

AGREEMENT WITH SERVICE FIRST TO PROVIDE MAINTENANCE SERVICES FOR CITY POOL SITES

THIS AGREEMENT is made and entered into on this 21st day of February, 2023 by and between Service First ("Consultant"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California ("City").

RECITALS

- A. As set forth in Request for Proposal ("RFP") No. 22-167, the City desires to retain a Consultant having special skill and knowledge in the field of qualified and comprehensive pool maintenance for five (5) of the City's pool sites.
- B. Consultant represents that Consultant is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Consultant shall perform all services described in "**Scope of Work**" that was included in RFP No. 22-167, which is attached hereto and fully incorporated herein by this reference as **Exhibit A**.

2. COMPENSATION

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in Consultant's "Fee Proposal", which is attached hereto and fully incorporated herein by this reference as **Exhibit B**. The total amount to be expended under this Agreement shall not exceed \$1,240,675.00 during the term of this Agreement, including any extension periods. This sum is comprised of (1) the base annual amount of \$198,135.00 and (2) an annual contingency in an amount not to exceed \$50,000.00, exercisable at City's sole discretion, for on-call and/or emergency services, as well as for extra work and/or repairs to be performed by Consultant.
- b. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

3. TERM

This Agreement shall commence on February 21, 2023 for a three (3) year term ending on February 20, 2026 with the option for the City to grant up to two (2), one-year extensions of the Agreement, exercisable by a writing by the City Manager and the City Attorney, unless terminated

earlier in accordance with Section 16, below.

4. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed are part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

5. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

6. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

7. INSURANCE

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. **Minimum Scope and Limit of Insurance**

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed

operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. If Consultant is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than **\$2,000,000** per claim with \$2,000,000 in the aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

b. Other Insurance Provisions

1. **Additional Insured Status:** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 2037 if a later edition is used).
2. **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. **Waiver of Subrogation:** Consultant hereby grants to City a waiver of any right to subrogation that any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this

provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

5. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
6. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
7. **Claims Made Policies (applicable only to professional liability):**
 - i. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
 - iii. If coverage is canceled or non-renewed, and not replaced *with another claims-made policy form with a Retroactive Date prior to* the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *five (5)* years after completion of work.
8. **Verification of Coverage:** Consultant shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them.

The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
9. **Subcontractors:** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors.
10. **Special Risks or Circumstances:** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8. INDEMNIFICATION

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

9. INTELLECTUAL PROPERTY INDEMNIFICATION

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

10. RECORDS

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

11. CONFIDENTIALITY

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no

event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

12. CONFLICT OF INTEREST CLAUSE

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

13. NON-DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

15. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

16. TERMINATION

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

17. WAIVER

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

18. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PROFESSIONAL LICENSES

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

Nabil Saba, P.E.
Executive Director, Public Works Agency
City of Santa Ana
20 Civic Center Plaza (M-21)
P.O. Box 1988
Santa Ana, California 92702
Fax: (714) 647-5635

To Consultant:

Mark Bucher
Secretary
Service First
2510 N. Grand Ave., #110
Santa Ana, California 92705

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

21. MISCELLANEOUS PROVISIONS

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA


Norma Orozco
Acting Clerk of the Council

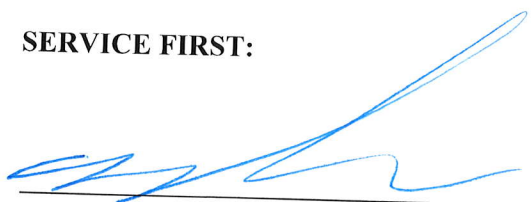
Kristine Ridge
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

SERVICE FIRST:

By: 
Jonathan T. Martinez
Assistant City Attorney


Mark Bucher
Secretary

RECOMMENDED FOR APPROVAL:

Nabil Saba, P.E.
Executive Director Public Works Agency

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A

Appendix

ATTACHMENT 1: SCOPE OF WORK

SCOPE OF WORK

1. General

The basic service obligations of the contractor shall include, but not be limited to, the following:

- Vacuum pool
- Clean pool tiles, pump strainers, and basket strainers
- Brush pool plaster
- Clean back-wash filters
- Test pool water chemistry (i.e. chlorine, pH, alkalinity, calcium hardness, etc.)
- Maintain water levels (i.e. fill and/or drain)
- Pool start up
- Chemical treatment
- Clean pool deck and pump room
- Pool equipment inspection
- Testing/replacement of pool lamps

2. Locations

PARK/POOL SITE	ADDRESS	SIZE (in gallons)
El Salvador Park • El Salvador Pool	1825 W. Civic Center Drive Santa Ana, CA 92703	99,000
Jerome Park • Jerome Pool	726 S. Center Street Santa Ana, CA 92704	248,907
Memorial Park • Memorial Pool	2102 S. Flower Street Santa Ana, CA 92707	600,000
Rosita Park • Salgado Pool	706 N. Newhope Street Santa Ana, CA 92703	88,594
Santa Anita Park • Santa Anita Pool	300 S. Figueroa Street Santa Ana, CA 92704	103,500

3. Hours of Operation

- The Contractor shall accomplish all maintenance required under this RFP before 3:00 p.m. During the swim season (May 1 – September 15) maintenance shall be required five days a week (Monday through Friday) for all pools. During the off season (September 16 – April 30) maintenance shall be required three days a week (Monday, Wednesday and Friday) for all pools.

On-call services during the weekend (Saturday and Sunday) for bio-hazard incidents and other chemical issues will be provided throughout the entire calendar year (January – December) will be at the contractor's expense.

4. Water Treatment Chemicals

- Contractor will be responsible for supplying all chemicals needed to maintain proper water balance. To the extent possible, chemicals shall be supplied in liquid bulk form and stored in the equipment tanks on site.

- The following chemicals shall be used:
- Acid: 31.44% hydrochloric acid
- Chlorine: 12.5% sodium hypochlorite
- Calcium Chloride: powder form (optional)
- Sodium Hydroxide: caustic soda 50%
- Sodium Bicarbonate

Safety Data Sheets (SDS) must be kept at each pool site and be available for inspection at all times throughout the term of the contract. Personal Protection Equipment (PPE) shall be worn while handling chemicals pursuant to the manufacturer's specifications. Cyanuric acid may be used at the pools; however, levels shall remain between 10 – 15 ppm.

The Contractor shall submit a list of all chemicals and quantities that will be stored at each pool site to the Parks Superintendent upon request. No more than a two (2) weeks supply of chemicals will be allowed at any pool site at any given time, unless otherwise authorized by the Parks Superintendent.

5. Water Balance

Chemicals should be balanced through our BECSys5 water chemistry controller. Contractor shall be responsible for proper calibration of equipment in order to ensure proper water chemistry balance. Water chemistry shall be maintained within the following parameters:

- pH level between 7.2 - 7.8;
- Alkalinity level between 80 - 120 ppm;
- Calcium hardness level between 200 – 400 ppm
- Chlorine level between 1.5 – 5.0 ppm; and
- Total dissolved solids level between 300 – 2,300 ppm.

6. Equipment

Contractor shall be responsible for maintaining all pool equipment in proper working order at all times. Contractor will be responsible for all minor equipment repairs, including but not limited to, replacement and/or cleaning of PVC fittings, foot valves, self-priming valves, and chemical feed lines. Contractor shall perform pool light inspections to ensure the fixtures are secured

properly to the wall and the lights are operational. Re-securing fixtures to pool walls and replacing lamps shall be completed by the Contractor at the Contractor's sole cost. Replacement of fixtures will be considered by the City as extra work.

7. Pool Start Up

Contractor shall be required to test domestic water supply and make appropriate chemical adjustments (i.e. sequestering agents) in order to ensure proper water chemistry balance.

8. Trained Personal

Contractor shall provide personnel fully trained in all phases of swimming pool maintenance, including water chemical treatment, controller programming (BECSys5 water chemistry controller) and chemical pump calibration. All Supervisors shall be Certified Pool Operators and/or Aquatics Facilities Operators. Proof of certification shall be provided to City upon request.

9. Reports

Daily and monthly reports shall be maintained at each pool site. The daily report shall include chemical analysis of the pool (controller and manual), filter readings, and flow readings. The monthly report shall include a complete chemical analysis of the pool (free chlorine, combined chlorine and total chlorine), pump room equipment inspection, pool deck equipment inspection, and a list of all minor maintenance repairs. All reports shall be in a form acceptable to the Parks Superintendent.

