



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 6/12/2012

Report Type: Consent

Title: Agreement: Southside Park Pool Operations

Report ID: 2012-00546

Location: 2115 6th Street, District 4

Recommendation: Pass a Resolution 1) authorizing the City Manager or City Manager's designee to enter into a License Agreement with the YMCA of Superior California (YMCA) for the operation, use and maintenance of the pool at Southside Park for the summer 2012 season; and (2) authorizing up to \$30,000 from the Council District 4 Operations to support the YMCA's operational costs.

Contact: Sylvia Fort, Recreation Services Manager, (916) 808-8381; Dave Mitchell, Operations Manager, (916) 808-6076, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Aquatics

Dept ID: 19001521

Attachments:

- 1-Description/Analysis
- 2-Location Map
- 3-Resolution
- 4-Exhibit A (License Agreement)

City Attorney Review

Approved as to Form
Sheryl Patterson
6/7/2012 8:20:26 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
6/4/2012 12:45:45 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 6/5/2012 5:46:39 PM



Description/Analysis

Issue: A recent community-wide fundraising campaign sponsored by Save Mart Supermarkets raised enough funds to keep six swimming pools and five wading pools open for the 2012 summer pool season, however, the Department of Parks and Recreation still faces a severe budget deficit that leaves six swimming pools closed this summer, including the pool at Southside Park. The Southside Park pool has been closed since 2010 although it had the 4th highest pool usage.

Rather than have their pool closed for a second summer pool season, Southside Park neighbors and Councilmember Fong approached the YMCA of Superior California (YMCA) with a partnership proposal. As a result, Southside Park neighbors, the City of Sacramento, and the YMCA have successfully united to keep Southside Park pool open this summer. The Southside Park community has organized to launch a fundraising campaign, the YMCA has agreed to operate and maintain the pool for the 2012 summer season, and the City of Sacramento has agreed to minimal operational support. The YMCA has been providing programs and services to people of all ages throughout the region for the past 145 years and has been teaching people to swim for more than a century. YMCA staff are fully trained and experienced in the operation of pools open to the public and are knowledgeable on state and national laws and safety standards and providing the required number of certified lifeguards for surveillance and to administer first aid and an aquatic facility site supervisor.

The YMCA will open the Southside Park pool up to seven days a week, June 15 – September 3, 2012, for swim lessons, lap swim, water exercise, and recreational swim. The pool will also be available for private rentals Friday and Saturday evenings. The recreational swim fees may be higher than the City usually charges at other pools and are proposed as follows: Adults/\$4, Children & Teens/\$2, YMCA Adult Members/\$2 and YMCA Child Members/\$1. Recreational Swim Family passes will also be available. For more information on hours of operations, programs and fees, visit the YMCA website at: www.ymcasuperiorcal.org.

In consideration of YMCA's commitment to maintain and operate the Southside Park pool this summer and to provide for public use during recreational swim periods, the City will fund the cost for water as well as fund the current amount of pool chemicals to keep the closed pool in a "clean and blue" condition and provide a subsidy payment from Council District 4 operations to the YMCA in an amount up to \$30,000 to help support operational costs.

Staff is recommending that City Council authorize the City Manager or City Manager's designee to enter into a License Agreement with the YMCA of Superior California to assume operations of the Southside Park pool for the summer 2012 season so the pool

can be open for public recreational use and for YMCA swim programs that will benefit the community.

Policy Considerations: Seeking partnerships, sponsorships, and donations to extend recreation operations for public enjoyment, health and wellness is consistent with the *City of Sacramento's 2030 General Plan* and the *2005-2010 Parks and Recreation Master Plan*.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities that will not have a significant effect on the environment, and does not constitute a "project" as defined by Sections 15061(b)(3) and 15378(b)(2) of the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.).

