

**REPORT TO MAYOR AND COUNCIL**

TO THE HONORABLE MAYOR AND COUNCIL:

DATE: December 11, 2012

SUBJECT: AGREEMENT WITH THE TERRAPINS SWIM TEAM FOR A COMPETITIVE SWIM PROGRAM; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT (FUNDED BY USE FEES)

Report in Brief

Staff is recommending that the City Council approve an agreement with the Terrapins Swim Team (TST), covering the period of January 1, 2013 through December 31, 2017, allowing TST to continue their use of Concord Community Pool.

This action will provide \$39,837 in revenue for the year 2013 and a 3% increase each of the following four years during the term of the newly proposed contract.

Background

Since 1990, the City has offered competitive swim activities in cooperation with the Terrapins Swim Team (TST). The program has been conducted at Concord Community and Meadow Homes pools and has enabled hundreds of youth from Concord and surrounding cities to develop into competitive swimmers. Notably, Olympic champion Natalie Coughlin participated in the Terrapins program. The City has entered into a series of agreements with TST that provided use of pools, shower/locker facilities and other support services. TST has provided high quality coaching to the participating youth and shared certain operational responsibilities associated with the pools. The most recent agreement between the City and TST was approved by the City Council on January 26, 2010 and expires on December 31, 2012.

The proposed agreement (Attachment No. 1) will enable the team to continue to develop as a nationally recognized competitive aquatics program. With Council approval, the agreement would be in place for a term ending December 31, 2017.

The terms of the agreement remain consistent with the most recent version and are based on the fundamentals of goodwill and desire to address the very difficult economic circumstances facing both organizations. TST's requested use hours at Concord Community Pool have been dramatically reduced in the last contract term from 16,824 to 10,950 which has provided the ability for increased *Learn to Swim* programs offered by the City in both spring and fall resulting in an expanded source of City revenue.

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SWIM PROGRAM; AND AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AGREEMENT**

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Discussion

Since its formation in 1989, TST has developed from a community age group swim team into a nationally ranked program. The program has provided hundreds of local and regional youth with competitive swim training and TST has hosted many regional swim competitions that have brought thousands of visitors to Concord.

In order to develop an agreement that would achieve the objectives described herein, staff and TST representatives deliberated over a range of scenarios to maintain viability of the swim team, provide opportunities for other community groups to utilize the Concord Community Pool while potentially expanding revenue generating City programs such as swim lessons and/or fitness oriented lap swimming.

The proposed agreement contains the following conditions mutually agreed upon by the City and TST representatives:

- TST will provide competitive swim programs for ages five years and older.
- TST will insure that swimmers abide by use conditions defined in Exhibit "A".
- TST will provide an unaltered Waiver and Release of Liability (Exhibit "D") for each participant.
- TST will remove/install pool covers at the beginning and conclusion of each day based on whether or not they are the first in or last scheduled user of the pool.
- TST will share space with other users including the high schools during their respective swim and water polo seasons.
- TST will pay the City \$39,837 annually for use of the pool; fees will escalate at 3% per year during the term of the agreement. This amount includes a \$9,834 winter surcharge which assists in recouping costs during the lowest period of community use and highest actual cost for heating the pool.
- TST will be responsible to pay all possessory interest taxes levied through the use of CCP.
- The City will provide limited storage space for TST's use.
- City will provide seasonal use of Concord Community Pool based on the schedule outlined in Exhibit "B" of the agreement. (10,000+ use hours)
- To the degree possible, City will support marketing and promotion of the TST program.

The agreement provides a fair and equitable framework for meeting the defined objectives. TST maintains an appropriate level of annual use, community use is potentially expanded, liability exposure is addressed, possessory interest taxes will be the responsibility of the user consistent with other agreements, and the City receives increased income that offsets escalating operational costs.

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Fiscal Impact

The proposed agreement requires TST to pay \$39,837 in annual fees for the use of Concord Community Pool which includes a \$9,834 winter surcharge. The fees are based on lane use hours (beginning at \$2.74 per lane per hour) for each year of the agreement. TST will also pay a \$3.00 per hour per lane for requested additional use. The fees will escalate at 3% annually during the term of the agreement. Shared usage with the high schools during swim and water polo season will generate an estimated additional \$15,124 from the local high schools.

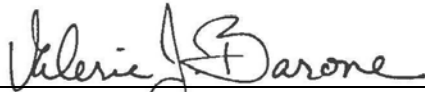
Public Contact

The City Council agenda has been properly posted and a copy of the report has been provided to the Terrapins Swim Team.

Recommendation for Action

Staff recommends that the City Council approve an agreement between the City and the TST covering the period of January 1, 2013, through December 31, 2017; and authorize the City Manager to execute the agreement.

