

City Council:
Mayor Steven Veres
Mayor Pro Tem Mario F. Hernández
Councilmember Ernesto Rubio Hernández
Councilmember Maribel De La Torre
Councilmember Nury Martinez



NOTICE AND AGENDA OF SPECIAL MEETING

SAN FERNANDO CITY COUNCIL

Monday, May 11, 2009
6:00 p.m.

NOTICE IS HEREBY GIVEN that the San Fernando City Council will hold a Special Meeting on **Monday, May 11, 2009, at 6:00 p.m.** in the Community Meeting Room, located at 117 Macneil Street, San Fernando, California.

The **AGENDA** for this meeting is as follows:

CALL TO ORDER/ROLL CALL

APPROVAL OF AGENDA

PUBLIC STATEMENTS

There will be a three (3) minute limitation per each member of the audience who wishes to make comments in order to provide a full opportunity to every person who desires to address the City Council. Only matters contained in this notice may be considered.

NEW BUSINESS

SAN FERNANDO AQUATICS FOUNDATION PROPOSED OPERATIONS AND MANAGEMENT AGREEMENT FOR POOL OPERATIONS

Recommend that the City Council authorize the Mayor to sign the contract between the City of San Fernando and San Fernando Aquatics Foundation subject to edits provided by City Council and City Attorney.

NOTICE AND AGENDA OF SPECIAL MEETING – 6:00 P.M.

May 11, 2009

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CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATOR (G.C. 54957.6)

City Negotiator: City Administrator José E. Pulido
Employee Organizations: San Fernando Management Group (SEIU, Local 721); San
Fernando Public Employees' Association (SEIU, Local 721); San
Fernando Part-time Employees' Association (SEIU, Local 721)

ADJOURNMENT

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the City Hall bulletin board not less than 24 hours prior to the meeting.



Elena G. Chávez, City Clerk

Signed and Posted: May 7, 2009 (5:00 p.m.)

Agendas and complete Agenda Packets (including staff reports and exhibits related to each item) are posted on the City's Internet Web site (www.sfcity.org). These are also available for public reviewing prior to a meeting in the City Clerk's Office.

Any public writings distributed by the City Council to at least a majority of the City Council regarding any item on this special meeting agenda will also be made available at the City Clerk's Office at City Hall located at 117 Macneil Street, San Fernando, CA, 91340 during normal business hours. In addition, the City may also post such documents on the City's Web Site at www.sfcity.org.

In accordance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services please call the City Clerk's Office at (818) 898-1204 at least 24 hours prior to the meeting.

RECREATION AND COMMUNITY SERVICES DEPARTMENT

MEMORANDUM

TO: Mayor Steven Veres and Councilmembers

FROM: José Pulido, City Administrator
By: Tom Ristau, Recreation and Community Services Director *TR*

DATE: May 11, 2009

SUBJECT: San Fernando Aquatics Foundation Proposed Operations and Management Agreement for Pool Operations

RECOMMENDATION:

It is recommended that the City Council authorize the Mayor to sign the contract between the City of San Fernando and San Fernando Aquatics Foundation (Attachment "A") subject to edits provided by City Council and City Attorney.

BACKGROUND:

1. On January 16, 2008, a Request for Proposals (RFP) was issued in the Los Angeles *Daily News* for the management and operation of the San Fernando Regional Swimming Pool Facility.
2. On February 6, 2008 a bidder's conference was held in the Conference Room at San Fernando Recreation Park in order to offer prospective bidders an opportunity to meet with staff regarding any questions they may have regarding the proposal.
3. On February 7, 2008, an addendum was issued to extend the deadline for submission of the Request for Proposals for the Management and Operation of the San Fernando Regional Swimming Pool Facility from February 12, 2008 to February 20, 2008.
4. On February 11, 2008, another addendum was issued to extend the deadline for submission of the Request for Proposals for the Management and Operation of the San Fernando Regional Swimming Pool Facility from February 20, 2008 to February 26, 2008.
5. On February 21, 2008, a second bidder's conference was held in the Conference Room at San Fernando Recreation Park in order to allow for more bidders to meet with staff due to the fact that the deadline was extended.

6. On February 26, 2008, one proposal was received from USA Pools for the management and operation of the San Fernando Regional Swimming Pool Facility.
7. On February 27, 2008, the Pool Operations and Programming Ad Hoc Committee met to discuss the proposal received from USA Pools for the management and operation of the San Fernando Regional Swimming Pool Facility.
8. On March 4, 2008, the Pool Operations and Programming Ad Hoc Committee met and decided to recommend that the City Council reject the proposal from USA Pools for the management and operation of the San Fernando Regional Swimming Pool Facility.
9. On March 16, 2008, the City Council rejected the proposal from USA Pools for the management and operation of the San Fernando Regional Swimming Pool Facility, and instructed staff to issue a second RFP.
10. On March 18, 2008, a second Request for Proposals was issued for the management and operation of the San Fernando Regional Swimming Pool Facility.
11. On April 8, 2008 the City Clerk received proposals from the San Fernando Aquatics Foundation and from USA Pools.
12. On April 28, 2008, the Pool Operations and Programming Ad Hoc Committee met to prepare for interviews of each of the bidders.
13. On April 29, 2008 the Pool Operations and Programming Ad Hoc Committee met with USA Pools.
14. On May 1, 2008 the Pool Operations and Programming Ad Hoc Committee met with the San Fernando Aquatics Foundation.
15. On May 5, 2008, a City Council study session was held and staff presented a construction update and presented information on the proposed operation and management of the San Fernando Regional Swimming Pool.
16. On May 15, 2008, a meeting of the Pool Operations and Programming Ad Hoc Committee was held to discuss the selection of a pool operator.
17. On May 19, 2008, the City Council rejected the proposal from USA Pools.
18. On July 21, 2008, staff forwarded the proposed fee schedule to Jeff Julian, the representative for the San Fernando Aquatics Foundation.
19. On July 22, 2008, staff, the City Attorney and Jeff Julian of the San Fernando Aquatics Foundation met.

20. On April 27, 2009, staff, along with Council member De La Torre and the City Attorney, held a conference call to discuss the proposed contract. Direction was provided to the City Attorney to make changes to the proposed operating agreement (Attachment "A").
21. On May 6, 2009, staff, along with Mayor Veres and the City Attorney, met with Jeff Julian to discuss the proposed contract. Direction was provided to the City Attorney to make changes to the proposed operating agreement.

ANALYSIS:

The proposed contract would allow for the San Fernando Aquatics Foundation (SFAF) to begin operations and maintenance of the San Fernando Regional Pool Facility (the "Facility") effective upon the successful completion, by SFAF, of Section 2 (b)(1-4) of the Agreement, but no earlier than June 1, 2009. As currently proposed the following are key components of the proposed contract:

1. A six year term with an option to extend for an additional six years.
2. City shall be responsible for the management and operations of the Multi-Purpose Room ("MPR") for the first twelve months, at which time the City and SFAF will re-evaluate the management and operations of the MPR.
3. SFAF agrees that, subject to Section 61 (force majeure) or any reductions in service that may be agreed upon by the Parties pursuant to Section 39 (Budgetary Shortfall), the Facility will operate on a year-round basis and will be available for open swim, including assistance for the physically impaired, every day except Holidays. For purposes of this Section 10, "Holidays" means Easter Sunday, Thanksgiving Day, Christmas Day, and New Years Day, and any other day mutually agreed upon by City and SFAF in writing. Any foreseeable changes which may result in SFAF not following the hours of operation shall be submitted in writing to the City Administrator for approval at least five (5) days prior to the proposed effective date of the changes; the City's approval shall not be unreasonably withheld.
4. The City will have the discretion to set fee amounts and admissions charges for entrance to the Facility, which fees and charges shall be collected by SFAF, except for the fees explicitly defined in the Agreement. SFAF will be required to prepare and submit to the City Finance Department, on forms approved by the City and accepted by the CDC, a monthly and annual detailed breakdown of all revenue collected by SFAF. Contingent on approval by the CDC, all revenue collected by SFAF will remain with SFAF.
5. SFAF will be responsible for maintenance of the Facility (exclusive of the MPR). SFAF will be required to contract with Knorr Systems, Inc., or other qualified mechanical equipment service provider to repair and maintain the mechanical equipment at the Facility. SFAF will be required to ensure that proper maintenance, per the Covenants, Conditions and

Restrictions of the Section 108 Loan from the CDC, is provided and maintenance logs are available for City and/or CDC inspection.

