



**SUBMITTAL TO THE BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

323



FROM: Regional Park & Open-Space District

SUBMITTAL DATE:
April 4, 2013

SUBJECT: Contract Services Agreement between the City of Perris and Riverside County Regional Park and Open Space District for the District to Operate the Perris Aquatic Program and Provide Services for the 2013 Summer Schedule – District 5/5

RECOMMENDED MOTION: That the Board of Directors approves and:

1. Authorizes the Chairman to execute four (4) copies of the attached Contract Services Agreement with the City of Perris for Riverside County Regional Park and Open-Space District to operate the Perris Aquatic Program at the Perris High School Pool and provide services for the Summer 2013 schedule; and
2. Authorizes the General Manager to sign agreements or similar documents for future programs which have a net fiscal impact of less than \$25,000 provided the amount is included in the District's budget and the agreement has been approved by County Counsel; and
3. Directs the Clerk of the Board to return all four (4) copies of the Contract Services Agreement to Riverside County Regional Park and Open-Space District for further execution and transmittal.

BACKGROUND:
(continued on page 2)

[Signature]

Brande Hune, Chief-Business Operations for
Scott Bangle, General Manager

2013-026D KB/NVW

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 40,240	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012-2013

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
 BY: *[Signature]*
 County Executive Office Signature Steven C. Horn, MPA

- Consent
- Policy
- Consent
- Policy

Dep't Recomm.:
Per Exec. Ofc.:

5013 Y68 50 6W15: 58
OFFICE OF THE COUNTY CLERK
RECEIVED BY TELEPHONE

FORM APPROVED COUNTY COUNSEL
BY: *[Signature]* DATE: 4/11/13
NEAL R. KIPNIS Departmental Concurrence

SUBJECT: Contract Services Agreement between the City of Perris and Riverside County Regional Park and Open Space District for the District to Operate the Perris Aquatic Program and Provide Services for the 2013 Summer Schedule – District 5/5

BACKGROUND:

The City of Perris (City) is seeking assistance from the Regional Park and Open-Space District (District) to operate the Perris Aquatic Program at Perris High School and provide services for the Summer 2013 Schedule.

Those services including hiring, training, and managing all personnel working with the public and development of all programming, which includes swim lesson group classes, semi-private classes, private classes; aquatic aerobic classes (as public interest permits); and recreation swim. Pool operation will be May 30, 2013 through August 2, 2013, with days and times as outlined in Exhibit D. Financial obligations by the City and District are also outlined in Exhibit B.

The Office of County Counsel has reviewed and approved the Contract as to legal form.

CITY OF PERRIS

CONTRACT SERVICES AGREEMENT FOR

Summer 2013 Aquatic Program Operations at Perris High School

This Contract Services Agreement ("Agreement") is made and entered into this _____ day of _____, 2013, by and between the City of Perris, a municipal corporation ("City"), and Riverside County Parks & Open-Space District, a semi-independent Special District within the Riverside County government system ("Consultant"). The term Consultant includes professionals performing in a consulting capacity. The parties hereto agree as follows:

1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide the work and services specified in the "Scope of Services" attached hereto as *Exhibit "A"* and incorporated herein by this reference. Consultant warrants that all work or services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

1.2 Consultant's Proposal. The Scope of Services shall include the Consultant's proposal or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, taxes, including applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement; and shall indemnify, defend and hold harmless City against any claim for such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work. By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the work and services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement.

1.6 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as *Exhibit "B"* and incorporated herein by this reference. In the event of a conflict between the provisions of *Exhibit "B"* and any other provisions of this Agreement, the provisions of *Exhibit "B"* shall govern.

1.7 Environmental Laws. Consultant shall comply with all applicable environmental laws, ordinances, codes and regulations of Federal, State, and local governments. Consultant shall also comply with all applicable mandatory standards and policies relating to energy efficiency.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as *Exhibit "C"* and incorporated herein by this reference., The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures approved by the Contract Officer in advance if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City.

Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

2.2 Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Consultant wishes to receive payment, no later than the first (1st) working day of such month, Consultant shall submit to the City, in a form approved by the City's Director of Finance, an invoice for services rendered prior to the date of the invoice. Except as provided in Section 7.3, City shall pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement generally within thirty (30) days, and no later than forty-five (45) days, from the submission of an invoice in an approved form.

2.3 Availability of Funds. It is mutually understood between the parties that this Agreement is valid and enforceable only if sufficient funds are made available by the City Council of the City for the purposes of this Agreement. The availability of funding is affected by matters outside the City's control, including other governmental entities. Accordingly, the City has the option to void the whole Agreement or to amend the Agreement to reflect unanticipated reduction in funding for any reason.

3.0 PERFORMANCE SCHEDULE

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

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

the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding seven (7) days cumulatively.

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

3.4 Term. Unless earlier terminated in accordance with Section 7.3 below, this Agreement shall continue in full force and effect until completion of the services no later than August 2, 2013.

4.0 COORDINATION OF WORK

4.1 Representative of Consultant. The Park's District General Manager is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work or services specified herein and to make all decisions in connection therewith.

It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may his responsibilities be substantially reduced by Consultant without the express written approval of City.

4.2 Contract Officer. The City's City Manager is hereby designated as the representative of the City authorized to act in its behalf with respect to the work and services and to make all decisions in connection therewith ("Contract Officer"). It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. The City may designate another Contract Officer by providing written notice to Consultant.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred or assigned without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant taking all

transfers into account on a cumulative basis. A prohibited transfer or assignment shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

5.0 INSURANCE AND INDEMNIFICATION

5.1 Insurance. Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000.00 per occurrence for all covered losses and no less than \$2,000,000.00 general aggregate.

(b) Workers' Compensation Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000.00 per accident for all covered losses.

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than \$1,000,000.00 per accident, combined single limit. Said policy shall include coverage for owned, non-owned, leased and hired cars.

In the event that the Consultant is authorized to subcontract any portion of the work or services provided pursuant to this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to this Section 4.1.

The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance.

5.2 Indemnification.

(a) Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and the City's Parties from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees of subcontractors (or any entity or individual for which Consultant shall bear legal liability) in the performance of professional services under this Agreement.

(b) Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City and City's Parties from and against any liability (including liability for claims, suits, actions, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, defense costs and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

6.0 **RECORDS AND REPORTS**

6.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

6.2 Records. Consultant shall keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

7.0 **ENFORCEMENT OF AGREEMENT**

7.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.3 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon fifteen (15) days' written notice to the other party. Upon receipt of any notice of termination, Consultant shall immediately cease all work or services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for the reasonable value of the work product actually produced prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

7.4 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment, and to all other reasonable costs for investigating such action, taking depositions and discovery, including all other necessary costs the court allows which are incurred in such litigation.

8.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest; City. No officer or employee of the City shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is interested, in violation of any State statute or regulation.

8.3 Conflict of Interest; Consultant. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. Consultant shall comply with all conflict of interest laws and regulations including, without limitation, City's Conflict of Interest Code which is on file in the City Clerk's office. Accordingly, should the City Manager determine that Consultant will be performing a specialized or general service for the City and there is substantial likelihood that the Consultant's work product will be presented, either written or orally, for the purpose of influencing a governmental decision, the Consultant and its officers, agents or employees, as applicable, shall be subject to the City's Conflict of Interest Code.

8.4 Covenant Against Discrimination. Consultant covenants that, by and for itself, its executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice or other communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, City of Perris, 101 North "D" Street, Perris, CA 92570, and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by an instrument in writing signed by both parties.