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TERRAPINS SWIM TEAM AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2012, by and between the CITY OF CONCORD, a municipal corporation (hereinafter "CITY"), and the TERRAPINS SWIM TEAM, a non-profit corporation, (hereinafter "TST").

WHEREAS, the CITY operates aquatics facilities including the Concord Community Pool (hereinafter “Community Pool”), for the benefit of the citizens of the City of Concord; and

WHEREAS, competitive swim teams are part of a full service municipal aquatics program; and

WHEREAS, TST has represented to CITY that its employees have the knowledge, skills, and ability to provide the services identified herein in accordance with U.S. Swimming and applicable provisions of the State of California, Title 22 of the Health Code.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. TST's Commitments. The services that TST agrees to provide City will include the following:

A. Provide competitive swim programs at the Community Pool for ages five (5) years and over. Programs shall not interfere or compete with CITY programs and shall require advance CITY approval. All participants must have a level of swimming skill equivalent to CITY’s Swim School, Level 4 or above.

B. Remove and/or install the pool covers at the beginning and/or conclusion of each day's activities at the Community Pool based on whether or not TST is the first and/or last scheduled user of the pool. In the event TST fails to remove or install pool covers, TST shall reimburse to CITY Twenty Five Dollars (\$25.00) for each hour required to remove said covers with a minimum charge of two (2) hours based on whether or not TST is the first and/or last scheduled user of the pool.

C. Provide CITY with an Emergency Action Plan (EAP) that in the judgment of CITY is consistent with the CITY’S EAP.

D. Abide by all Community Pool Conditions of Use as defined in Exhibit “A” and provide adequate personnel to monitor all aquatic facilities at the Community Pool during

1 TST's exclusive use to prevent vandalism and undesirable conduct.

2 E. Provide, maintain and replace pace clocks, backstroke flags and starting blocks
3 based on a mutually agreed upon schedule that will be reviewed annually by CITY and TST.
4 CITY will have use of said equipment.

5 F. Properly install and remove starting blocks and install protective covers for
6 deck anchors. Failure to install protective deck anchors will result in an assessment of repair/
7 maintenance costs incurred by CITY. At no time other than during team practices will starting
8 blocks be left in the deck.

9 G. Maintain the storage facility in a safe, neat and orderly manner. Said facility
10 will be inspected regularly by CITY. Failure to put equipment away in shed will result in TST
11 reimbursing CITY Twenty Five Dollars (\$25.00) for each hour required to put equipment
12 away.

13 H. Pool area, including the deck, locker rooms, restrooms, showers, office area and
14 general grounds must be left in a safe, neat and orderly manner at the conclusion of TST
15 activities. Opening/Closing procedures must be strictly followed to assist in the proper
16 safeguarding of the facility; including any and all items within the facility. Pool facility keys
17 are assigned to TST staff members only. TST shall reimburse the City for any lost keys at
18 \$100 per incident. Alarm codes will be assigned to specific TST staff members who may be
19 the first to arrive or last person to leave the facility.

20 I. Annually certify by September 1, 2013 that all coaches/managers operate in
21 accordance with applicable United States Swimming Rules and Regulations, California State
22 Health Codes, and CITY's standards for lifeguard certification through a Nationally
23 Recognized lifeguard training program acceptable to City. All TST coaches/managers will
24 need to provide the CITY a copy of their certification. Certifications may be obtained through
25 the City, by signing up for an available course.

26 J. Provide to CITY an updated quarterly list of team members, coaches, staff and
27 board of directors. Provide an unaltered Waiver and Release of Liability (Exhibit "D") for
28 each TST participant engaging in any use of CITY aquatic facilities encompassed in this

1 Agreement. Waivers must be submitted annually to the Parks & Recreation Department
2 Aquatics Program Coordinator. No one may participate in a practice, stroke lessons,
3 exhibitions or meets at the Community Pool without these waivers being signed by the
4 participants and collected by TST and provided to the CITY by TST. Waivers must be turned
5 in to the Aquatics Program Coordinator in advance of any practice, stoke lesson, exhibition or
6 meet.

7 **2. CITY's Commitments.** CITY shall provide the following services:

8 A. Annual use of Community Pool based on the schedule outlined in Exhibit "B".
9 Use of Community Pool during Holidays and facility maintenance is excluded.

10 B. Designated area for storage as specified in Exhibit "A," attached hereto and
11 made a part hereof. All improvements or alterations to this storage area requires prior
12 approval by CITY. CITY shall not be responsible for and does not ensure privacy,
13 confidentiality or security of any items/documents stored at the pool.

