

City of Los Alamitos

Agenda Report Consent Calendar

March 23, 2015
Item No: 8E

To: Mayor Richard D. Murphy & Members of the City Council

Via: Bret M. Plumlee, City Manager

From: Corey Lakin, Director of Recreation & Community Services

Subject: Amendment No. 2 to Professional Services Agreement for Pool Maintenance Services

Summary: This item is to consider continuing services with Commercial Aquatic Services, Inc. to provide pool maintenance services at the USA Water Polo National Training Center at the JFTB in Los Alamitos. The current Professional Services Agreement (PSA) expires on June 30, 2015, but can be extended for one additional one-year term.

Recommendation: Authorize the Mayor to execute Amendment No. 2 of the PSA with Commercial Aquatic Services, Inc. for pool maintenance services.

Background

Commercial Aquatic Services, Inc. has been providing pool maintenance services to the City of Los Alamitos since July 1, 2013 through a Professional Services Agreement (PSA). The services provided by Commercial Aquatic Services, Inc. involve ongoing and regular cleaning and preventive maintenance services by duly trained and qualified personnel. They have done a terrific job keeping the pool water clear, clean and healthy, while working alongside City staff to prevent additional issues from arising.

Discussion

The current PSA expires on June 30, 2015, but allows for one additional one-year extension if mutually agreed upon. Staff has been very satisfied with the service provided by Commercial Aquatic Services, Inc and they have agreed to provide continued service at the rates shown in the "Approved Fee Schedule", Exhibit B, of the original PSA. Extension of the agreement for pool maintenance ensures the containment of costs, promotes continuity by keeping the service in place, and gives staff the opportunity to further evaluate the scope of services for possible future savings as we work to stabilize the organization. The attached Amendment No. 2 to the PSA

extends the City's contractual relationship with Commercial Aquatic Services, Inc. for one year at the same terms mentioned above, with no increase in rates.

Fiscal Impact

The cost of maintenance of the pool will be continue to be \$900 per month for five days of cleaning per week. Commercial Aquatic Services, Inc. was the lowest bidder in 2013 year, saving the City \$300 per month. The annual contract will not exceed \$15,000 annually. Funds for the service and maintenance of the pool will come from the Aquatics Division of the Recreation and Community Services Department Fund, Pool Maintenance Budget (account 10.552.5282) in the FY 2015-16 Budget.

Submitted By:



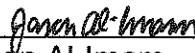
Corey Lakin
Director of Recreation and Community Services

Approved By:



Bret M. Plumlee
City Manager

Fiscal Impact Reviewed By:



Jason Al-Imam
Administrative Services Director

Attachments:

- 1. Amendment No. 2 – Commercial Aquatic Services, Inc.*
- 2. Professional Services Agreement – Commercial Aquatic Services, Inc.*

Professional Services Agreement
City of Los Alamitos / **Commercial Aquatic Services, Inc.**

AMENDMENT No. 2 TO PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos and Commercial Aquatic Services, Inc.)

This Amendment No. 2 (“Amendment”) to Professional Services Agreement (“Agreement”) is made on this 23rd day of March, 2015, at Los Alamitos, California, by and between the City of Los Alamitos, a municipal corporation, 3191 Katella Ave., Los Alamitos, California 90720 (“City”) and Commercial Aquatic Services, Inc., 1121 N. Hawk Circle, Anaheim, CA 92807 (“Contractor”).

This “Amendment” modifies the original “Agreement” between the “City” and the “Contractor” dated May 20, 2013 in the following fashion:

A. “City” and “Contractor” desire to amend the “Agreement” by modifying section 3.4 – Expiration Date of the “Agreement” to read as follows:

3.4 “Expiration Date”: June 30, 2016.

B. “City” and “Contractor” desire to amend the “Agreement” by modifying section 11.5 to read as follows:

11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City’s Risk Manager satisfactory evidence showing that the policies required by the agreement are in effect in the required amounts naming the City of Los Alamitos, its officers, employees, agents and volunteers, Military Department of the State of California, USA Water Polo, Los Alamitos Aquatics Foundation as additional insureds. Consultant shall file with City’s Risk Manager such satisfactory evidence of coverage prior to commencement of work under this Agreement.

C. “City” and “Contractor” desire to amend the “Agreement” by modifying section 11.7 to read as follows:

11.7 Satisfactory evidence is required for the following entities with the same rights as the City: City of Los Alamitos, Military Department of the State of California, USA Water Polo, Los Alamitos Aquatics Foundation. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be cancelled or reduced except on thirty (30) days’ prior written notice to the City of Los Alamitos, Military Department of the State of California, USA Water Polo, Los Alamitos Aquatics Foundation. Consultant agrees to require its insurer to modify the certificate of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation and to delete the word “endeavor” with regard to any provisions.

