities may be changed via written notice.

6.9 Security. Operator shall be responsible for determining the operational security needs of the Facilities, arrange for adequate staff and security for all events at the Facilities.

Operator shall maintain copies of all City provided reports on site during current swim season (ex: Security Plan, Evacuation Plan, and other reports as required by City Safety Officer and/or applicable local and state codes).

6.10 First Aid and Signage/Equipment/Condition Requirements. City shall be responsible to provide and maintain all required signage, safety equipment, and start up for 10-person first aid kit items. Operator shall be required to maintain first aid supplies in the amount initially provided by City. Operator shall immediately notify the City before Facilities opening if Operator daily pre-opening inspection shows there is a deficiency in signage, water quality standards, safety equipment, or evidence of graffiti, and or vandalism. Operator shall also fill out required incident reports or police reports and provide an electronic copy by end of business day.

6.11 Right of Entry, Keys, and Security Codes. Installation of locks and keys will be the responsibility of the City. City reserves the right to install a security system. Operator shall be provided a copy of City key policies and enforce those rules with employees. Operator shall assign unique employee code to each employee with key carrier rights. City and Operator shall maintain a list of key holders to be turned in to City within three (3) weeks before swim season start. If an Operator employee is terminated, Operator shall receive and return to City all assigned keys upon termination. Operator shall not copy City keys. City shall maintain right to enter to inspect or repair the Facilities. Upon termination of Agreement, Operator shall surrender all sets of keys to the Facilities to City on the final Facilities swim season close out inspection. Failure to maintain internal controls over pool may require the Operator pay for the Facilities to be rekeyed at sole cost of Operator.

6.12 Inventory of Materials and Supplies. Operator shall be responsible to provide the equipment and materials for Operations as further described in Exhibit 5 and complete a daily pre-opening inspection.

6.13 Water Quality Maintenance and Supplies. The City through its water quality vendor shall be responsible to purchase/deliver pool chlorine and chemicals for the term of this Agreement. Pool chemicals include algae, acid, stain, and scale treatments. City shall purchase and provide filters for filter breakdown. City shall maintain the ultimate responsibility to maintain water quality standards with the support of Operator during open hours. Operator and City shall work cooperatively to maintain safe water quality standards at all times. City shall be responsible to pay for maintenance related to pool equipment, pumps, filters, etc. City shall be responsible for building and grounds maintenance as defined by fencing, graffiti removal, vandalism, landscaping, and irrigation. Operator shall promptly notify City if any condition occurs during Operator management of Facilities which may affect health and safety of visitors.

6.14 Notice of Inspection. If regulatory inspections occur on site, Operator shall immediately notify City of the inspection and outcome.

6.15 Notice of Closure. If Operator must shut down Facilities during regularly scheduled hours (as identified Section 5.5), Operator must notify the City authorized representative 24 hours prior to proposed closure or immediately after the Facilities are closed.

6.16 Notice of Media Contact. If the media arrives on site to report, photograph, or interview, Operator shall immediately contact Director of Community Services (or designee) and the City's Public Information Officer at (209) 937-8827.

6.17 Police Reports. Operator promptly notify the Community Services Department if laws are broken, or if theft occurs. Operator shall file related police reports and incidents report in a timely manner and provide an electronic copy by close of business day.

ARTICLE 7. GENERAL PROVISIONS.

7.1 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal, and agent, limited or general partnership, or joint venture between City and Operator or its agents, employees, or contractors. Nothing herein contained is intended to be construed as creating or establishing a relationship of partners, or a joint venture between Operator or City. Operator shall not be considered a tenant and shall gain no right to occupy facilities as a tenant or any other property right or interest in the Facilities by virtue of this Agreement. Neither Operator, its principal, nor any Operator employee or volunteer is an employee of City and none are entitled to any of the rights, benefits, or privileges of City employees, including but not limited to medical, unemployment, or worker's compensation. Except as City may specify in writing, Operator shall have no authority to act as an agent of City or bind City to any obligation. Nothing in this Agreement, either express or implied, is intended to confer upon any person or entity, other than City and Operator and their respective officers, directors, employees, and agents providing services under this Agreement any rights, remedies, obligations, or liabilities or by reason of this Agreement.

7.2 Control. Neither City nor its officers, agents, or employees and/or, volunteers shall have sufficient control over the conduct of Operator or any of Operator's employees, except as herein set forth; and Operator expressly agrees not to represent that Operator or any of Operator's agents, servants, or employees, to be deemed the agents, servants, or employees of City.

7.3 No Third-Party Beneficiaries. No person or entity, other than Operator shall be deemed to be a third-party beneficiary hereof, or a third party to the Facilities.

7.4 Debt Liability Disclaimer. City will not be liable for any debts or claims that arise from the obligations of the Operator.

7.5 Title VI of the Civil Rights Act and Non-Discrimination. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funding assistance." (2 USC Section 2000d). <https://www.dol.gov/oasam/regs/statutes/titlevi.htm>.

The City of Stockton is committed to complying with the requirements of Title VI in all its federally funded programs and activities.

In performing services under this Agreement, Operator shall not discriminate in the employment or application of employment of employees or in the engagement of any contractors or subcontractors based on race, color, religion, sex, marital status, national origin, ancestry, age, or any other criteria prohibited by law. Operator agrees to comply fully with all applicable federal, state, local laws, ordinances, executive orders, and regulations which prohibit discrimination.

The City of Stockton has a Discrimination and Harassment Policy which is attached and as Exhibit 9: HR15, Harassment and Discrimination Policy. The purpose of the policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

7.6 Assignment. Operator may not assign, sublet transfer, or otherwise alienate its rights and obligations pursuant to this Agreement, without written consent of the Director of Community Services, and then only upon such terms and conditions as City may set forth in writing. Operator shall be solely responsible for reimbursing vendors, contractors, employees, and subcontractors.