6. City agrees to allocate the sum of \$ 250,000 per year to the Facility's operation (the "City Contribution"). The City Contribution shall be disbursed in accordance with the procedures in Sections 37 and 38. City shall be under no obligation to deposit more than one-twelfth of the City Contribution into the separate account referenced in Section 37 in any one calendar month. This limitation shall not apply to the month of July 2009, wherein no more than four twelfths, but not less than two twelfths, of the City Contribution may be deposited pursuant to paragraph "a" of Section 37 subject to availability of adequate City funds. The remainder of the funds would be paid in monthly installments of \$20,833 beginning August 2009.
7. The agreement calls for an annual budget, and for an oversight committee that will regularly review and monitor operations and the budget, including the possibility of a budget shortfall.
8. If the City determines in any future year that it is not able to allocate \$250,000 to SFAF for the Facility's operation and maintenance, SFAF has the opportunity to seek funding from outside sources before the City decides to suspend operations.
9. Establishment of "Reserve Funds" for Maintenance, Capital Improvements and Endowment when revenues exceed expenses in any particular fiscal year.

CONCLUSION:

Staff recommends that the City Council approve the operations and management agreement between SFAF and the City allowing SFAF to assume the responsibility for operation and management of the Facility, effective upon the successful completion of Section 2 (b) (1-4) of the Agreement, but no earlier than June 1, 2009, contingent upon the City receiving a 3 to 5 year pro-forma (business plan) from SFAF. The Director of Recreation and Community Services does not feel comfortable having the City take on a \$250,000 annual obligation without first reviewing a business plan which would illustrate how SFAF will be able maintain the proper cash flow to enable SFAF to operate and maintain the facility according to the terms of the Agreement.

BUDGET IMPACT:

The Council will need to allocate a fixed amount of \$250,000 from the Fiscal Year 2009/2010 municipal budget to cover the City's commitment to SFAF. SFAF will be responsible for all expenses, except for those specifically identified within the text of the Agreement. The Agreement has specific directions for the disbursement of the City's commitment to SFAF. Due to City cash flow concerns the Agreement identifies payment to SFAF in monthly installments as opposed to a one-time up-front disbursement.

ATTACHMENTS:

A. Operating Agreement

OPERATION AND MANAGEMENT AGREEMENT

for the

SAN FERNANDO REGIONAL POOL FACILITY

BETWEEN

SAN FERNANDO AQUATICS FOUNDATION,
a California nonprofit public benefit corporation

AND

THE CITY OF SAN FERNANDO
a California municipal corporation

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Exhibit A Depiction of Facility

Exhibit B CDC Contract Provisions

OPERATION AND MANAGEMENT AGREEMENT

THIS OPERATION AND MANAGEMENT AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2009 between the CITY OF SAN FERNANDO, a municipal corporation (“City”) and the SAN FERNANDO AQUATICS FOUNDATION, a California nonprofit public benefit corporation (“SFAF”). City and SFAF are sometimes referred to collectively herein as the “Parties”.

RECITALS:

WHEREAS, City has constructed a new aquatic facility known as the San Fernando Regional Pool Facility (the “Facility”) on City-owned land in the City of San Fernando; and

WHEREAS, the Facility was substantially completed and was opened to the public on or about August 23, 2008, and is currently managed and operated by the County of Los Angeles; and

WHEREAS, in response to a Request for Proposal for the Management and Operation of the San Fernando Regional Pool Facility issued March 27, 2008 by the City, SFAF submitted a proposal on April 2, 2008; and

WHEREAS, City desires to engage SFAF to manage the Facility, on the terms and conditions set forth in this Agreement; and

WHEREAS, SFAF acknowledges and agrees to work cooperatively to facilitate the transition of operations of the Facility from the current operator, County of Los Angeles, to SFAF; and

WHEREAS, this Agreement allocates responsibilities for management and operation of the Facility between SFAF and City; and

WHEREAS, it is the intent of the Parties that SFAF have full responsibility for management and operations of the Facility, subject to the terms of this Agreement and all applicable law;

WHEREAS, it is the intent of the Parties that SFAF implement a vigorous fund raising program to achieve financial self-sufficiency in maintaining and operating the Facility as quickly as possible; and

WHEREAS, SFAF acknowledges that its rights and responsibilities under this Agreement are not assignable, except as expressly set forth herein; and

WHEREAS, the Parties acknowledge that the Facility was constructed with financing from a variety of public sources, and that such sources of public financing impose certain obligations and limitations on the operation of the Facility;

NOW, THEREFORE, City and SFAF hereby agree to the following:

FACILITY, TERM OF AGREEMENT, TRANSITION OF OPERATIONS

1. **Identification of Facility.** The San Fernando Regional Pool Facility (the "Facility") is located at 208 Park Avenue, on a portion of Recreation Park. The Facility was constructed and is owned by City, and consists of one competition size swimming pool, one instruction pool, a splash area, and a two-story building structure with an office, reception area, locker rooms, a classroom, a multi-purpose room, and related equipment. The Facility is depicted in Exhibit A, attached hereto and incorporated herein by this reference.

2. **Term; Commencement Date.**

a. The Term of this Agreement shall be the Initial Term, together with the Extended Term (if any). The Initial Term of this Agreement shall be six (6) years, commencing on the Commencement Date (defined in paragraph "b" below), unless earlier terminated pursuant to the provisions of this Agreement.

b. The Commencement Date shall be the date that the following conditions precedent have been satisfied, but no earlier than June 1, 2009:

1) SFAF has prepared, and the City Council has approved, the budget for fiscal year 2009-2010, consistent with the requirements of Section 29;

2) SFAF has submitted to City evidence demonstrating, to the satisfaction of the City Administrator, that it has obtained the insurance required by Sections 41 through 44, inclusive;

3) SFAF has submitted, and City's Director of Recreation and Community Services has approved, the Transition Plan referenced in Section 4; and

4) SFAF has submitted evidence satisfactory to the City Administrator that it holds tax-exempt status for both state and federal tax purposes.

c. This Agreement shall terminate, and be of no further force or effect, if the conditions in paragraph "b" are not satisfied by SFAF or waived by City prior to August 1, 2009.

d. The Initial Term may be extended for an additional term of six (6) years (the "Extended Term"), upon the occurrence of all of the following:

1) SFAF shall provide written notice to City at least 90 but no more than 180 days prior to the expiration of the Initial Term, of its desire to extend the term of this Agreement;

2) All conditions of operation and management set forth in this Agreement have been met to City's satisfaction, and SFAF has established a record of successful management and operation of the Facility;

3) SFAF has been reasonably successful in its revenue generation and fundraising efforts, such that SFAF is making reasonable progress towards the goal of operating the Facility without any financial assistance from City; and

4) None of the circumstances set forth in Sections 59 or 60 of this Agreement (default and rights of termination) are in effect.

3. Increased Role of SFAF.

a. During the Initial Term, SFAF shall endeavor to establish, to the full satisfaction of City: (1) a record of successful management and operation of the Facility; and (2) financial stability through revenue generation and fundraising efforts, such that SFAF is able to operate the Facility without any financial assistance from City.

b. The Parties contemplate that, as SFAF makes progress in achieving financial stability through revenue generation and fundraising efforts, the City Contribution (Section 32) will be eliminated, and this Agreement will be amended to transfer responsibility for all or a portion of all City Costs (defined in Section 38) to SFAF, or otherwise cause all City Costs to be paid out of Gross Revenues (defined in Section 30).

4. Transition of Operations and Management. SFAF agrees to work cooperatively with the County of Los Angeles to take control of the operation and management of the Facility, as detailed in the Transition Plan submitted by SFAF and approved by City's Director of Recreation and Community Services pursuant to paragraph "b" of Section 2, prior to commencement of the Term. The Transition Plan shall set forth how SFAF will learn the current operations at the Facility, and how it will cause the transition from operation of the Facility by the County to operation by SFAF to occur in such a way that, from the perspective of the users of the Facility, the transition is seamless. SFAF agrees to diligently pursue the transition as set forth in the Transition Plan. City agrees to cooperate with and reasonably assist SFAF in those efforts.

OPERATION AND MANAGEMENT OF FACILITY

5. Operation and Management. This Agreement assigns the responsibility for operation and management of the Facility to SFAF. Subject to the terms of this Agreement and all applicable law, City hereby appoints SFAF to serve as manager of the Facility, and SFAF hereby accepts the appointment to serve as manager of the Facility. It is the intention of the Parties that SFAF will have the maximum authority permitted by law over the operation and day-to-day management of the Facility, subject to compliance with applicable laws, and as otherwise specifically provided in this Agreement. SFAF understands and agrees that its responsibilities for management of this public asset shall include providing all of the supplies and services necessary to operate a first class aquatic

facility, including but without limitation, conducting and scheduling recreational and instructional programs, collecting and accounting for fees, charges, and other revenue, scheduling and booking of the Facility for special events, rental of lockers and equipment, public relations, complaint resolution, security, interaction with City personnel, enforcement of Facility regulations, posting of regular, special and emergency signage, emergency planning, cleaning and maintenance. City shall cooperate with and shall not impede or impair the ability of SFAF to soundly manage and operate the Facility; however, nothing in this Agreement shall be construed as an attempted delegation by City of any non-delegable duties or as a restriction on any legislative authority of City.

