This Agreement is made and entered into on __________________________, by and between the CITY OF STOCKTON, a municipal corporation of the State of California, (hereinafter “CITY”), and SHERWOOD MANOR HOMEOWNERS ASSOCIATION, (hereinafter “ASSOCIATION”) for the exclusive use of the Sherwood Manor Pool Facility located at 100 W Robinhood Drive, Stockton, California (hereinafter “POOL”).

CITY for and in consideration of the rents, covenants, and agreements contained herein to be performed by ASSOCIATION does lease to ASSOCIATION that certain area together with the facilities and improvements located thereon which is located within the City of Stockton and outlined on the attached map marked Exhibit 1.

1: DEFINITIONS

1.1 “Association” means the Sherwood Manor Homeowners, the Association responsible to maintain, repair, operate, and insure the aquatic facility.

1.2 “Director of Community Services” means the Director of Community Services of the City of Stockton, CA or the Director’s designee.

1.3 “Fiscal Year” means the one-year period from July 1 through June 30.

1.4 “Laws” means all federal, state, local, and municipal regulations, ordinances, statutes, rules, laws, and constitutional provisions.

1.5 “Parties” means Sherwood Manor Homeowner’s Association and City of Stockton.

1.6 “Prevailing Wage” means the basic hourly rate paid on CITY public works projects to a majority of workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing.

1.7 “Facility” means the Sherwood Manor Pool Facility and improvements, located at 100 W Robinhood Drive, Stockton, California, collectively known as the aquatics facility site.

2: TERM AND TERMINATION.

2.1 Term. The term of this Lease is for a period of fifteen (15) years commencing on April 1, 2016, and terminating on March 31, 2031.

2.2 Termination by Association without Cause. In the event the Agreement is terminated by ASSOCIATION, the ASSOCIATION will send a thirty (30) day written notice of the termination to the Community Services Director of the election to terminate the agreement.
2.3 **Breach of Obligations by Association; Right to Cure.** In the event the CITY determines the ASSOCIATION has substantially failed to fulfill the obligations as provided under this Agreement, CITY shall provide ASSOCIATION with written notice detailing specific obligations which CITY claims ASSOCIATION has failed to fulfill, and notifying ASSOCIATION that it is deemed to be in breach of the Agreement. If the breach is not cured within the time specified in the Notice, or if the CITY and ASSOCIATION cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by CITY which will be no sooner than ten (10) days from the date of issuance of final notice. In the event that this Agreement is so terminated by CITY, ASSOCIATION shall promptly cooperate with the transition of the Facility to CITY according to all applicable laws and the terms of the Agreement.

2.4 **Termination Due to Catastrophic or Natural Disaster.** If, because of any catastrophic or natural disaster, it becomes impossible for ASSOCIATION to render services and perform under this Agreement, CITY and ASSOCIATION will meet to discuss termination, closure and Transition of the Facility to the City within ten (10) days of catastrophic cause, or as soon thereafter as practical.

3: **COMPENSATION AND REVENUE.**

3.1 **Rent.** In consideration of CITY’s intent to provide additional recreational facilities and opportunities to the Citizens of Stockton; and, in consideration of additional commitments by ASSOCIATION relating to repair, maintenance, and upkeep of the Facility, hereby agrees to lease the premises to ASSOCIATION without requiring additional monetary compensation.

3.2 **Revenue.** ASSOCIATION shall receive 100% of the proceeds from all income producing activities associated with the Facility, including, but not limited to the following: swim lessons, aquatic program fees, snack bar sales, rentals, fund raising, etc.

4: **INDEMNIFICATION, INSURANCE.**

4.1 **Insurance Requirements.** ASSOCIATION must obtain and shall maintain in force at all times during the duration and performance of this Agreement, the policies of insurance specified in Exhibit 2, attached hereto and incorporated by this reference.

4.2 **Proof of Insurance.** ASSOCIATION shall provide proof of insurance in the required form to the CITY’s Risk Manager prior to the first day of operation as evidence that it has complied with the insurance requirements set forth in Exhibit 2.