7.7 Reserved Rights. During the term of this Agreement, there shall be and is hereby expressed reserved to City and its agencies, contractors, agents, employees, representatives, or licensees, the right to use the Facilities and Property for all purposes which will not unreasonably interfere with Operator's enjoyment of its rights under this Agreement. City reserves the right to make use of the property for such purposes as it may deem necessary or appropriate, if, and whenever in the interest of its service to customers or the public, it shall appear necessary or desirable to do so. City further reserves the right at all reasonable times, to temporarily enter upon said premises for inspection or other lawful City purposes.

7.8 Notices. All written notices and communication required to be given under the provisions of this Agreement shall be delivered personally, or mailed and addressed as follows:

To City: City Manager
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Phone (209) 937-8212

With copy to: Community Services Director
City of Stockton
605 N. El Dorado Street
Stockton, CA 95202
Phone (209) 937-8373

To:

7.9 Waiver. Any waiver by City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by City to act on any breach or default of Operator or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Operator to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by City to any act or omission by Operator shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for City's written consent to future waivers.

7.10 Applicable Law, Resolutions of Disputes, Forum, and Attorney's Fees. California law shall govern any legal action pursuant to this Agreement with venue in the applicable state court or forum for San Joaquin County, Stockton Division and for federal claims in the federal district court for California, Eastern District, Sacramento Division. The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorney's fees expended in connection with such an action.

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

7.11 Severability. The provisions of this Agreement are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

7.12 Integration and Modification. This Agreement represents the entire integrated agreement between Operator and City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by written instrument signed by Operator and Community Services Director. All Exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached Exhibits, the terms of this Agreement shall prevail.

7.13 Title of Parts and Sections. The Title of parts and sections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

7.14 Language Construction. The Language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair

meaning, and not for or against any party hereto and with no regard whatsoever to the identity any status of any person.

7.15 Records, Audits, Reports. Operator agrees that City or its designee shall have the right to review, obtain, and copy all records pertaining to the performance of the Agreement. Operator agrees to provide the City any relevant information requested and shall permit City or designee access of its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting/copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Agreement. Operator agrees to maintain such records for a period of three (3) years after termination of Agreement. Operator agrees to send annual report to City in May of each year for the term of the Agreement.

7.16 Condemnation. If the whole or any substantial part of the Facilities shall be taken by any paramount public authority under the power of eminent domain, then this Agreement shall be terminated as to such Facilities from the day when the possession of that part shall be taken for said public purpose. All damages awarded for this taking shall belong to and be property of City, and all agreements pertaining to that sale including without limitation all related agreements. However, City shall not be entitled to any portion of the award made for loss of business installation or improvements belonging to Operator, if any.

7.17 Discretion of the City. City's execution of this Agreement in no way limits the discretion of City in the permit and approval process in connection with any improvements by Operator.

7.18 Entire Agreement. This Agreement and any Exhibits attached hereto constitute the sole and entire agreement of the parties hereto with respect to the matters herein and correctly sets for the rights, duties, and obligations of each to the other as of the date first written above. There are no other Agreements or understandings, written or oral, between the parties regarding this Agreement other than those set forth herein. All prior or contemporaneous negotiations, Agreements and understandings, oral, written, are revoked, cancelled, and rescinded, and are all merged herein and superseded hereby.

The following exhibits are included and incorporated into this Agreement by this reference:

- Exhibit 1 Aquatics Facilities Locations
- Exhibit 2 Insurance
- Exhibit 3 HR 40, Fingerprinting
- Exhibit 4 Signature of Compliance for HR 40
- Exhibit 5 Facilities Inventory
- Exhibit 6 San Joaquin County Environmental Health Department Notice: Title 22 CCR Changes Effective January 1, 2015
- Exhibit 7 San Joaquin County Environmental Health Department Notice: Recommendations for the Management of Fecal Accidents at Public Pools
- Exhibit 8 Compensation Schedule
- Exhibit 9 HR15, Harassment and Discrimination Policy
- Exhibit 10 Swim Schedule by Aquatic Facility

7.19 Non-Liability of City Officials. No member, official, employee or agent of City shall be personally liable to Operator in the event of any default or breach by City or for any amount which may become due to Operator or its successor or on any obligation under the terms of this Agreement.

7.20 Law Abiding Conduct. Operator agrees that it shall comply with all the applicable laws and ordinances, administrative regulations, and orders of appropriate government authority in the conduct of its business and further agrees that City shall have the right to enter upon said premises at reasonable times for the purpose of inspection and ensure enforcement of this Agreement and ordinances and laws governing Operator's use of Facilities.

7.21 Conflict of Interest. Operator covenants that other than this Agreement, Operator has no financial interest with any official, employee, or other representative of the City. Operator and its principals do not have any financial interest in real property, sources of income, or investment that would be affected in any manner of degree by the performance of Operator's services under this Agreement. If such an interest arises, Operator shall immediately notify the City.

7.22 Confidentiality. Operator shall exercise all reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

7.23 Digital Signature. The Parties agree that this agreement may be signed with a digital signature, which has the same force and effect of a handwritten signature.

7.24 Dispute Resolution. Prior to undertaking any litigation, the Parties shall make reasonable efforts to resolve all disputes informally, including by means of a conference between the senior managers of each Party having authority to resolve the dispute. If any litigation action or proceeding is commenced in connection with this Agreement, the prevailing Party, as determined by the court, shall be entitled to reasonable attorneys' fees (including allocated costs for in-house legal services), costs and necessary disbursements incurred in such action or proceeding.

7.25 Public Record Requests. Any documents provided by Operator to City are public records and City may authorize third parties to review and reproduce such documents pursuant to the public records laws and policies including the California Public Records Act. If the Operator receives a public records request, Operator shall immediately forward the request directly to the Director of Community Services.

7.26. Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean earthquake, fire, or other casualty, flood, landslide, epidemic, unforeseeable adverse weather, "acts of God", war, civil disturbance, court ordered injunction, intervention by civil or military authorities or government, strikes, lockouts, boycotts, or other labor disputes, to the extent any of the foregoing are beyond the reasonable control of either City or Operator and which cause either party to be delayed or hindered in or prevented from the performance of any covenant or obligation under this Agreement other than the payment of money.

