

**CITY OF OAKLAND**  
**COUNCIL AGENDA REPORT**

OFFICE OF THE CITY CLERK  
2006 FEB 16 PM 9:04

**TO:** Office of the City Administrator  
**ATTN:** Deborah Edgerly  
**FROM:** Office of Parks and Recreation  
**DATE:** February 28, 2006

**RE:**

- 1) RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE TEMESCAL AQUATICS MASTERS FOR NONEXCLUSIVE USE OF TEMESCAL POOL FOR \$15 PER HOUR OF USE, FOR A THREE YEAR TERM WITH ONE THREE YEAR OPTION TO RENEW; AND
- 2) RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND BARRACUDA AQUATICS FOR NONEXCLUSIVE USE OF LIVE OAK MEMORIAL POOL FOR \$15 PER HOUR OF USE, FOR A THREE YEAR TERM WITH ONE THREE YEAR OPTION TO RENEW

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**SUMMARY**

Staff recommends City Council adopt resolutions authorizing the City Administrator to negotiate and execute separate license agreements between 1) the City and the Temescal Aquatic Masters ("Temescal Masters") for nonexclusive use of Temescal Pool and 2) the City and the Oakland Barracuda Aquatics ("Barracudas") for nonexclusive use of Live Oak Memorial Pool to conduct swim programs. Each License Agreement is for a three year term with one three year option to renew.

Historically both organizations have rented City pools, operated by the Office of Parks and Recreation ("OPR"), on an ongoing basis through informal agreements. The City wishes to enter into formal agreements which update the fees charged for pool use and set forth specific terms and responsibilities. To date the groups have been paying hourly pool rental rates that fall well below the current Master Fee Schedule rate of \$30 per hour for nonprofit groups. The City benefits from the presence of the swimming groups because they offer programming during off hours and therefore increasing the value of the City's maintenance of the pools. The groups also provide officials for swim meets and contribute other volunteer hours that benefit City swimming programs. The proposed License Agreements provide for incremental annual increases to the hourly rate to bring the groups' rental rates closer to the standard fees while recognizing the groups' contributions to the City and without creating an insurmountable burden for the groups. The proposed legislation will also serve to formalize the City's agreements with the groups.

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## **FISCAL IMPACT**

Under the proposed license agreement, the groups would each pay \$15 per hour of use in the first year with incremental increases of approximately 15% for each subsequent year until their hourly rate more closely aligns with the Master Fee Schedule rate for nonprofit or community groups, which is currently \$30 per hour. The Temescal Masters currently pay \$10 per hour of use and use Temescal Pool for 1,352 hours annually. The Barracudas currently pay \$7.50 per hour of use and use Live Oak Memorial Pool for 1,462 hours annually. Total revenue to the General Fund for both groups at the existing rates is \$24,485 annually. Adoption of the proposed legislation is estimated to result in an increase of revenue to the General Fund of \$17,725 the first year and increases of between \$5,628 and \$8,442 each subsequent license period for both groups.

## **BACKGROUND**

The Temescal Aquatic Masters is a registered United States Masters Swimming Club and through its programs at Temescal Pool it serves swimmers of all levels, athletes of all types, and people of all backgrounds. The participants swim for fitness, endurance, fun, or to train for competitive events such as swim meets and triathlons. Temescal Masters hosts a free youth learn-to-swim program each year and sponsors an annual swim-a-thon. Proceeds from the swim-a-thon are donated to Friends of Oakland Parks and Recreation and are then used to sponsor swimming lessons provided by the OPR Aquatics Unit for Oakland children who would not otherwise be able to participate in OPR's swimming programs.

The Oakland Barracuda Aquatics is a non-profit organization (founded in 1996) that has been hosting swimming programs for youth and adult swimmers at the City's Live Oak Memorial Pool under a verbal pool use agreement. This non-profit organization annually assists Oakland Parks and Recreation in hosting swim meets for the Special Olympics.

These aquatics groups have been operating programs at City facilities without proper legal agreements and at a substantially subsidized rate. OPR staff have held meetings with key members of both aquatics groups to negotiate a pool use rate schedule and to identify opportunity for increased community involvement.

Given the benefits to the City of the presence of the Temescal Masters and the Barracudas at Temescal and Live Oak Memorial Pool respectively, negotiating a special rate for their use of the pools is appropriate.

## **KEY ISSUES AND IMPACTS**

The proposed license agreement for the Temescal Aquatic Masters allows them use of Temescal Pool for the purpose of operating a United States Masters Swimming program during specified times. The proposed license agreement for the Oakland Barracuda Aquatics allows them use of Live Oak Memorial Pool for the purpose of operating a competitive swim team and learn to

swim programs during specified times. Each group agrees to pay \$15 per hour for pool use in the first year of the Agreement and to periodic increases outlined in the Agreement.

Under the proposed license agreements, each group agrees to adhere to the following facility operations requirements:

- Licensee shall be required to provide two certified staff on site at all times during programming. One staff must be a lifeguard; additional staff may be a certified swim coach. Appropriate certifications must be current and on file at the office of Parks and Recreation, Aquatics office.
- Licensee shall follow operating procedures as specified by the “Daily Pool Log” including opening/closing procedure, testing and recording of water quality and proper handling and care of equipment.
- Licensee shall inform and enforce pool rules and regulations as posted to staff and program participants.

The Temescal Aquatic Masters and the Oakland Barracuda Aquatics groups agree to the City’s requirements for insurance, indemnification, records retention, and non-discrimination. The groups agree to provide liability insurance as described within the license agreement.

The Temescal Aquatic Masters and the Oakland Barracuda Aquatics groups further agree, under the proposed license agreement, to submit their accounting records annually, as well as certified statements confirming the number of participants, number of activities undertaken and operating budget for the current year.

The license agreements provides for one option for a three-year extension provided sufficient notice is given and other terms and conditions are met to the satisfaction of the City.

Either party may terminate the license at any time with 30 days written notice.

By granting licenses to the Temescal Aquatic Masters and the Oakland Barracuda Aquatics groups, the Oakland community receives the benefits of swimming instruction and coaching beyond that offered by OPR.

The presence of the Temescal Masters at Temescal Pool and the Barracudas at Live Oak Memorial Pool provides local swimmers the opportunity to be part of a community organized around a positive and health-promoting activity. Participants have exclusive use of the pool during the groups’ reserved times and the groups provide swimming lessons and coaching to their participants. Enrollment fees charged by the groups pay their costs for rent of the pools and their instructors. The groups use the pools during non-peak hours and therefore do not displace other Oakland users.

