

0136

Exhibit A
Original Agreement

RESOLUTION NO. 2016- 280

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE
CITY OF POMPANO BEACH, FLORIDA, APPROVING
AND AUTHORIZING THE PROPER CITY OFFICIALS TO
EXECUTE A REVOCABLE LICENSE AGREEMENT
BETWEEN THE CITY OF POMPANO BEACH AND
PAYLESS SWIM LLC FOR THE AQUATIC CENTER PRO
SHOP; PROVIDING AN EFFECTIVE DATE.

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO
BEACH, FLORIDA:**

SECTION 1. That a Revocable License Agreement between the City of Pompano Beach and Payless Swim LLC for the Aquatic Center Pro Shop, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Revocable License Agreement between the City of Pompano Beach and Payless Swim LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 13th day of September, 2016.



LAMAR FISHER, MAYOR

ATTEST:



ASCELETA HAMMOND, CITY CLERK

/jrm
6/1/16
l:reso/2016-224

07/21

City of Pompano Beach

LICENSE AGREEMENT

with

Payless Swim LLC

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), entered into this 19th day of September, 2016, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter "CITY"),

and

PAYLESS SWIM, LLC, a Florida limited liability company (hereinafter "LICENSEE").

WHEREAS, the CITY issued Request for Proposals E-20-16 (Exhibit A) to locate a qualified firm to provide operation of a full-service swim shop servicing all competitive aquatic services to the City located at 820 NE 18 Avenue in Pompano Beach, Florida (the "Aquatic Center"); and

WHEREAS, on March 8, 2016, the CITY declared Payless Swim LLC as the sole proposer to RFP E-20-16 (Exhibit B), which conditions and terms shall be incorporated into this Agreement, and directed staff to negotiate a License Agreement (the "Agreement") between the parties; and

WHEREAS, in accordance with the terms and conditions set forth herein, LICENSEE is able and prepared to provide the goods and services described in this Agreement and in Exhibits attached hereto and made a part hereof; and

WHEREAS, the CITY has determined entering into this License Agreement with LICENSEE is in the best interest of the public; and

WHEREAS, the CITY and LICENSEE desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and LICENSEE agree as follows.

ARTICLE 1 REPRESENTATIONS

A. **Representations of CITY.** CITY makes the following representations to LICENSEE which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY's Recreation Programs Administrator.

B. **Representations of Payless Swim, LLC.** LICENSEE makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. Payless Swim, LLC is a Florida limited liability company duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause Payless Swim, LLC, Inc. to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

3. The individual executing this Agreement and related documents on behalf of Payless Swim, LLC is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting Payless Swim, LLC or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. The standard of care for all professional services furnished by LICENSEE and its employees, subLicensees or other agents under this Agreement will be the skill and care used by professionals currently practicing under similar circumstances in the same locality.

7. CITY shall be entitled to rely upon the professional and technical skills of LICENSEE or by others authorized by LICENSEE under this Agreement.

8. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 2 NON-ASSIGNABILITY AND SUBCONTRACTING

This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of LICENSEE's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

ARTICLE 3 TERM AND RENEWAL

The City hereby engages LICENSEE to operate a full service Pro Swim Shop specializing in the sale of recreational and competitive swimwear, training accessories and equipment for a term of three (3) years, commencing Sep 19, 2016, and ending Sep. 19, 2019. The CITY reserves the right to extend this Agreement for one (1) two-year renewal option provided both parties agree in writing to said extension. Renegotiation should commence at least 180 days prior to normal termination.

ARTICLE 4 RESPONSIBILITIES OF LICENSEE

LICENSEE shall provide operation of a full-service Pro Swim Shop servicing all competitive aquatic disciplines to the CITY and specializing in full time, on-site management for the Pro Swim Shop and all its operations consistent with policies adopted by CITY which specifically require LICENSEE to at all times perform its obligations under this Agreement in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated. LICENSEE agrees to follow the policies and directives of

the CITY's Recreation Programs Administrator but in the absence thereof, LICENSEE shall exercise its reasonable judgment in discharging its duties hereunder.

LICENSEE shall perform the duties set forth below at the Pompano Beach Aquatic Center, including such other duties as the CITY may, from time to time, require in connection with the requirements provided for pursuant to this License Agreement.

1. LICENSEE shall plan, coordinate and direct the overall operations of the Pro Swim Shop and shall work closely with the CITY Recreation Programs Administrator, or designee, to set up all hours of operation which shall include being open during all CITY aquatic events and swim meets. It is expressly understood that LICENSEE shall only have access to CITY Aquatic Center during facility operating hours.

2. LICENSEE shall be responsible for the general cleanliness of the Pro Swim Shop and patio, which includes coordinating daily collection of debris from the aforesaid areas prior to opening them to the public and from time to time throughout the day as conditions require to maintain a state of cleanliness. It is expressly understood that no garbage may be stored by LICENSEE during business hours and/or within sight of the public.

3. At LICENSEE's sole risk and expense, LICENSEE shall manage and maintain an inventory of aquatic related goods and merchandise for public sale at the Pro Swim Shop including, but not limited to, recreational and competitive swimwear, training accessories and equipment supplied by all the major brands recognized in the aquatic industry.

4. In addition to providing items for public sale, LICENSEE shall sell to CITY all lifeguard suits, training accessories or equipment supplied through any supplier at a reduced rate of twenty-five (25) percent off the Manufacturer's Suggested Retail Price (MSRP) pricing. LICENSEE's provision of all merchandise and services at the Pro Swim Shop shall be offered at competitive prices for the Broward County area. LICENSEE must seek and receive written permission from the CITY's Recreation Programs Administrator prior to providing any goods or services not enumerated in this Agreement or Exhibits.

5. LICENSEE shall be responsible to pay any and all sales taxes and other charges of any nature or kind which may be assessed against LICENSEE's provision of services or merchandise sales under this Agreement, including real estate taxes. LICENSEE shall be responsible for any corresponding equipment necessary for operations and shall not make any improvements, additions or repairs without prior written approval from the CITY. If any such approvals are given by CITY, LICENSEE agrees to return the area to original working condition at its own expense at the expiration or termination of Agreement.

6. LICENSEE shall utilize the Pro Swim Shop exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the Pro Swim Shop of Aquatic Center to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

7. LICENSEE is responsible for hiring and managing its own staff of employees sufficient to provide operation of a Pro Swim Shop. LICENSEE's employees and

personnel shall be a minimum of eighteen years old, under LICENSEE's exclusive direction and control and not deemed employees or agents of the CITY.

8. LICENSEE shall be solely responsible for compensating its employees and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, the provisions of workers' compensation insurance and all other benefits required by law.

9. LICENSEE shall be responsible to ensure that all of its employees are suitable for employment in a municipal facility in terms of general character, knowledge, ability, public relations potential, manner and conduct.

10. For each employee, at LICENSEE's sole expense and prior to allowing any of its employees to provide services at the Aquatic Center, LICENSEE shall (i) provide the CITY's Recreation Programs Administrator a written background check from a reputable company approved by the CITY or (ii) allow the CITY to conduct its own background check at the LICENSEE's sole expense. LICENSEE's failure to comply with the obligations of this paragraph shall be deemed a material breach of this Agreement.

11. LICENSEE shall promptly respond to complaints about its employees from the CITY and Aquatic Center patrons and timely take appropriate disciplinary action as warranted by the circumstances.

12. LICENSEE shall immediately inform the CITY's Recreation Program Administrator of any repairs or maintenance necessary to keep all Pro Swim Shop areas in good and safe condition. LICENSEE agrees to accept the concession area, as is, and the City shall not be obligated to make any improvements as a condition precedent to this Agreement. LICENSEE shall provide signage to be approved by CITY prior to installation.

13. LICENSEE shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, including the laws of Broward County and the charter, ordinances and other regulations of the City of Pompano Beach as may now exist or as may hereafter be adopted. LICENSEE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against LICENSEE's provision of goods and services under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

14. LICENSEE, while acting pursuant to this Agreement, shall not discriminate against any worker, employee, patron, or member of the public on the basis of race, creed, religion, age, sex, disability or national origin.