6. Authorized Uses.

a. SFAF shall manage and operate the Facility as a community aquatics facility for the general benefit of the residents of City and surrounding communities, including uses for recreational and competitive swimming for individuals and organized teams, and other aquatic activities. The Parties acknowledge that other non-aquatic activity uses may occur on the Facility, to the extent permitted by this Agreement.

b. SFAF may at its discretion operate or cause to be operated a pro shop providing for sale of personal property related to or used for aquatic activities, and/or rentals of such property. SFAF may subcontract operation of any pro shop; any such subcontract requires the prior review and approval of the City Council. Any such pro shop must be planned, designed, constructed, and operated at no cost to City. Any alternations or improvements needed for the pro shop must be approved by City, pursuant to Section 16.

c. SFAF may at its discretion operate or cause to be operated a concession stand or snack bar at the Facility, to provide food and beverages for users of the Facility. SFAF may subcontract operation of the concession stand; any such subcontract requires the prior review and approval of the City Council. Any such concession stand or snack bar must be planned, designed, constructed, and operated at no cost to City, and must be operated in compliance with all requirements of the Los Angeles County Department of Health. Any alternations or improvements needed for the snack bar must be approved by City, pursuant to Section 16.

d. During the term of this Agreement, City covenants and agrees with SFAF that City shall not license any third party to use the Facility (exclusive of the multi-purpose room and classroom) for any purpose without the prior written consent of SFAF, which consent shall not be unreasonably withheld.

7. Multi-Purpose Room & Classroom. Notwithstanding Section 6 or any other provision of this Agreement, City shall have exclusive rights to manage and collect revenue from rental of the multi-purpose room and the classroom at the Facility. SFAF shall have access to the multi-purpose room and the classroom with the prior written consent of City, to the extent that the multi-purpose room or classroom are available for

use. SFAF shall fully cooperate with City in the management and rental of the multi-purpose room and classroom at the Facility. City and SFAF shall reevaluate this Section 7 in conjunction with City's review of the budget for fiscal year 2010/2011. The Parties acknowledge that the multi-purpose room cannot be changed to a different use without the prior approval of the Los Angeles County Community Development Commission and potentially one or more of the other Public Financing Sources.

8. **Entry Rights.** City reserves the right to enter the Facility at any time and for any reason, and may enter the Facility without obtaining the permission of SFAF.

9. **Supplies, Equipment, Materials and Services.** Except as otherwise provided herein, SFAF shall, at its own expense, furnish all necessary supplies, equipment, materials and services of reasonable quality and in reasonable amounts necessary to perform SFAF's programs. SFAF will also provide for the replacement of such supplies, equipment, materials and services as needed.

10. **Hours of Operation.**

a. SFAF agrees that, subject to Section 61 (force majeure) or any reductions in service that may be agreed upon by the Parties pursuant to Section 39 (Budgetary Shortfall), the Facility will operate on a year-round basis and will be available for open swim, including assistance for the physically impaired, every day except Holidays. For purposes of this Section 10, "Holidays" means Easter Sunday, Thanksgiving Day, Christmas Day, and New Years Day, and any other day mutually agreed upon by City and SFAF in writing. Any foreseeable changes which may result in SFAF not following the hours of operation shall be submitted in writing to the City Administrator for approval at least five (5) days prior to the proposed effective date of the changes; the City's approval shall not be unreasonably withheld.

b. City acknowledges that there will be times that major swim meets or other events will be held at the Facility which will preclude SFAF's adherence to the open swim schedule. SFAF agrees to seek prior approval from the Director of Recreation and Community Services for, and to notify the public as early as possible of, any special event, including but not limited, to swim meets and any rental of the Facility or other Facility condition that will restrict the open swim schedule. Approval from the Director of Recreation and Community Services shall not be unreasonably withheld.

11. **Programs.**

a. SFAF agrees to operate aquatics programs at the Facility including swim classes and recreational programs for youth, teens, adults, and senior citizens, and shall have discretion as to the types of classes offered. A mutually agreed upon programming schedule shall be prepared by SFAF based on the City fiscal year, and shall be submitted and processed for approval in accordance with the schedule and process set forth in Section 29 for review and approval of the annual budget. The Parties agree that, unless and until a new programming schedule is prepared and approved by the City Council, the programming schedule in effect as of the date of this Agreement shall

remain the programming schedule for fiscal year 2009/2010. Except as set forth in paragraph "b" of Section 10, SFAF shall not cancel, suspend, or reduce the hours of any of the programs or other activities set forth in the approved programming schedule without prior written approval from the Director of Recreation and Community Services. SFAF may add programs to the approved programming schedule at any time, without prior approval from City. SFAF shall promptly notify City's Director of Recreation and Community Services of any additions to the approved programming schedule.

b. SFAF shall cooperate with City and the Los Angeles Unified School District (LAUSD) to implement any joint-use agreement or facility use agreement that may be entered into between the City and LAUSD for the use of the Facility. Use of the Facility by LAUSD for any activities pursuant to such a joint use agreement or facility use agreement shall be incorporated into the programming schedule referenced in paragraph "a."

c. Notwithstanding any other provision of this Agreement, City shall be entitled to use the Facility during recreational hours, at no charge, for its recreation programs, as deemed necessary by the Director of Recreation and Community Services. Use of the Facility for City's recreation programs shall be incorporated into the programming schedule referenced in paragraph "a".

12. Fees and Admissions.

a. City shall have discretion to set fee amounts and admissions charges for entrance to and use of the Facility by residents of the City of San Fernando. SFAF shall have discretion to set fees and amounts for entrance to and use of the Facility by non-residents, subject to any restrictions imposed by the Public Financing Sources (defined in Section 23). SFAF acknowledges receipt of and agrees to the fee schedule currently in effect as of the date of this Agreement. Annually, in accordance with the schedule for submittal and approval of the annual budget set forth in Section 29, SFAF shall submit any recommendations for changes to the fee schedule to City for review and approval. City shall consider such recommendations concurrently with its review of the proposed budget. Any revisions to the fee schedule that are approved by the City Council shall be attested by the City Clerk and conveyed to SFAF in accordance with Section 64.

b. SFAF shall collect all fees for use of the Facility (including for locker rentals), and deposit the collected fees into the Operations Bank Account. Except as otherwise provided herein, SFAF shall not permit anyone to use the Facility who has not paid the applicable fees to SFAF in accordance with the approved fee schedule. Notwithstanding the preceding sentence, SFAF may waive or reduce fees in special circumstances, when doing so will result in a special benefit to the Aquatic Facility, with the prior written approval of the Director of Recreation and Community Services.

c. SFAF agrees to cooperate with City in setting reduced fees for use of the Facility by the patrons of a health club or other athletic facility located in San Fernando, should the City make that request of SFAF.

UTILITIES, MAINTENANCE & REPAIRS; ALTERNATIONS

13. **Utilities.** The cost of all utilities necessary for operation of the Facility, including but not limited to water, electricity, natural gas, trash services, and telephone and telecommunications services, shall be paid by SFAF.

14. **Conservation.** SFAF shall ensure that all pools are covered when the Facility is closed to ensure lower heating and cleaning costs, but shall ensure that all pools are uncovered when the Facility is in operation for safety purposes. SFAF shall ensure that all lighting is used to the minimum extent possible (consistent with safe operation of the Facility), including utilizing only security lighting when the Facility is closed. SFAF shall ensure at all other times that the use and operation of the Facility is conducted in a manner to maximize energy and water conservation efforts through sound utilities management practices.