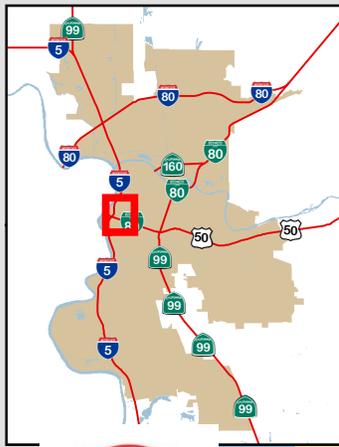
Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Significant budget reductions have kept the Southside Park pool closed since 2010. The pool at Southside Park was scheduled to remain closed for the summer 2012 pool season due to continuing budget deficits. The Southside Park community has launched a fundraising campaign to raise donations to keep Southside Park pool open and the YMCA has agreed to assume operations of the pool for the summer 2012 season so that it can be open for public recreational use and for YMCA swim programs that will benefit the community. YMCA staff are fully trained and experienced in the operation of pools open to the public and are knowledgeable on state and national laws and safety standards and providing the required number of certified lifeguards for surveillance and to administer first aid and an aquatic facility site supervisor. To help support this effort, the City of Sacramento will provide a nominal operation subsidy in order for the Southside Park pool to remain open this summer.

Financial Considerations: In consideration of YMCA's commitment to maintain and operate the Southside Park pool for the summer 2012 season and to provide for public use during recreational swim periods and to limit the user fees, the City will fund the cost for water, the current amount of pool chemicals the City supplies to keep the closed pool in a "clean and blue" condition, and the City will provide an operation subsidy payment to the YMCA in an amount of up to \$30,000 for operational support from the Council District 4 operations.

Emerging Small Business Development (ESBD): Not applicable.

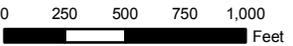


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Southside Park

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City of Sacramento
Department of Parks and Recreation
Southside Park



RESOLUTION NO. 2012-

Adopted by the Sacramento City Council

APPROVING THE LICENSE AGREEMENT WITH YMCA OF SUPERIOR CALIFORNIA TO OPERATE SOUTHSIDE PARK POOL FOR SUMMER 2012

BACKGROUND

- A. The pool at Southside Park has been closed since summer 2010. Due to continuing budget deficits, the pool at Southside Park was scheduled to remain closed this summer.
- B. The Southside Park neighbors and Councilmember Fong have organized to launch a fundraising campaign and have asked the YMCA of Superior California to partner with the community and City to operate the pool at Southside Park.
- C. The YMCA of Superior California has agreed to assume operations of the pool for the summer 2012 season so that it can be open for public recreational use and for YMCA swim programs that will benefit the community.
- D. YMCA staff are fully trained and experienced in the operation of pools open to the public and are knowledgeable with regard to the applicable state laws and regulations, national and state safety standards and codes, and county environmental health inspection requirements pertaining to maintenance of pool facilities, handling hazardous pool chemicals, and providing the required number of certified lifeguards for surveillance and to administer first aid and an aquatic facility site supervisor.
- F. In order for YMCA to fund its costs to maintain and operate the Southside Park pool, the fees for swim programs and recreation use are expected to be higher than what the City charges for the same types of programs and recreation use at its other pools.
- E. In consideration of YMCA's commitment to maintain and operate the Southside Park pools for the summer 2012 season, and to provide for public use during recreation swim periods and to limit the amount of user fees the City will fund the cost for water, the current amount of pool chemicals the City supplies to keep the closed pool in a "clean and blue" condition and provide an operation subsidy payment from Council District 4 operations to the YMCA in an amount of up to \$30,000.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The City Manager or City Manager's designee is authorized to enter into a License Agreement with the YMCA of Superior California for the operation of Southside Park Pool for summer 2012, attached as Exhibit A, and part of this resolution.
- Section 2. That payment to the YMCA of Superior California in an amount up to \$30,000 from Council District 4 Operations for operational support is approved.

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Exhibit A – License Agreement with YMCA of Superior California for Southside Pool Operations for Summer 2012



LICENSE AGREEMENT FOR SOUTHSIDE POOL FOR SUMMER 2012

THIS LICENSE AGREEMENT ("Agreement") is made an entered into on this ___ day of _____, 2012, by and between the CITY OF SACRAMENTO, a municipal corporation, ("CITY") and THE YMCA OF SUPERIOR CALIFORNIA, a California non-profit corporation, ("YMCA").