4.3 **Indemnity and Hold Harmless.**

With the exception that this section shall in no event be construed to require indemnification by ASSOCIATION to a greater extent than permitted under the public policy of the State of California, ASSOCIATION shall, indemnify, protect, defend with counsel approved by CITY and at ASSOCIATION’s sole cost and expense, and hold harmless CITY, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments,
awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys’ fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law, or ordinance, or CITY Policy, by ASSOCIATION or ASSOCIATION’s officers, agents, employees, volunteers, or subcontractors. ASSOCIATION shall not be obligated to indemnify or defend CITY for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the CITY. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of ASSOCIATION to CITY, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by ASSOCIATION under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by ASSOCIATION to a greater extent than permitted under the public policy of the State of California, the parties agree that ASSOCIATION’s duty to defend CITY is immediate and arises upon the filing of any claim against the CITY for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by ASSOCIATION or ASSOCIATION’s officers, agents, employees, volunteers, or subcontractors. ASSOCIATION’s duties and obligations to defend the CITY shall apply regardless of whether or not the issue of the CITY’s liability, breach of this Agreement, or other obligation or fault has been determined. ASSOCIATION shall be immediately obligated to pay for CITY’s defense costs of the claim, including, but not limited to, court costs, attorney’s fees and costs, expert consultant, and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the CITY, CITY will then reimburse ASSOCIATION for amounts paid in excess of ASSOCIATION’s proportionate share of responsibility for the damages within thirty (30) days after ASSOCIATION provides CITY with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures ASSOCIATION is not obligated to defend or indemnify CITY in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by ASSOCIATION to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, ASSOCIATION shall indemnify, defend, and hold harmless CITY, its Mayor, Council, officials, representatives, agents employees, and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys’ fees, arising out of any claim brought against the CITY by an employee, office, agent, or volunteer of ASSOCIATION, regardless of whether such claim may be covered by any applicable workers’ compensation insurance. ASSOCIATION’s indemnification obligation is not
limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the ASSOCIATION under workers’ compensation acts, disability acts, or other employee benefit acts.

4.4 Tender of Claims. ASSOCIATION shall accept tender of any third party claim submitted to it by CITY as a result of ASSOCIATION’s obligation herein within thirty (30) days of such tender.

4.5 Use of Contractors/Subcontractors Association. If the ASSOCIATION uses Contractors or Subcontractors for performance of its obligations pursuant to this Agreement, the Contractor/Subcontractor agrees to be bound to the ASSOCIATION and CITY in the same manner and to the same extent as ASSOCIATION is bound to the CITY under this Agreement, including all Indemnification and Insurance requirements. As to any Subcontractor, it shall be as to the extent the Indemnification and Insurance requirements apply to the scope of the Sub-contractor’s work. A copy of this Agreement, will be furnished to the Contractor and Subcontractor upon request.

5. ASSOCIATION RESPONSIBILITIES

5.1 Possessory Interest, Taxes, Assessments, Permits, Fines. ASSOCIATION shall pay any and all taxes, including possessory interest, assessments, permits, or fines related to all aspects of operation of the Facility.

5.2 Expense Obligation. The ASSOCIATION agrees to pay 100% of costs and expenses related to this Facility without limitation. In the event the ASSOCIATION incurs costs related to the operation, maintenance and use of the Facility, the CITY will not be required to pay any part of any such expense, and the ASSOCIATION shall not have any claim against the CITY on account of any costs or expenses related to the operation or repair of the Facility.

5.3 Qualified Pool Personnel. ASSOCIATION shall abide by standards set by CITY as to the number of supervisory personnel required at the pool when the pool is in operation. ASSOCIATION shall use Red Cross certified Lifeguards and minimum staffing standards in alignment with state requirements and CITY policy, and as may be mutually agreed upon.

6. IMPROVEMENTS, MAINTENANCE, JANITORIAL, AND SECURITY OF FACILITY

6.1 Acceptance of Condition of Facility ASSOCIATION accepts the Facility and all equipment hereunder in their present ‘as is’ condition, without warranty by CITY or any duty or obligation on the part of the CITY to maintain the facility other than as set forth herein. At the end of the term of this Agreement or its earlier termination, ASSOCIATION will surrender to the CITY, the Facility in the same condition as when received, less reasonable use and wear and tear, damage caused by an act of God or by the elements excepted. ASSOCIATION shall remove any and all equipment and personal property of the ASSOCIATION, except, however, the CITY may approve, in writing, any deviation from this requirement. If ASSOCIATION fails to remove its property after notice by CITY, ASSOCIATION agrees that CITY may remove said property and bill the cost of removal.
and/or storage, if necessary, to ASSOCIATION, who agrees to be responsible for such costs.

6.2 Improvements. ASSOCIATION is granted permission to construct improvements on the Facility consistent with the recreational nature thereof, provided that any such additions, alternations, or changes required the prior written approval of the Director of Community Services. All improvements, alterations, or changes shall be made at the sole expense and cost of the ASSOCIATION according to the terms and conditions required by the Director of Community Services, and will, upon termination of this Agreement, remain the property of the CITY.

6.3 Expiration. ASSOCIATION shall surrender said premises in good work order as set forth in Section 6.1 above, to CITY at the expiration or sooner termination of this Agreement.

6.4 Prior Written Approval of Alterations, Use of Vendor Agreements. It is specifically understood that prior written approval by Community Services Director for addition, removal, alteration, etc. will include specific terms and conditions of the improvement (such as ASSOCIATION use of specific vendor agreements, approval of vendor insurance) must be met or the failure will be considered a breach of Agreement.

6.5 Repairs, Alterations, Improvements by CITY. CITY shall not be responsible for any repairs, alterations, changes, or improvements to the Facility during the term of this Agreement.

6.6 Defects in Material and Workmanship. ASSOCIATION warrants that all performance within the term of this Agreement shall be free from defects in workmanship, and the ASSOCIATION, at the ASSOCIATION's own expense, will remedy any defects due to faulty workmanship.