If either Operator or City is delayed or prevented from the performance of any act required by this Agreement by reasons of Force Majeure, performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent of the period of such delay. Both parties shall take reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfil contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of the conditions.

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SAMPLE

ARTICLE 8. AUTHORITY AND EXECUTION.

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and first year hereinabove written.

ATTEST:

CITY OF STOCKTON

ELIZA R. GARZA CMC
CITY CLERK, CITY OF STOCKTON

BY: _____
HARRY BLACK
CITY MANAGER

APPROVED AS TO FORM:
LORI ASUNCION
CITY ATTORNEY

BY: _____

BY: _____

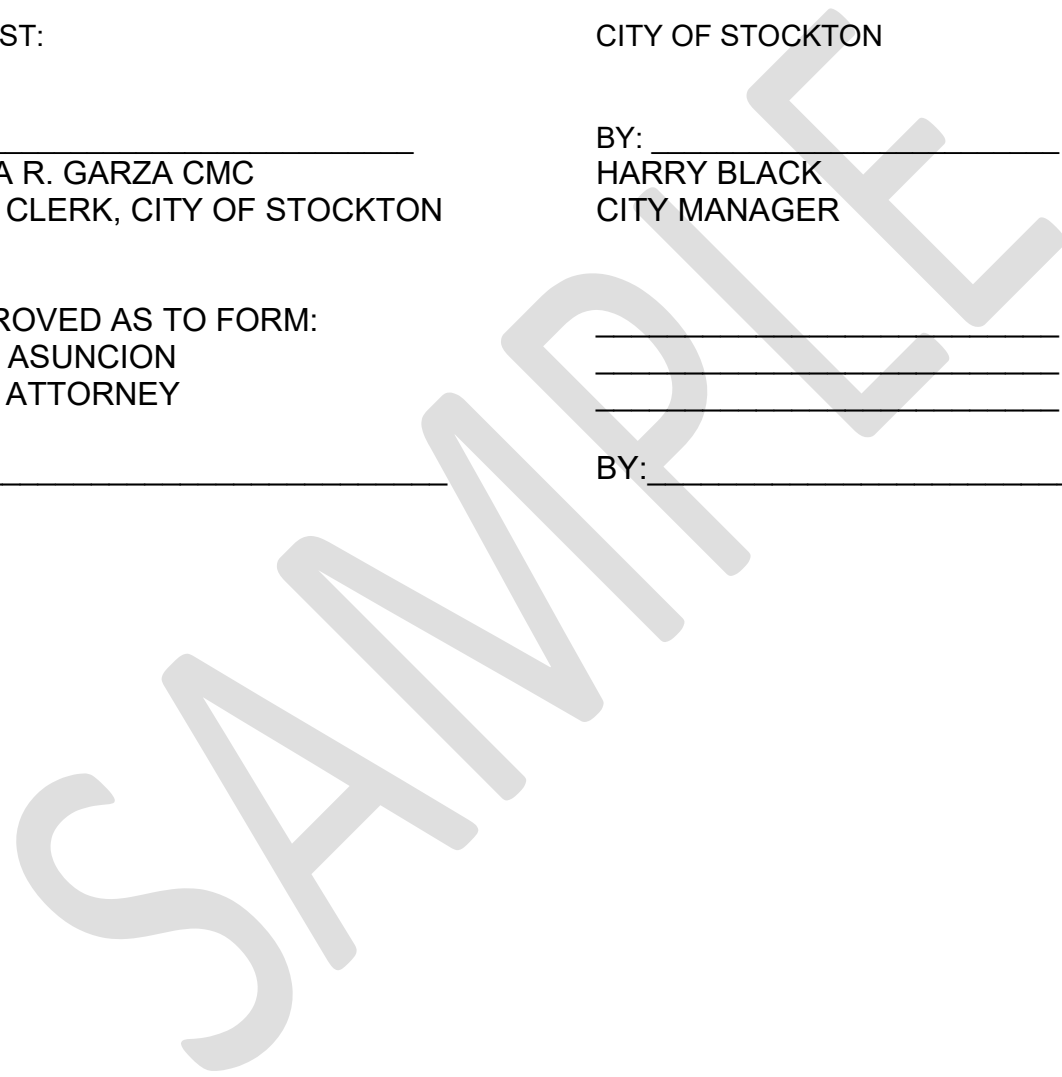
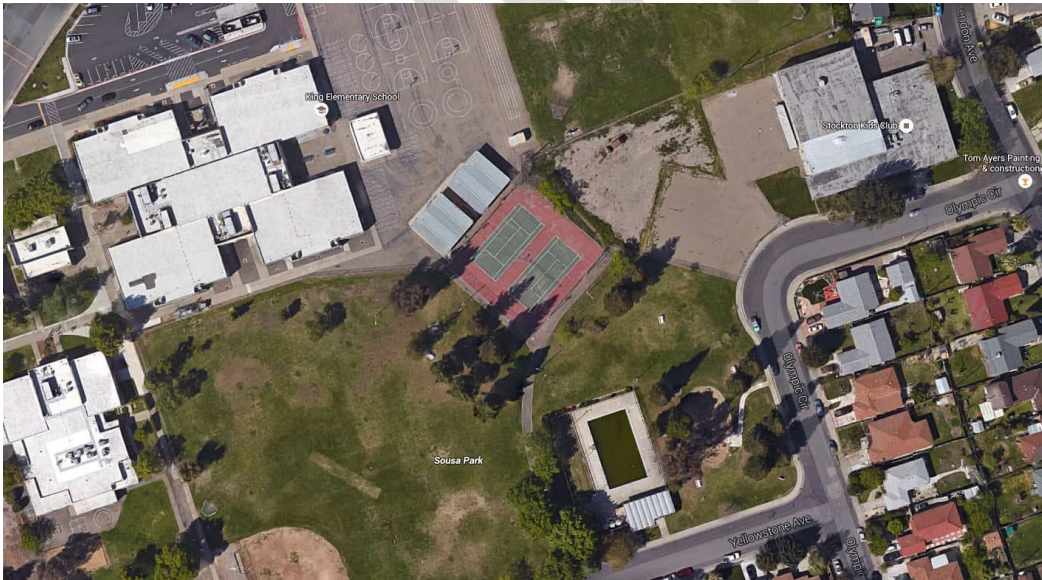