15. LICENSEE shall record all fees and sales under this Agreement on a daily basis and submit monthly gross revenue reports to the CITY's Recreation Programs Administrator.

16. LICENSEE shall give CITY prompt written notice of any accidents occurring at the Aquatic Center in which damage to property or injury to a person occurs.

ARTICLE 5 RESPONSIBILITIES OF CITY

A. CITY is responsible to maintain the Aquatic Center facilities and surrounding outdoor areas, including the building systems (plumbing, electrical, painting, ceilings, walls, floors, roof, public restrooms, etc.), and general maintenance (shrubbery and lawn care, garbage pickup, etc.). CITY shall provide electricity, Internet access will be provided via a CITY public Wi-Fi feed.

B. CITY shall provide LICENSEE with a designated area in the Aquatic Center to operate, stock and sell merchandise and services as provided for in this Agreement and Exhibits. Said area shall be referred to as the Pro Swim Shop. LICENSEE may advertise and promote the sale of its merchandise and services provided all signs and advertisements comply with all applicable laws, ordinances, regulations and CITY policies.

C. CITY shall provide LICENSEE a schedule of all meets, competitions, special events and scheduled practices of both local home based programs and visiting teams.

ARTICLE 6 COMPENSATION AND METHOD OF PAYMENT

A. LICENSEE shall pay CITY compensation in the amount of one hundred (\$100) dollars a month in association with the terms and conditions of this Agreement. Payment shall be due on the first day of each month or as agreed to in writing by both parties. A late fee of twenty-five (\$25.00) dollars shall be assessed if payment is not received by the fifth day of the month.

ARTICLE 7 ACCOUNTING AND RECORD KEEPING PROCEDURES

A. Both CITY and LICENSEE shall conform to generally accepted accounting methods and procedures and those set forth in this Agreement.

B. LICENSEE and its employees providing services and merchandise hereunder shall be required to record and preserve complete and accurate records attendant to this Agreement for a period of five (5) years after its termination or, if an audit has been initiated and audit findings have not been resolved at the end of this five (5) year period, the records shall be retained until resolution of the audit findings.

LICENSEE shall make available locally at reasonable time for CITY's examination and audit all such financial records, supporting documents, statistical records and any other documents, including state sales tax returns. If such examination or audit discloses a liability of fees, LICENSEE shall promptly pay the amount due. If such liability exceeds three percent (3%) of the fees, LICENSEE shall pay CITY the amount due and also pay for the cost of the CITY's audit within 10 calendar days.

Incomplete and incorrect entries in LICENSEE's records will be grounds for the CITY's allowance of any fees based upon such entries as well as termination of this Agreement.

C. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, the Licensee shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the Licensee does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Licensee, or keep and maintain public records required by the City to perform the service. If the Licensee transfers all public records to the City upon completion of the contract, the Licensee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Licensee keeps and maintains public records upon completion of the contract, the Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

Failure of the LICENSEE to provide the above described public records to the City within a reasonable time may subject Licensee to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,

**CONTACT THE CUSTODIAN OF PUBLIC RECORDS
AT:**

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

**ARTICLE 8
LICENSEE'S INDEMNIFICATION OF CITY**

A. LICENSEE shall indemnify, defend and save harmless the CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Aquatic Center and Pro Swim Shop.

B. LICENSEE shall be solely responsible for insuring all stock and inventory at the Pro Swim Shop against damage or loss of any nature or kind. LICENSEE has permission from CITY to install new locks on the entry doors to the Pro Swim Shop. LICENSEE agrees to provide CITY with a key to same in case of emergency. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any property placed at the Aquatic Center and that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LICENSEE's presence and occupancy at the Aquatic Center.

**ARTICLE 9
INSURANCE**

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit C.

**ARTICLE 10
INDEPENDENT LICENSEE**

Both CITY and LICENSEE agree that LICENSEE is an independent Licensee and not a CITY employee.

**ARTICLE 11
DEFAULT AND DISPUTE RESOLUTION**

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to

reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 17 herein.

C. If the party receiving written notice of default provides written notice denying same within ten (10) calendar day of receipt or the alleged default has not been remedied within ten (10) calendar days after written notice of same and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 17 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 14 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by LICENSEE.

ARTICLE 12 TERMINATION

CITY may terminate this Agreement, in whole or in part, for convenience, cause, default or negligence upon forty-five (45) days advance written notice to LICENSEE in accordance with Article 17 herein.

If any service hereunder is in progress but not completed as of the date of termination, then upon the CITY's written approval, this Agreement may be extended until said services are completed and accepted by CITY.

ARTICLE 13 EQUAL OPPORTUNITY EMPLOYMENT

LICENSEE agrees not to discriminate against any of its or the CITY's employees under this Agreement because of race, color, religion, sex, age, national origin or disability.

ARTICLE 14 PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 15
NOTICES AND DEMANDS

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:

City Manager
City of Pompano Beach
P.O. Drawer 1300
Pompano Beach, Florida 33061
dennis.beach@copbfl.com
954-786-4601 office
954-786-4504 fax

With a copy to:

Recreation Program Administrator
City of Pompano Beach
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
954-786-4191 office
954-786-4113 fax

For LICENSEE:

Michael McGoun, Payless Swim, LLC
12270 NW 2nd Street
Coral Springs, Florida 33071
954-515-8689
paylessswim@hotmail.com

ARTICLE 16
GOVERNING LAW AND VENUE

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 17
CONTRACT ADMINISTRATOR

The CITY's Recreation Program Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Michael McGoun shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

ARTICLE 18
NO CONTINGENT FEE

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LICENSEE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at the CITY's sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 19
ATTORNEY'S FEES

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

ARTICLE 20
FORCE MAJEURE

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

ARTICLE 21 WAIVER AND MODIFICATION

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 22 RELATIONSHIP BETWEEN THE PARTIES

LICENSEE is being contracted by CITY for the purposes and to the extent set forth in this Agreement. LICENSEE is an independent Licensee and not an employee of the CITY.

ARTICLE 23 MISCELLANEOUS TERMS AND CONDITIONS

A. LICENSEE may not make changes to any permanent fixtures at the Aquatic Center without prior written approval from the CITY's Recreation Program Administrator. Upon written approval of the CITY and receipt of all necessary and proper permits, LICENSEE may install permanent fixtures in the Pro Swim Shop area at its sole expense.

ARTICLE 24 SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

ARTICLE 25 APPROVALS

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 26
ABSENCE OF CONFLICTS OF INTEREST

LICENSEE represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. LICENSEE further represents no person having any interest shall be employed or engaged by it for said performance.

LICENSEE shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence LICENSEE's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that LICENSEE intends to undertake and shall request the CITY's opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by LICENSEE.

ARTICLE 27
BINDING EFFECT

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

ARTICLE 28
NO WAIVER OF SOVEREIGN IMMUNITY

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

ARTICLE 29
LICENSE NOT LEASE

Both parties acknowledge and agree this license shall not be deemed a lease of the Aquatic Center but rather a license granted to LICENSEE by CITY for the full time, on-site management of the Pro Swim Shop located at the Aquatic Center and all its operations.

