

**SERVICES CONTRACT AGREEMENT
FOR THE
DOWNTOWN SAN DIEGO PARTNERHSIP
CLEAN AND SAFE PROGRAM**

THIS AGREEMENT ("Agreement") by and between the DOWNTOWN SAN DIEGO PARTNERSHIP, CLEAN AND SAFE PROGRAM ("DSDP") and California Aquatics ("Contractor"), is made and entered into on April 18, 2018 (*Effective date*) with references to the facts set forth below.

RECITALS

- A. Pursuant to a contract (the "City Agreement") with the City of San Diego ("City") DSDP is authorized to provide certain services (the "District Enhancement Services") in the downtown area of San Diego.
- B. The PBID Management Plan states that DSDP may enter into contracts with Contractors to provide District Enhancement Services.
- C. DSDP requires a maintenance service firm to provide Water Feature Maintenance services. The Contractor has a background in providing these services and is willing to provide such services to DSDP based on this background.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions herein contained and other good and valuable consideration, receipt of which is acknowledged, the parties hereto agree as set forth below:

- 1. **AGREEMENT PERIOD.** This Agreement shall commence on July 1st, 2018 ("Commencement Date") and continue through June 30th, 2019 ("Completion Date") unless terminated sooner pursuant to the termination provision provided in this Agreement.
- 2. **SCOPE OF SERVICES.** Contractor shall provide water feature maintenance services as follows:
 - Inspections of the pool basin not less than 5 days per week.
 - Vacuuming and sweeping of the pool basin not less than 5 days per week.
 - Cleaning of skimmer basket not less than 5 times per week.
 - Removal of floating debris not less than 5 days per week.
 - Backwashing of filter system as dictated by pressure differential after vacuuming of pool.

- Removal and cleaning of pump system strainer baskets not less than 5 days per week.
- Testing of chemical balance and water quality not less than 5 days per week.
- Add chemicals to maintain water quality and chemical balance as required.
- Purchase and replacement of chemicals as needed.
- Inspect and repair all electrical components.
- Adjustment of water feature lighting and sprinkler system as needed or requested by DSDP.
- Quarterly calibration of chemical control system to factory specifications.
- Quarterly washing of sensor probes to factory specifications.
- Remove and rebuild filter valve to factory specifications.
- Replace missing or broken skimmer basket as needed.
- Replace sprinkler heads as needed.
- Replace inner pool hardware, including but not limited to valve covers.
- Report any problems or deficiencies in a timely manner to Clean & Safe Operations staff.
- Report any unusual activity in the water feature in a timely manner to Clean & Safe Operations staff.
- Properly clean islands, rocks, sprinklers and perimeter of water feature to remove debris and stains on a weekly basis.
- Respond to emergency calls for water feature maintenance within 2 hours.
- Train DSDP staff on how to shut off all water in case of emergency.
- Enter all service activity into the required data collection software. It will be the responsibility of the contractor to procure the necessary Iphone and software application titled Eponic. Contractor will be charged a service fee of \$75 per month per phone by Eponic Corporation.
- Immediately report any unusual incidents or hazardous conditions to representatives designated by the DSDP.
- Provide a schedule for all inspections/work conducted under contract to designated DSDP contact.

Frequency:

- At any time and for any reason, the DSDP may request additional or less frequent water feature maintenance services.

3. **DUTIES OF CONTRACTOR.** DSDP hereby retains Contractor as an independent contractor to maintain and perform the services set forth in this Agreement beginning on the Commencement Date. Contractor shall perform the following duties:

- Contractor will visit the site and conduct work with full understanding of the qualifications required, the inherent hazards and necessary precautions involved in conducting the work safely.
- Contractor shall have an ongoing Safety Training Program for its employees assigned to this contract. Employees shall at all times be certified in Cardiopulmonary Resuscitation and First Aide skills.

- Contractor shall have direct two-way voice communications with all field managers and supervisors directing work under this contract.
- Contractor shall maintain at all times casualty insurance in such amounts as DSDP specifies and name DSDP and the City of San Diego as additional insured.
- Contractor will have in effect an active drug and alcohol abuse and testing policy and shall, where applicable, comply with the U.S. Department of Transportation's regulations for commercial motor vehicle drivers, 49 CFR 382, Controlled Substances and Alcohol Use and Testing.
- Contractor will comply with all federal, state and local laws and regulations applicable to the work to be performed under the contract.
- All work shall be in accordance with the requirements of the Contract Documents and the California Building Code, Uniform Building Code, Mechanical Code, Plumbing Code, and Electric Code; either International, National, or Local, whichever applies.