9.4 Severability. Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

"CITY"
CITY OF PERRIS

By: _____
Judy L. Haughney, City Clerk

By: _____
Daryl R. Busch, Mayor

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Eric L. Dunn, City Attorney

"CONSULTANT"
Riverside County Parks & Open-Space
District, a semi-independent Special District
within the Riverside County government
system

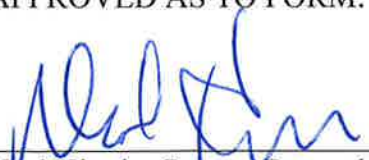
By: _____
Kevin Jeffries
Chairman Board of Directors

ATTEST:

By: _____
Kecia Harper-Ihem
Clerk of the Board

By: _____
Scott Bangle
General Manager

APPROVED AS TO FORM:



Neal Kipnis, County Counsel

EXHIBIT "A"

SCOPE OF SERVICES

The Consultant shall operate the Perris Aquatic Program located at Perris High School, 175 East Nuevo Road, Perris, CA 92570, and provide services for the Summer 2013 schedule.

Operations include the hiring, training and management of all personnel working with the public at the Perris High School Pool (Pool) and development and promotions of all programming. Consultant is not required to provide maintenance of the Pool.

1. Programming for the public will include:

- a. Swim lessons
 - Group classes
 - Semi-Private classes
 - Private classes
- b. Aqua Aerobic classes (as public interest permits)
- c. Recreation Swim

EXHIBIT "B"

SPECIAL REQUIREMENTS

1. Financial

The Consultant will be responsible for the financial management of the operation, to include:

- a. Payment of operation costs EXCEPT for maintenance, chemicals, and equipment and/or capital replacement.
- b. Operation costs to be paid by Consultant include:
 1. Staff – lifeguards, supervisors, instructors
 2. Marketing of programs and services
- c. Collection and ownership of all revenues collected. The City of Perris has no rights to revenue collected during the term of this contract.
- d. The City will assume all financial obligations as required by the Perris Unified High School District (PUHSD) only for usage of the Perris High School pool during the days and times listed in Exhibit D. The Consultant will not be responsible for any compensation payments to PUHSD for facility use or maintenance of the Pool.
- e. The District will partner with the City to implement scholarships for programming participation, but will not be responsible to bear the cost of such scholarships.
- f. Consultant will be responsible for meeting the liability requirements of the PUHSD and for completing all of their facility usage applications prior to the start of the season.

2. Scholarships

The City wishes to provide its' citizens discounted fee access to the pool during the season. The City will be responsible for determining eligibility for discounted fee pricing.

The City understands the revenue not collected by the Consultant as a result of the service offered through the scholarship program will be subsidized by the City to fully compensate the Consultant for services rendered.

The City will be responsible for providing the Consultant with verification, in a mutually agreed upon manner, prior to the first registration event date, for each family eligible to receive discounted fees.

As a family provides the Consultant with verification of eligibility for the discount, the Consultant will charge the eligible family the discounted fee.

The City agrees to reimburse the Consultant for providing discounted fees for swim lessons and recreational swim to residents of the City of Perris who meet scholarship requirements.

EXHIBIT "C"

SCHEDULE OF COMPENSATION

The Consultant will submit an invoice for reimbursement of all scholarships honored/discounted services rendered to the City twice during the term of the contract: at four (4) weeks into the season and at the end of the season.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

Pool operations will be conducted during the following dates, days, and time:

Dates:

Season begins: June 10, 2013
Season ends: August 2, 2013

Days and Times:

Recreational Swim (Public Access) Schedule:

Monday through Thursday 1:15 to 3:15 p.m.
Friday 1:00 to 4:00 p.m.

Consultant staff access hours are as follows:

Consultant staff access to the Pool is needed both prior to, and after, public use to conduct site operations.

Monday through Thursday 9:15 a.m. to 5:30 p.m.
Friday 12:45 through 4:15 p.m.

The Pool will be closed Saturday, Sunday and Holidays.

Changes to this schedule will be made on an as needed basis upon mutual agreement of the City and Consultant.