The City gains positive exposure in the community through competitive swim meets hosted by the Oakland Barracudas at Live Oak Memorial Pool. The City also benefits from the

participation of the swim groups through volunteer hours that the groups provide to support OPR Aquatics programs. Volunteer hours may include but are not limited to aquatic site clean up, swim team coaching, swim meet officiating, and learn-to-swim instruction. Schedule of and type of volunteer hours will be determined by the OPR Aquatics Program Coordinator based on need and volunteer availability and skills. The Oakland Barracudas will provide swim instructors at no cost to the City to assist with implementation of OPR's partnership with the YMCA "First Wave" initiative to teach every Oakland third grade student how to swim. The Barracudas will also provide officials for the Special Olympics swim meets. Temescal Masters Aquatics will provide officials for all City-sponsored swim meets including the citywide championship meet.

### **SUSTAINABLE OPPORTUNITIES**

Economic: The License Agreements proposed in this report do not offer economic opportunities at this time.

Environmental: The License Agreements proposed in this report do not have an environmental impact.

Social Equity: Volunteer hours and swim-a-thon proceeds help to provide free and low cost swimming lessons to Oakland children.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

Temescal Pool is an accessible site and is equipped with a pool lift for disabled patrons. Temescal Aquatic Masters accommodate disabled users. Although there is not a pool lift at Live Oak Memorial Pool for patrons who might require it, the Barracudas do accommodate disabled users to the best of their ability when requested.

### **RECOMMENDATION AND RATIONALE**

Staff recommends that City Council adopt the following pieces of legislation:

- 1) Resolution authorizing the City Administrator to negotiate and execute a license agreement between the City of Oakland and the Temescal Aquatics Masters for nonexclusive use of Temescal Pool for \$15 per hour of use, for a three year term with one three year option to renew; and
- 2) Resolution authorizing the City Administrator to negotiate and execute a license agreement between the City of Oakland and the Oakland Barracuda Aquatics for nonexclusive use of Live Oak Memorial Pool for \$15 per hour of use, for a three year term with one three year option to renew.

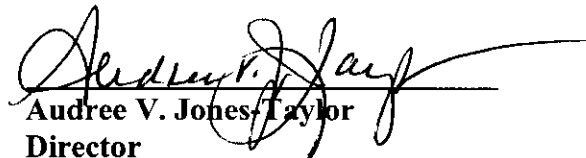
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**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that City Council adopt the following pieces of legislation:

- 1) Resolution authorizing the City Administrator to negotiate and execute a license agreement between the City of Oakland and the Temescal Aquatics Masters for nonexclusive use of Temescal Pool for \$15 per hour of use, for a three year term with one three year option to renew; and
- 2) Resolution authorizing the City Administrator to negotiate and execute a license agreement between the City of Oakland and the Oakland Barracuda Aquatics for nonexclusive use of Live Oak Memorial Pool for \$15 per hour of use, for a three year term with one three year option to renew.

Respectfully submitted,

  
**Audree V. Jones-Taylor**  
**Director**  
Office of Parks and Recreation

Prepared by:  
Dana Riley, Marine and Aquatics Supervisor  
Office of Parks and Recreation

APPROVED AND FORWARDED TO THE  
LIFE ENRICHMENT COMMITTEE:

  
**OFFICE OF THE CITY ADMINISTRATOR**

Item: \_\_\_\_\_  
Life Enrichment Committee  
February 28, 2006

**REVOCABLE NONEXCLUSIVE LICENSE AGREEMENT (\*\*DRAFT\*\*)**

**BETWEEN THE CITY OF OAKLAND**

**AND TEMESCAL AQUATIC MASTERS**

This Revocable Nonexclusive License Agreement ("License") is made as of this \_\_\_ day of \_\_\_\_\_, 2006 by and between the City of Oakland, Office of Parks and Recreation ("OPR") jointly and severally called "Licensor", located at 250 Frank H. Ogawa Plaza, Suite 3330 Oakland, CA 94612, and Temescal Aquatic Masters, a California non-profit corporation, called "Licensee", located at 359 50<sup>TH</sup> Street, Oakland, CA 94609.

**RECITALS**

**WHEREAS**, the City of Oakland is the fee simple owner and OPR is the custodial agency of the real property, commonly known as Temescal Pool located at 371-45<sup>th</sup> Street, Oakland, California 94609 called the "Property."

**WHEREAS**, Licensee is classified under the Internal Revenue Code, section 501(c)(3) as a tax exempt, public benefit organization as described in IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

**WHEREAS**, Licensee wishes to use of the Property for the purpose of operating a United States Masters Swimming program.

**WHEREAS**, Licensee desires to continue promoting the sport of swimming to the Oakland Community and supporting OPR's swim programs by providing volunteer officials for all OPR summer swim meets.

**WHEREAS**, Licensor is willing to grant Licensee a revocable nonexclusive license for the uses of the Property described herein subject to the terms and conditions of this License.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **Grant of Revocable License.** Licensor grants and Licensee accepts a revocable nonexclusive license to use the Property for the License Period and any Extended License Period subject to the exception and reservation of Licensor's right to also use the Property as described in Paragraph 8 of this License and on the terms and conditions set forth in this License.

2. **License Period.** The License Period shall be for three (3) years commencing on \_\_\_ and ending on \_\_\_\_\_, unless terminated sooner by either party in accordance with this License.

3. **Extended License Period.** Subject to earlier termination by either party in accordance with this License, Licensee shall have the right to one (1) option to extend the License for an Extended License Period of three (3) years to the same terms and condition as described in this License provided that following conditions are satisfied:

3.1 Licensee shall not be in default under any provision of this License,

3.2 Licensee shall provide Licensor with advance irrevocable written notice at least ninety (90) days prior to the termination of the License Period or any Extended License Period.

If Licensee fails to exercise the option to extend the License Period, Licensee shall have no other subsequent options to extend the License Period.

