

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

1 SUMMER FOOD PROGRAM  
2 SPONSOR/SITE AGREEMENT

3 **32199**

4 THIS AGREEMENT is made and entered, in duplicate, as of June 23,  
5 2011 for reference purposes only, pursuant to a minute order adopted by the City Council  
6 of the City of Long Beach at its meeting held on April 5, 2011, by and between the CITY  
7 OF LONG BEACH ("Sponsor") and CALIFORNIA AQUATIC THERAPY AND  
8 WELLNESS CENTER ("Site Organization"), whose address is 6801 Long Beach Blvd.,  
9 Long Beach, CA 90805.

10 WHEREAS, the California Department of Education ("CDE") has funds for a  
11 2011 Summer Food Service Program for Children ("Program") to provide free meals to  
12 eligible children; and

13 WHEREAS, Sponsor has executed or will soon execute an agreement with  
14 a vendor to prepare the meals; and

15 WHEREAS, Site Organization rents, leases, owns, operates, maintains, or  
16 otherwise controls a site, independent of Sponsor, located in or near the City of Long  
17 Beach at which the meals could be served; and

18 WHEREAS, Site Organization desires to participate in the Program; and

19 WHEREAS, CDE requires that Sponsor enter a written agreement with  
20 each Site Organization that participates in the Program;

21 NOW, THEREFORE, in consideration of the mutual terms and conditions  
22 herein, the parties agree as follows:

23 1. Site Organization shall serve lunch to all needy children 1 to 18 years of  
24 age (or persons over 18 years of age if they are mentally or physically disabled and  
25 participating in a public or private nonprofit school program for the mentally or physically  
26 disabled), using Site Organization employees and volunteers, all of whom are subject to  
27 the management, direction, and control of Site Organization.

28 2. Sponsor shall provide to Site Organization, through Sponsor's vendor,

1 lunch as part of the Program. The number and type of meals to be provided shall depend  
2 on the attendance reported to Sponsor by Site Organization on a daily basis.

3 3. Site Organization shall provide adequate supervision during the food  
4 service, and shall report to Sponsor any and all problems concerning or related to the  
5 food service.

6 4. Site Organization shall maintain and submit promptly such reports and  
7 records as Sponsor requires.

8 5. Site Organization shall promptly report to Sponsor any change in the  
9 number of meals required as attendance at Site Organization activities, programs,  
10 classes and the like fluctuates. Such report is exempt from the notice provision set forth  
11 in Section 17 hereof.

12 6. Site Organization and Sponsor shall comply with Title VI of the Civil  
13 Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the  
14 Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 &  
15 50), and FNS directives or regulations issued pursuant to that Civil Rights Act to the  
16 effect that no person in the United States shall, on the ground of race, religion, color, sex,  
17 sexual orientation, AIDS, AIDS related condition, age, national origin, disability, handicap,  
18 or Vietnam Era veteran status, be excluded from participation in, be denied benefits of, or  
19 otherwise be subject to discrimination under any program or activity for which Site  
20 Organization and Sponsor received Federal financial assistance from the Department of  
21 Agriculture. And, Site Organization and Sponsor hereby give assurance that they shall  
22 immediately take any measures necessary to effectuate compliance.

23 7. Site Organization shall indemnify and hold harmless the City, its Boards,  
24 Commissions, and their officials, employees and agents (collectively in this Section  
25 "City") from and against any and all liability, claims, demands, damage, causes of action,  
26 proceedings, penalties, loss, costs, and expenses (including attorney's fees, court costs,  
27 and expert and witness fees) (collectively "Claims" or individually "Claim"). Claims  
28 include allegations and include by way of example but are not limited to: Claims for

1 property damage, personal injury or death arising in whole or in part from any negligent  
2 act or omission of Site Organization, its officers, employees, or agents, or anyone under  
3 Site Organization's control (collectively "Indemnitor"); Site Organization's breach of this  
4 Agreement; misrepresentation; willful misconduct; and Claims by any employee of  
5 Indemnitor relating in any way to worker's compensation. Independent of the duty to  
6 indemnify and as a free-standing duty on the part of Site Organization, Site Organization  
7 shall defend City and shall continue such defense until the Claim is resolved, whether by  
8 settlement, judgment or otherwise. Site Organization shall notify the City of any claim  
9 within ten (10) days. Likewise, City shall notify Site Organization of any claim, shall  
10 tender the defense of such claim to Site Organization, and shall assist Site Organization,  
11 as may be reasonably requested, in such defense.