D. "City" and "Contractor" desire to amend the "Agreement" by modifying section 11.8 to read as follows:

11.8 The insurance provided by Consultant shall be primary to any other coverage available to the City of Los Alamitos, Military Department of the State of California, USA Water Polo, Los Alamitos Aquatics Foundation. Any insurance or self-insurance maintained by City and/or its officers, employees, agents, or volunteers, Military Department of the State of California, USA Water Polo, Los Alamitos Aquatics Foundation, shall be in excess of Consultant's insurance and shall not contribute with it.

E. "City" and "Contractor" desire to amend the "Agreement" by modifying section 11.9 to read as follows:

11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City of Los Alamitos, Military Department of the State of California, USA Water Polo, Los Alamitos Aquatics Foundation.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Los Alamitos

“Consultant”
Commercial Aquatic Services, Inc.

By: _____
Richard D. Murphy, Mayor

By: _____
Heather Woodland, Director of Operations

Date: _____

Date: _____

By: _____
Dave Woodland, President

Date: _____

Attest:

By: _____
Windmera Quintanar, CMC, City Clerk

Date: _____

Approved as to form:

By: _____
Cary S. Reisman, City Attorney

PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos/Commercial Aquatic Services, Inc.)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Los Alamitos, a California municipal corporation ("City"), and Commercial Aquatic Services, Inc. a corporation ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Provide maintenance services for the USA Water Polo National Training Center at least five days per week for 52 weeks of the year.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's April 29, 2013 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's April 29, 2013 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": July 1, 2013.
- 3.4 "Expiration Date": June 30, 2014.

4. **TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below. Two additional optional one-year contract extensions may follow with a Commencement Date of July 1, 2014 and Expiration Date of June 30, 2015 and Commencement Date of July 1, 2015 and Expiration Date of June 30, 2016, with the same contract terms, fees and agreements if both City and Contractor are in agreement.

5. **CONSULTANT'S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Fifteen Thousand Dollars (\$15,000) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Heather Woodland shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule nor to claim payment other than in compliance with this Agreement, including Section 5.1 above. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as its employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.

- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000) and Aggregate Liability with coverage limits of not less than Four Million Dollars (\$4,000,000)

including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, death, loss, or damage, underground hazard, and explosion and collapse hazard where applicable.

- 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident/accident for bodily injury and/or property damage.
- 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. Additional endorsements are required for the following entities with the same rights as the City: Military Department of the State of California, USA Water Polo, Los Alamitos Aquatics Foundation. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to

modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:
City of Los Alamitos
10911 Oak Street
Los Alamitos, CA 90720
Attn: Corey Lakin
Telephone: (562) 430-1073
Facsimile: (562) 594-9657
Email: clakin@cityoflosalamitos.org

If to Consultant:
Commercial Aquatic Services, Inc.
1332 Bell Ave., 2F
Tustin, CA 92780
Attn: Heather Woodland
Telephone: (877) 794-6227
Facsimile: (877) 794-6329
Cellular: (714) 488-4302
Email: heather@swimcas.com

With courtesy copy to:

Cary S. Reisman, City Attorney
Wallin, Kress, Reisman & Kranitz, LLP
2800 28th Street, Suite 315
Santa Monica, CA 90405-6201
Telephone: (310) 450-9582
Facsimile: (320) 450-0506

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination.

All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in a writing signed by one authorized to bind the party asserted to have consented to the waiver.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and in addition to

every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue for any litigation shall be Orange County, California and Consultant hereby consents to jurisdiction in Orange County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

19 **PREVAILING WAGE LAW**

- 19.1 Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services under this Agreement are being performed as part of an applicable "public works" or "maintenance"

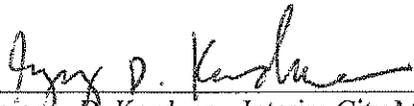
Professional Services Agreement
City of Los Alamitos/Commercial Aquatic Services, Inc.

project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”

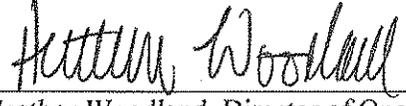
City of Los Alamitos

By: 
Gregory D. Korduner, Interim City Manager

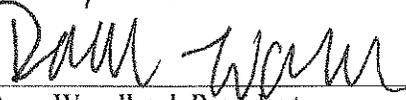
Date: 5/21/13

“Consultant”

Commercial Aquatic Services, Inc.