14 C. All utilities excluding telephone.

15 D. Access to emergency back board, AED, oxygen, rescue tubes, and appropriate
16 protective barriers.

17 E. Marketing support for promotion of TST that may include review of the
18 Terrapin marketing plan and identification of promotional opportunities.

19 **3. Fee.** Effective January 1, 2013 for services described in Paragraph 2, TST shall pay
20 the CITY \$30,003 (Thirty Thousand and three Dollars) per year, plus an additional \$9,834 winter
21 surcharge fee. Payments may be made in a lump sum on January 1, 2013 or in 12 monthly
22 installments due on the first day of every month as described in Exhibit "C". In the event TST's use
23 of Community Pool consistent with the Agreement commences before said Agreement is executed,
24 unpaid fees for pre-execution use shall be due and payable on the first day of the month following
25 execution. Said annual fees and winter surcharge fee shall escalate at 3% (three percent) per year
26 commencing on January 1, 2013, and continuing at the beginning of each calendar year during the
27 term of this Agreement. Said annual fee for lane use hours is described in Exhibit "C." The fees set
28 forth in this paragraph are for the use hours described in Exhibit "B" and there is no credit or refund

1 for unused scheduled time. Additional lane use hours will be billed at \$3.00 per lane per hour and
2 must be scheduled and approved by CITY 30 (thirty) days in advance.

3 A. TST shall be responsible for any required payment of Possessory Tax. This
4 Use Agreement may create a possessory property interest in TST. TST's property
5 interest may be subject to property taxation, and TST or the party in whom the
6 possessory interest is vested may be subject to the payment of property taxes levied on
7 the interest. Such taxes are referred to herein as "Possessory Interest Taxes."
8

9 B. TST shall be responsible for any other fee(s) levied to CITY based on use of
10 facility by TST.
11

12 **4. Term.** The term of this Agreement shall be from January 1, 2013 through December
13 31, 2017, unless earlier terminated in accordance with Paragraph 7 of this Agreement.

14 **5. Records and Inspection.** As TST is a non-profit corporation, the CITY shall have the
15 right through its agents and representatives, at all reasonable times and with reasonable notice, to
16 inspect TST's financial statements and records. TST agrees that its financial records and statements
17 shall be made available to the CITY during City's normal business hours.

18 TST shall provide to CITY upon request a copy of its most recent State/Federal tax returns and
19 financial records/statements relating to the operations herein. The aforesaid documents shall be
20 provided to CITY's Director of Parks & Recreation within 15 working days of such request. TST
21 shall report all documentation regarding use hours and participation levels recorded at the pool to the
22 Aquatics Program Coordinator on an annual basis.

23 **6. Audit.** CITY may elect to retain a third party to perform an audit and accounting of
24 the financial statements and records of TST. If CITY elects to have an audit and accounting
25 performed, TST will make available to CITY and/or its designated representative, all financial records
26 retained by it in the normal course of its business for such audit and accounting, within fifteen (15)
27 working days of such notice by City.

28 **7. Termination.** Either party may, at its discretion, terminate this Agreement without

1 cause, provided that the other party be given written notice of termination at least one hundred fifty
2 (150) days written notice of same. In the event of termination of this agreement, either party may
3 request an accounting of monies due and/or owing the other within sixty (60) calendar days from the
4 date of termination. In the event that an accounting is requested by either party, the full and complete
5 financial accounting shall be provided within sixty (60) calendar days of the request. In the event
6 monies are due to either party, said monies shall be paid within thirty (30) working days of the
7 tendering of the accounting.

8 **8. Independent Entities.** It is understood that neither party hereto shall be deemed the
9 employer/employee, partner or joint venturer of the other, that neither party is liable for any of the
10 debts or obligations of other party, and that TST is an independent entity and is neither an agent nor a
11 representative of the CITY. Volunteers of, or personnel employed by TST, are not and shall not be
12 deemed to be employees, representatives or volunteers of the CITY. Personnel employed by CITY
13 are not and shall not be deemed to be employees representatives or volunteers of TST.

14 **9. Hold Harmless and Insurance.** Each party agrees to hold the other harmless and to
15 indemnify and defend the other party (with counsel reasonably acceptable to the other party) from and
16 against any liability, loss, cost or expense incurred by or claimed against the other party as a result of
17 or in any way arising out of the negligent performance of this Agreement by the other party, its agents,
18 employees or person(s) acting on its behalf.

19 TST shall maintain during the term of this Agreement a general liability insurance policy
20 providing coverage of at least \$2 million per occurrence/aggregate, naming CITY as additional
21 insured. The endorsement shall be in a form acceptable to the City Attorney and shall be provided no
22 later than thirty (30) calendar days following the execution of this Agreement by both parties. The
23 insurance contemplated under this provision shall remain in full force and effect during the term of
24 this Agreement.