EXHIBIT 1: Aquatic Facilities Locations

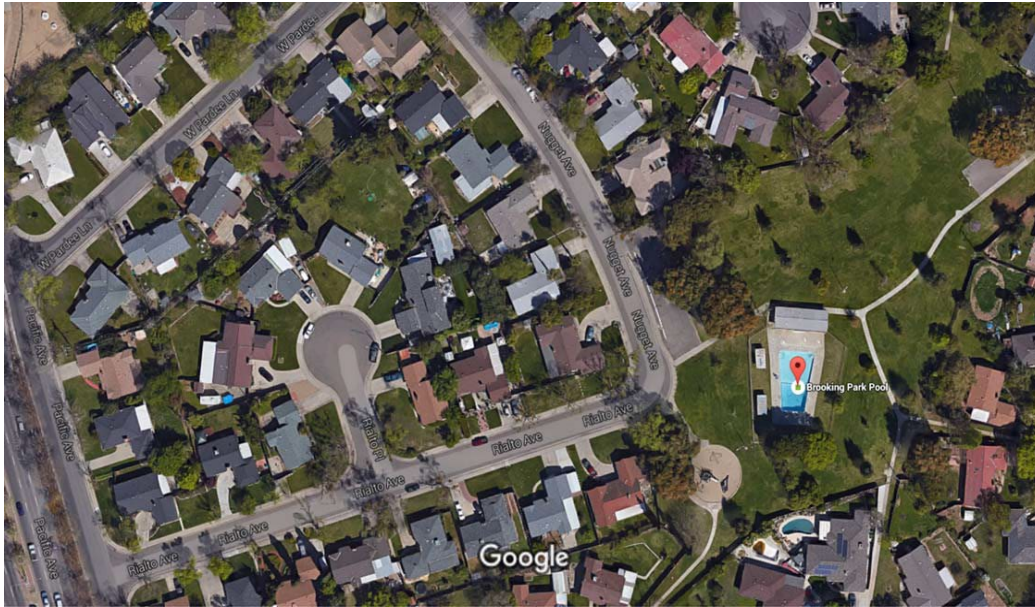
A. Oak Park Pool House Facility 3547 Alvarado Street



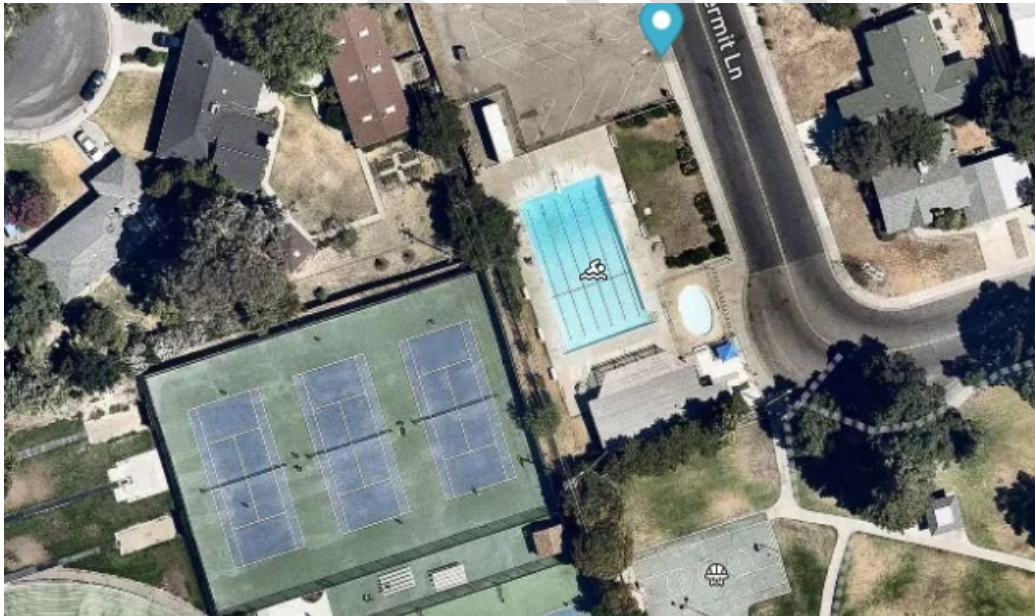
B. Sousa Pool House Facility 2900 Yellowstone



C Brooking Pool House Facility
4505 Nugget



D Holiday Pool House Facility
5710 Kermit Lane



**Exhibit 2:
Insurance**

REQUIREMENTS FOR SWIMMING POOL OPERATOR/SUMMER CAMP
OPERATOR/SEAMLESS SUMMER MEAL PROGRAM OPERATOR

Operator 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 and the results of that work by the Operator, their agents, representatives, employees or subcontractors.

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, and sexual abuse and molestation (SAM) coverage with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.

2. Workers’ Compensation: 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.

3. Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

Limits of Insurance

The limits of insurance required in this agreement 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 before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

Other Insurance Provisions

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

Additional Insured Status

The City of Stockton, 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 Operator 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 Operator'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). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

The Additional Insured coverage under the Operator's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Operator's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

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

Waiver of Subrogation

Operator hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Operator may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Operator 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 of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Operator, its employees, agents and subcontractors.

Self-Insured Retentions

All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Operator 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 of Stockton.

Acceptability of Insurers

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

Verification of Coverage

Operator shall furnish the City of Stockton with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Operator's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Operator shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

Subcontractors

Operators shall require and verify that all subcontractors, or other parties hired for this work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor's work with the same certificate of insurance requirements and naming as additional insureds all parties to this contract. Operator shall include the following language in their agreement with Subcontractors: *"Subcontractors hired by Operator agree to be bound to Operator and City in the same manner and to the same extent as Operator is bound to City under the contract documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the owner contract document indemnity and insurance provisions will be furnished to the subcontractor upon request."* Operator shall provide proof of such compliance and verification to the City upon request.