6.7 No Threat. The ASSOCIATION represents and warrants that the work and materials used by ASSOCIATION or contractors/vendors are not currently known to be harmful to public health and safety. ASSOCIATION warrants that the work shall not constitute any threat to the safety of persons when used in the manner for which it was designed. ASSOCIATION agrees to cooperate with CITY in making or permitting changes to the Facility if necessary to eliminate hazards which become apparent.

6.8 Prevailing Wage. In the performance of the work to be completed on Facility, without limitation of any other provision of this Agreement, ASSOCIATION shall pay or cause to be paid prevailing wages for all work done under this Agreement if prevailing wage is determined to be required.

6.9 Janitorial Services, Maintenance, and Security of Facility. ASSOCIATION shall be responsible for the safety and sanitary conditions of their use of the Facility and shall remedy without delay any defective, dangerous, or unsanitary conditions therein. In addition, ASSOCIATION shall be responsible for the maintenance and housekeeping of the facility and all adjacent areas, keeping them in a safe, clean, wholesome, and good condition, and sanitary condition. ASSOCIATION shall ensure that at all times during the
term of this Agreement that Facility shall be kept free of trash, garbage, and obstructions of any kind. And ensure that all trash resulting from cleaning shall be placed in appropriate containers. Facility shall be kept in compliance with any and all applicable present and future laws relating to sanitation, public health, safety, or welfare or any general rules and regulations of any governmental authority in force now, or at any time, during the term of this Agreement. ASSOCIATION shall be responsible for all cost and expense of all maintenance and repair for landscape, buildings, fencing, gates, janitorial, plumbing, electrical, mechanical systems, sewer, septic, water delivery, and water source. ASSOCIATION agrees CITY has no responsibility for any repairs, maintenance, or work to the Facility including but not limited to repairs to any building, fixtures, equipment, plumbing, electrical or mechanical systems, landscaping, or roadways.

6.10 Utilities and Water. ASSOCIATION is responsible for, and agrees to pay for all utilities (inclusive of gas, propane, electric, water, sewage, waste water, discharge fees, charges, inspections, reports, communication, and related costs) utility use, including connections and upgrades for Facility. ASSOCIATION is responsible for payment of all charges, reports, inspections, fees, service charges, and other requirements related to the use permits, licenses, and permit requirements. ASSOCIATION further agrees that all water usage and regulations in connection with this Facility be monitored and adhered to by the ASSOCIATION. ASSOCIATION shall immediately contact Municipal Utilities if there is any discharge or release of water or materials into the storm drains at Facility.

6.11 Operations, Permits, Licenses. ASSOCIATION shall, for the conduct of operations of ASSOCIATION’s operations under this Agreement and at its sole expense, obtain and maintain in full force and effect throughout the Term and any extension thereof, any and all applicable permits and licenses which may be required by any law, including administrative regulations, regulatory requirements, and operational requirements. Including without limitation, a CITY business license if required by Administrative Services.

6.12 State of California and San Joaquin County Hazardous Materials Storage, Reporting, and Safety Plan Requirements. ASSOCIATION shall be familiar with the California Environmental Reporting System requirements, and remain responsible for meeting the state and local requirements for storage of hazardous materials, reporting of hazardous materials, and filing of a Business Plan and or a safety plan if required. ASSOCIATION may be required to obtain chemical storage permit as required.

6.13 Certified Pool Association/Water Quality Assurance. ASSOCIATION agrees that a Certified Pool Association (CPO) and water quality specialist, will add chemicals, maintain, monitor, and appropriately document pool maintenance and water quality, including water chemistry. Records shall be kept on Facility and available to inspectors for the time specified in state and local codes.

6.14 Security. ASSOCIATION shall be responsible for determining the security needs of the Facility, arrange for security for all events at the Facility and for general Facility security when events are not in progress. ASSOCIATION will prepare a Security Plan, evacuation Plan, and other reports as required by the CITY Safety Officer and/or applicable local and state codes.
6.15 First Aid and Signage/Equipment requirements. ASSOCIATION shall be responsible to provide and maintain all required signage, safety equipment, and first aid items.

6.16 Right of Entry, Keys, and Security Codes Installation of locks and keys will be the responsibility of the ASSOCIATION. ASSOCIATION shall furnish a key and alarm code to Community Services Director. CITY shall maintain right to enter to inspect or repair the facility with reasonable notice unless emergency. Upon termination of Agreement, ASSOCIATION shall surrender all sets of keys to the Facility and any Facility Improvements, to CITY.