4. **License Fee.** Licensee agrees to unconditionally pay in advance and without any right of offset or deduction in lawful money of the United States a license fee of fifteen dollars (\$15.00) per hour of pool usage (reference schedule in Exhibit A) to Licensor on a quarterly fee schedule. The first License Fee shall be paid on March 1, 2006 and shall thereafter be paid to Licensor on the first day of each and every quarter (March, June, September, December) of the License Period and any Extended License Period. All License Fees shall be payable to the City of Oakland and shall be remitted to the Office of Parks and Recreation, Attention: **Fiscal Manager, 250 Frank H. Ogawa Plaza, Suite 3330, Oakland, CA 94612.**
  - 4.1 **License Fee Schedule.** For each year after the initial year of the license and for each and every year thereafter, the License Fee shall be adjusted annually as reflected in the following schedule:
    - (a) Initial License Period
      - March 2006 – February 2008 \$15.00 per hour of pool use
      - March 2008 – February 2009 \$17.00 per hour of pool use
    - (b) Extended License Period
      - March 2009 – February 2011 \$19.00 per hour of pool use
      - March 2011 – February 2012 \$22.00 per hour of pool use
  - 4.2 Licensor shall credit licensee amounts in accordance with the schedule in sections 4.1(a) and 4.1(b) for periods when the pool is unsuitable for swimming due to improper pool chemical levels, improper temperature or other maintenance issues as documented in the Daily Pool Log maintained at the Property. The credit shall be applied to Licensee's next scheduled payment.
5. **Late Payment Fee And Interest.** Licensee acknowledges that the late payment of any License Fee or other charges due under this License will cause Licensor to incur costs not contemplated which costs are difficult to ascertain. Such costs include without limitation administrative and processing expenses and the loss of interest on the past due License Fee or other charges. If any payment due under this License is not paid within ten (10) days from the receipt of written notice from Licensor, Licensee shall be required to pay a late payment fee of seventy-five dollars (\$75) which shall be immediately paid to Licensor with all other payments due under this License. Licensor and Licensee confirm that such a late payment charge represents a fair and reasonable estimate of the costs that Licensor will incur resulting from Licensee's late payment. Acceptance of any late payment charge or any part thereof shall not constitute a waiver of Licensor's right to enforce any right under this License or any other legal remedy available to Licensor. If any License Fee remains delinquent for a period in excess of 10 calendar days, in addition to the \$75 late payment fee, Licensee shall pay to Licensor interest on any License Fee or other charges that are not paid from the 10-day period at the maximum rate of interest permitted by law until paid.
6. **Use.** Licensee shall have no other use of the Property except for the following:
  - 6.1 Temescal Pool. The use of Temescal Pool shall be restricted to use as a United States Masters Swimming Club during the times detailed in Exhibit A attached hereto.
  - 6.2 Except for Licensee's permitted use of the Property on the days and times described

in Exhibit A, Licensor reserves and accepts the exclusive right to use the Property for all other days and times not granted to Licensee. Licensor accepts and reserves the right to use the Property for any purpose including but not limited to renting the Property for swim meets, classes, and other related events. Licensee may reserve additional days and times not granted in Exhibit A at the current City of Oakland Master Fee Schedule hourly rate.

- 6.3 Request for modification of use schedule (Exhibit A) must be submitted in writing with thirty (30) day advance notice. Schedule modification must be agreed upon and signed off by both parties.
- 6.4 Prior to the end of Licensee's use of the Property for days and times described in Exhibit A, Licensee shall remove and store all equipment, install pool covers and shall maintain the Property in a clean and safe condition.

#### **7. Facility Operations.**

- 7.1 The Licensee shall provide two (2) certified staff on site at all times during programming. One staff must be a lifeguard; additional staff may be a certified swim coach. Swim coach and lifeguard certifications must be on file at the Office of Parks and Recreation, Aquatics Office. Swim Coach/Lifeguard shall receive remuneration for services from the Licensee.
- 7.2 The Licensee shall test swimming pool chemical balance and record the results in the "Daily Pool Log" prior to use.
- 7.3 The Licensee shall immediately report any vandalism or damage to the facility caused during programming. Incidents are to be recorded in the "Daily Pool Log".
- 7.4 The Licensee shall inform and enforce posted pool rules and regulations with Licensee's staff and program participants.
- 7.5 The Licensee shall comply with all operations procedures as specified by the "Daily Pool Log".
- 7.6 Licensee may submit any requests for maintenance to the Licensor via email. Within 5 days of receipt of request, Licensor shall reply with acknowledgement of receipt of maintenance request.

**8. Facility Modifications.** Licensee shall not make any improvements or alterations to the Property without first obtaining the written consent from Licensor. If Licensee makes any improvements or alterations to the Property, Licensor shall have the option to require Licensee to remove any such improvements or alterations made by Licensee prior to the end of this License at no cost to Licensor. If any improvements or alterations are not removed, such improvements or alterations shall become part of the Property and Licensee shall not have any claim or interest in such improvements or alterations.

- 8.1 Improvements required by law. Licensee shall, at no cost to Licensor, make all improvements or alterations to the Property required by law due to Licensee's use of the Property or Licensee's application for any governmental permit. If Licensor shall be required by any governmental agency to make any improvements or alterations to the Property, the cost incurred by Licensor to complete such improvements or alterations including 10% interest per year shall be evenly amortized over the useful life of such improvements or alterations and such monthly amortized cost shall included in the Project Management Cost.
- 8.2 Liens. Licensee shall keep the Property free from any liens and shall pay when due all bills arising out of any work performed, materials, furnished, or obligations incurred Licensee, its agents, employees, or contractors relating to the Property.



9. **Telephone.** Licensee shall be responsible for its telephone services and related charges.

10. **Hazardous & Toxic Materials.** The Licensee shall not use, create, store or allow any hazardous and toxic materials on the Property except for those materials and supplies normally and customarily used for housekeeping, maintenance or cleaning considered safe.

Licensee acknowledges Licensor's disclosure and has reviewed the issues relating to the past history of hazardous and toxic materials contamination and remediation actions undertaken by Licensor. Licensor agrees to be solely responsible and liable for any prior hazardous and toxic materials conditions, which may have occurred prior to Licensee's involvement in the Property.

11. **Insurance.** At Licensee's own cost, Licensee shall purchase and maintain insurance policies in an amount and coverage satisfactory to Licensor for the License Period and any Extended License Period. A copy of all required insurance policies shall be delivered to Licensor prior to the execution of this License unless Licensor shall request from Licensee a Certificate of Insurance. In any event, a copy of any required insurance policy or Certificate of Insurance as requested by Licensor shall be attached hereto as Exhibit B and made a part of this License.

11.1 Licensee's Insurance. Licensee's insurance policies shall consist of the following:

(a) Comprehensive or Commercial Form General Liability Insurance (contractual liability and fire legal liability included), with minimum limits as follows:

1. Each Occurrence:  
Two Million Dollars (\$2,000,000)
2. Products/Completed Operations Aggregate:  
Two Million Dollars (\$2,000,000)
3. General Aggregate:  
Two Million Dollars (\$2,000,000)

If the insurance is written on a claims-made form, following termination of this License, the coverage shall survive for a period of not less than three years. Coverage shall provide for a retroactive date of coverage coinciding with the commencement date of this License.

~~(b) Business Automobile Liability Insurance for any owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. (See attached waiver.)~~

(c) Workers' Compensation and Employers Liability Insurance in a form and amount covering Licensee's full liability under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.

(d) Property Insurance, Fire and Extended Coverage Form in an amount sufficient to reimburse Licensor for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises and for all leasehold improvements including those hereinafter constructed or installed by Licensor or Licensee.

(e) Such other insurance in such amounts which at any time may be reasonably

required by the City against other insurable risks relating to Licensee's use of the premises. In no event shall Licensee be required to secure and maintain earthquake insurance.

In each insurance policy referenced under (a) and (b) of this paragraph, the City of Oakland shall be a named additional insured. The insurance policies shall apply only to the extent of the negligent acts or omissions of Licensee, its officers, agents, employees; or any other person or persons under Licensee's direct supervision and control. Prior to the execution of this License, Licensee shall either furnish City with a copy of the insurance policies or Certificates of Insurance evidencing compliance with all insurance requirements. The Certificates shall contain provisions for thirty (30) day advance written notice to City of any modification, change or cancellation of any of the above insurance coverage.