3a. **Requirements Relating to Employees.** Contractor shall hire, employ, discharge control, and supervise all personnel and labor necessary for performance of the duties described in this Agreement. Contractor shall use its best efforts to exercise reasonable care to select qualified, competent, and trustworthy employees. All employees shall be employees of Contractor and not DSDP. Contractor shall comply with all laws, ordinances, statutes, codes, and regulations including, without limitation, governmental anti-discrimination laws and the requirements of the American with Disabilities Act relating to employees and all requirements relating to employee tax, employee benefits, and other federal and state requirements. Contractor shall make whatever reports may be required by the state and federal governments relative to such taxes or deductions. All employees shall be covered under Contractor's Worker's Compensation insurance policy at Contractor's expense.

3b. **Living Wage:** The Contractor must comply with the City of San Diego Living Wage ordinance. If it is determined that the Contractor is not comply with living wage, any fees, costs or penalties associated with noncompliance will be paid for by Contractor. Contractor shall provide payroll reports for all employees working on the contract showing compliance with Living Wage requirements. Confidential employee information may be redacted. You may visit the following links for specific requirements. <http://www.sandiego.gov/purchasing/programs/livingwage/>.

3c. **Prevailing Wage:** Prevailing Wages. Pursuant to SDMC section 22.3019, construction, alteration, demolition, repair, and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to SDMC sections 22.4201 through 22.4245. Contractor must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living

Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. Compliance with Prevailing Wage Requirements. Pursuant to California Labor Code (Labor Code) sections 1720 through 1861, Contractor and its subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

- (a) Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found

at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

- (b) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Contract.

2. Penalties for Violations. Contractor and its subcontractors shall comply with Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

3. Payroll Records. Contractor and its subcontractors shall comply with Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776.

Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.

4. Apprentices. Contractor and its subcontractors shall comply with Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. Contractor and subcontractors shall comply with Labor Code sections 1810 through 1815 including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of Labor Code sections 1810 through 1815.

6. Required Provisions for Subcontracts. Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: Labor Code sections 1771, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. Contractor, in accordance with Labor Code section 3700, is required to secure the payment of compensation of its employees and by signing this Agreement, Contractor certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this agreement."

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the Equal Opportunity Contracting Department at 619-236-6000.

- (c) Higher Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

3d. **Monitoring.** DSDP shall have the right to monitor the performance by Contractor of all its obligations under this Agreement. Contractor shall cooperate with DSDP, Clean and Safe Program staff in connection with such monitoring. All work performed and services provided may be monitored for compliance with the requirements of this Agreement on a daily or other basis by the Clean and Safe Program staff. Prior to daily commencement of work under this contract, Contractor shall contact the DSDP, Clean and Safe Program duty supervisor at (619) 414-2698 and notify him/her of the work to be performed, location of work and the expected commencement and completion time. DSDP agrees to notify contractor within 48 hours when the work completed does not comply with the standards as set forth in the scope of services. Contractor agrees to correct all deficiencies identified as part of the DSDP monitoring program with 48 hours of notification. Contractor agrees that failure to correct identified deficiencies within 48 hours will result in non-payment for the deficient portion of the work.

3e. **Delivery of Services.** The Contractor agrees to perform the services described herein and provide specified equipment in a professional, effective manner. The type and nature of the services described herein may not be varied without prior written amendment to this Agreement, executed by both parties, and subject to negotiation. The services provided by the Contractor determined by the scope of work set forth in this Agreement and any additional services shall not be provided unless authorized in writing by DSDP, Clean and Safe Program. In such situations, the Contractor shall respond to the request in a timely manner.

3f. **Records Review and Retention.** Contractor shall permit DSDP or the City, at any time during normal business hours, to audit all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered in this Agreement. Contractor shall maintain, at its regular place of business or at such other place as may be approved by DSDP, all such data and records for a period of three (3) years following the termination of this Agreement.