7. CITY AND ASSOCIATION RESPONSIBILITIES

7.1 New Hire, Recruitment, and Staffing Guidelines. ASSOCIATION shall hire, supervise, and manage all personnel (paid or volunteer) necessary for the management, operation, and maintenance of Facility and shall comply with CITY’s administrative directive with respect to fingerprinting ASSOCIATION employees and volunteers. Any individual who has been convicted of certain criminal offenses as set forth below, is not eligible to work or volunteer under this Agreement. ASSOCIATION shall comply with the relevant portions of CITY’s Administrative Directive HR-40 (which is attached as Exhibit 3 and incorporated by this reference) regarding who must be fingerprinted and what offenses or disqualifiers will prohibit an individual from working at facility. ASSOCIATION employees and volunteers, if applicable, are required to submit fingerprints in a manner authorized by the State of California Department of Justice. ASSOCIATION and all applicable employees/volunteers shall submit fingerprints prior to start of work. ASSOCIATION is responsible for all costs of fingerprinting and background check. Any individual who has been convicted of certain criminal offenses (disqualifiers) is not eligible to work at Facility. The disqualifying criminal convictions are as follows: Any of those offenses identified in Public Resources Code, section 5164 except for Penal Code sections 211, 215, 236, or 240, provided, however, that any individual who has been convicted of violating Penal Code sections 211, 215, 236, or 240 may, in the sole discretion of the ASSOCIATION or the CITY, nevertheless be ineligible to work or volunteer at the Facility under this Agreement. In addition, if any of the ASSOCIATION’s employee(s)/volunteer(s) assigned is/are subsequently found to have a disqualifying conviction, that/those individuals shall be immediately removed from the Facility and shall not be allowed to perform any further work under this Agreement. If the ASSOCIATION is subsequently found to have a disqualifying conviction, the contract may be immediately terminated by CITY. The ASSOCIATION shall certify in writing to CITY before the first day of each season of operation that neither the ASSOCIATION nor any of ASSOCIATION’s employees have been convicted of any of the offenses specified in California Public Resources Code section 5164 or CITY of Stockton Administrative Directive HR-40.

7.2 Signature of Compliance for HR-40. ASSOCIATION shall confirm, in writing, prior to each swim season, (See Exhibit 4) to CITY that ASSOCIATION employees/volunteers have been fingerprinted and not convicted of any of the offenses specific in California Public Resources Code section 5164 or City of Stockton Administrative Directive HR-40 in Exhibit 3.
7.3 **Snack Bar Sales.** ASSOCIATION is granted the exclusive right to sell food and merchandise at the facility at the sole cost and expense of the ASSOCIATION. ASSOCIATION shall retain all revenue from concession sales. ASSOCIATION shall provide copies of all related concession licenses for CITY review if requested. It shall be the sole responsibility of ASSOCIATION to ensure that all food and beverage products sold by ASSOCIATION or its concessionaire(s) shall conform to all applicable federal, state and local laws, including the California Health and Safety Code, and other requirements. ASSOCIATION is responsible to timely report and pay all sales tax.

7.4 **Emergency Contacts.** ASSOCIATION will provide CITY with emergency phone numbers of key staff and Board Members. ASSOCIATION shall ensure that CITY representatives have the ability to communicate with said persons twenty-four hours a day when emergency conditions occur.

7.5 **Facility Use Agreements.** ASSOCIATION shall be responsible for entering into Facility Use Agreements with all renters and users of the facility for aquatic and rental activities. ASSOCIATION shall be responsible for developing the form of each Agreement and complying with all requirements established by CITY Risk Services and contract compliance requirements for users of the Facility.

7.6 **Compatible Use.** ASSOCIATION agrees not to make use of Facility and property in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use of the Facility as it is intended and according to the terms and conditions of this Agreement and general use of an Aquatic Facility.

7.7 **Swim Season Participation Reports.** ASSOCIATION shall provide participation numbers for each annual swim season by November 1 each year for the term of this agreement as mutually agreed upon. This information will report the full use of each pool and service to community.

8. **GENERAL PROVISIONS**

8.1 **Relationship of Parties.** Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between CITY and ASSOCIATION or its agents, employees, or contractors. Nothing herein contained is intended to be construed as creating or establishing a relationship of partners, or a joint venture between ASSOCIATION or CITY. ASSOCIATION shall not be considered a tenant, and shall gain no right to occupy facilities as a tenant or any other property right or interest in the Facility by virtue of this Agreement. Neither ASSOCIATION, its principal, nor any ASSOCIATION employee is an employee of CITY and none are entitled to any of the rights, benefits, or privileges of CITY employees, including but not limited to medical, unemployment, or worker's compensation. Except as CITY may specify in writing, ASSOCIATION shall have no authority to act as an agent of CITY or bind CITY to any obligation. Nothing in this Agreement, either express or implied, is intended to confer upon any person or entity, other than CITY and ASSOCIATION and their respective officers, directors, employees,
and agents providing services under this Agreement any rights, remedies, obligations, or liabilities or by reason of this Agreement.

8.2 **Control.** Neither CITY nor its officers, agents, or employees and/or, volunteers shall have sufficient control over the conduct of ASSOCIATION or any of ASSOCIATION’s employees, except as herein set forth; and ASSOCIATION expressly agrees not to represent that ASSOCIATION or any of ASSOCIATION’s agents, servants, or employees, to be deemed the agents, servants, or employees of CITY.