RECITALS

- A. The YMCA currently operates an indoor pool facility at 2021 W Street in downtown Sacramento and offers lifeguard certification courses, swim lessons, lap swim, water exercise, and recreation swim programs open to the public and individuals who become members of the YMCA and pay user fees.
- B. The CITY owns the pool at Southside Park located at 6th and U Streets in downtown Sacramento, which offers a swimming and a wading pool (collectively "pool") and attached building with restrooms, dressing rooms and an office area. This pool was constructed in 1952 and due to its age, this pool is more costly to operate and maintain.
- C. Due to budget deficits, the last year that the pool in Southside Park was open to the public was during the summer of 2009, and this pool is not scheduled to be open during the upcoming summer season. The CITY continues to maintain the pool in a "clean and blue" condition, by applying chemicals and maintaining the water levels.
- D. YMCA staff are fully trained and experienced in the operation of pools open to the public and are knowledgeable with regard to the applicable state laws and regulations, national and state safety standards and codes, and county environmental health inspection requirements pertaining to maintenance of pool facilities, handling hazardous pool chemicals, and providing the required number of certified lifeguards for surveillance and to administer first aid and an aquatic facility site supervisor.
- E. YMCA is willing to assume operations of the Southside Park pool for the summer 2012 season at a minimal cost to the CITY so that it can be open for public recreation use and for YMCA swim programs that will benefit the community.
- F. In order for YMCA to fund its costs to maintain and operate the Southside Park pool, the fees for swim programs and recreation use is expected to be higher than what CITY charges for the same types of programs and recreation use at its other pools.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual commitments as hereinafter set forth, the Parties enter into this License Agreement for

the purpose of establishing each Party's rights and obligations with regard to the use and maintenance of the pool at Southside Park Pool for the summer 2012 season as follows:

AGREEMENT

1. TERM

This Agreement shall be effective on June 1, 2012 ("Effective Date") and shall expire on September 30, 2012 (the "Term"), unless terminated sooner by either Party, with or without cause and in their sole discretion, by providing at least 10 days advance written notice to the other Party in the manner specified in paragraph 10 and specifying the date of termination.

2. POOL OPERATION SCHEDULE

YMCA intends to operate the Southside Park Pool for swim programs and recreational swimming open to the public from June 15, 2012 through August 30, 2012, although YMCA may extend operations into September to continue swim programs and possibly recreational swimming. YMCA must operate the Southside Park Pool so that it is open to the public for recreational swimming at least two hours per day and at least five days per week between June 15, 2012, through August 30, 2012, subject to the termination rights of the Parties in paragraph 1.

3. USER FEES

Persons using the Southside Park Pool under this Agreement may be required to pay to YMCA a user fee, but shall not be required to become a member of the YMCA. The daily user fee for recreational swimming shall not exceed \$2.00 for children under age 18 and \$4.00 for adults. YMCA may set fees for all other swim programs at the Southside Park Pool which do not exceed the rates charged for the same programs at its pool at 2021 W Street.

4. CONSIDERATION

In consideration of YMCA's commitment to maintain and operate the Southside Park Pool for the summer 2012 season, and to provide for public use during recreation swim periods and to limit the amount of the user fees as set forth in Sections 2 and 3, above; CITY will fund the cost for water, the current amount of pool chemicals CITY supplies to keep the closed pool in a "clean and blue" condition, and CITY will provide payment to YMCA in the amount of up to \$30,000 (the "Operation Subsidy").

The Operation Subsidy amount is based on YMCA's Budget, attached as Exhibit A and incorporated herein by this reference. Within 10 days from the end of each month (June, July, August, September) of this agreement the YMCA will submit to CITY an invoice with documentation to verify the actual costs incurred by YMCA and the total revenues actually received. CITY shall pay YMCA the amount of the deficit, but not to

exceed the foregoing Operating Subsidy amount. Payment shall be made within 30 days from receipt of the invoice with the required documentation.

5. POOL CONDITION

CITY hereby leases the Southside Park Pool to YMCA in its "as is" current condition, and makes no warranty that the condition of the pool complies with the Sacramento County Department of Health requirements or the State Health and Safety Code. Prior to opening the pool to the public or YMCA members, YMCA and the CITY shall jointly conduct an inspection of the pool and the related equipment and facilities and shall obtain an operational permit from the County to verify that the pool facility is safe for public and YMCA member use.