12 8. As a condition precedent to the effectiveness of this Agreement, Site  
13 Organization shall procure and maintain at Site Organization's expense for the duration  
14 of this Agreement from insurance companies that are admitted to write insurance in  
15 California or from authorized non-admitted insurance companies that have ratings of or  
16 equivalent to A:VIII by A.M. Best Company the following insurance:

17 (a) Commercial general liability insurance (equivalent in scope to ISO form  
18 CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars  
19 (\$1,000,000.00) per each occurrence and Two Million Dollars (\$2,000,000.00)  
20 general aggregate. Such coverage shall include but not be limited to broad form  
21 contractual liability, cross liability, independent contractors liability, and products  
22 and completed operations liability. The Sponsor, its officials, employees and  
23 agents shall be named as additional insureds by endorsement (on Sponsor's  
24 endorsement form or on an endorsement equivalent in scope to ISO form CG 20  
25 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special  
26 limitations on the scope of protection given to the Sponsor, its officials, employees  
27 and agents.

28 (b) Workers' Compensation insurance as required by the Labor Code of the

1 State of California and employer's liability insurance in an amount not less than  
2 One Million Dollars (\$1,000,000.00).

3 (c) Professional liability or errors and omissions insurance in an amount not  
4 less than One Million Dollars (\$1,000,000.00) per claim.

5 (d) If use of vehicles are necessary in the performance of this Agreement,  
6 commercial automobile liability insurance (equivalent in scope to ISO form CA 00  
7 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five  
8 Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.

9 Any self-insurance program, self-insured retention, or deductible must be  
10 separately approved in writing by City's Risk Manager or designee and shall protect  
11 Sponsor, its officials, employees and agents in the same manner and to the same extent  
12 as they would have been protected had the policy or policies not contained retention or  
13 deductible provisions. Each insurance policy shall be endorsed to state that coverage  
14 shall not be reduced, nonrenewed or cancelled except after thirty (30) days prior written  
15 notice to Sponsor, and shall be primary and not contributing to any other insurance or  
16 self-insurance maintained by Sponsor. Site Organization shall notify the Sponsor in  
17 writing within five (5) days after any insurance required herein has been voided by the  
18 insurer or cancelled by the insured.

19 Site Organization shall require that all contractors and subcontractors which  
20 Site Organization uses in the performance of services hereunder maintain insurance in  
21 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or  
22 designee.

23 Site Organization shall deliver to Sponsor certificates of insurance and  
24 required endorsements for approval as to sufficiency and form. The certificate and  
25 endorsements for each insurance policy shall contain the original signature of a person  
26 authorized by that insurer to bind coverage on its behalf. In addition, Site Organization,  
27 shall, within thirty (30) days prior to expiration of the insurance required herein, furnish to  
28 Sponsor certificates of insurance and endorsements evidencing renewal of such

1 insurance. Sponsor reserves the right to require complete certified copies of all policies of  
2 Site Organization and Site Organization's contractors and subcontractors, at any time.  
3 Site Organization shall make available to City's Risk Manager or designee all books,  
4 records and other information relating to the insurance coverage required herein, during  
5 normal business hours.

6 Any modification or waiver of the insurance requirements herein shall only  
7 be made with the approval of City's Risk Manager or designee. Not more frequently than  
8 once a year, the City's Risk Manager or designee may require that Site Organization, Site  
9 Organization's contractors and subcontractors change the amount, scope or types of  
10 coverages required herein if, in his or her sole opinion, the amount, scope, or types of  
11 coverages herein are not adequate.

12 The procuring or existence of insurance shall not be construed or deemed  
13 as a limitation on liability relating to Site Organization's performance or as full  
14 performance of or compliance with the indemnification provisions of this Agreement.

15 9. Site Organization shall comply with all applicable laws, rules, and  
16 regulations, and the directives or instructions issued by Sponsor and the CDE relating to  
17 the activities or operations conducted herein. Failure to do so may result in the  
18 immediate termination of this Agreement.

