

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is dated April 1, 2025 (“Effective Date”) and is between the City of Covina, a California municipal corporation (“City”) and Premier Aquatic Services, a California limited liability company (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

### RECITALS

A. City desires to utilize the services of Contractor as an independent contractor to provide aquatics programs and services, such as private and group swim lessons, swim team programming, aquatic exercise classes, lifeguard training, junior lifeguard training, recreational swimming, lap swimming, pool rentals, special events, and other aquatic programming as mutually agreed upon at the City’s aquatic facility located at Covina Park, 301 N. Fourth Avenue, Covina, California.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The parties therefore agree as follows:

**1. Term of Agreement.** The term of this Agreement shall be from the Effective Date through April 1, 2026, unless sooner terminated as provided in Section 14 of this Agreement. The City may, upon mutual agreement, extend this Agreement for two (2) additional one (1) year terms. In no event shall this Agreement be extended beyond April 1, 2028.

**2. Compensation.**

A. Compensation. As full compensation for Contractor’s services provided under this Agreement, City shall pay Contractor a sum not to exceed Seventy-Five Thousand Dollars (\$75,000.00) (the “maximum compensation”) annually, based on the rates set forth in the Approved Fee Schedule, attached hereto as **Exhibit A**. Any terms in Exhibit A, other than the payment rates and schedule of payment, are null and void.

B. Expenses. The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional services performed by Contractor, unless the City Council and the Contractor Representative, as defined in Section 3, authorize the additional services in writing prior to Contractor’s performance of the additional services or inurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

ATTACHMENT A

### **3. Contractor's Services.**

A. Scope of Services. Contractor shall perform the services described in the Scope of Services, attached as **Exhibit B**. City may request, in writing, changes in the scope of services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Ryan Larson, Chief Operating Officer (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the services on the Effective Date and shall perform all services in conformance with the dates and times mutually agreed upon.

D. Standard of Performance. Contractor shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Contractor shall determine the means, methods, and details by which Contractor's personnel will perform the services under this Agreement. Contractor shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and compliance with the customary professional standards. Contractor shall certify that all personnel who have direct contact with minors will be background screened through the Department of Justice.

F. Compliance with Laws. The Contractor shall keep itself informed of all local, state and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City and its agents shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

### **4. Method of Payment.**

A. Invoices. Contractor shall submit to City invoices based on the timeline set forth in **Exhibit A** for actual services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period, hourly rates charged, if applicable, and the amount

due. If City disputes any of Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 2 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this agreement available during Contractor's regular working hours to City for review and audit by City.

**5. Ownership of Documents.** Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed ("written products") pursuant to this Agreement shall become the sole property of the City without restriction or limitation upon its use and may be used, reused, disseminated or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files containing data generated for the work, Contractor shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

## **6. Independent Contractor.**

A. Contractor is, and shall at all times remain as to City, a wholly independent contractor and not an employee of City. The personnel performing the services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City. Contractor and Contractor's personnel shall not supervise any of City's employees; and City's employees shall not supervise Contractor's personnel. Contractor's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as an employee of City; and Contractor's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services under this Agreement. Contractor shall acquire and maintain, at its sole cost and expense, such vehicles, equipment, and supplies as Contractor's personnel require to perform any of the services required by this Agreement. Contractor shall perform the services off of City premises at locations of Contractor's choice, except as otherwise may from time to time be necessary in order for Contractor's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Contractor's performance of the services under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services. City may make a computer available to Contractor from time to time for Contractor's personnel to obtain information about or to check on the status of projects pertaining to the services under this Agreement.

B. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder. Contractor shall be responsible for and pay all wages, salaries, benefits and other amounts due to Contractor's personnel in connection with their performance of the services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute or ordinance to the contrary, Contractor and any of its officers, employees, agents, and subcontractors providing any of the services under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as an employee of City, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

C. Contractor shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Contractor's personnel practices. or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section 6. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6. This duty of indemnification is in addition to Contractor's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **7. PERS Compliance and Indemnification.**

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Contractor agrees that, in providing its employees and any other personnel to City to perform the services under this Agreement, Contractor shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Contractor shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Contractor shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its

City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Contractor's violation of any provisions of this Section 7. This duty of indemnification is in addition to Contractor's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

**8. Confidentiality.** All data, documents, discussion, or other information (collectively "data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential. Contractor shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Contractor shall return all data to City upon the expiration or termination of this Agreement. Contractor's covenant under this Section 8 shall survive the expiration or termination of this Agreement.

**9. Conflicts of Interest.** Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this Agreement, including the Political Reform Act (Gov. Code, § 81000 *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 9 into any subcontract that Contractor executes in connection with the performance of this Agreement.

**10. Indemnification.**

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liability with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in

connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph A. 2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 10, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 10 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 10 shall survive the expiration or termination of this Agreement.

## **11. Insurance.**

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Four Million Dollars (\$4,000,000) per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 11.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Contractor has no employees while performing services under this Agreement, workers' compensation policy is not required, but Contractor shall provide an executed declaration that it has no employees.

4) Sexual Abuse and Molestation Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence.

B. Acceptability of Insurers. The insurance policies required under this Section 11 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 11.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 11 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 11 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 11 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to City. If any insurance policy required under this Section 11 is canceled or reduced in coverage or limits, Contractor shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 11 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 11, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 11. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 10 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 11.