8.3 **No Third Party Beneficiaries.** No person or entity, other than ASSOCIATION shall be deemed to be a third party beneficiary hereof, or a third party to the Facility.

8.4 **Debt Liability Disclaimer.** CITY will not be liable for any debts or claims that arise from the obligations of the ASSOCIATION.

8.5 **Non Discrimination.** In performing services under this Agreement, ASSOCIATION shall not discriminate in the employment of ASSOCIATION employees or in the engagement of any contractors or subcontractors on the basis of race, color, religion, sex, marital status, sexual orientation, national origin, ancestry, age, or any other criteria prohibited by law.

8.6 **Assignment.** ASSOCIATION may not assign, sublet transfer, or otherwise alienate its rights and obligations pursuant to this Agreement, without written consent of the Director of Community Services, and then only upon such terms and conditions as CITY may set forth in writing. ASSOCIATION shall be solely responsible for reimbursing vendors, contractors, employees, and subcontractors.

8.7 **Reserved Rights.** During the term of this Agreement, there shall be and is hereby expressed reserved to CITY and its agencies, contractors, agents, employees, representatives, or licensees, the right to use the Facility and Property for any and all purposes which will not unreasonably interfere with ASSOCIATION’s enjoyment of its rights under this Agreement. CITY reserves the right to make use of the property for such proposes as it may deem necessary or appropriate, if, and whenever in the interest of its service to customers or the public, it shall be appear necessary or desirable to do so. CITY further reserves the right at any and all reasonable times, to temporarily enter upon said premises for inspection or other lawful CITY purposes.

8.8 **Notices.** All written notices and communication required to be given under the provisions of this Agreement shall be delivered personally, or mailed and addressed as follows:

To CITY: Director of Community Services
City of Stockton
605 N. El Dorado Street
Stockton, CA 95219
Phone (209) 937-8206

To: Sherwood Manor Homeowners Association
PO Box 7455
8.9 **Waiver.** Any waiver by CITY of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of ASSOCIATION or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to ASSOCIATION to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by CITY to any act or omission by ASSOCIATION shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’s written consent to future waivers.

8.10 **Applicable Law, Resolutions of Disputes, Forum, and Attorney’s Fees.** California law shall govern any legal action pursuant to this Agreement with venue in the applicable state court or forum for San Joaquin County, Stockton Division and for federal claims in the federal district court for California, Eastern District, Sacramento Division. The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorney’s fees expended in connection with such an action.

8.11 **Severability.** The provisions of this Agreement are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

8.12 **Integration and Modification.** This Agreement represents the entire integrated agreement between ASSOCIATION and CITY; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by written instrument signed by ASSOCIATION and Community Services Director. All Exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached Exhibits, the terms of this Agreement shall prevail.

8.13 **Title of Parts and Sections.** The Title of parts and sections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

8.14 **Language Construction.** The Language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity any status of any person.

8.15 **Records, Audits, Reports.** ASSOCIATION agrees that CITY or its designee shall have the right to review, obtain, and copy all records pertaining to the performance of the Agreement. ASSOCIATION agrees to provide the CITY any relevant information.
requested and shall permit CITY or designee access of its premises, upon reasonable notice, during normal business hours for the purpose if interviewing employees and inspecting /copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Agreement. ASSOCIATION agrees to maintain such records for a period of three (3) years after termination of Agreement. ASSOCIATION agrees to send annual report to CITY in May of each year for the term of the Agreement.

8.16 Condemnation. If the whole or any substantial part of the Facility shall be taken by any paramount public authority under the power of eminent domain, then this Agreement shall be terminated as to such Facilities from the day when the possession of that part shall be taken for said public purpose. All damages awarded for this taking shall belong to and be property of CITY, and all agreements pertaining to that sale including without limitation all related agreements. However, CITY shall not be entitled to any portion of the award made for loss of business installation or improvements belonging to ASSOCIATION, if any.

8.17 Discretion of the City. CITY’s execution of this Agreement in no way limits the discretion of CITY in the permit and approval process in connection with any improvements by ASSOCIATION.

8.18 Entire Agreement. This Agreement and any Exhibits attached hereto constitute the sole and entire agreement of the parties hereto with respect to the matters herein and correctly sets for the rights, duties, and obligations of each to the other as of the date first written above. There are no other Agreements or understandings, written or oral, between the parties regarding this Agreement other than those set forth herein. All prior or cotemporaneous negotiations, Agreements and understandings, oral, written, are revoked, cancelled, and rescinded, and are all merged herein and superseded herby.

8.19 Authority of Parties. Each individual executing this Agreement on behalf of the respective Parties represents and warrants that he/she is duly authorized to execute this Agreement on behalf of the respective Parties.

8.20 Non-Liability of City Officials. No member, official, employee or agent of CITY shall be personally liable to ASSOCIATION in the event of any default or breach by CITY or for any amount which may become due to ASSOCIATION or its successor or on any obligation under the terms of this Agreement.