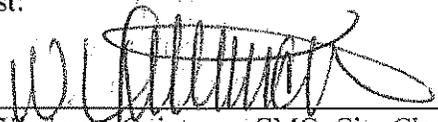
By: 
Heather Woodland, Director of Operations

Date: May 7, 2013

By: 
Dave Woodland, President

Date: May 7, 2013

Attest:

By: 
Windmera Quintanar, CMC, City Clerk

Date: 5/21/13

Approved as to form:

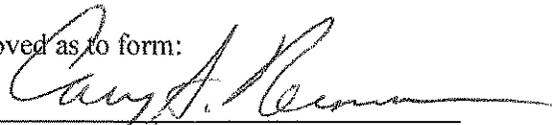
By: 
Cary S. Reisman, City Attorney

EXHIBIT A SCOPE OF WORK

Contractor will perform five (5) pool maintenance service visits per week for fifty-two (52) weeks of the year, at the direction of the Director of Recreation and Community Services and/or his designee.

Contractor will use best efforts to provide maintenance services on the days required by the City. Due to special events at the pool, the days and times for pool maintenance may fluctuate from week to week. City will provide the Contractor with the monthly pool usage schedule in order to work around the activities and provide the best service possible.

Contractor will perform the following pool maintenance services:

1. Vacuum and brush to remove debris, clean pool and eliminate dirt, scum, scale, calcium, algae and other harmful deposits daily;
2. Vacuum, brush, scrape, wipe, wash, and clean black lines from inside the water to eliminate scale, dirt, scum, calcium, algae and other harmful deposits monthly;
3. Scrape, brush and clean expansion joints to eliminate algae, dirt, scum, scale, calcium and other harmful deposits bi-weekly;
4. Maintain a daily log of all work done at the pool, to be kept in the pump room for City personnel and maintenance personnel to view;
5. Monitor and maintain correct water levels in pool daily;
6. Monitor and maintain pool temperature daily;
7. Monitor Chemtrol system and test water to confirm proper water balance, pH, chlorine (free and total), total alkalinity, calcium hardness, conditioner levels, and total dissolved solids daily;
8. Clean Chemtrol leads as needed or at least twice per year;
9. Inspect all equipment for leaks, clogs and other malfunctions daily;
10. Provide a schedule to City personnel of monthly, quarterly, annually, etc. maintenance needs to maintain equipment and keep the chemical room and pool safe for all patrons and employees, including, but not limited to the pool pump, acid pump, chlorine pump, all associated chemical lines, etc.;
11. Change out chemical lines and tubing quarterly or as needed to ensure the highest safety of personnel and equipment;
12. Maintain pool chemicals and water quality in accordance with Orange County Health Care Agency standards, adding additional chemicals as necessary (chemicals provided by the City and requested by the Contractor at least 2-4 weeks in advance);
13. Backwash and clean filters as needed;
14. Clean pump strainer and gutter gratings daily or as needed;
15. Maintain equipment room and chemical room in clean condition and remove and dispose of all chemical related garbage off site, in compliance with the Orange County Health Care Agency and Joint Forces Training Base standards daily;
16. Inspect safety signs and safety equipment daily;
17. Contractor shall conduct quarterly walkthroughs with City staff to ensure cleanliness and proper operation of City and Contractor equipment and materials

Professional Services Agreement
City of Los Alamitos/Commercial Aquatic Services, Inc.

18. Always end your daily service ensuring to properly close and lock doors and gates;
19. Provide advice, insight and knowledge to upgrade, replace and/or repair pool equipment at the most reasonable prices;
20. Repair/replace pool equipment as necessary with prior City staff approval.

EXHIBIT B
APPROVED FEE SCHEDULE

The rate to be paid to the Contractor for five (5) pool maintenance visits per week is noted below:

July 1, 2013 to June 30, 2014

(Two additional optional one-year contract extensions may follow with a Commencement Date of July 1, 2014 and Expiration Date of June 30, 2015 and Commencement Date of July 1, 2015 and Expiration Date of June 30, 2016, with the same contract terms, fees and agreements if both City and Contractor are in agreement.)

Monthly Service Rate: \$900 (Annual Service Rate: \$10,800)

The monthly service rate of \$900 is to be billed 15 days prior to the month. Any additional work over and above the \$900 rate per month must be approved by City in writing prior to work being completed and will be billed after work is completed.