4. **PAYMENT FOR SERVICES.** During the term of this Agreement, the Clean and Safe Program shall pay to Contractor an annual amount not to exceed \$30,240 for annual pool maintenance performed weekly for 52 weeks.

4a. Invoicing/Payment due Dates. The Contractor shall invoice the Clean & Safe Program monthly during the term of this Agreement, the DSDP (Clean and Safe Program) shall pay to Contractor \$2,520 per month, to this agreement for the performance of services not later than 5 business days following the end of each month for services performed, which invoices shall be sent via regular mail to DSDP, Clean and Safe Program 1111 Sixth Ave., Suite 101 San Diego, CA 92101. Each invoice shall specify the dates of service, and activities performed. There will be no charge and no bill for equipment and/or supplies. The Contractor's invoice shall be due and payable 30 days from the date of DSDP's receipt of the invoice. Upon termination of this Agreement, payments under this paragraph shall cease, provided, however, that the Contractor shall be entitled to payments for periods or partial

periods that occurred prior to the date of termination and for which Contractor has not yet been paid.

4b. **Time Periods for Providing Service.** Contractor shall provide the services as needed to complete the scope of work, including holidays.

5. **SUPERVISORS.**

5a. **DSDP Supervisor.** The Clean and Safe Executive Director appoints the overall contract manager. He/she designates the point of contact between Clean and Safe Program and Contractor. The Clean and Safe Program, Director of Operations is designated as the field liaison; he/she may be reached by calling (619) 234-8900. The Contractor shall be liable if any work performed does not meet all specifications and requirements contained in this Agreement.

5b. **Project Supervisor Appointed by Contractor.** Contractor shall appoint a supervisor who shall have primary responsibility for administering and ensuring compliance by Contractor of the obligations under this Agreement. The Project Supervisor is responsible for ensuring compliance with all the terms of this Agreement, and keeping an open flow of information and communication between DSDP and the Contractor.

6. **EQUIPMENT SPECIFICATIONS.**

6a. **Obligation to Provide Equipment.** The Contractors shall supply all necessary equipment, supplies and vehicles to be used in performing the services specified in this Agreement. The Contractor shall maintain its vehicles and tools and store its equipment at its own location.

6b. **Logos and Signage.** Any and all equipment/vehicles must, wherever possible or appropriate, carry DSDP-designed signage and logos along with the Contractor's logo. DSDP logos and signage will be provided to Contractor by DSDP.

7. **ATTRIBUTES AND CONDUCT OF PERSONNEL.** Contractor's personnel shall conduct themselves in a professional and courteous manner at all times. They shall not use offensive language, perform their services under the influence of alcohol or illegal drugs, or engage in any form of illegal or other activities that would bring discredit to the DSDP. All employees shall be clean, courteous, and neat in appearance. Employees must demonstrate the capability and willingness to communicate effectively with members of the public. At the sole discretion and request of the DSDP, Contractor agrees to reassign any of its employees if their conduct is determined by the DSDP to be detrimental to the best interests of the DSDP.

7a. **Appearance:** A professional, well-groomed appearance is consistent with the Downtown San Diego Partnership Clean and Safe Program's image and ensures that

our clients have a positive overall impression of the organization and Downtown San Diego.

- **Uniforms:** All work attire must be complete, clean, odor free, with no stains, rips, or holes.
 - DSDP vest with logo as approved by DSDP at the cost of Contractor.
 - Uniforms and vests will not be shared between employees.
 - Polo-style shirts or T-Shirts: Must be tucked in at all times. Whether long sleeve or short sleeve, if visible from collar the shirt must be white or blue. Explicit or suggestive language or images are forbidden.
 - Pants/Shorts: pants or shorts must not be ripped, worn, torn, or frayed. Pants and shorts must be worn above hip bone and should not be baggy or sagging.
 - Shoes: Shoes must be clean, in good repair and conform to the safety standards of your service.
 - Socks: Must wear black or white socks
 - Belt: Belts that are worn should coordinate and not pose a safety hazard.
 - Jewelry: Jewelry must not present a safety hazard.
- **Hygiene:** Clean hygiene is expected.
- **Hair:**
 - Men: Hair must be clean and styled to provide a conservative, neat appearance. Long hair may not fall forward while performing normal job duties. Extreme or bizarre hair colors are not permitted. Facial hair must be neatly trimmed and give a professional appearance.
 - Women: Hair must be clean and styled to provide a conservative, neat appearance. Long hair may not fall forward while performing normal job duties. Extreme or bizarre hair colors are not permitted. Hair clips, ribbons, or bows that coordinate with uniform colors are acceptable.
- **Body Art:** Tattoos are acceptable, but may not be offensive, derogatory, racial, explicit, or gang related.
- **Cell Phone/Pagers:** While delivering contracted services personal cell phones, texting devices, pagers, or any other electronic communication devices should not be used unless it is related to the service provided. Per California state law, a hands free device must be employed while driving and speaking on a cell phone.
- **Sunglasses:** Sunglasses should have a conservative, professional appearance and be removed when performing customer services duties. Sunglasses may only be worn when conditions require.