Special Risks or Circumstances

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

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attn: City Risk Services
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

SAMPLE

**EXHIBIT 3:
HR40, Fingerprinting**

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE City OF STOCKTON	Directive No. HR-40	Page 1 of 9
	Effective Date: 4/7/14	Revised from: 8/1/95 3/1/00 8/30/04 7/24/06 4/14/08

I. PURPOSE

- A. To provide a uniform policy and procedure for the administration of the City of Stockton Mandatory Fingerprinting Program, in accordance with California Public Resources Code section 5164, California Education Code section 10911.5, California Penal Code sections 11105, 11105.3, 13300, and any other applicable state and federal laws.
- B. To ensure that the City of Stockton, as an agency receiving criminal history information, complies with the requirements of the State of California, Department of Justice, Division of Criminal Justice Information Services.

II. POLICY

All applicants, employees, interns, temporary agency employees, and volunteers who meet the following conditions shall be subject to fingerprinting.

- A. Employees Having Direct Contact With Minors. It is the policy of the City of Stockton to obtain criminal history information for all prospective, as well as current, full-time (including provisional and temporary), part-time, volunteer (including the San Joaquin County Alternate Work Program or any other community service or volunteer organization), and contractual employees in any department who have direct contact¹ with minors. This requirement shall be a condition of employment for all employees who have direct contact with minors.

The City of Stockton will not hire or retain any person or permit any person to volunteer his/her services to work with children in any department who has been convicted of certain criminal offenses (disqualifiers), as specified in California Public Resources Code section 5164.

¹ "Direct Contact" is defined in section II.B.

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE City OF STOCKTON	Directive No. HR-40	Page 2 of 9
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B. Employees Performing Sensitive Duties. In addition, to implement Stockton Municipal Code Chapter 2.70, the City of Stockton will obtain criminal history information for all persons applying for positions that require the employee to:

1. Perform sensitive and/or fiduciary duties, such as handling public Funds or confidential documents.
2. Enter privately owned property, structures, or curtilages.
3. Care for ill, injured, or incapacitated members of the public.
4. Have access to a secure facility.
5. Have direct contact with minors. "Direct contact with a minor" shall mean any of the following, in the course of paid or unpaid work:
 - a. The care, supervision, guidance, or control of a minor on any basis.
 - b. Close physical proximity to a minor on more than an "occasional" or "incidental" basis.
 - c. Talking face-to-face with or within eye contact of a minor on more than an "occasional" or "incidental" basis.

"Occasional" shall mean irregular or infrequent. "Incidental" shall mean occurring by chance or in isolation. If the job specifications for apposition requires contact with a minor on any basis, then the contact is neither "occasional" nor "incidental."

C. The City of Stockton, in its discretion, may refuse to hire any person or permit any person to volunteer his/her services who has been convicted of any of the offenses (disqualifiers) specified in Appendix A of this policy.

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE City OF STOCKTON	Directive No. HR-40	Page 3 of 9
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- D. In making any employment or retention decision based upon a disqualifier, the Director of Human Resources shall consider, among other factors: the employment classification to which the person is applying or being certified, including its sensitivity; the nature and seriousness of the conduct; whether there is a rational relationship between the employment duties and the nature of the conduct; the circumstances surrounding the conduct; the recentness of the conduct; the age of the individual at the time of the conduct; and the presence or absence of rehabilitation or efforts at rehabilitation.
- E. Submission of fingerprints, as specified in the sections above, shall be a condition of employment.
- F. This policy shall not apply to one-day events or programs.
- G. This policy shall be administered by and is the responsibility of the Director of Human Resources.

III. PROCEDURES

- A Administration of Criminal Offense Record Information (CORI).
 - 1. The Human Resources Department shall enter into an agreement with the California Department of Justice for the purpose of electronically exchanging criminal offender information. This information shall be accessible only to designated individuals in the Human Resources Department, and the affected computer terminal shall be in a secure area to provide protection from unauthorized access. CORI shall be made available to the City Auditor and designated members of his/her staff for the sole purpose of performance audits in accordance with Stockton Municipal Code section 2.70.020(8).

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE City OF STOCKTON	Directive No. HR-40	Page 4 of 9
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- a. Security. Any questions regarding the release, security, and privacy of CORI shall be resolved by the Director of Human Resources.
 - b. Destruction. CORI shall be destroyed after the employment determination has been made, and copies of the CORI information will be destroyed in such a way that the employee's name can no longer be identified.
 - c. Dissemination. CORI shall be used only for the purpose for which it was requested; except that, the City Auditor shall have access to and shall examine CORI in connection with his/her duties under section 1501(d) of the City Charter.
 - d. Storage. CORI shall be securely maintained and accessible only to the Director of Human Resources or his/her designees and the City Auditor or his/her designees, who are committed to protect such information from unauthorized access, use, or disclosure.
 - e. Reproduction. CORI shall not be reproduced for secondary dissemination.
 - f. Subsequent Arrest Reports. Any Subsequent Arrest Reports for separated employees, volunteers, and contract personnel shall be immediately returned to the Department of Justice.
2. The Director of Human Resources and/or his/her designees who are involved in the administration of this policy, and the City Auditor and/or his/her designees who conduct performance audits, shall be fingerprinted and cleared by the Department of Justice prior to attaining access to CORI. Each employee given CORI access shall be fingerprinted and processed through the California Department of Justice. In addition, those employees shall execute a copy of the Employment Statement issued by the Department of Justice, which statement shall be maintained on file in the Human Resources Department.