10. Revised Schedule

After start of the Work, the Contractor shall submit revised pool maintenance schedules not later than the 1st day of each month thereafter until completion of the Contract. The revised schedules should show any significant changes in activities since submission of the previous schedule with revised projections of progress and upcoming seasonal periodic work.

11. Contractor Staff/ Employees & Workers

- The Contractor shall provide sufficient personnel to perform all Work in accordance with this RFP. At no time, will the Contractor allow its crew to be diminished in size or labor hours so as to not effectively complete the assigned maintenance tasks.

- A qualified foreman in the employ of the Contractor shall supervise all of the Contractor's maintenance personnel. At least one (1) member of each crew working at each site shall be able to communicate both orally and in writing and a crew shall consist of no less than two (2) employees.
- Contractor shall require employees to wear a uniform identifying them as an employee of the Contractor while working in the City. This shall include proper work shoes and uniform clothing with a name badge and photo ID.
- If any person employed by the Contractor or any subcontractor shall fail or refuse to carry out the directions of the Parks Superintendent, or is in the opinion of the Parks Superintendent, intemperate, or disorderly; or uses threatening or abusive language to any person on the work site; or is otherwise unsatisfactory, he/she shall be discharged from the project immediately, and shall not again be employed on the work except with the written consent of the Parks Superintendent.
- Employees shall be properly trained for the handling and use of chemicals and BECSys5 water chemistry controller.

12. Work Schedule

- The Contractor shall accomplish all maintenance required under this RFP before 3:00 p.m. on a daily basis. During the swim season (May 1 – September 15) maintenance shall be required five days a week (Monday through Friday) for all pools. During the off season (September 16 – April 30) maintenance shall be required three days a week (Monday, Wednesday and Friday) for all pools. Schedules shall be provided to the City accompanied by all chemical SDS sheets.
- Exceptions may be made to normal work hours where incidence of use may be too great during the specified hours to allow for proper maintenance. The City may grant, on an individual basis, permission to perform maintenance at other hours. No maintenance functions that generate excessive noise shall be commenced before 7:00 a.m.
- The City shall have the authority to suspend the work, wholly or in part, for such a period as may be deemed necessary due to renovation or construction, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work.
- Within 48 hours after the Notice to Proceed has been given, and prior to the start of any Work, the Contractor shall submit to the Parks Superintendent for approval three (3) copies of its proposed monthly schedule with sub-schedules of periodic activities. If the Parks Superintendent notifies the Contractor that the schedule is unacceptable, the Contractor shall submit a revised schedule within five (5) working days thereafter.
- The schedules shall be in a form acceptable to the Parks Superintendent.
- The schedule shall also contain a list of all applicable tasks including the time and location of the task, and the labor force used to complete the task.

13. Material

- Facilities will be available for storage of equipment at each pool site for use in connection with the performance of the work. However, the City will not be responsible for any lost, stolen or damaged equipment.
- The Contractor shall be responsible for materials and facilities as hereinafter provided and in the event of its failure to carry out said responsibilities, the same may be carried out by the City at the expense of the Contractor:
- The Contractor shall be responsible for any materials, equipment and/or supplies so furnished and for the care of all work until its completion and final acceptance. Contractor shall at its own expense replace damaged or lost materials and repair damaged parts of the Work.
- The Contractor shall protect City facilities from damage resulting from its Work. City facilities damaged by, or as a result of, the Contractor's work under this Contract shall be repaired or replaced, as directed by the Parks Superintendent, at the Contractor's expense.
- The Contractor shall remove from the vicinity of the completed Work all rubbish, unused material, and other materials belonging or used under its direction during work.
- All damages that, in the City's opinion, are due to the Contractor's operations shall be repaired at the Contractor's expense.

14. Vehicle Limitations

- The Contractor shall at no time drive vehicles on turf for any reason without prior written authorization from the Parks Superintendent. Contractor shall be limited to pool access using defined maintenance paths.