## **12. Mutual Cooperation.**

A. City's Cooperation. City shall provide Contractor with all pertinent data, documents and other requested information as is reasonably available for Contractor's proper performance of the services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against the City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.



**13. Records and Inspections.** Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of two (2) years. Contractor shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

**14. Termination or Suspension of Agreement.**

A. Right to Terminate or Suspend. City may terminate or suspend this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least seven (7) calendar days before the termination or suspension is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the services required by this Agreement.

**15. Force Majeure.** Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

**16. Notices.** Any notices, consents, requests, demands, bills, invoices, reports or other communications which either party may desire to give to the other party under this Agreement must be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by reputable document delivery service or courier service during Contractor's and City's regular business hours, or (c) five business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:  
City of Covina  
Attn: Lisa Evans, Director of Parks &  
Recreation and Library Services  
125 E. College Street|  
Covina, California 91723

If to Contractor:  
Premier Aquatic Services  
Attn: Ryan Larson, Chief Operating  
Officer  
6 Journey #200  
Aliso Viejo, California 92656

**17. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for

employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**18. Prohibition of Assignment and Delegation.** Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 18 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 18, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**19. No Third Party Beneficiaries Intended.** Except as otherwise provided in Section 10, this Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**20. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**21. Exhibits. Exhibits A and B** constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

**22. Entire Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement.

**23. Amendment of Agreement.** This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-

substantive modifications to the Agreement: (a) name changes; (b) extensions of time; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

**24. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

**25. Word Usage.** Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

**26. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

**27. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Covina.

**28. Attorneys’ Fees.** In any litigation or other proceeding by which on party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys’ fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

**29. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**30. Authority to Execute Agreement.** **The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.**

*[SIGNATURE PAGE FOLLOWS]*

The parties, through their duly authorized representatives, are signing this Agreement on the date stated in the introductory clause.

City:

City of Covina,  
a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: Fabian Velez  
Title: Chief Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Candice K. Lee  
Title: City Attorney

Contractor:

Premier Aquatic Services,  
a California Limited Liability Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)*

## **EXHIBIT A COMPENSATION**

Contractor will be compensated as outlined below:

- Annual Management Fee – Fifty Thousand dollars (\$50,000.00)
  - Billed in three (3) installments as follows:
    - (1) Sixteen thousand six hundred sixty-six dollars and sixty-seven cents (\$16,666.67) upon execution of agreement (April 1, 2025)
    - (2) Sixteen thousand six hundred sixty-six dollars and sixty-seven cents (\$16,666.67) at mid-season (July 14, 2025)
    - (3) Sixteen thousand six hundred sixty-six dollars and sixty-six cents (\$16,666.66) upon completion of season (August 15, 2025)
  - Annual Management Fee covers all Contractor’s expenses to operate the seasonal aquatics program at the City’s Aquatics Center, which includes, but is not limited to recruiting, training, hiring and managing all staff (Lifeguards, Swim Instructors, Pool Supervisor and/or Pool Manager), processing all registration for Aquatics programs, providing customer service during registration process and at Aquatics Center, staffing Aquatics Center during all hours of operation, and general maintenance/cleaning of facility during seasonal use.
- Additional Services – Not to exceed Twenty-Five Thousand dollars (\$25,000.00) annually
  - Billed immediately upon completion of services rendered at rates noted below.
  - Additional Services include staffing for pool rentals and city special events.
- Hourly Lifeguard and Supervisor fees for services not specifically included under the Annual Management Fee at rates not to exceed:
  - Thirty-five dollars (\$35.00) per hour per Lifeguard
  - Thirty-seven dollars (\$37.00) per hour per Pool Supervisor

## **EXHIBIT B SCOPE OF SERVICES**

Premier Aquatic Services shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Premier Aquatic Services represents and maintains that it is skilled in the professional calling necessary to perform the Services. Premier Aquatic Services warrants that all employees and sub consultants shall have sufficient skill and experience to perform the services assigned to them. Finally, Premier Aquatic Services represents that it, its employees and sub consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Premier Aquatic Services shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law.

**Annual Management:** Premier Aquatic Services will provide personnel and equipment for all aquatics programs and services at the City's aquatic facility located at Covina Park, 301 N. Fourth Avenue, Covina California. Premier Aquatic Services will provide the following programs and services: private and group swim lessons, swim team programming, lifeguard training, recreational swimming, and lap swimming. Premier Aquatic Services will also provide any additional aquatic programs that will benefit the residents of the City of Covina, which may include junior lifeguard program and aquatics exercise classes. Premier Aquatic Services may add other programs with prior approval from the City. Final program schedule and fee structure will be mutually agreed upon by Contractor and City. At minimum, the program schedule will include ten (10) weeks of swim lessons, swim team, lap swimming, and recreational swimming beginning on June 9, 2025.

**Additional Services:** When requested by City, Premier Aquatic Services will provide qualified personnel for special events, pool rentals or other activities not included in the annual management services, which will be billed at the hourly rates included in this agreement and billed immediately upon completion of those services.

Premier Aquatic Services will provide qualified supervision of aquatics programs, events, rentals, or other activities at all times. This includes at least one leader/supervisor/manger (who is not in the pool actively instructing) on site at all times during hours of operation.