6. POOL OPERATIONS

CITY hereby grants to YMCA the exclusive right to occupy, use, and manage the Southside Park Pool during the Term set forth above at no rental cost, as long as YMCA complies with its obligations as set out herein and as follows:

- A. Notification – YMCA shall post notices of the days and hours when the Southside Park Pool is open to the public for recreation swim and the swim programs and pool rentals that are also available to the public. If YMCA changes its planned pool schedule, YMCA shall notify CITY's Contract Manager specified in subsection K below, so that the public is kept informed as to the days and hours when the pool is open to the public.
- B. Operations and Supervision – YMCA shall manage the Southside Park Pool operations in compliance with all applicable state laws and regulations, national and state safety standards and codes, and in accordance with the following obligations:
 1. Surveillance: All lifeguards must possess a YMCA or Red Cross lifeguarding certificate, lifeguards must be present during all hours of operation, the minimum number of lifeguards per pool users must meet applicable standards and be adequate to maintain continuous surveillance of all areas of the facility, and the lifeguards shall have no other duties to perform than lifeguarding while on duty. Prior to taking possession of the Southside Park Pool under this Agreement, YMCA shall submit to CITY a copy of its pool operating plan with regard to the number of lifeguards and other staffing ratios required based on the number and type of pool users (i.e., recreation swim, adult and child swim programs, and pool rentals).
 2. Training: All lifeguards must be certified in cardiopulmonary resuscitation (CPR) and first aid at the professional rescuer level, and all lifeguard certificates must be current and in compliance with all national and state safety standards and codes.

3. Facility Supervisor: A qualified and experienced aquatic facility supervisor must be in charge and present during all hours of operation to ensure that the facility is and remains in compliance with all applicable state Health and Safety Codes and regulations and county environmental health inspection requirements.
 4. Facility Maintenance: The aquatic facility supervisor shall be responsible for regularly inspecting the pool facilities to insure that all equipment is in good operating condition, the pool water is clear and the main drain can be clearly seen, chlorine levels are maintained at the required parts per million and pH levels so that the pool is continuously disinfected and the bacteria levels do not exceed applicable public health standards, which are the same as for drinking water. The pool and its related facilities shall be maintained by YMCA in a safe and sanitary condition for public use.
 5. Facility Inspection: The pool facilities shall be inspected daily before the facility is opened to the public to identify any health or safety hazards, and any such conditions shall be reported to the CITY immediately to determine the proper course of action to remedy the problem and to protect the public.
 6. Facility Use: The pool building shall be used solely in conjunction with the YMCA's aquatic activities and not in any other manner for any other purposes. Any concessions shall be limited to serving those inside the pool facility and YMCA shall be solely responsible for complying with the rules or laws regarding sales tax.
 7. Rules and Regulations/Signage: YMCA shall operate the Southside Park Pool in accordance with CITY's aquatic rules and regulations which apply to public use of CITY pools, which CITY has provided to YMCA. All existing signage which sets forth the CITY pool rules and regulations shall remain in place at the pool facility. YMCA shall not place any signage on the pool building or facilities without CITY's prior consent.
 8. Emergency Plans: Prior to taking possession of the Southside Park Pool under this Agreement, YMCA shall provide to CITY for its approval a copy of YMCA's Emergency Response Plan, Emergency Action Plan and similar documents setting forth the protocols and procedures YMCA staff are required to follow in the event of any type of emergency, including any incidents or injuries.
- C. Supplies and Equipment – YMCA shall be responsible for furnishing all chemicals required for pool maintenance above the current levels furnished by CITY, which the parties agree is not sufficient to allow use of the pool by the public. The parties acknowledge that the cost for pool chemicals is a major operating expenditure after labor costs in YMCA's Budget.