15. **Maintenance and Repairs.**

a. SFAF agrees to maintain the Facility in a safe, clean, and sanitary condition, and in a manner that will provide for the on-going use of the Facility. SFAF shall engage a janitorial service to provide janitorial services and supplies. The Parties acknowledge that City is currently engaged in a procurement process for janitorial services for all City facilities. Should it be more cost effective for that janitorial service to provide janitorial services and supplies to the Facility, SFAF shall engage that janitorial service, and pay the cost of that janitorial service providing janitorial services and supplies to the Facility.

b. City agrees to provide landscaping maintenance for the Facility.

c. SFAF shall provide repairs to the Facility, except the multi-purpose room and the classroom, arising from reasonable wear and tear, and shall be authorized to expend funds from the Maintenance and Repair Fund established pursuant to Section 29 for that purpose. City shall provide repairs to the multi-purpose room and the classroom arising from reasonable wear and tear.

d. City shall be responsible for any new capital improvements as needed to keep the Facility in good operating condition, and shall be authorized to expend funds from the Capital Improvement Reserve established pursuant to Section 29 for that purpose.

e. SFAF agrees to maintain all mechanical equipment at the Facility according to all applicable warranties and agrees not to engage in any conduct that may be a violation of any and all applicable warranties. SFAF agrees to maintain any maintenance logs as required by any and all applicable warranties and as required pursuant to California Code of Regulations, Title 22, Regulation 65523. The maintenance logs shall be subject to inspection by the City. SFAF shall engage Knorr Systems, Inc., or other qualified mechanical equipment service provider to repair and maintain the mechanical equipment at the Facility.

f. Notwithstanding any other provision of this Agreement, should SFAF operate or cause to be operated a pro shop or a concession stand or snack bar, as authorized by paragraphs "b" and "c" of Section 6 of this Agreement, SFAF shall be responsible for all maintenance and repairs of the equipment and portion of the Facility used for such pro shop or concession stand or snack bar.

g. SFAF shall prepare a maintenance plan setting forth the procedures, standards, and schedule it will follow in maintaining the Facility, for review and approval by City. The draft maintenance plan shall be submitted to City within 180 days after the Commencement Date.

16. **Alterations.** SFAF agrees that no alterations to any portion of any structure or building, including the placement of signs thereon, may be made by SFAF without the prior written approval of each alteration by the City.

MISCELLANEOUS OPERATING PROVISIONS

17. **Punctual Payment.** Each party shall duly and punctually pay or cause to be paid its obligations to the other and its obligations to third parties associated with management of the Facility.

18. **Mutual Cooperation.** Each party shall cooperate with the other as may be reasonably necessary to allow each to carry out their responsibilities under this Agreement.

19. **Discharge Claims.** Each party shall timely discharge or provide for the discharge of all claims which it has authorized or incurred for labor, materials and supplies furnished for or in connection with the Facility, unless it shall in good faith dispute such claims.

20. **Reporting of Defects.** Each party shall have the duty to give notice to the other of any conditions discovered which create a hazard or problem with the operation and maintenance of the Facility.

21. **Non-Discrimination in Access.** SFAF shall operate and manage the Facility without discrimination as to race, religious creed, color, national origin, ancestry, handicap, sex, age or any other impermissible classification.

22. **Accessibility - General Standards.** SFAF shall maintain the accessibility features of the Facility and equipment on site that promotes equal opportunity for participation by individuals with disabilities, and shall continue to develop and implement procedures for providing an equal opportunity for individuals with disabilities to participate in or benefit from the use of Facility in accord with federal and state law. SFAF shall ensure that its employees, contractors and licensees are aware of accessibility features and are prepared to provide assistance as required by individuals with disabilities using or accessing the Facility. SFAF is not responsible for capital improvements

required to comply with ADA. In connection with ADA, each party shall advise the other of other ADA issues at the Facility that come to their attention.

Responsibility for any third party claims arising out of or related to ADA will be as follows:

a. SFAF shall be responsible for claims relating to the operation of the Facility and the City shall be responsible for claims relating to the structure of the Facility, provided that SFAF does not make any modifications or improvements to the physical structure of the Facility without the express written consent of the City.

b. The responsible party will indemnify, hold harmless and defend the other party and its officers, directors, representatives and employees, and in the case of the City its council members, from all claims, liabilities, damages, costs and expenses (including attorneys' fees) resulting from and in any way related to the claims.

When appropriate, each party will forthwith submit any such claims to its general liability insurance carrier in an attempt to have the claim covered by such insurance.

23. Agreement Subject to Requirements of Public Financing Sources.

SFAF understands and agrees that the Facility was constructed with financing from a variety of public sources, including but not limited to a Section 108 loan from the Department of Housing and Urban Development, a grant from _____, and _____, (collectively, the "Public Financing Sources"). SFAF further understands and agrees that this Agreement is subject to the requirements of the Public Financing Sources, and agrees that it shall not knowingly take any action that is inconsistent with any obligation imposed by the Public Financing Sources. City will use its best efforts to make SFAF aware of any pertinent requirements of the Public Financing Sources as it relates to the operation and management of the Facility. Certain of the requirements of the Public Financing Sources are set forth in Exhibit B, attached hereto and incorporated herein by this reference.

24. Contracts for Services at the Facility.

a. To the extent practicable, every vendor that SFAF contracts with for services at the Facility for an amount in excess of \$5,000 per month, if any, shall be selected through a competitive process. SFAF shall obtain at least three proposals or bids prior to entering into any such contract. SFAF is not required to select the vendor offering the lowest price if other factors, such as qualifications of the vendor and quality of the services being offered, outweigh the benefits offered by the lowest priced bid or proposal. SFAF shall document all of its procurements in a manner sufficient to document compliance with the provisions of this section.

b. SFAF shall use commercially reasonable efforts to obtain in every contract that SFAF enters into with third-party vendors for services at the Facility: (a) a termination for convenience provision that allows its termination on 30 days written notice with no penalty, payment or amortized buyout; and (b) a provision authorizing assignment of the contract to the City upon termination or expiration of this Agreement.

In addition to any other indemnity obligations created by this Agreement, SFAF agrees to use commercially reasonable efforts to require any third-party contractors to insure and to indemnify the City at levels and in a form approved, in writing, by the City's Director of Finance.

c. The contract with the food concessionaire shall require that the concessionaire provide and install (or cause the installation of) all fixtures necessary for operation of the food concession area, in compliance with all applicable laws, rules, and regulations.

25. Limitations on Authority of SFAF. SFAF shall not have the authority to:

a. Delegate its authority under this Agreement;

b. Charge fees or rates outside the parameters established pursuant to Section 12 of this Agreement, except with the prior written approval of the Director of Recreation and Community Services, which shall not be unreasonably withheld (in no event, however, shall the fees or rates be set at a level that violates the requirements of the Public Financing Sources);

c. Operate the Facility or any part thereof in any manner or for any purpose other than as set forth herein;

d. Contract for services at the Facility in a manner that binds or obligates the City beyond the term of this Agreement; or

e. Permit any team or organization to refer to the Facility as its "home pool", other than teams and organizations that are based in the City of San Fernando and are comprised primarily of residents of the City of San Fernando, without the prior approval of the San Fernando City Council.

26. San Fernando Living Wage Ordinance. This Agreement, as well as any third-party contracts for services at the Facility, is subject to the City of San Fernando's Living Wage Ordinance, Chapter 2 of the San Fernando City Code, commencing at Section 2-896. SFAF shall comply with the provisions of the Ordinance, which include:

a. Pay no less than _____ dollars and _____ cents (\$_____) per hour plus medical benefits of no less than ___ dollar and ___ cents (\$_____) per hour, or _____ dollars and _____ cents (\$_____) per hour without medical benefits to all employees who spend any of their time providing labor or delivering services to the Facility for the period June 1, 2009 to December 31, 2009. Beginning January 1, 2010, and each January 1 thereafter, the Living Wage rate shall be adjusted in accordance with Section 2-898 of the San Fernando City Code.

b. Notifying employees who spend any of their time providing labor or delivering services to the Facility who make less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit (EITC) under Internal

Revenue Code, 26 U.S.C. § 32, and making available to such employees forms required to secure advance EITC payments.

c. Failure to comply with the provisions of the San Fernando Living Wage Ordinance is grounds for termination of this Agreement and a basis for penalties stated in San Fernando City Code. SFAF will be given 30 days from the date of discovery to cure any non-compliance with the City's Living Wage Ordinance with any of its contractors providing services under this Agreement prior to the imposition of penalties.

27. Oversight. A joint financial and operations monitoring committee ("Monitoring Committee") comprised of two representatives from the City, appointed by the City Administrator, and two from SFAF will be established and will meet quarterly, or more frequently as needed. The primary purpose of this committee is to review operations, including but not limited to maintenance, public benefits, and monitoring the budget (see also Section 38), and make recommendations to both SFAF and the City Council as appropriate with respect to the implementation of and compliance with this Agreement. On or before the fifteenth day of each month, SFAF shall deliver to the Monitoring Committee a brief monthly report of expenditures and income, correlated with the line items in the approved budget. SFAF shall deliver to the Monitoring Committee, within three (3) days of receipt by SFAF, copies of all monthly bank and financial statements relating to the Operations Bank Account, one or more of the Reserve Funds, or otherwise relating to the Gross Revenues. The Monitoring Committee shall have the authority to cause to be conducted informal audits of SFAF and the operation of the Facility. This Committee shall not have binding, decision-making authority.

