

1 PERMIT FOR THE USE OF BELMONT PLAZA POOL

2 **31412**

3 THIS PERMIT is made and entered, in duplicate, as of October 7, 2009 for
4 reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach ("City"), at its October 6, 2009 meeting, granting permission to
6 McCORMICK DIVERS, ("Permittee") to use that portion of the indoor pool at the Belmont
7 Plaza Pool ("permit area") designated by the Manager of the City's Community
8 Recreation Services Bureau ("Manager"). The permit area shall be used and occupied
9 by Permittee subject to the following terms, conditions and limitations:

10 1. PERMITTED USE. Access to diving well and dry board training area
11 at Belmont Plaza Pool as designated on Exhibit "A" for the purpose of training divers for
12 national and international competitions, developing recreational diving, conducting diving
13 competitions, use of a 20x20 storage space and for no other purpose.

14 A. Scheduled Time of Use.

15 Permittee may use the permitted area as follows:

16 **1) September 1 through June 14**

17 (a) Use of the diving well at Belmont Plaza Pool
18 which includes: two (2) – one (1) meter boards, two (2) – three (3)
19 meter boards, one (1) – five (5) meter platform, one (1) – seven (7)
20 meter platform, and one (1) – ten (10) meter platform as illustrated
21 on Exhibit "A".

22 (b) Use of the dry board training area as illustrated
23 on Exhibit "A."

24 (c) Monday through Friday from 4:00 p.m. to 7:00
25 p.m.

26 (d) Practice Fee of ten dollars (\$10.00) per hour. In
27 the event that the term of this Permit is extended beyond the initial
28 term, this rate is subject to change.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(e) Practice is defined as single team workouts which are closed to the public.

2) June 15 through August 30

(a) Use of the diving well at Belmont Plaza Pool includes: two (2) – one (1) meter boards, two (2) – three (3) meter boards, one (1) – five (5) meter platform, one (1) – seven (7) meter platform, and one (1) – ten (10) meter platform as illustrated on Exhibit “A”.

(b) Use of the dry board training area of the Indoor Pool as indicated on Exhibit “A.”

(c) Monday through Friday from 3:30 p.m. to 6:30 p.m.

(d) Practice Fee of ten dollars (\$10.00) per hour. In the event that the term of this Permit is extended beyond the initial term, this rate is subject to change.

B. The Aquatics Supervisor may change the scheduled hours and days to accommodate special events or other pool activities. In making such changes, the Aquatics Supervisor will endeavor to provide a minimum of five (5) days notice. The Department of Parks, Recreation and Marine shall relocate the Permittee whenever possible. The Scheduled Time of Use and Use Fee provisions of this permit shall apply.

C. The scheduled time of use as listed in Section 1 A and the permitted area as illustrated on Exhibit “A” is only for the use of the Permittee. At no time is the Permittee allowed to subcontract or share the permitted area or time of use with another organization.

2. STORAGE SPACE. The Permittee shall be authorized to utilize the 20 x 20 storage container located at Belmont Plaza Pool Area for the storage of equipment and supplies. The monthly fee shall be one-hundred dollars (\$100.00). The

1 City shall not be held responsible for any property belonging to the Permittee. Permittee
2 shall be required to carry personal property insurance as designated by the City's Risk
3 Manager.

4 3. USE FEES. Permittee shall pay the City for the use of the permitted
5 area and shall pay in accordance with the Schedule of Fees and Charges adopted by the
6 City Council of the City of Long Beach for non-profit youth organizations unless otherwise
7 designated on this Permit.

8 A. Practice Fee – Permittee shall pay a practice fee of ten dollars
9 (\$10.00) per hour for the first (1st) permit year (“Permit Year - September 1 through
10 August 31”). This fee shall be adjusted to twelve dollars (\$12.00) per hour for the
11 second permit year and shall be adjusted to fifteen dollars (\$15.00) per hour for
12 the third (3rd) permit year. Upon execution of the first (1st) renewal option the
13 practice fee shall be twenty dollars (\$20.00) per hour.

14 B. Concession Fees – In consideration for the contributions the
15 Permittee makes to the City of Long Beach, the City shall waive the standard
16 concession fee of five percent (5%) of gross sales for all ticket sales, programs
17 and event t-shirts. The City shall also waive the fifteen percent (15%) of gross
18 sales receipts for all other concession items including food and/or beverage.

19 C. Special Event Fees – In consideration for the contributions the
20 Permittee makes to the City of Long Beach, the City shall waive the per hour
21 special event fee for no more than three (3) events per annum.

22 D. Reimbursement of Staff Costs for Special Events – Permittee
23 shall reimburse the City for all staff costs related to special events such as diving
24 meets, competitions or exhibitions.

25 4. TERM. One (1) three (3) year term commencing on September 1,
26 2009 through August 31, 2012, with one (1), two (2) year option for renewal, based on
27 mutual agreement in writing. Permittee must submit a letter of intent to renew within
28 ninety (90) days of the expiration of the initial term.

1 A. This Permit shall commence on the date of last execution and
2 remain in effect until terminated by thirty (30) days written notice by either party to
3 the other party.

4 B. Permittee shall not assign or otherwise transfer (voluntarily or
5 involuntarily) this Permit or any interest therein.

6 C. Permittee shall not make any alterations or improvements to
7 the permit area or the Belmont Plaza Pool, without obtaining the prior written
8 consent of the Manager.

9 5. INDEMNIFICATION.