8.21 Law Abiding Conduct. ASSOCIATION agrees that it will comply with all the applicable laws and ordinances, administrative regulations and orders of appropriate government authority in the conduct of its business and further agrees that CITY shall have the right to enter upon said premises at reasonable times for the purpose of inspection and ensure enforcement of this Agreement and ordinances and laws governing ASSOCIATION’s use of Facility.

8.22 Conflict of Interest. ASSOCIATION covenants that other than this Agreement, ASSOCIATION has no financial interest with any official, employee, or other representative of the CITY. ASSOCIATION and its principals do not have any financial interest in real property, sources of income, or investment that would be affected in any
8.23 **Confidentiality:** ASSOCIATION shall exercise all reasonable precautions to prevent the unauthorized disclosure and use of CITY reports, information or conclusions.

**AUTHORITY AND EXECUTION**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement the day and first year hereinabove written.

ATTEST:  

CITY OF STOCKTON

______________________________  BY:_________________________
BONNIE PAIGE                  KURT O. WILSON
CITY CLERK, CITY OF STOCKTON  CITY MANAGER

APPROVED AS TO FORM:  
PROFESSIONAL

BY:__________________________
SUSANA ALCALA WOOD
ASSISTANT CITY ATTORNEY

BY:__________________________
PRESIDENT, BOARD OF DIRECTORS
SHERWOOD MANOR HOMEOWNERS ASSOCIATION
EXHIBIT 1: LOCATION
SHERWOOD MANOR POOL
100 W Robinhood Drive Stockton, CA
EXHIBIT 2
INSURANCE REQUIREMENTS
SWIMMING POOL ASSOCIATION/SHERWOOD MANOR POOL

Association shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Association’s operation and use of the premises. The cost of such insurance shall be borne by the Association.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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, personal & advertising injury, and sexual abuse and molestation coverage, with limits no less than $5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than $1,000,000 per accident for bodily injury or disease. (for Associations with employees).

3. Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Association maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions:
The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status
The City of Stockton, its Mayor, Council, officers, representatives, agents, 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 Association 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 Association’s insurance (at least as broad as ISO Form CG 20 10 11 85).
Primary Coverage
For any claims related to this contract, the Association’s insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers shall be excess of the Association’s insurance and shall not contribute with it. The City of Stockton does not accept primary endorsements limiting the Association’s insurance coverage to sole negligence.

Notice of Cancellation
Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation
Association hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Association may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Association 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 of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Association to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Verification of Coverage
Association shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Association’s obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time, for any reason or no reason.

Special Risks or Circumstances
City of Stockton reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
Certificate holder address
Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N. El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037
City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance
If at any time during the life of the Contract or any extension, the Association fails to maintain the required insurance in full force and effect, the CITY may terminate this Contract.

Subcontractors
If the Association should subcontract all or any portion of the work to be performed in this contract, the Association shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.
Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE CITY OF STOCKTON

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4/7/14                8/1/95
                         3/1/00
                         8/30/04
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I. PURPOSE

A. To provide a uniform policy and procedure for the administration of the CITY of Stockton Mandatory Fingerprinting Program, in accordance with California Public Resources Code section 5164, California Education Code section 10911.5, California Penal Code sections 11105, 11105.3, 13300, and any other applicable state and federal laws.

B. To ensure that the CITY of Stockton, as an agency receiving criminal history information, complies with the requirements of the State of California, Department of Justice, Division of Criminal Justice Information Services.

II. POLICY

All applicants, employees, interns, temporary agency employees, and volunteers who meet the following conditions shall be subject to fingerprinting.

A. Employees Having Direct Contact With Minors. It is the policy of the CITY of Stockton to obtain criminal history information for all prospective, as well as current, full-time (including provisional and temporary), part-time, volunteer (including the San Joaquin County Alternate Work Program or any other community service or volunteer organization), and contractual employees in any department who have direct contact with minors. This requirement shall be a condition of employment for all employees who have direct contact with minors.

The CITY of Stockton will not hire or retain any person or permit any person to volunteer his/her services to work with children in any department who has been convicted of certain criminal offenses (disqualifiers), as specified in California Public Resources Code section 5164.

1 "Direct Contact" is defined in section II.B.
B. Employees Performing Sensitive Duties. In addition, to implement Stockton Municipal Code Chapter 2.70, the CITY of Stockton will obtain criminal history information for all persons applying for positions that require the employee to:

1. Perform sensitive and/or fiduciary duties, such as handling public Funds or confidential documents.

2. Enter privately owned property, structures, or curtilages.

3. Care for ill, injured, or incapacitated members of the public.

4. Have access to a secure facility.

5. Have direct contact with minors. "Direct contact with a minor" shall mean any of the following, in the course of paid or unpaid work:

   a. The care, supervision, guidance, or control of a minor on any basis.

   b. Close physical proximity to a minor on more than an "occasional" or "incidental" basis.

   c. Talking face-to-face with or within eye contact of a minor on more than an "occasional" or "incidental" basis.