28. Delegation to City Administrator. The City Administrator, or his or her designee, is hereby authorized to take any and all steps necessary to implement the provisions of this Agreement. The City Administrator may grant, in writing, any approval requested by SFAF pursuant to this Agreement (except for those matters which specify that approval by the City Council is required) or, in his or her sole discretion, refer such matters to the City Council for its approval or disapproval.

FINANCIAL PROVISIONS

29. Budget.

a. The annual operating and capital budget for the Facility (based on a fiscal year of July 1- June 30) shall be prepared by SFAF and will be subject to City review and City Council approval, consistent with the City's operating and capital budget processes and timetable. SFAF shall submit the proposed annual budget to the City's Director of Finance, on or before March 1st of each year, commencing on the first March 1st after the Commencement Date (defined in Section 2). The proposed annual budget shall be submitted in a form reasonably acceptable to City's Director of Finance. City staff shall review the draft budget and propose changes, if any, to SFAF, within thirty (30) days of initial receipt of the budget. SFAF shall either revise the budget as requested

by City's Director of Finance or provide a written explanation in support of its refusal to make any change requested by the Director of Finance. City's Director of Finance shall present the revised budget and written explanation (if any) to the City Council, and the City Council shall act on the proposed budget as part of the City's budget process, prior to June 30th.

b. The annual budget shall be based on an estimate of the total cost of operating the Facility for the fiscal year; that estimated total cost is referred to herein as the "Budget Total". The budget shall include line items for all expenditures necessary for operation of the Facility, including but not limited to, deposits into a reserve for operating and programming expenses (the "Operating Reserve"), a reserve for equipment repair and maintenance (the "Repair and Maintenance Reserve"), and a capital equipment replacement fund (the "Capital Improvement Reserve"; collectively, the "Reserve Funds"). The Capital Improvement Reserve shall be maintained by the City Treasurer. The Operating Reserve and the Repair and Maintenance Reserve shall be maintained by SFAF in separate interest bearing accounts, in the banking institution where the Operations Bank Account is maintained. The Parties acknowledge that, until Gross Revenues (defined in Section 30) exceed the amount of the Budget Total (exclusive of deposits into the Reserve Funds), it may not be feasible to deposit into the Reserve Funds the full amount budgeted for that purpose.

c. The salaries for all employees of SFAF shall not exceed by more than five percent (5%) the salaries for comparable positions at Comparable Facilities. The Parties agree that, for purposes of this paragraph, "Comparable Facilities" include the Rose Bowl Aquatic Center and _____. This restriction does not apply if the approved budget demonstrates that Gross Revenues are expected to exceed the sum of the Budget Total, the City Contribution, and all City Costs (defined in paragraph "c" of Section 38).

30. Financial Plan; Fundraising.

a. The available and anticipated funding for the Facility consists of the City Contribution (Section 32), the Fee Income (Section 33), the Third Party Income (defined below), and the Sales and Rental Income (Section 34). Collectively, the City Contribution, Fee Income, Third Party Income, and Sales and Rental Income are referred to herein as "Gross Revenues". The Parties anticipate that the City Contribution and Fee Income will not exceed the Budget Total. For that reason, SFAF represents and warrants to City that it will aggressively pursue grants and other fundraising to help defray the costs of operating the Facility. SFAF shall conduct vigorous fundraising activities towards a goal of financial self-sufficiency. The proceeds of such grants and fundraising activities, together with the proceeds from the sale of naming rights, advertising and sponsorships pursuant to Section 35, are referred to herein as the "Third Party Income".

b. SFAF shall notify City of any applications for grants that it has submitted, within five (5) days thereafter. SFAF shall notify City of any grants or other Third Party Income that it has been awarded or received, within five (5) days thereafter.

c. SFAF shall deposit all Third Party Income collected by SFAF into the Operations Bank Account established pursuant to paragraph “a” of Section 37. SFAF agrees that all such Third Party Income must be expended for items included in the approved annual budget.

31. Revenue Collection Standards. Pursuant to Sections 12, 33, and 34 of this Agreement, SFAF shall oversee the daily collection of Fee Income and Sales and Rental Income at the Facility, as well as all Third Party Income not collected by City, and shall deposit all such Revenues into the Operations Bank Account. SFAF shall follow written procedures approved by the City Treasurer for collection, deposit, reporting, oversight and audit of all Gross Revenues, and for the transfer of Revenues from the Operations Bank Account to one or more of the Reserve Funds.

32. City Contribution. City agrees to allocate the sum of \$ 250,000 per year to the Facility’s operation (the “City Contribution”) for the first year of the Initial Term, with the amount of the contribution for each subsequent year to be determined at the time of preparation and approval of the City’s annual budget. Subject to paragraph “a” of Section 37, City shall be under no obligation to deposit more than one-twelfth of the annual City Contribution into the Operations Bank Account in any one calendar month.

33. Fee Income. For purposes of this Agreement, “Fee Income” means all monies collected by SFAF for the privilege of using the Facility. This includes, but is not limited to, fees collected by SFAF pursuant to paragraph “b” of Section 12. Fee Income does not include any income received by City for rental of the multi-purpose room or the classroom, in accordance with Section 7.

34. Sales and Rental Income. Should SFAF commence operation of a pro shop and/or a concession stand pursuant to paragraphs “b” and “c” of Section 6, the net income from any such operation shall be considered Sales and Rental Income. All Sales and Rental Income shall be deposited into the Operations Bank Account, in accordance with Section 27.

35. Naming Rights; Advertising and Sponsorship Sales. The Parties agree that all naming rights, advertising and sponsorships associated with the Facility shall be controlled by and sold by SFAF. SFAF shall request prior approval from the City Council for any and all naming rights, advertising and sponsorship sales. The proceeds, if any, arising from the sale of naming rights, advertising and sponsorships associated with the Facility shall be included in the calculation of Gross Revenues, and shall be deposited into the Operations Bank Account established pursuant to Section 37.

36. INTENTIONALLY LEFT BLANK.

37. Payment Standards.

a. SFAF shall establish a separate bank account for its operations under this Agreement with the City’s primary banking relationship institution (the “Operations Bank Account”). The City’s Director of Finance and Treasurer shall be signatories on this account. SFAF shall deposit all Gross Revenues into the Operations

Bank Account. The City shall deposit the sum of \$41,666.66, being the equivalent of two-twelfths of the annual City Contribution ($\$250,000/12 \times 2$), into this account as start-up money, within five (5) days after the Commencement Date.

b. SFAF shall timely pay all sums when and as due to all contractors and vendors associated with SFAF's management of the Facility.

c. SFAF shall not incur any costs and expenses outside of or beyond its approved budget that are not otherwise approved by the City. Except as set forth in paragraph "d" below, no portion of the Gross Revenues (including but not limited to monies obtained from grants or gifts) may be spent on any item not included in the approved budget, or in an amount that exceeds the amount set forth in the approved budget, without the prior approval by the City Council of an amendment to the budget. SFAF may submit a written request to the City for the approval of an expense not included in the approved budget. The City shall promptly process the request, including any required consideration and approval by the City Council.

d. Notwithstanding paragraph "c", upon the occurrence of an actual emergency requiring immediate purchase of labor or services where the emergency is not caused by the intentional act or gross neglect of SFAF, SFAF may pay reasonable expenses, to a maximum of \$5,000 in any single occurrence, to address such occurrence.

38. Allocation of Gross Revenues.

a. All Gross Revenues shall be disbursed and expended in accordance with Section 37, except as otherwise specified in this Section 38.

b. If Gross Revenues exceed the Budget Total, the amount that exceeds the Budget Total (the "Surplus Revenue") shall be allocated to fully fund the Repair and Maintenance Reserve and the Capital Improvement Reserve, such that those two reserve accounts each contain the amount of money they would have had if the entire budgeted amount had been deposited into them during all prior years.

c. If there is any Surplus Revenue remaining after the Repair and Maintenance Reserve and the Capital Improvement Reserve are fully funded pursuant to paragraph "b", the budget for subsequent years shall reflect:

- 1) no City Contribution, and
- 2) payment by SFAF of all City Costs, up to the amount of the available Surplus Revenues. For purposes of this Section, "City Costs" shall mean all costs incurred by City for landscape maintenance, capital improvements, repairs and maintenance of the multi-purpose room and classroom, and other obligations of City pursuant to this Agreement, including but not limited to costs incurred by City due to any Budget Shortfall.

d. Any Surplus Revenue remaining after the Repair and Maintenance Reserve and the Capital Improvement Reserve are fully funded pursuant to paragraph

“b”, and the adjustments to budget specified in paragraph “c”, shall be deposited into the Operating Reserve.