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE City OF STOCKTON	Directive No. HR-40	Page 5 of 9
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- B. Fingerprint Procedures and Review of CORI. All applications for employment and requests to volunteer services, without exception, are to be made to the Human Resources Department.
1. All applicants for employment covered under this policy (as set forth in sections II. A and B, above), including part-time, volunteer, intern, temporary agency, and contract personnel, shall be provided with a fingerprint application and required to submit one set of fingerprints to the Department of Justice prior to the pre-employment physical examination. (Note: This requirement shall not apply to those concessionaires who contract with the Community Services Department solely to rent space to conduct their own business.)
 2. The applicant, volunteer, intern, temporary agency, or contract personnel shall hand-carry the fingerprint application, along with a valid California driver's license or identification card, to the Stockton Police Department Evidence Identification Section to complete the fingerprint process.
 3. Upon receipt of CORI, including Subsequent Arrest Information, the designated Human Resources employees shall review the information for any arrests or convictions for disqualifiers. If there are no disqualifiers, the clearance date shall be entered into the confidential database set up for this specific purpose. Upon the employee's separation from City service, the California Department of Justice shall be notified of the separation to ensure that Subsequent Arrest Notifications are no longer received.
 4. In the event CORI, including Subsequent Arrest Information, reveals disqualifiers, the Director of Human Resources shall evaluate the effect and potential effect of the employee's record of arrest on his/her position of employment, fellow employees, and the public in accordance with sections 11.8.2, above; and shall take appropriate action to maximize public safety and minimize

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE City OF STOCKTON	Directive No. HR-40	Page 6 of 9
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potential liability while respecting the rights of the employee or volunteer. No applicant for employment will be permitted to report for work until the Director of Human Resources, or his or her designee, has first determined from review of the CORI information that the applicant has no disqualifying convictions.

In addition, any employee, volunteer, intern, temporary agency or contract personnel who has direct contact with minors and for whom a disqualifier is subsequently revealed shall be subject to any one of the following actions:

- a. Transfer to a comparable position whose duties require no direct contact with children.
 - b. Reassignment to another department.
 - c. Placement back into a previously held position.
 - d. Termination.
5. The notice of rejection of application for employment or the notice of termination due to disqualifiers is the sole responsibility of the Human Resources Department. The Human Resources Department will immediately notify the Department of Justice that the affected applicant, employee, or volunteer has been rejected and that subsequent reports are not necessary.
 6. The appointing authority shall not make a hiring decision until after CORI has been received and reviewed by the Human Resources Department.
 7. The applicant, employee, or volunteer shall be responsible for reporting any conviction or arrest pending final adjudication to the Human Resources Department. If any conviction or arrest pending adjudication occurs while the employee or volunteer is working for the

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City, the employee or volunteer shall report that conviction or arrest to the Human Resources Department. Failure to report an arrest or conviction shall be grounds for disciplinary action, up to and including termination.

8. Employees transferring or promoting to positions covered under this directive shall have a right of reversion to a previously held position in the event subsequent arrest information reveals a disqualifier; EXCEPT THAT the City reserves its right to discipline an employee, up to and including termination, pursuant to the City Charter, Stockton Municipal Code, Civil Service Rules, collective bargaining agreements, and/or any applicable laws or regulations.

IV PENALTIES

- A. Misuse of CORI is a criminal offense, which may result in criminal or civil prosecution and may result in administrative action up to and including loss of access to information maintained by the Department of Justice and/or termination of employment, in accordance with City Charter sections 1201(a) and 1502, Administrative Directive No. HR-008, applicable memoranda of understanding, and/or the Civil Service Rules and Regulations.
- B. Any violation of this policy shall result in disciplinary action, up to and including termination from City service.

APPROVED:



KURT O. WILSON
City MANAGER

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APPENDIX A

Convictions for which an applicant may be rejected, or for which refusal of certification for appointment, or termination of employment may result, are as follows:

Crimes Against Persons

- Murder (Penal Code § 187, *et seq.*)
- Voluntary manslaughter (Penal Code § 191.5, *et seq.*)
- Mayhem (Penal Code § 203, *et seq.*)
- Torture (Penal Code § 206, *et seq.*)
- Robbery (Penal Code § 211, *et seq.*)
- Assault and/or battery (Penal Code §§ 240, *et seq.*; 243, *et seq.*)
- Rape (Penal Code §§ 261-263; 269.)
- Kidnapping (Penal Code § 207, *et seq.*)
- Prostitution (Penal Code §§ 266-267)
- Lewd or lascivious acts (Penal Code §§ 288, 288.2)
- Indecent exposure (Penal Code § 314)
- Stalking (Penal Code § 646.9, *et seq.*)
- Registered sex offender (Penal Code § 290)
- Child abandonment (Penal Code § 271, *et seq.*)
- Contributing to the delinquency of a minor (Penal Code § 272, *et seq.*)
- Incest (Penal Code § 285)
- A criminal violation that is substantially similar in nature to any of the foregoing crimes against persons.

Crimes Against Property

- Arson (Penal Code § 451, *et seq.*)
- Theft / Larceny (Penal Code § 484, *et seq.*)
- Burglary (Penal Code § 458, *et seq.*)
- Forgery (Penal Code § 470, *et seq.*)
- Embezzlement (Penal Code § 503, *et seq.*)
- Identity theft (Penal Code § 530.5, *et seq.*)

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- Extortion (Penal Code § 581, *et seq.*)
A criminal violation that is substantially similar in nature to any of the foregoing crimes against property.

Crimes involving Controlled Substances

Any crime described in the California Uniform Controlled Substance Act (division 10, commencing with section 11350), except where consideration of such conviction for employment purposes is prohibited or otherwise limited by law per Labor Code section 432.8. Employers are prohibited from considering marijuana related convictions which are more than two (2) years old. Specifically, agencies may not consider marijuana related convictions for violations of subdivision (b) or (c) of section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of section 11360 of the Health and Safety Code, or sections 11364, 11365, or 11550 as related to marijuana prior to January 1, 1976, or a statutory predecessor thereof.

Miscellaneous Crimes

- Perjury (Penal Code § 118, *et seq.*)
- Falsifying/Tampering with Evidence (Penal Code §§ 132-135.5)
- Falsifying public documents (Penal Code § 112, *et seq.*)
- Bribery (Penal Code §§ 68, 92, *et seq.*, 165)
- Money laundering (Penal Code § 186.9, *et seq.*)
- Bookmaking (Penal Code § 337a)
- Misappropriation of public funds (Penal Code § 424, *et seq.*)
- A criminal violation that is substantially similar in nature to any of the foregoing miscellaneous crimes.