   "Occasional" shall mean irregular or infrequent. "Incidental" shall mean occurring by chance or in isolation. If the job specifications for apposition requires contact with a minor on any basis, then the contact is neither "occasional" nor "incidental."

C. The CITY of Stockton, in its discretion, may refuse to hire any person or permit any person to volunteer his/her services who has been convicted of any of the offenses (disqualifiers) specified in Appendix A of this policy.
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D. In making any employment or retention decision based upon a disqualifier, the Director of Human Resources shall consider, among other factors: the employment classification to which the person is applying or being certified, including its sensitivity; the nature and seriousness of the conduct; whether there is a rational relationship between the employment duties and the nature of the conduct; the circumstances surrounding the conduct; the recentness of the conduct; the age of the individual at the time of the conduct; and the presence or absence of rehabilitation or efforts at rehabilitation.

E. Submission of fingerprints, as specified in the sections above, shall be a condition of employment.

F. This policy shall not apply to one-day events or programs.

G. This policy shall be administered by and is the responsibility of the Director of Human Resources.

III. PROCEDURES

A. Administration of Criminal Offense Record Information (CORI).

1. The Human Resources Department shall enter into an agreement with the California Department of Justice for the purpose of electronically exchanging criminal offender information. This information shall be accessible only to designated individuals in the Human Resources Department, and the affected computer terminal shall be located in a secure area to provide protection from unauthorized access. CORI shall be made available to the CITY Auditor and designated members of his/her staff for the sole purpose of performance audits in accordance with Stockton Municipal Code section 2.70.020(8).
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a. **Security.** Any questions regarding the release, security, and privacy of CORI shall be resolved by the Director of Human Resources.

b. **Destruction.** CORI shall be destroyed after the employment determination has been made, and copies of the CORI information will be destroyed in such a way that the employee's name can no longer be identified.

c. **Dissemination.** CORI shall be used only for the purpose for which it was requested; except that, the CITY Auditor shall have access to and shall examine CORI in connection with his/her duties under section 1501(d) of the CITY Charter.

d. **Storage.** CORI shall be securely maintained and accessible only to the Director of Human Resources or his/her designees and the CITY Auditor or his/her designees, who are committed to protect such information from unauthorized access, use, or disclosure.

e. **Reproduction.** CORI shall not be reproduced for secondary dissemination.

f. **Subsequent Arrest Reports.** Any Subsequent Arrest Reports for separated employees, volunteers, and contract personnel shall be immediately returned to the Department of Justice.

2. The Director of Human Resources and/or his/her designees who are involved in the administration of this policy, and the CITY Auditor and/or his/her designees who conduct performance audits, shall be fingerprinted and cleared by the Department of Justice prior to attaining access to CORI. Each employee given CORI access shall be fingerprinted and processed through the California Department of Justice. In addition, those employees shall execute a copy of the Employment Statement issued by the
Department of Justice, which statement shall be maintained on file in the Human
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Resources Department.

B. Fingerprint Procedures and Review of CORI. All applications for employment and requests to volunteer services, without exception, are to be made to the Human Resources Department.

1. All applicants for employment covered under this policy (as set forth in sections II. A and B, above), including part-time, volunteer, intern, temporary agency, and contract personnel, shall be provided with a fingerprint application and required to submit one set of fingerprints to the Department of Justice prior to the pre-employment physical examination. (Note: This requirement shall not apply to those concessionaires who contract with the Community Services Department solely to rent space to conduct their own business.)

2. The applicant, volunteer, intern, temporary agency, or contract personnel shall hand-carry the fingerprint application, along with a valid California driver's license or identification card, to the Stockton Police Department Evidence Identification Section to complete the fingerprint process.

3. Upon receipt of CORI, including Subsequent Arrest Information, the designated Human Resources employees shall review the information for any arrests or convictions for disqualifiers. If there are no disqualifiers, the clearance date shall be entered into the confidential database set up for this specific purpose. Upon the employee’s separation from CITY service, the California Department of Justice shall be notified of the separation to ensure that Subsequent Arrest Notifications are no longer received.

4. In the event CORI, including Subsequent Arrest Information, reveals disqualifiers, the Director of Human Resources shall evaluate the effect and potential effect of the employee's record of arrest on his/her position of employment, fellow employees, and the public in accordance with sections 11.8.2, above; and shall
take appropriate action to maximize public safety and minimize
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potential liability while respecting the rights of the employee or volunteer. No applicant for employment will be permitted to report for work until the Director of Human Resources, or his or her designee, has first determined from review of the CORI information that the applicant has no disqualifying convictions.

In addition, any employee, volunteer, intern, temporary agency or contract personnel who has direct contact with minors and for whom a disqualifier is subsequently revealed shall be subject to any one of the following actions:

- a. Transfer to a comparable position whose duties require no direct contact with children.
- b. Reassignment to another department.
- c. Placement back into a previously held position.
- d. Termination.