8. **STANDARD OF PERFORMANCE/RIGHT TO INSPECTION.** The Contractor's performance shall at all times meet with the satisfaction of Clean and Safe Program staff. Services proposed shall be exactly as specified herein and shall be subject to inspection and test by the Clean and Safe Program. If services furnished are found to be incomplete, not completed as specified, or do not meet with the satisfaction of Clean and Safe Staff, staff may, at its option, reject them and require the Contractor to complete the service to their satisfaction.
9. **SAFETY, HEALTH & FIRE PROTECTION.** All services provided pursuant to this Agreement shall comply with OSHA standards and regulations and all applicable government laws and orders as outlined by any applicable governing agency. The safety of all persons employed by the Contractor in DSDP's service area shall be the sole responsibility of the Contractor. The Contractor shall take all reasonable measures and precautions at all times to prevent injuries, to, or the death of any of its personnel assigned to DSDP service areas. Such measures and precautions shall include, but not be limited to, all safeguards and warnings necessary concerning DSDP's service area, which could be dangerous, and to prevent accidents of any kind. The Contractor shall comply with all DSDP's safety rules and regulations when on DSDP's premises.
10. **TERMINATION.** If not terminated sooner, this Agreement shall terminate automatically on **June 30, 2019**. DSDP may, at any time, terminate this Agreement without cause upon thirty-day (30) notice to Contractor. Upon termination of this Agreement, Contractor's right to compensation shall immediately cease except for amounts payable hereunder prior to the date of termination. Upon termination or expiration of this Agreement, Contractor shall (a) forward to DSDP any payments received following expiration of this Agreement (b) promptly deliver any documents and records relative to this provision of services provided hereunder to DSDP (c) immediately surrender to DSDP or its designee any other funds or property belonging to DSDP. Upon termination of this Agreement, the independent contractor relationship created hereby shall immediately cease. Notwithstanding the foregoing, DSDP may terminate this Agreement upon three-day (3) notice for Contractor's failure to comply with all of its obligations under this Agreement.
11. **INSURANCE REQUIREMENTS.** Prior to the Commencement Date, Contractor shall furnish DSDP with a certificate(s) of insurance and the endorsements specified below, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below. Contractor agrees to provide to The City of San Diego and its respective elected officials, officers, employees, agents and representatives the same protection as afforded to DSDP.

(1) Commercial General Liability. Commercial General Liability (CGL) insurance written on a current version of the ISO Occurrence form CG 00 01 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate

of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

(2) Commercial Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile insurance written on a current version of the ISO form CA 00 01 or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).

(3) Workers' Compensation. For all of Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against DSDP and the City and its respective elected officials, officers, employees, agents, and representatives.

(A) Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to DSDP at the time the evidence of insurance is provided.

(B) Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by DSDP. DSDP will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

(C) Required Endorsements. The following endorsements to the policies of insurance are required to be provided to DSDP before any performance is initiated under this Agreement.

(1) Commercial General Liability Insurance Endorsements.

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an additional insured using current versions of ISO additional insured endorsements CG 20 10 and CG 20 37 (completed operations) or their equivalents, the DSDP and the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability

arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of DSDP and the City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(2) Automobile Liability Insurance Endorsements

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured DSDP and the City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor. DSDP and the City is an additional named insured and insurer waives the right of subrogation against the DSDP and the City and its respective elected officials, officers, employees, agents and representatives.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of DSDP and the City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(3) Worker's Compensation Insurance Endorsements.

Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against DSDP and the City, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for DSDP and the City.

(D) Reservation of Rights. DSDP and the City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to DSDP and the City.

(E) Additional Insurance. Contractor may obtain additional insurance not required by this Agreement.

(F) Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

12. **RELATIONSHIP OF PARTIES.** It is understood by the parties that the Contractor, and its personnel and agents, are independent Contractors with respect to DSDP, and not employees of DSDP. The individuals used to perform such service, as DSDP shall request, shall be personnel of the Contractor, an independent Contractor. The Contractor shall provide the tools of the trade for, and shall have the sole management control over its personnel and agents.

13. **INDEMNITY AND HOLD HARMLESS.** All services in connection with this Agreement shall be at the risk of Contractor, exclusively. To the fullest extent allowed by law, Contractor shall indemnify, defend (with legal counsel reasonably satisfactory to DSDP and the Clean and Safe Program) and hold harmless the Indemnitees (defined below) from and against any and all Claims (as defined below). Contractor's obligation to defend and indemnify shall be triggered by the assertion of a Claim against any Indemnatee and shall apply whether or not the Contractor or any of the Contractor parties was negligent or otherwise at fault and whether or not the Claim has any merit. However, Contractor shall not be obligated under this Agreement to indemnify any Indemnatee for any Claims arising from the sole negligence or willful misconduct of that Indemnatee. Contractor's obligation shall also include Claims based on duties, obligations, or liabilities imposed on the Indemnitees by statute, ordinance, regulation, or other law. The indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Contractor Parties under works' or workman's compensation acts, disability benefit acts or other employee benefit acts. For purposes of this Section, (a) a "Claim" is any claim, demand, obligation, cause of action, damage, loss, liability, mechanic's lien, cost or expense (including, without limitation, attorney's fees and costs and other litigation, mediation, or judicial reference expenses) whether based on tort, contract, or equitable principles, in any way rising from or in any way connected with the performance or nonperformance of this Agreement by Contractor's or its employees, agents, independent contractors, suppliers, subcontractors, officers, directors, shareholders, representatives, affiliates, successors or assigns (collectively, "Contractor Parties"), and (b) the "Indemnitees" are DSDP and the City of San Diego, their members, managers, shareholder, and affiliates, and the officers, directors, insurers, representatives, agents, employees, successors and assigns of all such parties.

14. **WAIVER OF DEFAULT.** Any failure of the Clean and Safe Program at any time to enforce or require the strict keeping and performance by the Contractor of any of the terms and conditions of this Agreement shall not constitute a waiver by DSDP or the Clean and Safe Program of a breach of any such terms or conditions in any way of the right of DSDP or the Clean and Safe at any time to avail itself of such remedies as it may have for any such breach of terms and conditions.
15. **CONFIDENTIALITY AND OWNERSHIP OF WORK PRODUCT.** The Contractor recognizes that DSDP and the Clean and Safe Program has and shall have confidential information and proprietary information (collectively "Information"), which are valuable, special and unique assets of DSDP and the Clean and Safe Program. The Contractor shall not at any time or in any manner, either directly or indirectly, use any information for the Contractor's own benefit, or divulge, disclose, or communicate in any manner any information to any third party without the prior written consent of DSDP and the Clean and Safe Program. The Contractor shall protect the information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement. The confidentiality provision of this Agreement shall remain in full force and effect after the termination of this Agreement.
16. **PUBLIC RELATIONS/COMMUNICATIONS.** DSDP retains the right to review and approve any and all communication materials produced by the Contractor or its agent that incorporate or mention DSDP and/or infer a relationship with the Clean and Safe Program. The Contractor must provide copies of all materials, including but not limited to, press information, websites, newsletters, etc., for approval **prior** to distribution and/or printing. In addition, a complete copy of a press distribution list must be provided by Contractor. The Contractor grants permission to appear in person or in voice, video or photographic presentation for radio, television, web or print media reports and/or media campaign resulting from participation with DSDP. Contractor releases DSDP from any and all claims arising out of such photographing, videotaping, recording, reproducing, publishing or exhibiting.
17. **EQUAL OPPORTUNITY EMPLOYMENT ENDORSEMENT.** The Contractor certifies that in the performance of its duties under this Agreement, there shall be no discrimination on account of race, religion, sex, age, national origin, or sexual orientation. The Contractor shall at all times comply with applicable federal, state, and local laws and regulation pertaining to fair employment practices, including, but not limited to, sexual harassment. Contractor acknowledges it has reviewed, received and will comply with all of the equal opportunity requirements in Section 12(c)(1) of the City Agreement.
18. **LIST OF SUBCONTRACTORS OR SUPPLIERS.** If the Contractor intends to use subcontractors, the Contractor shall submit a list of subcontractors for approval by DSDP and/or the Clean and Safe Program. Any such lists shall show the names of each subcontractor or supplier, describe the portions of the work or product that each