EXHIBIT 4:

Signature of Compliance for HR 40

Operator confirms that all employees and volunteers who are working or volunteering at any City pool or park for all activities (swimming, seamless summer food program, summer camp, and swim team) are in compliance with **City of Stockton HR40** guidelines about fingerprinting and disqualifying criminal convictions. This Compliance is due annually before opening day of Aquatic Facilities. Any addition of staff after that date will require a signature page by Operator provided to City the week of new hire.

SIGNATURE LINE

SAMPLE

**EXHIBIT 5:
FACILITIES INVENTORY**

CITY INVENTORY

1. Signage

Operational Hours (soft sign)
National Fire Protection Agency (NFPA) Sign
Sign- Emergency Numbers
Sign- Keep Closed
Sign- diarrhea
Sign- CPR
Sign- Pool Rules
Sign- Pool Capacity

2. Life Saving Equipment

Life Ring
Rope-length
Rescue Pole-length
Backboard and head immobilizer

3. Equipment

Telephone
Umbrella-Stands
Chairs
10-person first aid kit
Pool Binder
Water hose
CERS binder and "station"
Emergency Spill pack
Personal Protection Equipment (PPE) (apron, neoprene gloves, Full face shield)

Operator EQUIPMENT

1. Equipment

Buoys- x per site

2. Supplies

Replacement supplies for first aid kit
Cleaning supplies, hand soap, toilet paper, garbage bags, paper towels and janitorial supplies

EXHIBIT 6
San Joaquin County Health Department Notice
Title 22 CCR Changes Effective January 1, 2015

Item 1: Pool Chemistry Requirements

		Free Chlorine Residual parts per million (ppm)				Bromine Residual (ppm)		pH	Combined Chlorine (ppm)
		Without Cyanuric Acid		With Cyanuric Acid		Min	Max		
		Min	Max	Min	Max				
Public Pools <i>All public pools (excluding spas, wading pools, and spray grounds)</i>	NEW 01/01/15	1.0	10.0	2.0	10.0	2.0	-	7.2-7.8	0.0 - 0.4
	OLD Before 01/01/15	1.0	-	1.5	-	N/A	N/A	7.2-8.0	N/A
Public Spas, Wading Pools, and Spray Grounds	NEW 01/01/15	3.0	10.0	3.0	10.0	4.0	-	7.2-7.8	0.0 - 0.4
	OLD Before 01/01/15	1.0	-	1.5	-	N/A	N/A	7.2-8.0	N/A

Item 2: Critical Closure Violations

VIOLATION DESCRIPTION: CHANGES ARE BOLDED	
1	Failure to maintain clean pool water and clear pool water requirements Bottom of pool, at the maximum depth, is not clearly visible from the deck
2	Inadequate disinfection Failure to meet microbiological (well-systems) or chemical water-quality standards
3	Improper pH
4	Presence of inhalation hazards
5	Missing or broken suction outlet covers
6	Missing or broken pool enclosures, including fencing and gates
7	Hazards to pool users
8	Any other violation of these regulations identified by the enforcing agent (e.g., lack of safety equipment)

Item 3: Operational Changes

Variation in Rate Flow:

Must not fall below **75%** of the rate required by the system. (Example: If your calculated flow rate should be 65 gallons per minute, your water flowing through the pump system shall be at least 75% of 65, which would be approximately 49 gallons per minute.)

Previous code allowed for a flow rate reduction of 65%.

Response to incidents is now required by Code:

Including fecal, vomit, blood contamination, and near drowning/drowning incidents. (See page 4). *Previously this procedure was recommendation only.*

For all pools exceeding 75 feet in length or 50 feet in width to provide a rescue pole and life ring that is available on at least 2 opposing sides of the pool at centralized locations.

(Previously only one set of equipment was required.)

Additional Record Keeping Requirements

The concentration of free chlorine/bromine and pH levels are still required to be recorded on a daily basis* and cyanuric acid level (if used) on a monthly basis. Records must be maintained for two years. In addition to free chlorine/bromine and pH levels, the following records must be kept.

Daily Records*:

- Heated pools water temperature
- Equipment readings
- Calibrations
- Corrective actions taken

As Required:

- Combined Chlorine
- Maintenance
- Maintenance Procedures
- Repairs

Item 4: Required Items for Pools with Lifeguards:

- A Red Cross 10-Person Industrial First Aid Kit or equivalent
- An operating telephone
- A Backboard with immobilizer

Item 5: Incident Report Log

Operator must maintain and report to City for fecal, vomit, blood contamination, near drowning, or drowning incidents.

Item 6: Lifeguard Health: Reporting Requirement

If two or more lifeguards or pool users at a public pool report within 5 days of each other to the pool operator that they have had diarrhea, the pool operator shall report this to the enforcing agency.

EXHIBIT 7:
San Joaquin County Health Department Notice
Recommendations for the Management of Fecal Accidents at Public Pools

1. When a fecal accident occurs, close the pool(s) and instruct all pool users to exit the pool(s) immediately. Do not allow anyone to enter the contaminated pool(s) until all the following steps are completed.
2. Remove as much of the fecal material as possible using a net or scoop and dispose of it in a sanitary manner. Clean and disinfect the net or scoop (e.g., after cleaning, leave the net or scoop immersed in the pool during the disinfection period). Vacuuming stool from the pool is not recommended. If the pool is vacuumed, waste should be directed to a sanitary sewer and not through the filtration system.
3.
 - A. If the fecal accident involves a “formed stool” (solid, not liquid), raise the free available chlorine concentration to 2 mg/L (parts per million) and maintain the pH between 7.2 - 7.5 for at least 25 minutes. If a free available chlorine concentration of 3 mg/L is present, the time can be reduced to 19 minutes.
 - B. If the fecal accident involves “diarrhea or a loose stool,” raise the free available chlorine concentration to 20 mg/L and maintain the pH between 7.2 and 7.5 for at least 8 hours. This is equivalent to a CT value of 9,600. The CT value is the concentration of chlorine in mg/L multiplied by the time in minutes. In this case, a 20 mg/L concentration of chlorine maintained in a pool for 8 hours or 480 minutes will result in a CT value of 9,600 (480 minutes X 20 mg/L). Any combination of chlorine concentration and time resulting in a CT value of 9,600 or greater can be used to achieve disinfection.