5. The notice of rejection of application for employment or the notice of termination due to disqualifiers is the sole responsibility of the Human Resources Department. The Human Resources Department will immediately notify the Department of Justice that the affected applicant, employee, or volunteer has been rejected and that subsequent reports are not necessary.

6. The appointing authority shall not make a hiring decision until after CORI has been received and reviewed by the Human Resources Department.

7. The applicant, employee, or volunteer shall be responsible for reporting any conviction or arrest pending final adjudication to the Human Resources Department. If any conviction or arrest pending adjudication occurs while the employee or volunteer is working for the
CITY, the employee or volunteer shall report that conviction or arrest to the Human Resources Department. Failure to report an arrest or conviction shall be grounds for disciplinary action, up to and including termination.

8. Employees transferring or promoting to positions covered under this directive shall have a right of reversion to a previously held position in the event subsequent arrest information reveals a disqualifier; EXCEPT THAT the CITY reserves its right to discipline an employee, up to and including termination, pursuant to the City Charter, Stockton Municipal Code, Civil Service Rules, collective bargaining agreements, and/or any applicable laws or regulations.

IV PENALTIES

A. Misuse of CORI is a criminal offense, which may result in criminal or civil prosecution and may result in administrative action up to and including loss of access to information maintained by the Department of Justice and/or termination of employment, in accordance with CITY Charter sections 1201(a) and 1502, Administrative Directive No. HR-008, applicable memoranda of understanding, and/or the Civil Service Rules and Regulations.

B. Any violation of this policy shall result in disciplinary action, up to and including termination from CITY service.

APPROVED:

KURT O. WILSON
CITY MANAGER
APPENDIX A

Convictions for which an applicant may be rejected, or for which refusal of certification for appointment, or termination of employment may result, are as follows:

**Crimes Against Persons**

- Murder (Penal Code § 187, *et seq.*)
- Voluntary manslaughter (Penal Code § 191.5, *et seq.*)
- Mayhem (Penal Code § 203, *et seq.*)
- Torture (Penal Code § 206, *et seq.*)
- Robbery (Penal Code § 211, *et seq.*)
- Assault and/or battery (Penal Code §§ 240, *et seq.*; 243, *et seq.*)
- Rape (Penal Code §§ 261-263; 269.)
- Kidnapping (Penal Code § 207, *et seq.*)
- Prostitution (Penal Code §§ 266-267)
- Lewd or lascivious acts (Penal Code §§ 288, 288.2)
- Indecent exposure (Penal Code § 314)
- Stalking (Penal Code § 646.9, *et seq.*)
- Registered sex offender (Penal Code § 290)
- Child abandonment (Penal Code § 271, *et seq.*)
- Contributing to the delinquency of a minor (Penal Code § 272, *et seq.*)
- Incest (Penal Code § 285)
- A criminal violation that is substantially similar in nature to any of the foregoing crimes against persons.

**Crimes Against Property**

- Arson (Penal Code § 451, *et seq.*)
- Theft / Larceny (Penal Code § 484, *et seq.*)
- Burglary (Penal Code § 458, *et seq.*)
- Forgery (Penal Code § 470, *et seq.*)
- Embezzlement (Penal Code § 503, *et seq.*)
- Identity theft (Penal Code § 530.5, *et seq.*)
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- Extortion (Penal Code § 581, et seq.)
- A criminal violation that is substantially similar in nature to any of the foregoing crimes against property.

Crimes involving Controlled Substances

Any crime described in the California Uniform Controlled Substance Act (division 10, commencing with section 11350), except where consideration of such conviction for employment purposes is prohibited or otherwise limited by law per Labor Code section 432.8. Employers are prohibited from considering marijuana related convictions which are more than two (2) years old. Specifically, agencies may not consider marijuana related convictions for violations of subdivision (b) or (c) of section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of section 11360 of the Health and Safety Code, or sections 11364, 11365, or 11550 as related to marijuana prior to January 1, 1976, or a statutory predecessor thereof.

Miscellaneous Crimes

- Perjury (Penal Code § 118, et seq.)
- Falsifying/Tampering with Evidence (Penal Code §§ 132-135.5)
- Falsifying public documents (Penal Code§ 112, et seq.)
- Bribery (Penal Code §§ 68, 92, et seq., 165)
- Money laundering (Penal Code§ 186.9, et seq.)
- Bookmaking (Penal Code§ 337a)
- Misappropriation of public funds (Penal Code § 424, et seq.)
- A criminal violation that is substantially similar in nature to any of the foregoing miscellaneous crimes.
Sherwood Manor Homeowner ASSOCIATION confirms compliance with Article 7:Section 7.1 New Hire, Recruitment, and Staffing Guidelines and Article 7: Section 7.2 Signature for HR 40 that all employees and volunteers who are working or volunteering at Sherwood Park Pool are in compliance with City of Stockton HR40 Guidelines about fingerprinting and disqualifying criminal convictions. This Compliance is due annually before opening day of Aquatic Facilities.

SIGNATURE LINE