19 10. Sponsor shall obtain any and all State or Federal financial assistance,  
20 grants, loans of State or Federal funds, and grants or loans of State or Federal property  
21 necessary to the implementation of the Program.

22 11. Sponsor retains the right to require Site Organization to replace any  
23 employee or volunteer whom Sponsor determines is unsatisfactory because of personal  
24 appearance, conduct or failure to properly serve the public. Sponsor shall notify Site  
25 Organization in writing of such deficiencies and Site Organization shall replace the  
26 employee or volunteer with a suitable employee or volunteer within forty-eight (48) hours  
27 after the date of such notice.

28 12. Sponsor shall have administrative responsibility for Program

1 operations, and shall submit all reports and monitor compliance with Program  
2 requirements in accordance with CDE rules, regulations, policies, and procedures as set  
3 forth in 7 CFR Part 225. Site Organization shall cooperate with Sponsor, if necessary, to  
4 provide information for said reports.

5           13. Sponsor and Site Organization understand and agree that this  
6 Agreement is contingent upon the execution of underlying agreements with the United  
7 States, the State of California, or departments or agencies thereof. Consequently,  
8 neither Sponsor nor Site Organization shall have any obligation to perform, and this  
9 Agreement shall have no force and effect, until and unless such underlying agreements  
10 are executed. Furthermore, Sponsor may terminate this Agreement if Site Organization  
11 fails to comply with any underlying agreement.

12           14. Site Organization, its officers, agents, employees, and volunteers are  
13 independent contractors and are not nor shall they be deemed employees or agents of  
14 Sponsor. Site Organization acknowledges and agrees that a) Sponsor will not withhold  
15 taxes of any kind hereunder, b) Sponsor will not secure workers' compensation or pay  
16 unemployment insurance to, for or on behalf of Site Organization's employees, and c)  
17 Sponsor will not provide and Site Organization is not entitled to any of the usual and  
18 customary rights, benefits or privileges of Sponsor's employees.

19           15. Site Organization shall not assign its rights nor delegate its duties  
20 hereunder, or any interest herein, or any portion hereof, without the prior written consent  
21 of Sponsor. Any attempted assignment or delegation shall be void, and any assignee or  
22 delegate shall acquire no right or interest by reason of such attempted assignment or  
23 delegation.

24           16. The Director of Parks, Recreation and Marine or any other designee of  
25 Sponsor's City Manager shall administer this Agreement.

26           17. All notices required or any communication desired to be given  
27 hereunder shall be in writing and shall be personally delivered or deposited in the U.S.  
28 Postal Service, first class, postage prepaid to the address first given herein for Site

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1 Organization and to Sponsor c/o Department of Parks, Recreation and Marine, 2760  
2 Studebaker Road, Long Beach, California 90815-1697. Notice shall be deemed given on  
3 the date of deposit in the mail or on the date of delivery, whichever applies.

4 18. The term of this Agreement shall commence at 12:01 a.m. on June 20,  
5 2011, and shall terminate at midnight on August 19, 2011, unless sooner terminated as  
6 provided herein.

7 19. Sponsor shall have no liability to Site Organization if the vendor  
8 supplying the food service fails to provide or delays in providing said food service.

9 20. Termination or expiration of this Agreement shall not terminate the  
10 rights or liabilities of either party which rights or liabilities accrued or existed during the  
11 term of the Agreement and prior to its termination or expiration.

12 IN WITNESS WHEREOF, the parties have caused this document to be  
13 executed with all formalities required by law as of the date first stated above.

14  
15 June 2, 2011  
16  
17

CALIFORNIA AQUATIC THERAPY AND  
WELLNESS CENTER  
By [Signature]  
Title: Executive Director  
"Site Organization"

18  
19  
20 6-23, 2011

CITY OF LONG BEACH, a municipal  
Corporation  
By [Signature] **Assistant City Manager**  
City Manager **EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**  
"Sponsor"

21  
22 This Agreement is approved as to form on June 9, 2011.  
23

24 ROBERT E. SHANNON, City Attorney  
25 By [Signature]  
26 Deputy  
27  
28