ARTICLE 30
ENTIRE AGREEMENT AND INTERPRETATION

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had

equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Betty J. Manes
Shelly R. Bartholme

By: [Signature]
LAMAR FISHER, MAYOR
By: [Signature]
DENNIS W. BEACH, CITY MANAGER

Attest:

[Signature]
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

[Signature]
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 19th day of September, 2016, by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:



CLS/ds
8/30/16
L:/agr/2016-976a

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Krystal Aaron
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

C. Missy Kitts

C. Missy Kitts

Print Name

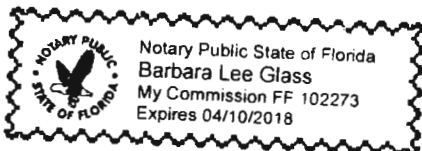
Scott Moore

Print Name

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 31st day of August, 2016, by Michael P. McGoun as Manager of Payless Swim LLC, a Florida Limited Liability Company. He is personally known to me or who has produced FDL 150855-40-0 (type of identification) as identification. exp 11/17

NOTARY'S SEAL:



Barbara Lee Glass
NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

FF 102273
Commission Number



Florida's Warmest Welcome

**CITY OF POMPANO BEACH
REQUEST FOR PROPOSALS
E-20-16**

AQUATIC CENTER PRO SHOP

**RFP OPENING: March 8, 2016 2:00 P.M.
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPANO BEACH, FLORIDA 33060**

February 8, 2016

CITY OF POMPANO BEACH, FLORIDA

REQUEST FOR PROPOSALS

E-20-16

AQUATIC CENTER PRO SHOP

The City of Pompano Beach is seeking proposals from qualified firms to provide operation of a full-service swim shop servicing all competitive aquatic services to the City.

The City will receive sealed proposals until 2:00 p.m. (local), March 8, 2016 in the City's Purchasing Office, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida, 33060. E-mailed or faxed proposals will not be acceptable.

Introduction

The City's Parks Recreation, and Cultural Arts Department requests proposals for the operation of a full-service swim shop specializing in all competitive aquatic disciplines on the premises of the Pompano beach Aquatic Center. The site, which is provided by the City through a ground lease agreement, is located at 820 NE 18th Avenue, Pompano Beach, FL. 33060.

1. Scope Of Services

Successful proposers must demonstrate minimum 10 years' experience of being a successful team dealer of all the major/recognized swimwear and equipment suppliers in the competitive swimming industry and related aquatic disciplines. Proposer must possess extensive knowledge in, but not limited to: team sales, team sponsorship agreements, technical suit sizing, and United States Swimming (USS), Federation Internationale de natation (FINA) technical suit criteria and regulations. Must have a minimum of 10 years' experience operating swim shop during on-site meets or competitions of all aquatic disciplines.

Proposer must be familiar and have relationships built with South Florida & International Swimming and Aquatics Communities including but not limited to: USS, High Schools, Collegiate, South Florida Recreation League, and FINA.

Operator must maintain proper insurance, certification and licensing throughout the entire contract period.

City will provide electric and internet for the swim shop.

2. Tasks/Deliverables

Must have approved authorized resale account or ability to secure within 30 days of contract execution with named brands to include, but not limited to:

Blue Seventy

Arena

Nike
Speedo
Q Swimwear
Adidas Swim
Finis
Dolphin
Stretchcordz
Custom Swim Cap ability

Hours of Operation

Operator will work closely with the Parks and Recreation Program Administrator and/or his/her staff/designee to set up all hours of operation.
Swim Shop must be open during all events held at the Pompano Beach Aquatic Center.

Fees

Ground lease agreement monthly fees to be determined based on proposal.
Operator agrees to provide a minimum discount of 25% off MSRP on mutually agreed upon to City of Pompano Beach for Pompano Beach Aquatic Center Lifeguard uniforms and swim suits.

3. Term of Contract

Proposer must be willing to enter into a ground lease agreement with the City of Pompano Beach at the Pompano Beach Aquatic Center for no less than 3 years with option of 2-year renewal. Proposer must agree to open Pro Swim Shop no later than May of 2016 within current accommodations of a retrofitted 100 sq. ft. concession stand.

4. Small Business Enterprise Program

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from

the City's website www.pompanobeachfl.gov. Please indicate in your response if your firm is a certified Small Business Enterprise.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages small business participation in *all* of its procurements.

5. Local Business Program

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: http://pompanobeachfl.gov/pages/department_directory/development_services/business_tax_receipt_division/business_tax_receipt_division.html.php

Please note that, while no voluntary goals have been established for this solicitation, the City encourages Local Business participation in *all* of its procurements.

6. Required Proposal Submittal

Submission/Format Requirements

Submit one (1) original unbound and four (4) bound copies of the proposal. All copies will be on 8 ½" x 11" plain white paper, typed, and signed by an authorized representative who is able to contractually bind the Proposer. In addition, Proposers must submit one (1) original copy of the Proposal on electronic media in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria may result in the Proposal being considered non-responsive.

Information to be included in the proposal: In order to maintain comparability and expedite the review process, it is required that proposals be organized in the manner specified below, with tabs or dividers between the sections:

Title page:

Show the project name and number, the name of the Proposer's firm, address, telephone number, name of contact person and the date.

Table of Contents:

Include a clear identification of the material by section and by page.

Letter of Transmittal:

Briefly state the Proposer's understanding of the project and express a positive commitment to provide the services described herein. State the name(s) of the person(s) who will be authorized to make representations for the Proposer, their title(s), office and E-mail addresses and telephone numbers. Please limit this section to two pages.

Fees & Costs:

Include a concise narrative with sufficient detail indicating the proposed approach to providing the required services, including a description of the types and qualities of service that would be provided. Provide a cost for each of the major services provided along with the estimated number of expected work hours for each qualified staff.

Proposer shall itemize all costs to complete all and necessary tasks as described under Scope of Services. Costs associated with travel as well as miscellaneous expenses should be adequately described.

Schedule:

Proposer shall provide a timeline that highlights proposed tasks that will meet all applicable deadlines.

References:

Submit a client reference list, including name of contact, firm and/or governmental entity, address, telephone number and type of service provided to each reference.

Litigation:

Disclose any litigation within the past five (5) years arising out your firm's performance.

City Forms:

The RFP Proposal Signature Page must be completed, signed and returned. Proposer should return all RFP pages, initialed where indicated.

7. Insurance

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

- a. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
- b. Liability Insurance
 - 1) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.

2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
-------------------	--------------------	-----------

GENERAL LIABILITY: *MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE*

* Policy to be written on a claims incurred basis

XX	comprehensive form	
XX	premises - operations	bodily injury
—	explosion & collapse	
—	hazard	property damage
—	underground hazard	
XX	products/completed	
	operations hazard	bodily injury and
XX	contractual insurance	property damage
XX	broad form property	combined
	damage	
XX	independent contractors	
XX	personal injury	personal injury

AUTOMOBILE LIABILITY: *MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE*

		bodily injury	
		(each person)	
		bodily injury	
XX	comprehensive form	(each accident)	
XX	owned	property damage	
XX	hired	bodily injury and	
XX	non-owned	property damage	
		combined	

REAL & PERSONAL PROPERTY

XX	comprehensive form	Consultant must show proof they have this coverage.
----	--------------------	---

EXCESS LIABILITY

XX	umbrella form	bodily injury and		
—	other than umbrella	property damage		
		combined	\$1,000,000.	\$1,000,000.

—	PROFESSIONAL LIABILITY		\$1,000,000.	\$1,000,000.
---	-------------------------------	--	--------------	--------------

* Policy to be written on a claims made basis

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

8. Selection/Evaluation Process

A Selection/Evaluation Committee will be appointed to select the most qualified firm(s). The Selection/Evaluation Committee will present their findings to the City Commission.

Proposals will be evaluated using the following criteria.

	<u>Criteria</u>	<u>Point Range</u>
1.	Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20
2.	References History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20
3.	Resources and Methodology Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30
4.	Cost Including the overall project-task budget and itemized cost breakdowns.	0-30
	Total	0-100

The Committee has the option to use the above criteria for the initial ranking to short-list Proposers and to use an ordinal ranking system to score short-listed Proposers following presentations (if deemed necessary) with a score of "1" assigned to the short-listed Proposer deemed most qualified by the Committee.

Each firm should submit documentation that evidences the firm's capability to provide the services required for the Committee's review for short listing purposes. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss the proposal and meet firm representatives, particularly key personnel who would be assigned to the project. Should interviews be deemed necessary, it is understood that the City shall incur no costs as a result of this interview, nor bear any obligation in further consideration of the submittal.