The insurance coverage required herein shall not limit the liability of Licensee, its officers, agents, or employees.

11.2 **Waivers of Subrogation.** The City and Licensee each hereby waive any right of recovery against the other due to any loss or damage to the property owned either by the City or Licensee when such loss of or damage to property arises out of the acts of God or any of the property perils included in the classification of fire, extended perils ("all risk" as such term is used in the insurance industry) whether or not such perils have been insured, self-insured or non-insured.

11.3 **Exemption of City from Liability.** Licensee agrees that City shall not be liable under this License for injury to Licensee's business or any loss of Licensee's income or for damage to the goods, wares, merchandise or other property of Licensee, Licensee's employees, invitees, customers, or any other person in or about the Property, nor shall the City be liable for injury to the person of Licensee, Licensee's employees, agents or contractors, as a result of any condition of the Property or the building on the Property, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause in or about the Property, whether the said damage or injury results from conditions arising from the Property or in other parts of the building on the Property, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee. The City shall not be liable under this License for any damages arising from any act or neglect of any other Licensee, if any, of the building in which the Property is located.

12. **Indemnification.** Licensee shall unconditionally indemnify, save, protect, defend and hold harmless the City, its Council members, officers, employees, agents, and contractors from and against any and all loss, injury, liability, expense, claims, costs, suits and damages, including attorney's fees and court costs, relating in any way to the use of the Property by Licensee, (including without any limitations, its employees, contractors, agents, and invitees), or resulting from conditions caused by Licensee's use of the Property. Licensee shall be solely responsible for all charges or claims from Licensee's employees and contractors with respect to any improvements or alterations to the Property. Licensee shall keep the Property free and clear of claims for any mechanics lien and Licensor shall not be responsible for any debts incurred by Licensee.

13. **Relocation.** Licensee expressly agrees to waive and releases any and all relocation rights, and understands and acknowledges that this License creates no rights in Licensee to receive

any relocation benefits or any advisory assistance when this License terminates.

13.1 If Temescal Pool becomes unusable due to renovation, repair etc. Licensor agrees to attempt to provide, but does not guarantee use of an alternate City aquatic facility at the regularly scheduled times.

14. **Possessory Interest Taxes.** Licensee understands and acknowledges that its interest hereunder may be subject to a possessory interest tax or property tax that may be levied on Licensee by the City or the County of Alameda pursuant to Section 107 of the Revenue and Taxation Code, Section 33673 of the Health and Safety Code, or any other provision of state or local law. The Licensee shall be required to pay any such taxes or assessments directly to the City or the County or file on its own for any exemptions to which it is entitled.

15. **Right of Entry.** Licensor may enter the Property at any reasonable time to inspect the Property, to install, construct, repair or maintain any public utility, including but not limited to drainage, sewage, and water facilities.

16. **Condition of Property.** Licensee accepts the Property in "as is" condition, without any warranty expressed or implied. When the License terminates, at Licensee's own cost, Licensee shall clean and restore the Property to the condition that existed on the day this License Period commenced, except for normal wear and tear.

17. **Assignment or Subletting.** This License is personal to Licensee. Licensee shall not transfer, pledge, or assign this License or any rights under the License. Any attempted transfer, pledge, or assignment of this License shall be null and void resulting in a default under this License.

18. **Termination.** Either party may terminate this License at any time upon providing the other party ninety (90) day written notice.

19. **Notices.** Any notice, demand, or communication under or in connection with this License which either party desires or is required to give the other party shall be delivered *personally or sent by prepaid, first class mail addressed to the respective parties as follows:*

To: Office of Parks and Recreation:  
250 Frank H. Ogawa Plaza, Suite 3330  
Oakland, CA 94612  
Attention: OPR Director

To: Temescal Aquatic Masters  
359 50<sup>th</sup> Street  
Oakland, CA 94609

Licensor and Licensee may, during this License, change their respective addresses for the purpose of receiving notices hereunder, by so notifying the other party in writing of such change of address. Notice shall be deemed communicated from and after the time of mailing, if mailed as provided in this paragraph.

20. **Default.** The occurrence of any of the following events shall constitute a default under this License:

20.1 Failure to pay the License Fee or any other sums of money due under this License when such failure to comply continues for ten (10) days after Licensee shall have received such notice from Licensor.

20.2 Failure to perform any other provision of this License if the failure to perform is not cured after ten (10) days after Licensee shall have received such notice from Licensor. If the default cannot be reasonably cured within thirty (30) days, Licensee shall not be in default if Licensee commences to cure the default within such thirty (30) day period and exercises due diligence and best efforts to cure the default.

21. **Licensor's Remedies.** In the event of any default by Licensee, Licensor shall have the following remedies in addition to all other rights and remedies provided by Law or otherwise provided in this License which Licensor may enforce cumulatively or in the alternative:

21.1 Licensor shall have the option to keep this License in force and effect and to enforce by an action at law or in equity the right to (1) recover the License Fee and other sums of money becoming due under this License, (2) make payments required by Licensee or perform Licensee's obligations and to be reimbursed by Licensee for such cost with interest at the then maximum rate of interest permitted by law from the sum is paid by Licensor until Licensor is reimbursed, and (3) remedies of injunctive relief and specific performance to prevent Licensee from violating the terms of this License and to compel Licensee to perform its obligation under this License.

21.2 Licensor shall the option to terminate this License by providing written notice to Licensee to be effective on the date set forth in such termination notice. Any such termination shall not relieve Licensee from its obligation to make any payments due under this License.

21.3 In the event that Licensee abandons the Property, Licensor may terminate this License provided that Licensor shall first provide written notice to Licensee with expressed notice of such termination.

22. **Damage or Destruction.** If all or part of the Property is destroyed or damaged from any cause which frustrates, causes the use of Property to be unfit for the purpose or use described in this License or creates a unsafe or hazardous condition, either party shall have the option to terminate this License upon thirty (30) days written notice to the other party. Licensor shall not have any obligation to Licensee under any circumstances to repair any damage to the Property or to rebuild any structure on the Property.

23. **Compliance with Laws and Nondiscrimination.** Licensee shall at all times and at no cost to Licensor comply with all applicable laws and regulations relating to this License. Licensee shall not unlawfully discriminate against any employee, applicant for employment, child or applicant for admission Licensee's program because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, gender or Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition (ARC).

24. **Annual Reporting.** At the end of each year of the License Period, Licensee shall deliver to Licensor current statements of the following:

24.1 Certificate of Insurance.

24.2 Certified Articles of Incorporation.

24.3 Certified Annual Reports including but not limited to an income and expense statement, a source and application of fund statement, balance sheet showing an all assets and liabilities and other related reports prepared by a Certified Public Accountant retained by Licensee at no cost to Licensor.