10 A. General Indemnity. Permittee shall defend and indemnify the
11 City of Long Beach and its officers and employees while acting within the scope of
12 their duties from and against any and all actions, suits, proceedings, claims and
13 demands, costs (including attorneys' fees and court costs), expense and liability of
14 any kind or nature whatsoever ("claims") for injury to or death of persons or
15 damage to property (including property owned by or under the control of the City)
16 which may be brought, made, filed against, imposed upon or sustained by the City,
17 its officers or employees based upon or arising out of:

18 1) An act or omission of Permittee, its officers, agents,
19 employees, contractors, licensees or invitees or of any person entering
20 upon the Permit Area with the express or implied invitation of Permittee;

21 2) A violation by Permittee, its officers, agents,
22 employees, contractors, licensees or invitees or of any other person
23 entering upon the Permit Area with the express or implied invitation of
24 Permittee of any law, ordinance or governmental order of any kind;

25 3) The use or occupancy of the Permit Area by Permittee,
26 its officers, agents, employees, contractors, licensees or invitees or of any
27 other person entering upon the Permit Area with the express or implied
28 invitation of Permittee.

1 This indemnity shall not include claims based upon or arising out of the sole
2 negligence, gross negligence, or willful misconduct of the City, its officers and
3 employees. Further, this indemnity shall not require payment of a claim by the
4 City or its officers or employees as a condition precedent to the recovery under the
5 same. The indemnity obligation of Permittee under this paragraph shall survive
6 the expiration or termination, for any reason, of this Permit.

7 6. INSURANCE. Concurrent with the execution of this Permit and in
8 partial performance of Permittee's obligations hereunder, Permittee shall procure and
9 maintain at Permittee's expense for the duration of this Permit, including any extensions,
10 renewals, or holding over thereof, the following insurance coverages from insurance
11 companies that are admitted to write insurance in the State of California or from
12 authorized nonadmitted insurers that have ratings of or equivalent to an A:VIII by A.M.
13 Best and Company:

14 (a) Commercial General Liability insurance equivalent in
15 coverage scope to ISO form CG 00 01 11 85 or 10 93 in an amount not less than
16 One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars
17 (\$2,000,000.00) in aggregate covering the Permittee's operations under or in
18 connection with this Permit. Such insurance shall include, as may be applicable to
19 Permittee's operations under or in connection with this Permit, broad form
20 contractual liability, products and completed operations liability, and liquor liability.
21 The City of Long Beach, its officials, employees and agents shall be added as
22 additional insureds by endorsement equivalent in coverage scope to ISO form CG
23 20 26 11 85. This insurance shall contain no special limitations on the scope of
24 protection afforded to the City, its officials, employees and agents, and shall
25 provide cross-liability protection.

26 (b) Special perils property insurance in an amount to cover the
27 full replacement value of Permittee's personal property, improvements, and
28 equipment on the permit area.

1 Any self-insurance program or self-insured retention must be approved
2 separately in writing by City and shall protect the City of Long Beach, its officials,
3 employees, and agents in the same manner and to the same extent as they would have
4 been protected had the policy or policies not contained retention provisions.

5 Each insurance policy shall be endorsed to state that coverage shall not be
6 suspended, voided, materially changed, or canceled by either party except after thirty
7 (30) days prior written notice to City, and shall be primary to City. Any insurance or self-
8 insurance maintained by City shall be excess to and shall not contribute to insurance or
9 self-insurance maintained by Permittee.

10 Permittee shall deliver to City certificates of insurance and the required
11 endorsements for approval as to sufficiency and form prior to commencement of this
12 Permit. The certificates and endorsements for each insurance policy shall contain the
13 original signature of a person authorized by that insurer to bind coverage on its behalf.
14 Permittee shall, at least thirty (30) days prior to expiration of such policies, furnish City
15 with evidence of renewals. City reserves the right to require complete certified copies of
16 all said policies at any time.

17 Such insurance as required herein shall not be deemed to limit Permittee's
18 liability relating to performance under this Permit. The procuring of insurance shall not be
19 construed as a limitation on liability or as full performance of the indemnification and hold
20 harmless provisions of this Permit. Permittee understands and agrees that,
21 notwithstanding any insurance, Permittee's obligation to defend, indemnify, and hold City,
22 its officials, agents, and employees harmless hereunder is for the full and total amount of
23 any damage, injuries, loss, expense, costs, or liabilities caused by or in any manner
24 connected with the operations of Permittee.

25 Not more frequently than every three (3) years, if in the opinion of City the
26 amount of the foregoing insurance coverage is not adequate, Permittee shall amend the
27 insurance coverage as required by City's Risk Manager or designee.

28 Any modification or waiver of the insurance requirements herein shall be

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 made only with the written approval of the City's Risk Manager or designee.

2 Any notice, demand, requires, consent, or communication that either party
3 desires or is required to give to the other party or any other person shall be in writing and
4 either served personally or sent by prepaid, first-class mail addressed as follows:

5
6 To City: Department of Parks, Recreation and Marine
7 Attention: Contract Manager
8 2760 N. Studebaker Road
9 Long Beach, California 90815

10
11 To Permittee: McCormick Divers
12 16088 Fame Circle
13 Huntington Beach, California 92649
14

15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

ACCEPTED this 6 day of NOVEMBER, 2009.

McCORMICK DIVERS

Nov. 6, 2009

By [Signature]
President

Nov 6, 2009

By [Signature]
Secretary

"Permittee"

CITY OF LONG BEACH, a municipal corporation

11-25, 2009

By [Signature]
Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Permit is approved as to form on November 17, 2009.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

Exhibit A