When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

9. Hold Harmless and Indemnification

Proposer covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Proposer, whether direct or indirect, or whether to any person or property to which the City or said parties may be subject, except that neither the Proposer nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents or employees.

10. Retention of Records and Right to Access

The selected firm shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices and standards. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. The selected firm must comply with the Internal Auditor's recommendation for changes, additions, or deletions. The City's Internal Auditor must be permitted during normal business hours to audit and examine the books of account, reports, and records relating to this contract. The selected firm shall maintain and make available such records and files for the duration of the contract and retain them until the expiration of three years after final payment under the contract.

11. Communications

No negotiations, decisions, or actions shall be initiated or executed by the firm as a result of any discussions with any City employee. Only those communications, which are in writing from the City, may be considered as a duly authorized expression on behalf of the City. In addition, only communications from firms that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of firms.

12. No Discrimination

There shall be no discrimination as to race, sex, color, age, religion, or national origin in the operations conducted under any contract with the City.

13. Independent Contractor

The selected firm will conduct business as an independent contractor under the terms of this contract. Personnel services provided by the firm shall be by employees of the firm and subject to supervision by the firm, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement shall be those of the firm.

14. Staff Assignment

The City of Pompano Beach reserves the right to approve or reject, for any reasons, Proposer's staff assigned to this project at any time. Background checks may be required.

15. Contract Terms

The contract resulting from this RFP shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFP document, together with the successful Proposer's proposal. Contract shall be prepared by the City of Pompano Beach City Attorney.

If the City of Pompano Beach defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its employees, agents or servants during the performance of the contract, whether directly or indirectly, contractor agrees to reimburse the City of Pompano Beach for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

16. Waiver

It is agreed that no waiver or modification of the contract resulting from this RFP, or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that the provisions of this paragraph may not be waived except by a duly executed writing.

17. Survivorship Rights

This contract resulting from this RFP shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

18. Termination

The contract resulting from this RFP may be terminated by the City of Pompano Beach without cause upon providing contractor with a least sixty (60) days prior written notice.

Should either party fail to perform any of its obligations under the contract resulting from this RFP for a period of thirty (30) days after receipt of written notice of such failure, the non-defaulting part will have the right to terminate the contract immediately upon delivery of written notice to the defaulting part of its election to do so. The foregoing rights of termination are in addition to any other rights and remedies that such party may have.

19. Manner of Performance

Proposer agrees to perform its duties and obligations under the contract resulting from this RFP in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees that the services provided under the contract resulting from this RFP shall be provided by employees that are educated, trained and experienced, certified and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City of Pompano Beach with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

20. Acceptance Period

Proposals submitted in response to this RFP must be valid for a period no less than ninety (90) days from the closing date of this solicitation.

21. RFP Conditions and Provisions

The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All Proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All proposals and supporting materials submitted will become the property of the City.

Any alteration, erasure, or interlineations by the Proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All Proposers are required to provide all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its sole discretion it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposals, or to award contract for the items herein, in part or whole, if it is determined to be in the best interests of the City to do so.

The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therein.

22. Standard Provisions

a. Governing Law

Any agreement resulting from this RFP shall be governed by the laws of the State of Florida, and the venue for any legal action relating to such agreement will be in Broward County, Florida.

b. Licenses

In order to perform public work, the successful Proposer shall:
Be licensed to do business in Florida, if an entity, and hold or obtain such Contractor' and Business Licenses if required by State Statutes or local ordinances.

c. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any Elected Official, Appointed Official, or City Employee is also an owner, corporate officer, or an employee of the firm. If any Elected Official, Appointed Official, or City Employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to §112.313, Florida Statutes.

d. Drug Free Workplace

The selected firm(s) will be required to verify they will operate a "Drug Free Workplace" as set forth in Florida Statute, 287.087.

e. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

f. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design,

device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during or after completion of the work.

g. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by federal, state, county, and municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform to the requirements of said legislation.

h. Familiarity With Laws

It is assumed the selected firm(s) will be familiar with all federal, state and local laws, ordinances, rules and regulations that may affect its services pursuant to this RFP. Ignorance on the part of the firm will in no way relieve the firm from responsibility.

i. Withdrawal Of Proposals

A firm may withdraw its proposal without prejudice no later than the advertised deadline for submission of proposals by written communication to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

j. Composition Of Project Team

Firms are required to commit that the principals and personnel named in the proposal will perform the services throughout the contractual term unless otherwise provided for by way of a negotiated contract or written amendment to same executed by both parties. No diversion or substitution of principals or personnel will be allowed unless a written request that sets forth the qualifications and experience of the proposed replacement(s) is submitted to and approved by the City in writing.

k. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of a proper invoice.

l. Public Records

1. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

- b. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;
 - c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
 - d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency.
2. The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default in accordance with the provisions set forth herein.

23. Questions and Communication

All questions regarding the RFP are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168, or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

24. Addenda

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this solicitation the City will attempt to notify all known prospective Proposers, however, it shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786-4098 to determine if addenda were issued and to make such addenda a part of their proposal.

PROPOSAL SIGNATURE PAGE
RFP E-20-16 Aquatic Center Pro Shop

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) _____ Title _____

Company (Legal Registered) _____

Federal Tax Identification Number _____

Address _____

City/State/Zip _____

Telephone No. _____ Fax No. _____

Email Address _____

Signature _____ Date _____

Addendum Acknowledgment - Proposer acknowledges that the following addenda have been received and are included in his/her proposal:

Addendum No. _____ Date Issued _____

Exhibit B



CITY OF POMPANO BEACH RESPONSES

R.F.P. # E-20-16 Aquatic Center Pro Shop

DATE: 03/08/2016

PAGE 1 OF 1

COMPANY RESPONDING: Payless Swim LLC
ADDRESS 3126 NW 6th Ct.
CITY Ft. Lauderdale STATE FL ZIP 33309

COMPANY RESPONDING: _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

COMPANY RESPONDING: _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

COMPANY RESPONDING: _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

COMPANY RESPONDING: _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

Read by Jeff English
Written by Cassie Lemasurier



Exhibit C

CERTIFICATE OF LIABILITY INSURANCE

TIE
R045DATE (MM/DD/YYYY)
3/4/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME:	
NORTHERN INSURANCE GROUP INC		PHONE (A/C, No, Ext): (207) 668-7639	
033452 P: (207) 668-7639 F: (207) 668-7849		FAX (A/C, No): (207) 668-7849	
949 BRIGHTON AVENUE		E-MAIL ADDRESS:	
PORTLAND ME 04102		INSURER(S) AFFORDING COVERAGE	
		NAIC#	
		INSURER A: Sentinel Ins Co LTD	
		11000	
INSURED		INSURER B:	
PAYLESS SWIM LLC		INSURER C:	
3126 NW 67TH CT		INSURER D:	
FORT LAUDERDALE FL 33309		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR HYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY			04 SBM NX2491	03/07/2016	03/07/2017	EACH OCCURRENCE
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						\$1,000,000
	General Liab	X					DAMAGE TO RENTED PREMISES (Ea occurrence)
							\$1,000,000
							MED EXP (Any one person)
							\$10,000
							PERSONAL & ADV INJURY
							\$1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE
POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC							\$2,000,000
OTHER:							PRODUCTS - COM/OP AGG
							\$2,000,000
							\$
AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)
ANY AUTO							\$
ALL OWNED AUTOS							BODILY INJURY (Per person)
SCHEDULED AUTOS							\$
HIRED AUTOS							BODILY INJURY (Per accident)
NON-OWNED AUTOS							\$
							PROPERTY DAMAGE (Per accident)
							\$
							\$
UMBRELLA LIAB							EACH OCCURRENCE
EXCESS LIAB							\$
DED							AGGREGATE
RETENTION \$							\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							PER STATUTE
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/>						OTH-ER
If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. EACH ACCIDENT
							\$
							E.L. DISEASE- EA EMPLOYEE
							\$
							E.L. DISEASE - POLICY LIMIT
							\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008 attached to this policy.