For fecal accidents involving “diarrhea or loose stools,” the filter should be thoroughly backwashed to a sanitary sewer after the CT value has been reached and before the pool is reopened.

4. During the entire treatment period, ensure that the pH is maintained between 7.2 and 7.5. The pH may be affected if additional chlorine is added to the pool.
5. Ensure that the filtration system is operating, and the proper free available chlorine concentration is maintained throughout the treatment period. Ensure free available chlorine concentrations are found throughout all areas of the pool or co-circulating pools by sampling in at least three widely spaced locations away from return water inlets.
6. The pool may be reopened after the required time/concentration or CT value has been achieved and the free available chlorine residual is below 5.0 mg/L.
7. If the pool is a low volume pool, such as a spa pool or wading pool, the pool can be drained. The pools should be refilled, the water balanced, and the proper time/concentration

- or CT value achieved before being reopened.
8. Establish a fecal accident log. Document each fecal accident by recording the following information:
 - a. Date
 - b. Time of the event
 - c. Formed stool or diarrhea.
 - d. Free available chlorine concentration and pH at the time of observation of the event
 - e. Free available chlorine and pH before reopening the pool.
 - f. Contact time.
 - g. Procedures followed to respond to the fecal accident, including the process used to increase the free chlorine residual if necessary.

 9. In the event of contamination with vomitus in a pool, the procedures for a “formed stool” (3A above) should be followed.

Notes:

- Fecal accident pool closure procedures are based on recommendations by the Centers for Disease Control and Prevention.
- All contact times assume a water temperature of 25°C (77°F).

- Theoretical Pool Closure Times for 99.9% Inactivation of Giardia Cysts by Free Available Chlorine, pH7.5, 25°C derived from the EPA’s Disinfection Profiling and Benchmarking Guidance Manual.
- The “short pool closure time” is the chlorine concentration/contact time theoretically required to inactivate Giardia cysts. The “long pool closure time” is the chlorine concentration/contact time theoretically required to inactivate Cryptosporidium oocysts.
- Non-chlorine disinfectants are not addressed and should not be used because there is limited pathogen inactivation data available for these compounds.
- The impact of chlorine stabilizers such as chlorinated isocyanurates on pathogen inactivation and disinfection measurement is unclear and warrants further investigation. Increased contact time may be desirable.
- Many conventional test kits cannot measure free available chlorine in a range that includes 20 mg/L. Use chlorine test strips, kits that can measure in this range or make dilutions using a standard DPD (N,N-diethyl-p-phenylenediamine) test kit and chlorine-free water. High levels of chlorine may damage pool equipment. Exercise caution or consult with an experienced aquatic professional.

**EXHIBIT 8:
Compensation Schedule**

**Total Annual Compensation for.
Year 1 Term of Agreement
(2023, 2024 Swim Seasons)**

<u>POOL</u>	<u>COMPENSATION AMOUNT</u>
BROOKING PARK POOL	\$
OAK PARK POOL	\$
SOUSA PARK POOL	\$
HOLIDAY PARK POOL	\$
TOTAL COMPENSATION	\$

**EXHIBIT 9:
HR 15, Harassment and Discrimination Policy**

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 1 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

I. PURPOSE

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

II. POLICY

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

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III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
 2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
 3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
 2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.

D. Affordable Care Act (ACA) Anti-Retaliation

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care "Marketplace" or "Exchange", by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

The City's reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment

- a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
- b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
- c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.

- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

VI. RESPONDING TO THE COMPLAINT

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
 - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
 - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

VIII. ALTERNATIVE REMEDIES

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



**KURT O. WILSON
CITY MANAGER**

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EXHIBIT 10:

Swim Schedule by Aquatic Facility

This Exhibit may be adjusted according to the terms of Article 5.5 of the Agreement

Holiday Park Pool	Oak Park Pool	Sousa Park Pool	Brooking Park Pool
Open - Labor Day Holiday weekend	Open - Labor Day Holiday weekend	Open - Labor Day Holiday weekend	Open - Labor Day Holiday weekend
5703 Kermit Lane Stockton, CA 95207	3537 Alvarado Ave. Stockton, CA 95204	2829 Yellowstone Ave. Stockton, CA 95205	4505 Nugget Ave. Stockton, CA 95207
Residents Fee: Open Swim: \$___/person Family Swim: \$___/Family Non-residents: \$___/person \$___/Family *up to 7 people	3 and under: Free 4+ years: \$___/person Family Swim: \$___/Family *up to 7 people	3 and under: Free 4+ years: \$___/person Family Swim: \$___/Family *up to 7 people	3 and under: Free 4+ years: \$___/person Family Swim: \$___/Family *up to 7 people
<u>Open Swim</u> Tues-Fri: 2-5 PM Sat: 1-5PM Sun: 1-4 PM <u>Family Swim</u> : Wed. & Fri: 6-8PM Sat: 5-8PM Sun: 4-8PM	<u>Open Swim</u> Tues-Fri: 2-5PM Sat-Sun: 1-6PM <u>Family Swim</u> Wed & Fri: 6-8PM Sat & Sun: 6-8PM	<u>Open Swim</u> Tues-Fri: 2-5PM Sat-Sun: 1-6PM <u>Family Swim</u> Wed & Fri: 6-8PM Sat & Sun: 6-8PM	<u>Open Swim</u> Fri: 4-8PM Sat: 1-5PM Sun: 1-4PM <u>Family Swim</u> Sat: 5-7:30 PM Sun: 4-7:30 PM
Swim Lessons: Tues-Friday Lap Swim: Tues-Sunday	Swim Lessons: Tues-Sat Splash ball: Tues & Thurs	Swim Lessons: Tues-Sat Splash ball: Saturday mornings	Swim Lessons: Tues-Sat Water aerobics: Tues & Thurs
Additional Programs offered	Additional Programs offered	Additional Programs offered	Additional Programs offered