- D. Rentals – Subject to paragraph 2, YMCA may rent the Southside Park Pool for private use at fee to be set by YMCA, as long as the YMCA complies with the pool operation obligations set forth in paragraph 6, subsections B and C, above, and YMCA insurance as required in paragraph 13 extends to such pool rentals.
- E. Nondiscrimination - YMCA shall not discriminate against any member of the public or community group on the ground of race, color, religion, sex, ancestry, national origin, age, disability, medical condition, marital status, or sexual orientation with regard to YMCA's occupancy, use and management of the Southside Park Pool including, without limitation, any person who desires to use the pool for recreation swimming or who may wish to participate in the programs and events sponsored by YMCA at the pool facility. YMCA is also prohibited from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees of YMCA.
- F. Unlawful Activity - YMCA shall not use or allow any use of the Southside Park Pool that would constitute a nuisance by permitting or creating offensive odors, loud sounds, a dangerous or noxious trade or business, or an unlawful use. YMCA shall to take all reasonable and appropriate actions to prevent any groups or members of the public from loitering or engaging in any nuisance or unlawful conduct in or about the pool. In no event shall YMCA or any of its permittees be allowed to sell or consume alcoholic beverages in the pool facility at any time, nor shall YMCA permit any members of the public under the influence of alcohol or drugs to gain entry into the pool facility.
- G. Compliance with Laws – In its occupancy and use of the Southside Park Pool as provided under this Agreement, YMCA shall comply with all applicable federal, state and local laws, regulations and ordinances. If any failure by the YMCA to comply with such laws, regulations and ordinances results in any fine, penalty, cost, or charge being assessed against CITY, YMCA shall reimburse and indemnify CITY for such cost.
- H. Background Checks – With regard to any volunteers and employees of YMCA who are to perform services at the Southside Park Pool in a position having supervisory or disciplinary authority over any minor, YMCA shall first obtain a Department of Justice (DOJ) clearance for all such employees and volunteers. YMCA must submit fingerprints of such persons in a manner authorized by the DOJ and that proof of such DOJ clearance must be provided to the CITY Contract Manager specified in subsection K below, prior to any volunteers or employees working with minors at the pool facility. YMCA shall also provide to CITY a list of the names of its volunteers and employees who work at the pool facility and certify that those volunteers and employees have received a DOJ clearance. Any person who has been convicted of an offense listed in Public Resources Code Section 5164 shall be prohibited from working or performing services at the pool facility.

- I. CITY Access – YMCA shall permit CITY and its employees and authorized agents to enter the Southside Park Pool at all reasonable times during pool hours of operation or upon twenty-four (24) hours advance notice for the purpose of inspecting the pool and its related equipment and facilities and determining compliance by YMCA with the requirements of this Agreement and all applicable laws, regulations and permits.
- J. Books and Records – All books, contracts, records, documents and other related papers including, without limitation, financial records (“Books and Records”) of the YMCA with respect to its occupancy, use and rental of the Southside Park Pool shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the CITY or its agents. The Books and Records of the operation of the Southside Park Pool by YMCA shall be kept in accordance with generally accepted accounting principles. YMCA shall provide CITY with access to its Books and Records during reasonable hours for the purpose of reviewing YMCA’s compliance with the terms of this Agreement.
- K. Reporting - YMCA shall provide the CITY Contract Manager specified below, with a list of the names of its volunteers and employees who work at the Southside Park Pool. YMCA shall also contact the CITY Contract Manager in the event of the discovery of any health or safety hazard, any incident of injury or illness, or any improper or illegal action of any person which occurs at the Southside Park Pool. Accident reports for any incidents that occur at the pool are to be submitted to the CITY Contract Manager within 24 hours of the incident. All notices and reports with CITY by YMCA as required under this Agreement shall be made or sent as follows:

CITY Contract Manager:
Greg Narramore, Recreational Superintendent
Phone: (916) 808-6095
e-mail: gnarramore@cityofsacramento.org

7. POOL UTILITIES, SERVICES AND MAINTENANCE

With the exception of structural or equipment defects and failures which render the Southside Park Pool inoperable or prevent its use as described herein, YMCA shall be solely responsible for the costs of utilities, services, maintenance, and janitorial services for the Pool and its related equipment and facilities during the Term. CITY may invoice YMCA for gas and electric usage if such costs cannot be billed to YCMA directly from the utility companies. The foregoing requirements include the repair and replacement of the pool equipment and facilities necessitated by normal use, but excluding damages caused by vandalism or removal of asbestos or lead paint. However, if the pool becomes inoperable due to structural or equipment defects and failures through no fault of YMCA, YMCA has the option to close the pool and terminate the Agreement as provided herein. CITY shall have no liability to YMCA with regard to the condition of the pool and the related equipment and facilities nor shall CITY be obligated to undertake any equipment or facility repairs or replacements. At the termination of this Agreement,

the pool and all of the related equipment, facilities, fixtures and supplies shall be returned to CITY in the same condition as of the Effective Date, subject to the foregoing provisions, and CITY may invoice YMCA for any damaged equipment, facilities or fixtures and replacement of supplies and payment shall be owed within 30 days from receipt of a properly documented invoice.