CERTIFICATE HOLDER

CANCELLATION

City of Pompano Beach 1190 NE 3RD AVE POMPANO BEACH, FL 33060	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Tac Tailor</i>

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City of Pompano Beach

LICENSE AGREEMENT

with

Payless Swim LLC

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), entered into this _____ day of _____, 2016, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter "CITY"),

and

PAYLESS SWIM, LLC, a Florida limited liability company (hereinafter "LICENSEE").

WHEREAS, the CITY issued Request for Proposals E-20-16 (Exhibit A) to locate a qualified firm to provide operation of a full-service swim shop servicing all competitive aquatic services to the City located at 820 NE 18 Avenue in Pompano Beach, Florida (the "Aquatic Center"); and

WHEREAS, on _____, the CITY declared Payless Swim LLC as the sole proposer to RFP E-20-16 (Exhibit B), which conditions and terms shall be incorporated into this Agreement, and directed staff to negotiate a License Agreement (the "Agreement") between the parties; and

WHEREAS, in accordance with the terms and conditions set forth herein, LICENSEE is able and prepared to provide the goods and services described in this Agreement and in Exhibits attached hereto and made a part hereof; and

WHEREAS, the CITY has determined entering into this License Agreement with LICENSEE is in the best interest of the public; and

WHEREAS, the CITY and LICENSEE desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and LICENSEE agree as follows.

ARTICLE 1 REPRESENTATIONS

A. **Representations of CITY.** CITY makes the following representations to LICENSEE which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY's Recreation Programs Administrator.

B. **Representations of Payless Swim, LLC.** LICENSEE makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. Payless Swim, LLC is a Florida limited liability company duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause Payless Swim, LLC, Inc. to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

3. The individual executing this Agreement and related documents on behalf of Payless Swim, LLC is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting Payless Swim, LLC or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. The standard of care for all professional services furnished by LICENSEE and its employees, subcontractors or other agents under this Agreement will be the skill and care used by professionals currently practicing under similar circumstances in the same locality.

7. CITY shall be entitled to rely upon the professional and technical skills of LICENSEE or by others authorized by LICENSEE under this Agreement.

8. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 2 NON-ASSIGNABILITY AND SUBCONTRACTING

This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of LICENSEE's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

ARTICLE 3 TERM AND RENEWAL

The City hereby engages LICENSEE to operate a full service Pro Swim Shop specializing in the sale of recreational and competitive swimwear, training accessories and equipment for a term of three (3) years, commencing _____, 2016, and ending _____, 2019. The CITY reserves the right to extend this Agreement for one (1) two-year renewal option provided both parties agree in writing to said extension. Renegotiation should commence at least 180 days prior to normal termination.

ARTICLE 4 RESPONSIBILITIES OF LICENSEE

LICENSEE shall provide operation of a full-service Pro Swim Shop servicing all competitive aquatic disciplines to the CITY and specializing in full time, on-site management for the Pro Swim Shop and all its operations consistent with policies adopted by CITY which specifically require LICENSEE to at all times perform its obligations under this Agreement in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated. LICENSEE agrees to follow the policies and directives of

the CITY's Recreation Programs Administrator but in the absence thereof, LICENSEE shall exercise its reasonable judgment in discharging its duties hereunder.

LICENSEE shall perform the duties set forth below at the Pompano Beach Aquatic Center, including such other duties as the CITY may, from time to time, require in connection with the requirements provided for pursuant to this License Agreement.

1. LICENSEE shall plan, coordinate and direct the overall operations of the Pro Swim Shop and shall work closely with the CITY Recreation Programs Administrator, or designee, to set up all hours of operation which shall include being open during all CITY aquatic events and swim meets. It is expressly understood that LICENSEE shall only have access to CITY Aquatic Center during facility operating hours.

2. LICENSEE shall be responsible for the general cleanliness of the Pro Swim Shop and patio, which includes coordinating daily collection of debris from the aforesaid areas prior to opening them to the public and from time to time throughout the day as conditions require to maintain a state of cleanliness. It is expressly understood that no garbage may be stored by LICENSEE during business hours and/or within sight of the public.

3. At LICENSEE's sole risk and expense, LICENSEE shall manage and maintain an inventory of aquatic related goods and merchandise for public sale at the Pro Swim Shop including, but not limited to, recreational and competitive swimwear, training accessories and equipment supplied by all the major brands recognized in the aquatic industry.

4. In addition to providing items for public sale, LICENSEE shall sell to CITY all lifeguard suits, training accessories or equipment supplied through any supplier at a reduced rate of twenty-five (25) percent off the Manufacturer's Suggested Retail Price (MSRP) pricing. LICENSEE's provision of all merchandise and services at the Pro Swim Shop shall be offered at competitive prices for the Broward County area. LICENSEE must seek and receive written permission from the CITY's Recreation Programs Administrator prior to providing any goods or services not enumerated in this Agreement or Exhibits.

5. LICENSEE shall be responsible to pay any and all sales taxes and other charges of any nature or kind which may be assessed against LICENSEE's provision of services or merchandise sales under this Agreement. LICENSEE shall be responsible for any corresponding equipment necessary for operations and shall not make any improvements, additions or repairs without prior written approval from the CITY. If any such approvals are given by CITY, LICENSEE agrees to return the area to original working condition at its own expense at the expiration or termination of Agreement.

6. Intentionally deleted.

7. LICENSEE shall utilize the Pro Swim Shop exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the Pro Swim Shop of Aquatic Center to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

8. LICENSEE is responsible for hiring and managing its own staff of employees sufficient to provide operation of a Pro Swim Shop. LICENSEE's employees and personnel shall be a minimum of eighteen years old, under LICENSEE's exclusive direction and control and not deemed employees or agents of the CITY.

9. LICENSEE shall be solely responsible for compensating its employees and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, the provisions of workers' compensation insurance and all other benefits required by law.

10. LICENSEE shall be responsible to ensure that all of its employees are suitable for employment in a municipal facility in terms of general character, knowledge, ability, public relations potential, manner and conduct.

11. For each employee, at LICENSEE's sole expense and prior to allowing any of its employees to provide services at the Aquatic Center, LICENSEE shall (i) provide the CITY's Recreation Programs Administrator a written background check from a reputable company approved by the CITY or (ii) allow the CITY to conduct its own background check at the LICENSEE's sole expense. LICENSEE's failure to comply with the obligations of this paragraph shall be deemed a material breach of this Agreement.

12. LICENSEE shall promptly respond to complaints about its employees from the CITY and Aquatic Center patrons and timely take appropriate disciplinary action as warranted by the circumstances.

13. Intentionally deleted.

14. LICENSEE shall immediately inform the CITY's Recreation Program Administrator of any repairs or maintenance necessary to keep all Pro Swim Shop areas in good and safe condition. LICENSEE agrees to accept the concession area, as is, and the City shall not be obligated to make any improvements as a condition precedent to this Agreement. LICENSEE shall provide signage to be approved by CITY prior to installation.

15. LICENSEE shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, including the laws of Broward County and the charter, ordinances and other regulations of the City of Pompano Beach as may now exist or as may hereafter be adopted. LICENSEE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against LICENSEE's provision of goods and services under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

16. LICENSEE, while acting pursuant to this Agreement, shall not discriminate against any worker, employee, patron, or member of the public on the basis of race, creed, religion, age, sex, disability or national origin.

17. LICENSEE shall record all fees and sales under this Agreement on a daily basis and submit monthly gross revenue reports to the CITY's Recreation Programs Administrator.

18. LICENSEE shall give CITY prompt written notice of any accidents occurring at the Aquatic Center in which damage to property or injury to a person occurs.

ARTICLE 5 RESPONSIBILITIES OF CITY

A. CITY is responsible to maintain the Aquatic Center facilities and surrounding outdoor areas, including the building systems (plumbing, electrical, painting, ceilings, walls, floors, roof, public restrooms, etc.), and general maintenance (shrubbery and lawn care, garbage pickup, etc.). CITY shall provide electricity, Internet access will be provided via a CITY public Wi-Fi feed.