provides and provide a detailed description of qualifications. Contractor may not subcontract 50% or more of the awarded contract work. Without the approval of DSDP and/or the Clean and Safe Program, the Contractor shall not substitute any subcontractor or supplier in place of the subcontractors designated in the list.

19. **COMPLIANCE AND ENFORCEMENT.** The Contractor is responsible for informing its subcontractor(s) and supplier(s) as to their respective obligations hereunder. It is further understood that for the purposes of indemnification to DSDP for this Agreement, the Contractor shall assume all responsibility of any and all of its subcontractors and suppliers as if they were employees of the Contractor's organization.
20. **DOCUMENTS TO BE SUBMITTED.** The Contractor shall submit to DSDP Certificate(s) of Insurance, and a copy of all current and relevant business licenses, permit and other appropriate licensing certificates. The Contractor shall submit to DSDP new and current documentation as each expires.
21. **NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the U.S. mail certified receipt addressed as follows:

If for DSDP:

Downtown San Diego Partnership
Clean and Safe Program
ATTN: Alonso Vivas, Executive Director
1111 Sixth Ave., Suite 101
San Diego, CA 92101
Telephone (619) 234- 8900
Fax (619) 234-2303

If for Contractor:

California Aquatics
Attn: Jim Dorsey, President
10161 Buena Vista
San Diego, CA 92101
Telephone (619) 562-0802


Either party may change such address from time to time by providing written notice to the other in the manner set forth above.

22. **ASSIGNMENT.** The Contractor's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without prior written consent of DSDP, which consent may be withheld in DSDP's sole, absolute and arbitrary discretion.

23. **EMPLOYEES AND SUBCONTRACTORS.** The provisions of this Agreement shall also bind the Contractor's personnel and subcontractors that perform services for DSDP under this Agreement.
24. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreement between the parties.
25. **ATTORNEY FEES.** If the services of any attorney are required by either party to secure performance of this Agreement, or otherwise upon the breach or the default of either party, or if any judicial remedy is necessary to enforce or interpret any provision of this Agreement, including arbitration, the prevailing party shall be entitled to reasonable attorney's fees, costs, and other expenses, in addition to any other relief to which such party may be entitled.
26. **AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and signed by both parties.
27. **SEVERABILITY.** If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision the Agreement would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. The invalidity of such clause shall not otherwise affect the remaining provisions of the Agreement, which shall continue to be enforceable.
28. **ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, or the actual or alleged breach hereof, shall be settled by binding arbitration conducted in the County of San Diego in accordance with, and by [an] arbitrator[s] appointed pursuant to, the Rules of the American Arbitration Association in effect at that time. Judgment upon an award rendered pursuant thereto may be entered in any court having jurisdiction.
29. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of California.
30. **NO THIRD PARTY BENEFICIARY.** The services provided under this Agreement are solely for the benefit of DSDP and neither this Agreement nor any services rendered hereunder shall be deemed to confer any rights on any other party as a third-party beneficiary.
31. **CONTRACT EXTENSION.** At the sole discretion of DSDP, this contract may be extended on a year to year basis; however in no case shall the renewal extend beyond five years from the date of award of the original contract.

Service agreement Signature Page

DSDP:
Downtown San Diego Partnership,
Clean & Safe Program
Property & Business Improvement District
(PBID)

By:  _____

Date: 4/24/18
Name: Alonso Vivas
Title: Executive Director

CONTRACTOR:
California Aquatics

By:  _____

Date: 4/20/18 Jim Dorsey
Name: Jim Dorsey
Title: President

IN WITNESS WHEREOF, this Agreement has been made and entered into as of the date first set forth above.