15. Traffic Control, Public Convenience and Safety

- The Contractor shall conduct its operations so as to offer the least possible obstruction and inconvenience to the public, and shall have underway, no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public. Contractor shall also be required to provide signs for public information when applying chemicals.

16. Signage

- Contractor shall display a sign indicating Contractor's name and license number on both sides of all maintenance vehicles. Said sign shall be approved by the City.

- Contractor shall not post advertising signs and banners within the Maintained Areas. All signs used by the Contractor shall be kept "Graffiti Free" at all times.
- Contractor shall post signs at all locations as required by the Department of Environmental Health notifying the public of potential exposures. Signs shall be provided by the Contractor at the Contractor's cost.

17. Reports

- Daily and monthly reports shall be maintained at each pool site. The daily report shall include chemical analysis of the pool (controller and manual), filter readings, and flow readings. The monthly report shall include a complete chemical analysis of the pool (free chlorine, combined chlorine and total chlorine), pump room equipment inspection, pool deck equipment inspection, and a list of all minor maintenance repairs. All reports shall be in a form acceptable to the Parks Superintendent.

18. Performance of Work

- Contractor shall, at its own cost and expense, furnish all necessary materials, supplies, labor, chemicals, transportation, and equipment for doing and performing work required under this RFP.
- Contractor agrees that all services performed hereunder shall be provided in a manner commensurate with the highest professional standards and shall be performed by qualified and experienced personnel; that any work performed by Contractor under the Contract will be performed in the best manner; that any material furnished shall be subject to the approval of the Parks Superintendent; and that both work and materials will meet fully the requirements of this RFP.

19. Permits & Licenses

- Where requirements of the permits differ from those listed herein, the more stringent requirement shall apply. The Contractor shall obtain all permits required by other agencies of the State and County as well as the City of Santa Ana. All permits and licenses shall be obtained by and at the expense of the Contractor and/or subcontractors.

20. Emergency Work

- In case of an emergency that threatens loss or injury of property, and/or safety of life, the Contractor shall act, without previous instructions from the City, as the situation may warrant. Contractor shall notify the City of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantiating documents in regard

to expense, shall be submitted to the Parks Superintendent within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as Extra Work.

- If such emergency arises out of or is the result of operations by the Contractor, the cost of the corrective measures will be billed to the Contractor and deducted from Contractor's payment as provided in the Contract Documents. The performance of emergency work by City forces will not relieve the Contractor of any of its responsibilities, obligations, or liabilities under the Contract.

21. Protection of Property

- All public and private property or improvements shall be safely guarded from damage or loss in connection with this Contract by the Contractor at all times. Should any facility, structure, or property be damaged during operations of the Contractor, it shall immediately notify the proper owners or authorities. The Contractor shall pay all damages and losses incurred.

22. Laws and Regulations

- The Contractor shall obey all laws, ordinances, and regulations affecting those engaged or employed on the work, or the materials used in the Work, or in any way affecting the performance of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Contract Documents, or in this RFP, in relation to any such law, ordinance, regulation, order, or decree, Contractor shall immediately report the same in writing to the Parks Superintendent.
- Contractor shall, at all times, cause all its agents and employees to observe and comply with all such applicable laws, ordinances, regulations, orders, and decrees in effect or which may become effective before completion of the Contract.
- Nothing in this RFP is to be construed to permit work not conforming with any current laws, ordinances, and/or regulations. If the Contractor ascertains at any time that any requirement of the Contract varies from such applicable law, ordinance and/or regulation, it shall promptly notify the Parks Superintendent.
- No adjustments in the contract price shall be made due to changes in any law, ordinance and/or regulation occurring after submission of Proposals. Proposer shall incorporate said risk in its Proposal.
- The Contractor, at its own expense, shall pay all taxes properly assessed against its equipment, materials, or property used or required in connection with the Work. Contractor shall be required to comply with all "NPDES" rules, regulations and Best Management Practices related to the Work.

23. Commencement of Work/ Notice to Proceed

- Unless otherwise specified, the Contract time shall commence upon the date of issuance of the City's written Notice to Proceed. The Contractor shall commence work within 15 days thereafter or on the date stipulated in the Notice to Proceed.
- The Notice to Proceed will not be issued until the Contract is properly executed, and all required bonds and insurance certificates have been submitted and approved.