39. Budget Shortfall.

The Monitoring Committee established pursuant to Section 27 shall keep both City and SFAF informed of any anticipated Budget Shortfall (Gross Revenues are less than Budget Total) during the fiscal year. The Monitoring Committee shall also develop and present to the City Council for consideration recommendations of actions to take in response to any anticipated Budgetary Shortfall. Such recommendations shall be presented to the City Council as early as possible, once the Monitoring Committee determines that Gross Revenues for the fiscal year are unlikely to meet the Budget Total.

40. Annual Reports. On or before June 1 of each year, SFAF shall provide to City’s Director of Finance, in a form reasonably acceptable to City’s Director of Finance, an annual report that shall detail the following information for the preceding twelve months (May 1- April 30, or Commencement Date – April 30, in the case of the first annual report):

- a. compliance with the programming schedule established pursuant to this Agreement, recommendations for changes in the programming schedule, if any;
- b. all Gross Revenues collected;
- c. all expenditures, including a reference to the applicable line item in the approved budget;
- d. details of any Budget Shortfall as described in Section 39 of this Agreement, and recommendations for corrective action;
- e. compliance with any maintenance requirements for mechanical equipment as provided in paragraph “c” of Section 15 of this Agreement, as well as compliance with the procedures, standards, and schedule set out in the maintenance plan required by paragraph “e” of Section 15 of this Agreement;
- f. records of any accidents that may have occurred at the Facility, and any and all claims filed relating to any accident at the Facility; and
- g. such other information as may be reasonably requested by the Director of Finance.

INSURANCE AND INDEMNITY

41. Insurance. No services may be commenced or provided by SFAF until all required insurance has been obtained in accordance with this Agreement. Specifically, SFAF shall obtain and maintain, as specified in this Agreement, the

insurance required by Sections 42, 43 and 44. Failure to maintain the required insurance shall be treated as a material breach of this Agreement.

42. General Liability Insurance.

a. Requirement: SFAF shall procure and maintain in full force and effect during the term of this Agreement a policy of insurance that shall insure SFAF against any liability of whatever nature on account of bodily injury or damage arising out of or in connection with the use and operation of the Facility by SFAF.

b. Minimum Limit: SFAF shall procure and maintain in full force and effect during the term of this Agreement a policy of insurance in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and damage.

c. Additional Insureds: Each policy of insurance required by this Section shall name as additional insureds the City, its officers, officials, agents, employees and volunteers with respect to liability arising out of or related to use and operation of the Facility.

d. Acceptability of Insurance: The policy of insurance required by this Section shall be maintained from an insurance company with a current A.M. Best's rating of no less than "A:VII" and be admitted to conduct business in the State of California by the Department of Insurance.

e. Endorsement: The policy of insurance required by this Section shall contain an endorsement which waives all right of subrogation against all persons and entities, and provides that it shall not be canceled or altered without thirty (30) days' written notice thereof given to the City by registered mail, containing a clause substantially in the following words "It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by City of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

f. Primary Insurance: The policy of insurance required by this Section shall specify that it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be in excess of the required insurance and shall not contribute with it.

g. Proof of Insurance: Prior to the Commencement Date, SFAF shall present an endorsement showing the issuance of such insurance, the additional insureds and other requirements contained herein on a form approved by the City. Proof of the general liability insurance shall be submitted annually, prior to the start of the new fiscal year, and as requested by City.

h. Failure to Maintain Insurance: In the event SFAF fails to procure and maintain the insurance coverage required above, City should have the option, at City's sole discretion, to provide and/or purchase such insurance coverage as Facility owner, or to self-insure, at SFAF's expense.

i. City Activities at Facility: Whenever City sponsors a program and/or activity at the Facility during the term of this Agreement, City shall enter into an Agreement with SFAF to assume liability for such program and/or activities only and provide insurance (including self-insurance) for both City and SFAF. City agrees that SFAF may cause SFAF's insurer to exclude liability coverage for such City-sponsored programs and/or activities. The provisions of this paragraph "i" shall apply only if no SFAF employees or contractors, including but not limited to lifeguards, are involved in the program and/or activity.

43. Fidelity Bond/Crime Insurance.

a. Requirement: SFAF shall secure and maintain in full force and effect during the term of this Agreement a blanket fidelity bond or proof of a crime insurance policy for all officers and all personnel in its employment, and all subcontractors, if any. The bond or insurance shall protect City from any losses sustained through any fraudulent or dishonest act or acts committed by any officers or employees of SFAF, or subcontractors, if any.

b. Minimum Limits: The bond or policy shall be issued in the amount of at least \$1,000,000 per occurrence.

c. Acceptability of Insurers: The policy of insurance required by this Section shall be maintained by an insurance company with a current A.M. Best's rating of no less than "A:VII," and be admitted to conduct business in the State of California by the Department of Insurance.

d. Endorsement: The policy of insurance required by this Section shall contain an endorsement which waives all right of subrogation against all persons and entities, and provides that it shall not be canceled or altered without thirty (30) days' written notice thereof given to the City by registered mail containing a clause substantially in the following words "It is hereby understood and agreed that this policy may not be canceled not the amount of the coverage thereof reduced until thirty (30) days after receipt by City of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

e. Primary Insurance: The policy of insurance required by this Section shall specify that it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be in excess of the required insurance and shall not contribute with it.

f. Proof of Insurance: Prior to the Commencement Date, SFAF shall present an endorsement showing the issuance of such insurance, and the additional insureds and other requirements contained herein, upon approval by the City. Proof of the fidelity bond or crime insurance policy as required by this Section shall be submitted to the City annually, prior to the commencement of the new fiscal year, and as requested by City.

g. Failure to Maintain Insurance: In the event SFAF fails to procure and maintain the insurance coverage required above, City should have the option, at City's sole discretion, to provide and/or purchase such insurance coverage as Facility owner, or to self insure at SFAF's expense.

44. Workers Compensation Insurance.

a. Requirement: SFAF shall provide complete worker's compensation insurance or a certificate of consent to self-insurance by the Director of Industrial Relations, in accordance with the laws of the State of California, including Section 3700 of the California Labor Code. SFAF shall sign and file with the City a certification as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing performance under this Agreement."

b. Additional Insureds: Each policy of insurance required by this Section shall name as additional insureds the City, its officers, officials, agents, employees and volunteers with respect to liability arising out of or related to use and operation of the Facility.

c. Acceptability of Insurance: The insurance policy required by this Section shall be maintained by an insurance company with a current A.M. Best's rating of no less than "A:VII," and be admitted to conduct business in the State of California by the Department of Insurance.

d. Endorsement: The insurance policy required by this Section shall contain an endorsement which waives all right of subrogation against all persons and entities, and provides that it shall not be canceled or altered without thirty (30) days' written notice thereof given to the City by registered mail, in a clause substantially in the following words "It is hereby understood and agreed that this policy may not be canceled not the amount of the coverage thereof reduced until thirty (30) days after receipt by City of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

e. Primary Insurance: The insurance policy required by this Section shall specify that it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be in excess of the required insurance and shall not contribute with it.

f. Proof of Insurance: Prior to the Commencement Date, SFAF shall present an endorsement showing the issuance of such insurance, the additional insureds and other requirements contained herein, on a form approved by the City. Proof of the

worker's compensation insurance policy as required by this Section shall be submitted to the City annually, prior to the start of the new fiscal year, and as requested by City.

g. **Failure to Maintain Insurance:** In the event SFAF fails to procure and maintain the insurance coverage required above, City should have the option, at City's sole discretion, to provide and/or purchase such insurance coverage, as Facility owner, or to self insure, at SFAF's expense.

45. Indemnity (General).

a. To the fullest extent permitted by law, SFAF agrees to indemnify, defend with legal counsel of the City's selection and hold harmless the City, its officers, officials, agents, employees and volunteers, from any and all liability, damages (whether in contract or tort, including personal injury, death, or damage, breach of contract, trade libel, libel, invasion of privacy, trademark and copyright infringement, or other causes of action), costs, and financial loss, including all costs and expenses of litigation or arbitration, that result directly or indirectly from the wrongful or negligent acts or omissions of SFAF or its officers, employees, agents, employees, volunteers or contractors while they are performing under this Agreement, or from the use of the Facility by SFAF or its officers, employees, agents or subcontractors.

b. City does not, and shall not, waive any rights against Contractor which it may have by reason of the above indemnification provision, because of the acceptance by the City of any of the insurance policies or bonds specified in this Agreement.

c. If SFAF alters, improves or modifies the Facility, to the fullest extent permitted by law, SFAF agrees that SFAF will indemnify, defend with legal counsel of the City's selection and hold harmless City, its officers, officials, agents employees and volunteers against all claims for labor and materials, including any liability under mechanics lien laws, in connection with improvements, repairs, or alterations constructed by SFAF on the Facility, and including the costs of defending against such claims, including reasonable attorneys' fees.