8. SUSPENSION OF USE

Whenever the condition of the Southside Park Pool and its related equipment and facilities could expose the public to safety or health hazards or could cause damage to their personal property, YMCA shall immediately discontinue use of the pool and shall prevent public entry until the defects can be remediated and the threat of injury or damage to the public and property no longer exists. If CITY discovers such safety or hazardous conditions at the pool facility, CITY shall have the right to order the pool facility immediately closed until such conditions are remedied or removed by YMCA and/or by CITY.

9. IMPROVEMENTS, LIENS AND TAXES

YMCA shall not undertake any alterations or improvements to the Southside Park Pool and its related equipment and facilities, install signage, or remove any furniture, fixtures or equipment from the facilities without CITY's prior written consent. If CITY permits YMCA to undertake alterations or improvements to the pool facilities, upon expiration or earlier termination of this Agreement, those alterations or improvements which are affixed to the building shall become the property of CITY without any obligation to reimburse YMCA for said costs. YMCA shall not create waste, destroy or modify any improvements or fixtures except as approved by CITY in advance in writing. YMCA shall be liable to CITY for any damages caused to the pool and its related equipment and facilities from any acts or omissions of YMCA and its employees, contractors, and agents, but excluding normal wear and tear and any acts of vandalism by the public.

YMCA shall pay in full all persons and entities who perform labor or provide materials for the work to be performed by YMCA at the Southside Park Pool and shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against CITY's property for such work or materials. YMCA shall indemnify and hold harmless CITY from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or arising from such work done, labor performed, or materials furnished.

YMCA shall be obligated to pay any possessory interest tax levied or assessed by the County Assessor on YMCA's possessory interest in the Southside Park Pool under this Agreement.

10. NOTICE

Any communication, other than notices and reports to CITY Contract Manager, as required during the term of this Agreement shall be deemed given when placed in the United States Mail, postage prepaid, and addressed as follows:

CITY: City of Sacramento
Parks and Recreation Department
Dave Mitchell, Operations Manager
915 I Street, 5th Floor
Sacramento, CA 95814
Phone: 916 - 808-6076

YMCA: YMCA of Superior California
Thomas Lowden, President & CEO
1926 V Street
Sacramento, CA 95818
jlowden@ymcasuperiorcal.org
916-452-9622 x 124

Any Party who desires to change its address for notice may do so by giving notice as described above.

11. NO JOINT VENTURE

It is understood and agreed that each Party is an independent government agency or corporation and that this Agreement shall not create a relationship between CITY and YMCA or its individual members of employer-employee, joint venture, partnership, or any other relationship of association. Except as expressly provided in this Agreement or as the Parties may specify in writing, neither Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent.

12. INDEPENDENT CONTRACTORS

Each Party may assign volunteers and employees or contract with third parties to perform services for the Southside Park Pool to meet their respective obligations under this Agreement at their exclusive discretion and the services of such assigned volunteers, employees and third parties shall be at the sole expense of that Party. The assigned personnel of each Party shall not be entitled to any benefits payable to employees of the other Party. This Agreement is for the sole benefit of the Parties hereto and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any term hereof.

13. INSURANCE

During the Term of this Agreement, YMCA shall, at its sole cost and expense, maintain in full force and effect to following insurance coverages. It is understood and agreed by YMCA that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by YMCA in connection with this Agreement.

- A. Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, and premises owned, leased or used by the ORGANIZATION with limits not less than two million dollars (\$2,000,000) per occurrence. The policy shall provide contractual liability, and products and completed operations coverage.
- B. Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the YMCA at the Southside Park Pool.
- C. Workers Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation in favor of the CITY.
- D. Additional Insured – The CITY, its officials, employees, volunteers and agents shall be covered by the policy terms or endorsement as additional insureds on the General Liability and Automobile Liability insurance policies, which policies shall be placed with an insurer with a Bests' rating of not less than A.V. CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers. The coverage shall state that YMCA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The YMCA's insurance coverage shall be primary insurance as respects the CITY and any insurance or self-insurance maintained by the CITY shall be in excess of the YMCA's insurance and shall not contribute with it.