24.4 Statement confirming the number of dues paying participants enrolled or scheduled to participate in that year; the fee charged per participant, scholarships awarded and the city in which the recipients live, an operating statement showing income and expenses for the prior year, a balance sheet showing all assets and liabilities, a budget for the current year, and the name and telephone number of the current Head Coach of Temescal Aquatic Masters.

24.5 Copies of Temescal Aquatics Masters staff current credentials (Water Safety or Lifeguard training and CPR).

25. **Condemnation.** If all or part of the Property is taken under the power of eminent domain, or sold under the threat of condemnation, either party shall have the option to terminate the License upon thirty (30) days written notice to the other party.

26. **Entire Agreement.** This License contains the entire agreement of the parties relating to the subject matter hereof and may not be amended except in writing signed by both parties. Any prior lease or agreement between the parties shall have no force and effect on this License.

27. **Legal Effect.** This License shall not be construed as a partnership between Licensor and Licensee and it is not intended to create a third party beneficiary contract.

28. **Time.** Time is of the essence as to each and every part of this License.

[Signatures on following page.]

In Witness hereof, the parties have executed this License on the dates set forth below.

**Temescal Aquatic Masters**  
(Licensee)

**City of Oakland**  
(Licensor)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_  
City Administrator

**Office of Parks and Recreation**  
(Licensor)

**Approved as to form and legality:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Audree V. Jones-Taylor  
Director

By: \_\_\_\_\_  
Office of the City Attorney

**EXHIBIT A**

**Temescal Aquatic Masters**

**Temescal Pool**

**Use Schedule**

Annually (10/hrs week)

5:30 a.m. to 6:30 a.m.

7:00 p.m. to 8:00 p.m.

8:45 a.m. to 10:15 a.m.

Monday, Wednesday, Friday

Monday, Tuesday, Wednesday, Thursday

Saturday and Sunday

**Table of Exhibits**

<b>Exhibit</b>	<b>Description</b>
A	Pool Use Schedule
B	Licensee's Certificate of Insurance
C	Licensee's Automobile Insurance Waiver



**EXHIBIT A**

**Temescal Aquatic Masters**

**Temescal Pool**

**Use Schedule**

Annually (10/hrs week)

5:30 a.m. to 6:30 a.m.

7:00 p.m. to 8:00 p.m.

8:45 a.m. to 10:15 a.m.

Monday, Wednesday, Friday

Monday, Tuesday, Wednesday, Thursday

Saturday and Sunday

**EXHIBIT B**

**Certificate of Insurance**

(to be provided at signing)

**EXHIBIT C**

**Automobile Insurance Waiver**

(to be provided at signing)

**REVOCABLE NONEXCLUSIVE LICENSE AGREEMENT (\*\*DRAFT\*\*)**

**BETWEEN THE CITY OF OAKLAND**

**AND OAKLAND BARRACUDA AQUATICS**

This Revocable Nonexclusive License Agreement ("License") is made as of this \_\_\_ day of \_\_\_\_\_, 2006 by and between the City of Oakland, Office of Parks and Recreation ("OPR") jointly and severally called "Licensor", located at 250 Frank H. Ogawa Plaza, Suite 3330 Oakland, CA 94612, and Oakland Barracuda Aquatics, a California non-profit corporation, called "Licensee", located at 4200 Park Boulevard, Suite 121, Oakland, CA 94612.

**RECITALS**

**WHEREAS**, the City of Oakland is the fee simple owner and OPR is the custodial agency of the real property, commonly known as Live Oak Memorial Pool located at 1055 MacArthur Blvd. Oakland, California, called the "Property."

**WHEREAS**, Licensee is classified under the Internal Revenue Code, section 501(c)(3) as a tax exempt, public benefit organization as described in IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

**WHEREAS**, Licensee wishes to use of the Property for the purpose of operating a United States Masters Swimming program.

**WHEREAS**, Licensee desires to continue promoting the sport of swimming to the Oakland Community and supporting OPR's swim programs by providing volunteer officials for Special Olympics swim meets and by providing volunteers to assist with maintenance of the pool cover for Live Oak Memorial Pool.

**WHEREAS**, Licensee agrees to provide swim instructors at no cost to the City to assist with implementation of OPR's partnership with the YMCA "First Wave" initiative to teach every Oakland third grade student how to swim.

**WHEREAS**, Licensor is willing to grant Licensee a revocable nonexclusive license for the uses of the Property described herein subject to the terms and conditions of this License.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **Grant of Revocable License.** Licensor grants and Licensee accepts a revocable nonexclusive license to use the Property for the License Period and any Extended License Period subject to the exception and reservation of Licensor's right to also use the Property as described in Paragraph 6 of this License and on the terms and conditions set forth in this License.

2. **License Period.** The License Period shall be for three (3) years commencing on \_\_\_ and ending on \_\_\_\_\_, unless terminated sooner by either party in accordance with this License.

3. **Extended License Period.** Subject to earlier termination by either party in accordance with this License, Licensee shall have the right to one (1) option to extend the License for an Extended License Period of three (3) years to the same terms and condition as described in this License provided that following conditions are satisfied:

3.1 Licensee shall not be in default under any provision of this License,

3.2 Licensee shall provide Licensor with advance irrevocable written notice at least ninety (90) days prior to the termination of the License Period or any Extended License Period.

If Licensee fails to exercise the option to extend the License Period, Licensee shall have no other subsequent options to extend the License Period.

4. **License Fee.** Licensee agrees to unconditionally pay in advance and without any right of offset or deduction in lawful money of the United States a license fee of fifteen dollars (\$15.00) per hour of pool usage (reference schedule in Exhibit A) to Licensor on a quarterly fee schedule. The first License Fee shall be paid on March 1, 2006 and shall thereafter be paid to Licensor on the first day of each and every quarter (March, June, September, December) of the License Period and any Extended License Period. All License Fees shall be payable to the City of Oakland and shall be remitted to the Office of Parks and Recreation, Attention: **Fiscal Manager, 250 Frank H. Ogawa Plaza, Suite 3330, Oakland, CA 94612.**
- 4.1 **License Fee Schedule.** For each year after the initial year of the license and for each and every year thereafter, the License Fee shall be adjusted annually as reflected in the following schedule:
- (a) Initial License Period
    - March 2006 – February 2008 \$15.00 per hour of pool use
    - March 2008 – February 2009 \$17.00 per hour of pool use
  - (b) Extended License Period
    - March 2009 – February 2011 \$19.00 per hour of pool use
    - March 2011 – February 2012 \$22.00 per hour of pool use
- 4.2 Licensor shall credit licensee amounts in accordance with the schedule in sections 4.1(a) and 4.1(b) for periods when the pool is unsuitable for swimming due to improper pool chemical levels, improper temperature or other maintenance issues as documented in the Daily Pool Log maintained at the Property. The credit shall be applied to Licensee's next scheduled payment.
5. **Late Payment Fee And Interest.** Licensee acknowledges that the late payment of any License Fee or other charges due under this License will cause Licensor to incur costs not contemplated which costs are difficult to ascertain. Such costs include without limitation administrative and processing expenses and the loss of interest on the past due License Fee or other charges. If any payment due under this License is not paid within ten (10) days from the receipt of written notice from Licensor, Licensee shall be required to pay a late payment fee of seventy-five dollars (\$75) which shall be immediately paid to Licensor with all other payments due under this License. Licensor and Licensee confirm that such a late payment charge represents a fair and reasonable estimate of the costs that Licensor will incur resulting from Licensee's late payment. Acceptance of any late payment charge or any part thereof shall not constitute a waiver of Licensor's right to enforce any right under this License or any other legal remedy available to Licensor. If any License Fee remains delinquent for a period in excess of 10 calendar days, in addition to the \$75 late payment fee, Licensee shall pay to Licensor interest on any License Fee or other charges that are not paid from the 10-day period at the maximum rate of interest permitted by law until paid.
6. **Use.** Licensee shall have no other use of the Property except for the following:

- 6.1 Live Oak Memorial Pool. The use of Live Oak Memorial Pool shall be restricted to use as a United States Masters Swimming Club during the times detailed in Exhibit A attached hereto.
- 6.2 Except for Licensee's permitted use of the Property on the days and times described in Exhibit A, Licensor reserves and accepts the exclusive right to use the Property for all other days and times not granted to Licensee. Licensor accepts and reserves the right to use the Property for any purpose including but not limited to renting the Property for swim meets, classes, and other related events. Licensee may reserve additional days and times not granted in Exhibit A at the current City of Oakland Master Fee Schedule hourly rate.
- 6.3 Request for modification of use schedule (Exhibit A) must be submitted in writing with thirty (30) day advance notice. Schedule modification must be agreed upon and signed off by both parties.
- 6.4 Prior to the end of Licensee's use of the Property for days and times described in Exhibit A, Licensee shall remove and store all equipment, install pool covers and shall maintain the Property in a clean and safe condition.

## 7. **Facility Operations.**

- 7.1 The Licensee shall provide two (2) certified staff on site at all times during programming. One staff must be a lifeguard; additional staff may be a certified swim coach. Swim coach and lifeguard certifications must be on file at the Office of Parks and Recreation, Aquatics Office. Swim Coach/Lifeguard shall receive remuneration for services from the Licensee.
- 7.2 The Licensee shall test swimming pool chemical balance and record the results in the "Daily Pool Log" prior to use.
- 7.3 The Licensee shall immediately report any vandalism or damage to the facility caused during programming. Incidents are to be recorded in the "Daily Pool Log".
- 7.4 The Licensee shall inform and enforce posted pool rules and regulations with Licensee's staff and program participants.
- 7.5 The Licensee shall comply with all operations procedures as specified by the "Daily Pool Log".
- 7.6 Licensee may submit any requests for maintenance to the Licensor via email. Within 5 days of receipt of request, Licensor shall reply with acknowledgement of receipt of maintenance request.

8. **Facility Modifications.** Licensee shall not make any improvements or alterations to the Property without first obtaining the written consent from Licensor. If Licensee makes any improvements or alterations to the Property, Licensor shall have the option to require Licensee to remove any such improvements or alterations made by Licensee prior to the end of this License at no cost to Licensor. If any improvements or alterations are not removed, such improvements or alterations shall become part of the Property and Licensee shall not have any claim or interest in such improvements or alterations.

- 8.1 Improvements required by law. Licensee shall, at no cost to Licensor, make all improvements or alterations to the Property required by law due to Licensee's use of the Property or Licensee's application for any governmental permit. If Licensor shall be required by any governmental agency to make any improvements or alterations to the Property, the cost incurred by Licensor to complete such improvements or alterations including 10% interest per year shall be evenly amortized over the useful life of such improvements or alterations and such monthly amortized cost shall included in the

Project Management Cost.

8.2 Liens. Licensee shall keep the Property free from any liens and shall pay when due all bills arising out of any work performed, materials, furnished, or obligations incurred Licensee, its agents, employees, or contractors relating to the Property.

9. **Telephone.** Licensee shall be responsible for its telephone services and related charges.

10. **Hazardous & Toxic Materials.** The Licensee shall not use, create, store or allow any hazardous and toxic materials on the Property except for those materials and supplies normally and customarily used for housekeeping, maintenance or cleaning considered safe.

Licensee acknowledges Licensor's disclosure and has reviewed the issues relating to the past history of hazardous and toxic materials contamination and remediation actions undertaken by Licensor. Licensor agrees to be solely responsible and liable for any prior hazardous and toxic materials conditions, which may have occurred prior to Licensee's involvement in the Property.

11. **Insurance.** At Licensee's own cost, Licensee shall purchase and maintain insurance policies in an amount and coverage satisfactory to Licensor for the License Period and any Extended License Period. A copy of all required insurance policies shall be delivered to Licensor prior to the execution of this License unless Licensor shall request from Licensee a Certificate of Insurance. In any event, a copy of any required insurance policy or Certificate of Insurance as requested by Licensor shall be attached hereto as Exhibit B and made a part of this License.

11.1 Licensee's Insurance. Licensee's insurance policies shall consist of the following:

(a) Comprehensive or Commercial Form General Liability Insurance (contractual liability and fire legal liability included), with minimum limits as follows:

1. Each Occurrence:  
Two Million Dollars (\$2,000,000)
2. Products/Completed Operations Aggregate:  
Two Million Dollars (\$2,000,000)
3. General Aggregate:  
Two Million Dollars (\$2,000,000)

If the insurance is written on a claims-made form, following termination of this License, the coverage shall survive for a period of not less than three years. Coverage shall provide for a retroactive date of coverage coinciding with the commencement date of this License.

~~(b) Business Automobile Liability Insurance for any owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. (See Exhibit C - waiver.)~~

(c) Workers' Compensation and Employers Liability Insurance in a form and amount covering Licensee's full liability under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.

(d) Property Insurance, Fire and Extended Coverage Form in an amount sufficient to reimburse Licensor for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises and for all leasehold improvements including those hereinafter constructed or installed by Licensor or Licensee.

(e) Such other insurance in such amounts which at any time may be reasonably required by the City against other insurable risks relating to Licensee's use of the premises. In no event shall Licensee be required to secure and maintain earthquake insurance.

In each insurance policy referenced under (a) and (b) of this paragraph, the City of Oakland shall be a named additional insured. The insurance policies shall apply only to the extent of the negligent acts or omissions of Licensee, its officers, agents, employees; or any other person or persons under Licensee's direct supervision and control. Prior to the execution of this License, Licensee shall either furnish City with a copy of the insurance policies or Certificates of Insurance evidencing compliance with all insurance requirements. The Certificates shall contain provisions for thirty (30) day advance written notice to City of any modification, change or cancellation of any of the above insurance coverage.