B. CITY shall provide LICENSEE with a designated area in the Aquatic Center to operate, stock and sell merchandise and services as provided for in this Agreement and Exhibits. Said area shall be referred to as the Pro Swim Shop. LICENSEE may advertise and promote the sale of its merchandise and services provided all signs and advertisements comply with all applicable laws, ordinances, regulations and CITY policies.

C. CITY shall provide LICENSEE a schedule of all meets, competitions, special events and scheduled practices of both local home based programs and visiting teams.

ARTICLE 6 COMPENSATION AND METHOD OF PAYMENT

A. LICENSEE shall pay CITY compensation in the amount of one hundred (\$100) dollars a month in association with the terms and conditions of this Agreement. Payment shall be due on the first day of each month or as agreed to in writing by both parties. A late fee of twenty-five (\$25.00) dollars shall be assessed if payment is not received by the fifth day of the month.

ARTICLE 7 ACCOUNTING AND RECORD KEEPING PROCEDURES

A. Both CITY and LICENSEE shall conform to generally accepted accounting methods and procedures and those set forth in this Agreement.

B. LICENSEE and its employees providing services and merchandise hereunder shall be required to record and preserve complete and accurate records attendant to this Agreement for a period of five (5) years after its termination or, if an audit has been initiated and audit findings have not been resolved at the end of this five (5) year period, the records shall be retained until resolution of the audit findings.

LICENSEE shall make available locally at reasonable time for CITY's examination and audit all such financial records, supporting documents, statistical records and

any other documents, including state sales tax returns. If such examination or audit discloses a liability of fees, LICENSEE shall promptly pay the amount due. If such liability exceeds three percent (3%) of the fees, LICENSEE shall pay CITY the amount due and also pay for the cost of the CITY's audit within 10 calendar days.

Incomplete and incorrect entries in LICENSEE's records will be grounds for the CITY's allowance of any fees based upon such entries as well as termination of this Agreement.

C. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

E. Intentionally deleted.

ARTICLE 8 LICENSEE'S INDEMNIFICATION OF CITY

A. LICENSEE shall indemnify, defend and save harmless the CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Aquatic Center and Pro Swim Shop.

B. LICENSEE shall be solely responsible for insuring all stock and inventory at the Pro Swim Shop against damage or loss of any nature or kind. LICENSEE has permission from CITY to install new locks on the entry doors to the Pro Swim Shop. LICENSEE agrees to provide CITY with a key to same in case of emergency. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any property placed at the Aquatic Center and that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LICENSEE's presence and occupancy at the Aquatic Center.

ARTICLE 9 INSURANCE

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit C.

ARTICLE 10 INDEPENDENT CONTRACTOR

Both CITY and LICENSEE agree that LICENSEE is an independent contractor and not a CITY employee.

ARTICLE 11
DEFAULT AND DISPUTE RESOLUTION

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 17 herein.

C. If the party receiving written notice of default provides written notice denying same within ten (10) calendar day of receipt or the alleged default has not been remedied within ten (10) calendar days after written notice of same and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 17 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 14 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by LICENSEE.

ARTICLE 12
ANNUAL PERFORMANCE GOALS AND EVALUATION

Intentionally deleted.

ARTICLE 13
TERMINATION

CITY may terminate this Agreement, in whole or in part, for convenience, cause, default or negligence upon forty-five (45) days advance written notice to LICENSEE in accordance with Article 17 herein.

If any service hereunder is in progress but not completed as of the date of termination, then upon the CITY's written approval, this Agreement may be extended until said services are completed and accepted by CITY.

ARTICLE 14
EQUAL OPPORTUNITY EMPLOYMENT

LICENSEE agrees not to discriminate against any of its or the CITY's employees under this Agreement because of race, color, religion, sex, age, national origin or disability.

**ARTICLE 15
PUBLIC ENTITY CRIMES ACT**

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 16
NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:

City Manager
City of Pompano Beach
P.O. Drawer 1300
Pompano Beach, Florida 33061
dennis.beach@copbfl.com
954-786-4601 office
954-786-4504 fax

With a copy to:

Recreation Program Administrator
City of Pompano Beach
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
954-786-4191 office
954-786-4113 fax

For LICENSEE:

Michael McGoun, Payless Swim, LLC
12270 NW 2nd Street
Coral Springs, Florida 33071
954-515-8689
paylessswim@hotmail.com

ARTICLE 17
GOVERNING LAW AND VENUE

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 18
CONTRACT ADMINISTRATOR

The CITY's Recreation Program Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Michael McGoun shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

ARTICLE 19
NO CONTINGENT FEE

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LICENSEE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at the CITY's sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 20
ATTORNEY'S FEES

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

ARTICLE 21 FORCE MAJEURE

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

ARTICLE 22 WAIVER AND MODIFICATION

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 23 RELATIONSHIP BETWEEN THE PARTIES

LICENSEE is being contracted by CITY for the purposes and to the extent set forth in this Agreement. LICENSEE is an independent contractor and not an employee of the CITY.

ARTICLE 24 MISCELLANEOUS TERMS AND CONDITIONS

A. LICENSEE may not make changes to any permanent fixtures at the Aquatic Center without prior written approval from the CITY's Recreation Program Administrator. Upon written approval of the CITY and receipt of all necessary and proper permits, LICENSEE may install permanent fixtures in the Pro Swim Shop area at its sole expense.

**ARTICLE 25
SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

**ARTICLE 26
APPROVALS**

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

**ARTICLE 27
ABSENCE OF CONFLICTS OF INTEREST**

LICENSEE represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. LICENSEE further represents no person having any interest shall be employed or engaged by it for said performance.

LICENSEE shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence LICENSEE's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that LICENSEE intends to undertake and shall request the CITY's opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by LICENSEE.

**ARTICLE 28
BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

**ARTICLE 29
NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

ARTICLE 30
LICENSE NOT LEASE

Both parties acknowledge and agree this license shall not be deemed a lease of the Aquatic Center but rather a license granted to LICENSEE by CITY for the full time, on-site management of the Pro Swim Shop located at the Aquatic Center and all its operations.

ARTICLE 31
ENTIRE AGREEMENT AND INTERPRETATION

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

C. Missy Kitts
C. Missy Kitts
Print Name

Anne Hollady
Anne Hollady
Print Name

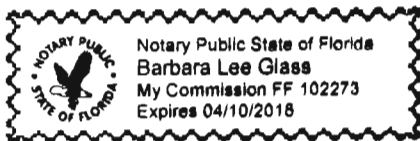
PAYLESS SWIM LLC, a Florida Limited Liability Company

By: [Signature]
Michael P. McGoun, Manager

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 4th day of August, 2016, by Michael P. McGoun as Manager of Payless Swim LLC, a Florida Limited Liability Company. He is personally known to me or who has produced DL # M250-555-55-402-0 exp 11/17 (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Barbara Lee Glass
(Name of Acknowledger Typed, Printed or Stamped)
FF 102273
Commission Number

CLS:jrm
6/27/16
L:agr/recr/2016-976



Florida's Warmest Welcome

**CITY OF POMPANO BEACH
REQUEST FOR PROPOSALS
E-20-16**

AQUATIC CENTER PRO SHOP

**RFP OPENING: March 8, 2016 2:00 P.M.
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPANO BEACH, FLORIDA 33060**

February 8, 2016

CITY OF POMPANO BEACH, FLORIDA

REQUEST FOR PROPOSALS

E-20-16

AQUATIC CENTER PRO SHOP

The City of Pompano Beach is seeking proposals from qualified firms to provide operation of a full-service swim shop servicing all competitive aquatic services to the City.

The City will receive sealed proposals until 2:00 p.m. (local), March 8, 2016 in the City's Purchasing Office, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida, 33060. E-mailed or faxed proposals will not be acceptable.