14. INDEMNITY

YMCA, on its own behalf and behalf of each of its members agrees to fully indemnify, defend, and save harmless, CITY, its officers, employees and volunteers from and against all actions, damages, costs, liabilities, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the CITY's staff attorneys or outside attorneys and any

fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities arise out of or are in any way connected with YMCA's performance of its rights and obligations under this Agreement, whether or not such Liabilities are caused in part by CITY, its officers, employees and volunteers; provided that the foregoing indemnity does not apply to Liabilities arising from the sole negligence or willful misconduct of CITY, its officers, employees or volunteers. This indemnity provision shall survive the termination of this Agreement.

15. NON-WAIVER

Waiver of any breach of, or default under, this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

16. DISPUTES

The Parties shall attempt to resolve any disputes they may have in good faith, beginning with the representatives listed in Section 10. Should they be unable reach resolution, they shall refer the dispute to the chairs of their respective governing boards, which may appoint a designee, to meet in an attempt to resolve the dispute. Should they be unable to reach resolution, they shall refer the dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon the mediator, the Parties will request appointment of a mediator by the American Arbitration Association. Each Party shall pay its own costs and be responsible to pay one-half of the mediator's costs. If a Party is not satisfied with the result of the mediation process, it then may file suit in a court of competent jurisdiction in Sacramento County.

18. ASSIGNMENT PROHIBITED

YMCA may not assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation of YMCA with the intent of releasing YMCA from its obligations to CITY pursuant to this Agreement shall be void and of no effect.

19. ENTIRE AGREEMENT; MODIFICATION

The Parties have each carefully reviewed this Agreement and have agreed to each term herein. No ambiguity shall be presumed to be construed against either Party. This Agreement contains all of the terms and conditions as agreed upon by the Parties, and supersedes any and all oral or written communications by and between the Parties. No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by the Parties. In the event of a conflict between this Agreement and any other contract or understanding executed by the Parties subsequent to the commencement of this Agreement, the terms of this Agreement shall prevail and be controlling unless such other contract expressly provides to the contrary.

20. AUTHORITY

Each of the signatories to this Agreement represents that he/she is authorized to sign the Agreement on behalf of such Party and that all approvals, resolutions and consents which must be obtained to bind such Party have been obtained that no further approvals, acts or consents are required to bind such Party to this Agreement.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

CITY OF SACRAMENTO,
a municipal corporation

**THE YMCA OF SUPERIOR
CALIFORNIA,**
a California non-profit corporation

By: _____
James L. Combs
Director of Parks and Recreation
For: John F. Shirey, City Manager

By: Thomas Lowden
Thomas Lowden
President & CEO

By: Scott Hagel (y2)
Scott Hagel
Chair, Board of Directors

Attest:

By _____
City Clerk

Approved As To Form:

By _____
Senior Deputy City Attorney

EXHIBIT A
SOUTHSIDE PARK POOL
SUMMER 2012 YMCA OPERATING BUDGET

EXHIBIT A - Budget for Southside Park Pool - Summer 2012

Revenue

Lap Swimming	\$	4,425
Swim Lessons	\$	17,400
Water Excercise	\$	3,270
Open Swim	\$	19,000
Family Pass	\$	1,200
Rentals	\$	1,600
Other Revenue	\$	36,000

TOTAL REVENUE: \$ 82,895

Expense

Salaries	\$	42,161
Payroll Taxes	\$	3,731
Worker's Comp	\$	2,087
Staff Development	\$	1,259
Rental Expense	\$	800
Pool Chemicals	\$	18,000
First Aid	\$	2,150
Cleaning Supplies	\$	240
Locker Room Supplies	\$	594
Occupancy	\$	3,390
Liability Insurance	\$	1,000
Minor Repairs	\$	2,000
Legal	\$	1,000
Marketing	\$	1,500
Administration	\$	7,650

TOTAL EXPENSE: \$ 87,562

Pool Chemicals already budgeted by city) \$ (7,000)

Surplus / (deficit): \$ 2,333