The insurance coverage required herein shall not limit the liability of Licensee, its officers, agents, or employees.

11.2 Waivers of Subrogation. The City and Licensee each hereby waive any right of recovery against the other due to any loss or damage to the property owned either by the City or Licensee when such loss of or damage to property arises out of the acts of God or any of the property perils included in the classification of fire, extended perils ("all risk" as such term is used in the insurance industry) whether or not such perils have been insured, self-insured or non-insured.

11.3 Exemption of City from Liability. Licensee agrees that City shall not be liable under this License for injury to Licensee's business or any loss of Licensee's income or for damage to the goods, wares, merchandise or other property of Licensee, Licensee's employees, invitees, customers, or any other person in or about the Property, nor shall the City be liable for injury to the person of Licensee, Licensee's employees, agents or contractors, as a result of any condition of the Property or the building on the Property, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause in or about the Property, whether the said damage or injury results from conditions arising from the Property or in other parts of the building on the Property, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee. The City shall not be liable under this License for any damages arising from any act or neglect of any other Licensee, if any, of the building in which the Property is located.

12. **Indemnification.** Licensee shall unconditionally indemnify, save, protect, defend and hold harmless the City, its Council members, officers, employees, agents, and contractors from and against any and all loss, injury, liability, expense, claims, costs, suits and damages, including attorney's fees and court costs, relating in any way to the use of the Property by Licensee, (including without any limitations, its employees, contractors, agents, and invitees), or resulting from conditions caused by Licensee's use of the Property. Licensee shall be solely responsible for all charges or claims from Licensee's employees and contractors with respect to any



improvements or alterations to the Property. Licensee shall keep the Property free and clear of claims for any mechanics lien and Licensor shall not be responsible for any debts incurred by Licensee.

13. **Relocation.** Licensee expressly agrees to waive and releases any and all relocation rights, and understands and acknowledges that this License creates no rights in Licensee to receive any relocation benefits or any advisory assistance when this License terminates.

13.1 If Live Oak Memorial Pool becomes unusable due to renovation, repair etc. Licensor agrees to attempt to provide, but does not guarantee use of an alternate City aquatic facility at the regularly scheduled times.

14. **Possessory Interest Taxes.** Licensee understands and acknowledges that its interest hereunder may be subject to a possessory interest tax or property tax that may be levied on Licensee by the City or the County of Alameda pursuant to Section 107 of the Revenue and Taxation Code, Section 33673 of the Health and Safety Code, or any other provision of state or local law. The Licensee shall be required to pay any such taxes or assessments directly to the City or the County or file on its own for any exemptions to which it is entitled.

15. **Right of Entry.** Licensor may enter the Property at any reasonable time to inspect the Property, to install, construct, repair or maintain any public utility, including but not limited to drainage, sewage, and water facilities.

16. **Condition of Property.** Licensee accepts the Property in "as is" condition, without any warranty expressed or implied. When the License terminates, at Licensee's own cost, Licensee shall clean and restore the Property to the condition that existed on the day this License Period commenced, except for normal wear and tear.

17. **Assignment or Subletting.** This License is personal to Licensee. Licensee shall not transfer, pledge, or assign this License or any rights under the License. Any attempted transfer, pledge, or assignment of this License shall be null and void resulting in a default under this License.

18. **Termination.** Either party may terminate this License at any time upon providing the other party ninety (90) day written notice.

19. **Notices.** Any notice, demand, or communication under or in connection with this License which either party desires or is required to give the other party shall be delivered personally or sent by prepaid, first class mail addressed to the respective parties as follows:

To: Office of Parks and Recreation  
250 Frank H. Ogawa Plaza, Suite 3330  
Oakland, CA 94612  
Attention: OPR Director

To: Oakland Barracuda Aquatics  
4200 Park Boulevard, Suite 121  
Oakland, CA 94602  
Attention: David Teel

Licensor and Licensee may, during this License, change their respective addresses for the purpose of receiving notices hereunder, by so notifying the other party in writing of such change of address. Notice shall be deemed communicated from and after the time of mailing, if mailed as provided in this paragraph.

20. **Default.** The occurrence of any of the following events shall constitute a default under this License:

20.1 Failure to pay the License Fee or any other sums of money due under this License when such failure to comply continues for ten (10) days after Licensee shall have received such notice from Licensor.

20.2 Failure to perform any other provision of this License if the failure to perform is not cured after ten (10) days after Licensee shall have received such notice from Licensor. If the default cannot be reasonably cured within thirty (30) days, Licensee shall not be in default if Licensee commences to cure the default within such thirty (30) day period and exercises due diligence and best efforts to cure the default.

21. **Licensor's Remedies.** In the event of any default by Licensee, Licensor shall have the following remedies in addition to all other rights and remedies provided by Law or otherwise provided in this License which Licensor may enforce cumulatively or in the alternative:

21.1 Licensor shall have the option to keep this License in force and effect and to enforce by an action at law or in equity the right to (1) recover the License Fee and other sums of money becoming due under this License, (2) make payments required by Licensee or perform Licensee's obligations and to be reimbursed by Licensee for such cost with interest at the then maximum rate of interest permitted by law from the sum is paid by Licensor until Licensor is reimbursed, and (3) remedies of injunctive relief and specific performance to prevent Licensee from violating the terms of this License and to compel Licensee to perform its obligation under this License.

21.2 Licensor shall the option to terminate this License by providing written notice to Licensee to be effective on the date set forth in such termination notice. Any such termination shall not relieve Licensee from its obligation to make any payments due under this License.

21.3 In the event that Licensee abandons the Property, Licensor may terminate this License provided that Licensor shall first provide written notice to Licensee with expressed notice of such termination.

22. **Damage or Destruction.** If all or part of the Property is destroyed or damaged from any cause which frustrates, causes the use of Property to be unfit for the purpose or use described in this License or creates a unsafe or hazardous condition, either party shall have the option to terminate this License upon thirty (30) days written notice to the other party. Licensor shall not have any obligation to Licensee under any circumstances to repair any damage to the Property or to rebuild any structure on the Property.

23. **Compliance with Laws and Nondiscrimination.** Licensee shall at all times and at no cost to Licensor comply with all applicable laws and regulations relating to this License. Licensee shall not unlawfully discriminate against any employee, applicant for employment, child or applicant for admission Licensee's program because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, gender or Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition (ARC).

24. **Annual Reporting.** At the end of each year of the License Period, Licensee shall deliver to Licensor current statements of the following:

24.1 Certificate of Insurance.

24.2 Certified Articles of Incorporation.

24.3 Certified Annual Reports including but not limited to an income and expense statement, a source and application of fund statement, balance sheet showing an all assets and liabilities and other related reports prepared by a Certified Public Accountant retained by Licensee at no cost to Licensors.