Introduction

The City's Parks Recreation, and Cultural Arts Department requests proposals for the operation of a full-service swim shop specializing in all competitive aquatic disciplines on the premises of the Pompano beach Aquatic Center. The site, which is provided by the City through a ground lease agreement, is located at 820 NE 18th Avenue, Pompano Beach, FL. 33060.

1. Scope Of Services

Successful proposers must demonstrate minimum 10 years' experience of being a successful team dealer of all the major/recognized swimwear and equipment suppliers in the competitive swimming industry and related aquatic disciplines. Proposer must possess extensive knowledge in, but not limited to: team sales, team sponsorship agreements, technical suit sizing, and United States Swimming (USS), Federation Internationale de natation (FINA) technical suit criteria and regulations. Must have a minimum of 10 years' experience operating swim shop during on-site meets or competitions of all aquatic disciplines.

Proposer must be familiar and have relationships built with South Florida & International Swimming and Aquatics Communities including but not limited to: USS, High Schools, Collegiate, South Florida Recreation League, and FINA.

Operator must maintain proper insurance, certification and licensing throughout the entire contract period.

City will provide electric and internet for the swim shop.

2. Tasks/Deliverables

Must have approved authorized resale account or ability to secure within 30 days of contract execution with named brands to include, but not limited to:

Blue Seventy
Arena

Nike
Speedo
Q Swimwear
Adidas Swim
Finis
Dolphin
Stretchcordz
Custom Swim Cap ability

Hours of Operation

Operator will work closely with the Parks and Recreation Program Administrator and/or his/her staff/designee to set up all hours of operation.
Swim Shop must be open during all events held at the Pompano Beach Aquatic Center.

Fees

Ground lease agreement monthly fees to be determined based on proposal.
Operator agrees to provide a minimum discount of 25% off MSRP on mutually agreed upon to City of Pompano Beach for Pompano Beach Aquatic Center Lifeguard uniforms and swim suits.

3. Term of Contract

Proposer must be willing to enter into a ground lease agreement with the City of Pompano Beach at the Pompano Beach Aquatic Center for no less than 3 years with option of 2-year renewal. Proposer must agree to open Pro Swim Shop no later than May of 2016 within current accommodations of a retrofitted 100 sq. ft. concession stand.

4. Small Business Enterprise Program

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from

the City's website www.pompanobeachfl.gov. Please indicate in your response if your firm is a certified Small Business Enterprise.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages small business participation in *all* of its procurements.

5. Local Business Program

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: http://pompanobeachfl.gov/pages/departments/directory/development_services/business_tax_receipt_division/business_tax_receipt_division.html.php

Please note that, while no voluntary goals have been established for this solicitation, the City encourages Local Business participation in *all* of its procurements.

6. Required Proposal Submittal

Submission/Format Requirements

Submit one (1) original unbound and four (4) bound copies of the proposal. All copies will be on 8 ½" x 11" plain white paper, typed, and signed by an authorized representative who is able to contractually bind the Proposer. In addition, Proposers must submit one (1) original copy of the Proposal on electronic media in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria may result in the Proposal being considered non-responsive.

Information to be included in the proposal: In order to maintain comparability and expedite the review process, it is required that proposals be organized in the manner specified below, with tabs or dividers between the sections:

Title page:

Show the project name and number, the name of the Proposer's firm, address, telephone number, name of contact person and the date.

Table of Contents:

Include a clear identification of the material by section and by page.

Letter of Transmittal:

Briefly state the Proposer's understanding of the project and express a positive commitment to provide the services described herein. State the name(s) of the person(s) who will be authorized to make representations for the Proposer, their title(s), office and E-mail addresses and telephone numbers. Please limit this section to two pages.

Fees & Costs:

Include a concise narrative with sufficient detail indicating the proposed approach to providing the required services, including a description of the types and qualities of service that would be provided. Provide a cost for each of the major services provided along with the estimated number of expected work hours for each qualified staff.

Proposer shall itemize all costs to complete all and necessary tasks as described under Scope of Services. Costs associated with travel as well as miscellaneous expenses should be adequately described.

Schedule:

Proposer shall provide a timeline that highlights proposed tasks that will meet all applicable deadlines.

References:

Submit a client reference list, including name of contact, firm and/or governmental entity, address, telephone number and type of service provided to each reference.

Litigation:

Disclose any litigation within the past five (5) years arising out your firm's performance.

City Forms:

The RFP Proposal Signature Page must be completed, signed and returned. Proposer should return all RFP pages, initialed where indicated.

7. Insurance

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

- a. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
- b. Liability Insurance
 - 1) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.

2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
-------------------	--------------------	-----------

GENERAL LIABILITY: **MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE**

* Policy to be written on a claims incurred basis

XX	comprehensive form	
XX	premises - operations	bodily injury
—	explosion & collapse	
—	hazard	property damage
—	underground hazard	
XX	products/completed	
	operations hazard	bodily injury and
XX	contractual insurance	property damage
XX	broad form property	combined
XX	damage	
XX	independent contractors	
XX	personal injury	personal injury

AUTOMOBILE LIABILITY: **MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE**

		bodily injury	
		(each person)	
		bodily injury	
XX	comprehensive form	(each accident)	
XX	owned	property damage	
XX	hired	bodily injury and	
XX	non-owned	property damage	
		combined	

REAL & PERSONAL PROPERTY

XX	comprehensive form	Consultant must show proof they have this coverage.
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EXCESS LIABILITY

XX	umbrella form	bodily injury and		
—	other than umbrella	property damage		
		combined	\$1,000,000.	\$1,000,000.

—	PROFESSIONAL LIABILITY	\$1,000,000.	\$1,000,000.
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* Policy to be written on a claims made basis

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

8. Selection/Evaluation Process

A Selection/Evaluation Committee will be appointed to select the most qualified firm(s). The Selection/Evaluation Committee will present their findings to the City Commission.

Proposals will be evaluated using the following criteria.

	<u>Criteria</u>	<u>Point Range</u>
1.	Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20
2.	References History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-20
3.	Resources and Methodology Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30
4.	Cost Including the overall project-task budget and itemized cost breakdowns.	0-30
	Total	0-100

The Committee has the option to use the above criteria for the initial ranking to short-list Proposers and to use an ordinal ranking system to score short-listed Proposers following presentations (if deemed necessary) with a score of "1" assigned to the short-listed Proposer deemed most qualified by the Committee.

Each firm should submit documentation that evidences the firm's capability to provide the services required for the Committee's review for short listing purposes. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss the proposal and meet firm representatives, particularly key personnel who would be assigned to the project. Should interviews be deemed necessary, it is understood that the City shall incur no costs as a result of this interview, nor bear any obligation in further consideration of the submittal.

When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

9. Hold Harmless and Indemnification

Proposer covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Proposer, whether direct or indirect, or whether to any person or property to which the City or said parties may be subject, except that neither the Proposer nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents or employees.

10. Retention of Records and Right to Access

The selected firm shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices and standards. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. The selected firm must comply with the Internal Auditor's recommendation for changes, additions, or deletions. The City's Internal Auditor must be permitted during normal business hours to audit and examine the books of account, reports, and records relating to this contract. The selected firm shall maintain and make available such records and files for the duration of the contract and retain them until the expiration of three years after final payment under the contract.

11. Communications

No negotiations, decisions, or actions shall be initiated or executed by the firm as a result of any discussions with any City employee. Only those communications, which are in writing from the City, may be considered as a duly authorized expression on behalf of the City. In addition, only communications from firms that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of firms.

12. No Discrimination

There shall be no discrimination as to race, sex, color, age, religion, or national origin in the operations conducted under any contract with the City.

13. Independent Contractor

The selected firm will conduct business as an independent contractor under the terms of this contract. Personnel services provided by the firm shall be by employees of the firm and subject to supervision by the firm, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement shall be those of the firm.

14. Staff Assignment

The City of Pompano Beach reserves the right to approve or reject, for any reasons, Proposer's staff assigned to this project at any time. Background checks may be required.