24. Suspension of Work

Climatic Conditions:

- The Parks Superintendent may suspend the Work whenever weather conditions or conditions resulting from inclement weather are unfavorable for the prosecution of the Work. The delay caused by such suspension may entitle the Contractor to an extension of time but not to any other compensation.
- No extension of time will be granted for suspension of work unless the suspension affects the timely completion of all Work under the Contract or the timely completion of a portion of the Work for which a time of completion is specified. Determination that the suspension for inclement weather conditions or conditions resulting from inclement weather affects timely completion and entitles the Contractor to an extension of time shall be made and agreed to in writing by the Parks Superintendent and the Contractor on each day that work is suspended.

Safety Hazard

- The Parks Superintendent may suspend operations if he/she determines that an imminent safety hazard exists.

25. Changes Initiated by The City

- In the event City desires to add additional sites, these additions shall be made at the rates listed in Contractor's Compensation Schedule.

26. Change Orders

- Prior to issuing an approved Change Order, the Parks Superintendent may request that the Contractor submit a proposal covering the changes. The request shall include a description of the proposed changes. Within three (3) days after receiving the request, the Contractor shall submit its proposal to the Parks Superintendent, including any claim for extension of time, and any and

all compensation that may be necessary as a result of performing the changes. If the Parks Superintendent decides not to issue a Change Order after requesting a proposal from the Contractor, the Contractor shall be notified of such decision in writing.

27. City Inspection

- The Parks Superintendent shall regularly inspect the pools and all other City property subject to this Agreement. If said inspection results in discovery of work that is not performed in the manner, and to the professional degree set forth in the Specifications, The Contractor agrees that the City shall; 1) withhold from Contractor's next monthly payment, the City's actual or estimated cost of performing the work; or, 2) hire a contractor or City staff to perform the work not performed and then withhold from the Contractor's next monthly payment the City's actual cost for performing the work to bring the property into conformance with the specifications. Additionally, City shall impose liquidated damages of up to \$ 300.00 per inspection, per park, per item specified herein not performed, per day not meeting the specifications during any such inspection.
- Furthermore, it is not the Parks Superintendent responsibility to inform the Contractor when work specified in the specifications was not performed or that deficiencies exist. It is the Parks Superintendent responsibility to inspect the properties to verify that work was performed to the specified level of quality and time frame followed by reporting that the work was performed satisfactorily or not. It is the Contractor's responsibility to provide adequate supervision and staffing to visit each site daily and prepare schedules for the appropriate level of staff, equipment and materials to perform all aspects specified in this agreement. Should the Parks Superintendent create PowerPoint punch lists, essentially performing the Contractor's Supervisor's responsibilities/duties of determine what work needs to be performed in accordance with the agreement specifications, the City shall deduct \$300 per Power Point punch list from the Contractor's monthly invoice.

EXHIBIT B

COMPENSATION

Fee Proposal including hourly rates if applicable

EXHIBIT B

FEE PROPOSAL, including hourly rates

The above-named Proposer having examined the proposed Contract Documents and having visited the sites and examined the conditions affecting the Work, hereby proposes and agrees to furnish all labor, materials, supplies and equipment, and to perform operations necessary to complete the Work as required by proposed Contract Documents. Pricing shall be inclusive of labor, material, travel time, sales tax (8.75%) and all other expenses.

SWIMMING POOL MAINTENANCE SERVICES	SWIM SEASON MONTHLY PRICE (May 1 - September 30)	OFF SEASON MONTHLY PRICE (October 1 - April 30)
El Salvador Pool	\$ 1680.00	\$ 1350.00
Jerome Pool	\$ 4032.00	\$ 3240.00
Memorial Pool	\$ 9,744.00	\$ 7830.00
Salgado Pool	\$ 1512.00	\$ 1215.00
Santa Anita Pool	\$ 1680.00	\$ 1350.00
Total	\$ 18,648.00	\$ 14,985.00

ADDITIONAL / SUBTRACTING ITEMS	
Certified Scuba Diver, per hour	\$ 165.00
Emergency Services, per hour	\$ 165.00
Additional Labor, per person per hour	\$ 148.00
Additional Supervisor, per person per hour	\$ 165.00