SFAF

46. Representations by SFAF. SFAF represents and warrants to City that:

a. SFAF is a California nonprofit public benefit corporation duly formed, validly existing and in good standing under the laws of the State of California, and has the legal power and authority to conduct its business, and to execute and deliver, and to perform its obligations under, this Agreement.

b. The execution and delivery of this Agreement by SFAF and performance of its obligations under this Agreement do not violate any provisions of SFAF's Articles of Incorporation or the Bylaws of the corporation.

c. To the actual knowledge and belief of SFAF, no audit, investigation, proceeding or other inquiry is pending by the Internal Revenue Service, the Franchise Tax Board or the State Attorney General with respect to SFAF.

47. **Board of Trustees.** The SFAF Board of Trustees shall be comprised of seven (7) members, with at least two (2) members appointed by the City, one (1) of which shall be a member from City staff and one (1) member a City elected official.

GENERAL PROVISIONS

48. **Assignment; No Encumbrance.** SFAF agrees not to assign this Agreement, without the prior written consent of the City. SFAF shall not pledge, mortgage or otherwise encumber all or any portion of the Facility or Facility.

49. **Cooperation Between City and SFAF.** City recognizes and acknowledges that SFAF requires the assistance and cooperation of City in order to perform and fulfill SFAF's obligations properly under this Agreement. City agrees that SFAF shall have the cooperation and assistance of City in the performance of this Agreement.

50. **Compliance With Laws, Rules, and Regulations.** SFAF agrees to comply with all applicable federal, state and local laws, rules, and regulations in connection with the use, operation and maintenance of the Facility. SFAF further agrees to comply with all applicable requirements of the Public Financing Sources in connection with the use, operation and maintenance of the Facility. SFAF acknowledges that all construction related work, including but not limited to alternations, will require payment of prevailing wages pursuant to California Labor Code Section 1720 et seq.

51. **Destruction of Facility.** In the event of destruction of all or a major part of the Facility during the term of this Agreement, from fire or any other cause, either City or SFAF shall have the absolute right to terminate this Agreement, and neither SFAF nor City shall have any obligation to repair same. City shall not be obligated to SFAF for damage to contents or improvements placed on the Facility by SFAF and destroyed or damaged by fire or other cause.

52. **Surrender of Possession of Facility; Transition to New Operator.**

a. SFAF agrees to surrender possession of the Facility to City at the end of the term hereof or upon such earlier termination as may be provided in this Agreement. Upon surrender, SFAF shall leave the Facility in the condition established as "standard" in the maintenance plan described herein. If, upon inspection, the Facility is not in standard condition, City shall have the right to restore the Facility to the standards of the maintenance plan, at the expense of SFAF.

b. SFAF agrees to work cooperatively with City and any new operator of the Facility in the transfer of the operation and management of the Facility, at

the end of the term hereof or upon such earlier termination as may be provided in this Agreement.

53. SFAF Employees. SFAF agrees that SFAF's employees shall not be deemed to be employees of City for any purposes. SFAF agrees to provide sufficient personnel to perform its obligations and responsibilities under this Agreement.

54. Subcontractors. SFAF agrees that City shall not be responsible for the performance of any of SFAF's subcontractors. SFAF shall ensure that the work or services performed by its subcontractors shall satisfy City's requirements under this Agreement.

55. Fair Employment Practices. SFAF agrees to comply fully with state and federal equal employment statutes and regulations, as amended from time to time, and the rules and regulations promulgated there under, and to this end,

a. SFAF certifies and represents that during the term of this Agreement, SFAF and any Parties with whom it may subcontract shall adhere to equal employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex or age. SFAF further certifies that it will not maintain any segregated facilities.

b. SFAF agrees to state in all of its solicitations or advertisements for applicants for employment that SFAF is an "Equal Opportunity Employer" or that all qualified applicants shall receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, handicap, sex or age.

c. SFAF shall, if requested to do so by City, certify to City that SFAF has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class. SFAF shall provide City with access to and, upon request, provide copies to City of all of SFAF's records pertaining or relating to SFAF's employment practices to the extent such records are not confidential or privileged under state or federal law.

d. SFAF agrees to recruit San Fernando residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this Agreement and which are performed within the City.

e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act that is prohibited by law.

f. A finding by the State Fair Employment and Housing Commission that SFAF has engaged in any unlawful employment practice (as defined in California Government Code, Sections 12900 et seq.) during the term of this Agreement shall be deemed a breach of this Agreement, and SFAF shall pay to City, five hundred dollars (\$500) liquidated damages for each such breach committed under this Agreement.

g. SFAF shall forfeit as a penalty to City twenty-five (\$25) dollars for each laborer, workman, or mechanic employed in the implementation of this Agreement by SFAF, or any subcontractor under it, for each calendar day during which such laborer, worker, or mechanic is required or permitted to work at other than a rate of pay provided by law in violation of the provisions of Sections 1810-1815 of the California Labor Code.

56. Governing Law. City and SFAF agree that the construction and interpretation of this Agreement and the rights and duties of City and SFAF hereunder shall be governed by the laws of the State of California.

57. Access to Records. City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of SFAF's records to the extent City deems reasonably necessary to verify the amounts invoiced or for other purposes relating to SFAF's performance under this Agreement. SFAF shall maintain and preserve all such records for at least seven (7) years after the termination of the Agreement. If SFAF does not maintain such records in the City, SFAF shall promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than City, including but not limited to, expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead. SFAF shall also comply with all requirements of the Public Financing Sources regarding the preservation of records, if SFAF is notified of such requirements by City.

58. Licenses and Permits; Payment of Fees. SFAF agrees to obtain all necessary licenses, permits and reports, and to pay all fees, taxes and charges lawfully assessed against SFAF for any uses granted in this Agreement.

59. Default and Cure. If City determines, in its judgment, that SFAF has violated any term or condition of this Agreement, City shall notify SFAF, in writing, of the defect or deficiency and shall give SFAF not less than ten (10) days in which to cure the defect or deficiency. If SFAF fails to cure the defect or deficiency to City's satisfaction within ten (10) days thereafter, then City shall have the right to (a) cure the defect or deficiency and charge SFAF for the cost of such cure, plus an administrative overhead charge of 15% of such cost, or (b) terminate this Agreement by providing written notice to SFAF of City's decision.

60. Termination.

a. In addition to the rights set forth in Section 59, City shall have the right to terminate this Agreement, upon forty-five (45) days written notice to SFAF, in the event that any of the following occurs:

1) the Budget Total exceeds the Gross Revenues for two or more consecutive years; or

2) City finds it necessary to increase the amount of the City Contribution, and SFAF is unable to raise sufficient Third Party Revenue to prevent the increase in the City Contribution.

b. SFAF shall have the right to terminate this Agreement for any reason, upon 180 days written notice to City.

61. Force Majeure. SFAF and City agree that neither party shall be liable to the other party for any non-performance, in whole or in part, of its obligations under this Agreement caused by the occurrence of any contingencies beyond the control of the Parties, including but not limited to, declared or undeclared war, sabotage, insurrection, riot or other act of civil disobedience, acts of a public enemy, acts of governments or agencies affecting the terms of this Agreement, labor disputes, shortages of fuel, accidents, fires, explosions, floods, earthquakes or other acts of God. In the event that any such contingencies occur, the party whose performance is affected shall have a reasonable time in which to resume performance and such party's non-performance shall not constitute a material breach hereof unless the party fails to make a reasonable attempt to resume full performance.

62. Insolvency. This Agreement shall terminate at the option of City upon SFAF being adjudged as bankrupt or insolvent by any court or by SFAF making an assignment for the benefit of creditors.

63. Severability. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

64. Waiver. No waiver of a breach of any provision of this Agreement by either SFAF or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or SFAF to enforce at any time, or from time to time; any provision of this Agreement, shall not be construed as a waiver of such provision or breach. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

65. Notices.

a. Any notice or demand to be given by one party to the other shall be given in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows (notice simply to the City of San Fernando or any other City department is not adequate notice):

If to SFAF: [INSERT SFAF ADDRESS]

If to City: City of San Fernando
117 Macneil Street
San Fernando, CA 91340
ATTN: City Administrator

With a copy to: Michael Estrada, City Attorney
Richards, Watson & Gershon
355 S. Grand Ave., 40th Floor
Los Angeles, CA 90071

b. Any such notice or demand shall be deemed to have been given upon delivery, if personally delivered, or, if mailed, upon receipt or upon expiration of three (3) business days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party.