15. Contract Terms

The contract resulting from this RFP shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFP document, together with the successful Proposer's proposal. Contract shall be prepared by the City of Pompano Beach City Attorney.

If the City of Pompano Beach defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its employees, agents or servants during the performance of the contract, whether directly or indirectly, contractor agrees to reimburse the City of Pompano Beach for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

16. Waiver

It is agreed that no waiver or modification of the contract resulting from this RFP, or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that the provisions of this paragraph may not be waived except by a duly executed writing.

17. Survivorship Rights

This contract resulting from this RFP shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

18. Termination

The contract resulting from this RFP may be terminated by the City of Pompano Beach without cause upon providing contractor with a least sixty (60) days prior written notice.

Should either party fail to perform any of its obligations under the contract resulting from this RFP for a period of thirty (30) days after receipt of written notice of such failure, the non-defaulting part will have the right to terminate the contract immediately upon delivery of written notice to the defaulting part of its election to do so. The foregoing rights of termination are in addition to any other rights and remedies that such party may have.

19. Manner of Performance

Proposer agrees to perform its duties and obligations under the contract resulting from this RFP in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees that the services provided under the contract resulting from this RFP shall be provided by employees that are educated, trained and experienced, certified and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City of Pompano Beach with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

20. Acceptance Period

Proposals submitted in response to this RFP must be valid for a period no less than ninety (90) days from the closing date of this solicitation.

21. RFP Conditions and Provisions

The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All Proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All proposals and supporting materials submitted will become the property of the City.

Any alteration, erasure, or interlineations by the Proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All Proposers are required to provide all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its sole discretion it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposals, or to award contract for the items herein, in part or whole, if it is determined to be in the best interests of the City to do so.

The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therein.

22. Standard Provisions

a. Governing Law

Any agreement resulting from this RFP shall be governed by the laws of the State of Florida, and the venue for any legal action relating to such agreement will be in Broward County, Florida.

b. Licenses

In order to perform public work, the successful Proposer shall:
Be licensed to do business in Florida, if an entity, and hold or obtain such Contractor' and Business Licenses if required by State Statutes or local ordinances.

c. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any Elected Official, Appointed Official, or City Employee is also an owner, corporate officer, or an employee of the firm. If any Elected Official, Appointed Official, or City Employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to §112.313, Florida Statutes.

d. Drug Free Workplace

The selected firm(s) will be required to verify they will operate a "Drug Free Workplace" as set forth in Florida Statute, 287.087.

e. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

f. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design,

device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during or after completion of the work.

g. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by federal, state, county, and municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform to the requirements of said legislation.

h. Familiarity With Laws

It is assumed the selected firm(s) will be familiar with all federal, state and local laws, ordinances, rules and regulations that may affect its services pursuant to this RFP. Ignorance on the part of the firm will in no way relieve the firm from responsibility.

i. Withdrawal Of Proposals

A firm may withdraw its proposal without prejudice no later than the advertised deadline for submission of proposals by written communication to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

j. Composition Of Project Team

Firms are required to commit that the principals and personnel named in the proposal will perform the services throughout the contractual term unless otherwise provided for by way of a negotiated contract or written amendment to same executed by both parties. No diversion or substitution of principals or personnel will be allowed unless a written request that sets forth the qualifications and experience of the proposed replacement(s) is submitted to and approved by the City in writing.

k. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of a proper invoice.

l. Public Records

1. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

- b. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;
 - c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
 - d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency.
2. The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default in accordance with the provisions set forth herein.

23. Questions and Communication

All questions regarding the RFP are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168, or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

24. Addenda

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this solicitation the City will attempt to notify all known prospective Proposers, however, it shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786-4098 to determine if addenda were issued and to make such addenda a part of their proposal.

PROPOSAL SIGNATURE PAGE
RFP E-20-16 Aquatic Center Pro Shop

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) _____ Title _____

Company (Legal Registered) _____

Federal Tax Identification Number _____

Address _____

City/State/Zip _____

Telephone No. _____ Fax No. _____

Email Address _____

Signature _____ Date _____

Addendum Acknowledgment - Proposer acknowledges that the following addenda have been received and are included in his/her proposal:

Addendum No. _____ Date Issued _____

Exhibit B



CITY OF POMPANO BEACH
RESPONSES

R.F.P. # E-20-16 Aquatic Center Pro Shop

DATE: 03/08/2016

PAGE 1 OF 1

COMPANY RESPONDING: Payless Swim LLC
ADDRESS 3126 NW 6th Ct.
CITY Ft. Lauderdale STATE FL ZIP 33309

COMPANY RESPONDING: _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

COMPANY RESPONDING: _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

COMPANY RESPONDING: _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

COMPANY RESPONDING: _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Read by Jeff English

Written by Cassie Lemasurier



Exhibit C

CERTIFICATE OF LIABILITY INSURANCE

TIE
R045DATE (MM/DD/YYYY)
3/4/2016

THIS CERTIFICATE ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER NORTHERN INSURANCE GROUP INC 033452 P: (207) 668-7639 F: (207) 668-7849 949 BRIGHTON AVENUE PORTLAND ME 04102	CONTACT NAME: PHONE (AC, No, Ext): (207) 668-7639 FAX (AC, No): (207) 668-7849 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Ins Co LTD 11000 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED PAYLESS SWIM LLC 3126 NW 67TH CT FORT LAUDERDALE FL 33309	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	STDR BYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY			04 SBM NX2491	03/07/2016	03/07/2017	EACH OCCURRENCE	\$1,000,000
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
	X General Liab	X					MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$2,000,000
	POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC						PRODUCTS - COMPROP AGG	\$2,000,000
	OTHER:							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	HIRED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	SCHEDULED AUTOS							\$
	NON-OWNED AUTOS							\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	EXCESS LIAB						AGGREGATE	\$
	DED							\$
	RETENTION S							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/>	\$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

APPROVED
RISK MANAGEMENT
DATE: 9/1/16
BY: E Beech

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008 attached to this policy.

CERTIFICATE HOLDER

CANCELLATION

ity of Pompano Beach
1190 NE 3RD AVE
POMPANO BEACH, FL 33060

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Tor Taylor

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Parks, Recreation and Cultural Arts
City of Pompano Beach, Florida

1801 NE 6th Street Pompano Beach, Florida 33060 | p: 954.786.4191 | f: 954.786.4113

Date August 31, 2016

Payless Swim, LLC
3126 NW 67th Ct.
Ft. Lauderdale, FL 33309

APPROVED
RISK MANAGEMENT
DATE: 9/1/16
BY: E Beecher

Dear Mike McGoun,

Your company has fewer than four employees, and you have elected not to purchase Workers' Compensation insurance to cover these employees. The State of Florida allows your company to operate without insurance, however, you are required by the State to "post clear written notice in a conspicuous location at each worksite directed to all employees and other persons performing services at the worksite of their lack of entitlement to benefits" as described in Chapter 440 of the Florida Statutes.

The City of Pompano Beach requires: **ALL CONTRACTORS MUST AGREE TO BE RESPONSIBLE FOR THE EMPLOYMENT, CONTROL AND CONDUCT OF THEIR EMPLOYEES AND FOR ANY INJURY SUSTAINED BY SUCH EMPLOYEES IN THE COURSE OF THEIR EMPLOYMENT.**

Please sign the area below acknowledging your compliance with the above requirements. Return this original letter to me at 1801 NE 6th Street Pompano Beach, 33060. If you have any questions about this letter please telephone me at

Very truly yours,

C. Missy Kitts
Recreation Manager

Payless Swim, LLC has posted notice(s) declaring the absence of Workers' Compensation insurance coverage, as required by the State of Florida **Payless Swim, LLC** agrees to be responsible for the employment, control and conduct of our employees and for any injury sustained by such employees in the course of their employment.

Signature

Date

Name and Title (print)

Michael McGoun / Co-owner

8/31/16