24.4 Statement confirming the number of dues paying participants enrolled or scheduled to participate in that year; the fee charged per participant, scholarships awarded and the city in which the recipients live, an operating statement showing income and expenses for the prior year, a balance sheet showing all assets and liabilities, a budget for the current year, and the name and telephone number of the current Head Coach of Oakland Barracuda Aquatics.

24.5 Copies of Temescal Aquatics Masters staff current credentials (Water Safety or Lifeguard training and CPR).

25. **Condemnation.** If all or part of the Property is taken under the power of eminent domain, or sold under the threat of condemnation, either party shall have the option to terminate the License upon thirty (30) days written notice to the other party.

26. **Entire Agreement.** This License contains the entire agreement of the parties relating to the subject matter hereof and may not be amended except in writing signed by both parties. Any prior lease or agreement between the parties shall have no force and effect on this License.

27. **Legal Effect.** This License shall not be construed as a partnership between Licensors and Licensee and it is not intended to create a third party beneficiary contract.

28. **Time.** Time is of the essence as to each and every part of this License.

[Signatures on following page.]

In Witness hereof, the parties have executed this License on the dates set forth below.

**Oakland Barracuda Aquatics**  
(Licensee)

**City of Oakland**  
(Licensor)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_  
City Administrator

**Office of Parks and Recreation**  
(Licensor)

**Approved as to form and legality:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Audree V. Jones-Taylor  
Director

By: \_\_\_\_\_  
Office of the City Attorney

**Table of Exhibits**

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**EXHIBIT A**

**Oakland Barracuda Aquatics  
Live Oak Memorial Pool  
Use Schedule**

**School Year – September to Mid-June (28.5/hrs week)**

5:30 a.m. to 7:30 a.m.	Monday thru Friday
4:00 p.m. to 7:00 p.m.	Monday thru Friday
7:00 a.m. to 10:30 a.m.	Saturday

**Summer – Mid-June to August (26.5/hrs week)**

5:30 a.m. to 9:00 a.m.	Monday thru Friday
6:30 p.m. to 8:30 p.m.	Monday, Tuesday, Wednesday, Thursday
6:30 a.m. to 7:30 a.m.	Saturday

**EXHIBIT B**

**Certificate of Insurance**

(to be provided at signing)

**EXHIBIT C**

**Automobile Insurance Waiver**

(to be provided at signing)



*D. Lewis*

Approved as to Form and Legality  
Oakland City Attorney's Office

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

2006 FEB 16 PM 9:05

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND BARRACUDAS AQUATICS FOR NONEXCLUSIVE USE OF LIVE OAK MEMORIAL POOL, FOR \$15 PER HOUR OF USE FOR A THREE YEAR TERM WITH ONE THREE YEAR OPTION TO RENEW**

**WHEREAS**, the City of Oakland is the fee simple owner and the Office of Parks and Recreation ("OPR") is the custodial agency of the real property, commonly known as Live Oak Memorial Pool located at 1055 MacArthur Blvd. Oakland, California 94611, ("Property"); and

**WHEREAS**, Oakland Barracuda Aquatics ("Barracudas"), a California 501(c)(3) non-profit corporation, desires to continue the use of the Property for the purpose of operating a competitive swim team and learn to swim programs; and

**WHEREAS**, the Barracudas annually assist OPR in hosting swim meets for the Special Olympics; and

**WHEREAS**, the Barracudas will provide swim instructors at no cost to the City to assist with implementation of OPR's partnership with the YMCA "First Wave" initiative to teach every Oakland third grade student how to swim; and

**WHEREAS**, the Barracudas agree to pay \$15 per hour for use of Live Oak Memorial Pool in the first year of the License Agreement and agree to periodic fee increases to be detailed within the License Agreement; and

**WHEREAS**, the Barracudas agree to abide by the terms and conditions set forth in the License Agreement; now therefore, be it

**RESOLVED:** That the City Administrator is authorized to negotiate and execute a License Agreement and any amendments thereto between the City of Oakland and the Oakland Barracuda Aquatics for nonexclusive use of Live Oak Memorial Pool, for a three year term with one three year option to renew; and, be it

**FURTHER RESOLVED:** That the Office of the City Attorney has approved this resolution as to form and legality, and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_.  
**PASSED BY THE FOLLOWING VOTE:**


AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California



Approved as to Form and Legality  
Oakland City Attorney's Office

# OAKLAND CITY COUNCIL

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**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and PRESIDENT DE LA FUENTE

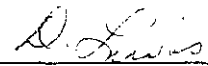
NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

IaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California



Approved as to Form and Legality  
Oakland City Attorney's Office

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

OFFICE OF   
Oakland City Attorney's Office

**OAKLAND CITY COUNCIL** 2006 FEB 16 PM 9: 05

**RESOLUTION NO. \_\_\_\_\_ C.M.S.**

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE TEMESCAL AQUATICS MASTERS FOR NONEXCLUSIVE USE OF TEMESCAL POOL FOR \$15 PER HOUR OF USE, FOR A THREE YEAR TERM WITH ONE THREE YEAR OPTION TO RENEW**

**WHEREAS**, the City of Oakland is the fee simple owner and the Office of Parks and Recreation ("OPR") is the custodial agency of the real property, commonly known as Temescal Pool located at 371-45<sup>th</sup> Street, Oakland, California 94609, ("Property"); and

**WHEREAS**, the Temescal Aquatic Masters ("Temescal Masters"), a California 501(c)(3) non-profit corporation, desires to continue the use of the Property for the purpose of operating a United States Masters Swimming program; and

**WHEREAS**, the Temescal Masters is a registered United States Masters Swimming Club serving swimmers of all levels, athletes of all types, and people of all backgrounds; and

**WHEREAS**, the Temescal Masters hosts a free youth learn-to-swim program each year and sponsors an annual swim-a-thon; and

**WHEREAS**, the Temescal Masters promote the sport of swimming to the Oakland Community and support OPR's swim programs by providing volunteer officials for all OPR summer swim meets; and

**WHEREAS**, the Temescal Masters agree to pay \$15 per hour of use of Temescal Pool in the first year of the License Agreement and agree to periodic increases detailed within the License Agreement, and

**WHEREAS**, the Temescal Masters agree to abide by the terms and conditions set forth in the License Agreement; now therefore, be it

**RESOLVED**: That the City Administrator is authorized to execute a License Agreement and any amendments thereto between the City of Oakland and the Temescal Aquatics Masters for nonexclusive use of Temescal Pool, for a three year term with one three year option to renew; and, be it

**FURTHER RESOLVED**: That the Office of the City Attorney has approved this resolution as to form and legality, and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_.

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and PRESIDENT DE LA FUENTE

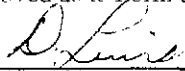
NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

  
Oakland City Attorney's Office

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ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

*D. Lewis*  
Oakland City Attorney's Office

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