66. Captions and Paragraph Headings. Captions and paragraph headings used in this Agreement are for convenience of reference only and shall not be used in construing any part of this Agreement.

67. Expenses of Enforcement. SFAF and City agree to pay all reasonable costs, attorneys' fees and expenses, including investigation fees, and expert witness fees, to the prevailing party in any dispute involving the terms and conditions of this Agreement as determined by a court, hearing officer, or arbitrator.

68. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of City and SFAF.

69. No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

70. Entire Agreement. City and SFAF agree that this Agreement constitutes the entire Agreement of the Parties involving the operation of the Facility. City and SFAF agree that the terms and conditions of the Agreement may be reviewed or modified at anytime. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by both City and SFAF.

CITY OF SAN FERNANDO

By _____
Mayor Steven Veres

ATTEST:

Elena Chavez , City Clerk

APPROVED AS TO FORM:

Michael Estrada, City Attorney

SAN FERNANDO AQUATIC
FOUNDATION, a California non-
profit public benefit corporation

By: _____

Its: _____

EXHIBIT A
DEPICTION OF FACILITY
[to be added]

EXHIBIT B

CDC CONTRACT PROVISIONS

1. Program Income. Program Income for the purposes of the CDBG and Section 108 loan programs means gross income that is received by the Operating Agency and has been directly generated from the use of the Regional Swimming Pool facility. The Operating Agency may retain such program income received provided that the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds. The Operating Agency shall use the program income generated by the use of the Regional Swimming Pool facility to offset the operating and maintenance costs for the Regional Swimming Pool facility. The Operating Agency shall establish a separate cost center for Regional Swimming Pool facility expenditures and program income generated. Once a year and by July 31 of each year, the Operating Agency shall remit its General Ledger and Operating Statement of the Regional Swimming Pool facility to the CITY. Any program income exceeding the amount specified in the Operating Statement for the Regional Swimming Pool facility shall be remitted via a check or wire transfer to the CITY as part of this closeout process.

2. Retention of Financial Records. The Operating Agency shall maintain during the term of this Contract and for a period of five (5) years after the expiration of the contract complete and adequate financial records and accounts as considered necessary by the City and the Community Development Commission (CDC) to assure proper accounting for all program funds and to support all program expenditures. These records and accounts shall include, but not be limited to, the following: * A double-entry General Ledger that supports the costs charged to the City; * Records documenting procurement of goods and services; * Contracts for goods or services; * Lease or Rental Agreements; * Invoices; * Billing Statements; * Cancelled Checks; * Timecards signed by employees and supervisors; * Personnel Authorization Records; * Payroll Registers; * Payroll Tax Records; * Bank Statements; * Bank Reconciliations; and * Documentation to support the allocation of costs.

3. Accounting. The Operating Agency shall establish and maintain on a current basis an adequate accounting system in accordance with generally accepted accounting principles and standards, and the County of Los Angeles Auditor-Controller Contract Accounting and Administration Handbook.

4. Operations and Maintenance. Operating Agency hereby covenants on behalf of itself, that the Operating Agency shall use the Project, in accordance with and of the quality prescribed by this Agreement.

The Operating Agency covenants and agrees for itself, that the facility, nor any portion thereof, shall be improved, used or occupied in violation of any applicable Governmental Restrictions or the restrictions contained in this Agreement. Furthermore, the Operating Agency shall not maintain, commit, or permit the maintenance or commission on the facility, or any portion thereof, of any nuisance, public or private, as now or hereafter

defined by any statutory or decisional law applicable to the facility, or any portion thereof.

As used herein, "Governmental Restrictions" shall mean and include any and all laws, statutes, ordinances, codes, rules, regulations, directives, writs, injunctions, orders, decrees, rulings, conditions of approval, or authorizations, now in force or which may hereafter be in force, of any governmental entity, agency or political subdivision as they pertain to the performance of this Agreement or development or operation of the facility, including specifically but without limitation all code and other requirements of the jurisdiction in which the facility is located; the California Environmental Quality Act, the National Environmental Policy Act (NEPA); and applicable federal, state and local laws. The Operating Agency shall indemnify, defend and hold the County of Los Angeles ("County") harmless for any suit, cost, attorneys' fees, claim, administrative proceeding, damage, award, fine, penalty or liability arising out of or relating to this Agreement.

(A) Performance of Maintenance.

The Operating Agency shall, at its expense, (i) maintain all improvements and landscaping on facility in first-class order, condition, and repair (and, as to landscaping, in a healthy and thriving condition) in accordance with the plans for the facility approved by County and all Governmental Restrictions, and (ii) manage the facility and facility finances reasonably prudently and in compliance with applicable Governmental Restrictions so as to maintain a safe and attractive environment for users of the Swimming Pool Facility. Specifically:

(1) The Operating Agency shall maintain in accordance with County Standards, as hereinafter defined, the improvements and landscaping to the curblines on and abutting the facility. Said improvements shall include, but not be limited to, buildings, sidewalks and other paved areas, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the facility and any and all other improvements to the facility and in the public right-of-way to the nearest curblines abutting the existing Swimming Pool Facility.

(2) To accomplish the maintenance, the Operating Agency shall either staff or contract with and hire, or cause its tenants to contract with and hire, licensed (if required by applicable law) and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

(3) County Standards: The following minimum standards ("County Standards") shall be complied with by the Operating Agency and its maintenance staff, contractors or subcontractors:

(i) Ordinary Maintenance Standards - The Operating Agency shall maintain the facility in good repair, order and condition at all times in order to assure that the facility is kept in a decent, safe, and sanitary condition, and that the

buildings, grounds, and equipment are to be maintained in a manner that will preserve their condition.

(ii) Annual Inspection Standards - The Operating Agency shall annually inspect the facility for compliance with the maintenance standards specified in this Agreement. The completed annual inspection will be documented and reported to City on an annual basis, and at the end of each year the Operating Agency shall submit to City a declaration certifying that the annual inspection was performed at the facility. The Operating Agency shall retain records of the inspection and make them available for review by City at the request of City. The Operating Agency shall perform any preventative maintenance and extraordinary repairs or replacements necessary in order to maintain the facility, in the condition required by this Agreement including extraordinary replacement of equipment, betterment, and additions. Extraordinary repairs or replacement consists of major repairs and rehabilitation involving substantial expenditures which usually are needed only at relatively long intervals of time, or are caused by such occurrences as earthquake, fire, obsolescence and, in some instances, neglect. Such items as replacement of roofs, replacement of corroded gas and heating lines, and rehabilitation of landscaping (ground-cover) would be considered in this category.

(iii) County may enter and inspect the premises at any time during hours of operation, with or without prior notice.

(B) Failure to Maintain Improvements.

In the event the Operating Agency does not maintain the facility improvements to the curblin(e) in the manner set forth herein and in accordance with County Standards, City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after (i) written notice to the Operating Agency stating that the condition of said improvements does not meet with County Standards and specifying the deficiencies and the actions required to be taken by the Operating Agency to cure the deficiencies ("Deficiency Notice"); and (ii) the lapse of the applicable "Cure Period," as hereinafter defined. Upon receipt of the Deficiency Notice, the Operating Agency shall have thirty (30) days within which to correct, remedy or cure the deficiency, unless such deficiency is not capable of being cured within such 30 day period, then such amount of time as is needed, to cure such deficiency provided owner is diligently pursuing cure; provided however, if the Deficiency Notice states the problem is urgent relating to public health and safety, then the Operating Agency shall have forty-eight (48) hours to rectify the problem (collectively the "Cure Periods").

In the event the Operating Agency fails to correct, remedy, or cure such maintenance deficiency after the Deficiency Notice and after the applicable Cure Period has lapsed, then City shall have the right to maintain such improvements. The Operating Agency agrees to pay City such maintenance charges and costs. Until so paid, ***County shall have a lien on the facility and existing recreation center building for the amount of such maintenance charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Project and existing recreation center***

building. Upon recordation of a Notice of a Claim of Lien against the facility and existing recreation center building, such lien shall constitute a lien on the fee estate in and to the facility and existing recreation center building prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which by law would be superior thereto; (ii) the lien or charges of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority for any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien. The Operating Agency acknowledges and agrees City and County may also pursue any and all other remedies available in law or equity. The Operating Agency shall be liable for any and all reasonable attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.