25 **10. Assignment.** CITY is entering into this Agreement based upon the representations set
26 forth in this Agreement and the reputation of TST. TST shall not assign any portion of this Agreement
27 without the express written consent of CITY.

28 **11. Industry Custom.** To the extent that customs in the trade or industry directly

1 controvert the express written provisions of this Agreement, then in such event the Agreement shall
2 control and be binding upon the parties hereto.

3 **12. Waiver.** Failure or delay by either party to exercise any right or power encompassed
4 in this Agreement, or otherwise, shall not be construed as a waiver thereof. The failure of either party
5 hereto to insist upon a strict performance of any of the terms, provisions, conditions or covenants
6 herein contained shall not be deemed a waiver of any subsequent or continuing breach of the terms,
7 provision, conditions or covenants contained herein. The receipt by either party from the other of any
8 payment or acceptance of performance of anything required by this Agreement to be performed, with
9 knowledge of the breach of a term, provision, condition or covenant of this Agreement, shall not be
10 deemed a waiver of such breach.

11 **13. Binding Effect.** This agreement is binding on the successors and assigns of the parties
12 hereto.

13 **14. Severability.** All of the covenants, provisions and clauses herein contained in this
14 Agreement are severable. In the event any of said covenants or provisions or clauses shall be held by
15 any court of competent jurisdiction to be invalid, this Agreement shall be construed, if possible, as if
16 such invalid covenant or provision or clause were not herein contained.

17 **15. City-TST Meetings.** CITY and TST agree that its designated representatives will
18 meet quarterly to discuss issues which may arise in the performance of the obligations required by this
19 Agreement. TST shall, with reasonable notice, attend all CITY meetings requested. In addition, the
20 Aquatics Program Coordinator and TST will meet monthly to review the pool use schedule and
21 discuss adjustments that may be required to accommodate changes to TST's training activities or to
22 meet CITY's program needs. All CITY programs will take priority over use of the Community Pool
23 by TST, although CITY will work to accommodate TST scheduling requests.

24 **16. Representatives.** In order to facilitate communications between the parties a
25 representative is herein designated to be the primary contact person for each party in case of issues
26 arising between the parties. For the CITY it is the Director of Parks & Recreation and for TST it is
27 the Head Coach. The parties' representatives may designate other individuals to act on their behalf or
28 to handle specific aspects of the relationship between the parties.

1 **17. Notices.** All invoices or notices, except those pertaining to day to day booking or
2 production, required herein shall be in writing and shall be deemed to have been received on the day
3 they are hand delivered or deposited in the United States mail with first class postage and addressed:

4 To TST: President of the Board of Directors
5 Terrapins Swim Team
6 4180 Treat Boulevard, Suite K
7 Concord, CA 94518

8 With copies to: Head Coach
9 Terrapins Swim Team
10 4180 Treat Boulevard, Suite K
11 Concord, CA 94518

12 To CITY: City Manager
13 City of Concord
14 1950 Parkside Drive
15 Concord, CA 94519

16 With copies to: City Attorney
17 City of Concord
18 1950 Parkside Drive
19 Concord, CA 94519

20 Director of Parks & Recreation
21 City of Concord
22 1950 Parkside Dr., MS/10
23 Concord, CA 94519

24 **18. Change of Address.** Any of the parties may change the address to which notices are
25 sent by giving written notice of such change to the other party as provided herein.

26 **19. Amendment.** This Agreement may be amended, modified, or changed by the parties
27 provided that said amendment, modification or change is in writing and approved by both parties.

28 **20. Time of Essence.** Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in one (1) or more
copies as of the date and year first written above.

Terrapins SWIM TEAM

Date: _____

By: _____
President of the Board of Directors

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CITY OF CONCORD

Date: _____

By: _____
Valerie Barone, Interim City Manager



Terrapin 2013-2017
Agreement.doc

ATTEST:

By: _____
Mary Rae Lehman, CMC
City Clerk

APPROVED AS TO FORM:



Terrapin 2013-2017
Agreement.doc

City Attorney

EXHIBIT "A"

**CONDITIONS OF USE
CONCORD COMMUNITY POOL**

In order to facilitate use of the Concord Community Pool and ensure a safe and healthful environment for all concerned, the following conditions of use must be adhered to:

1. Two certified coaches must be on deck at all times during TST use of the pool or at least one certified coach and one certified supplemental responder. Certifications must be in accordance with applicable U.S. Swimming, the State of California and the City of Concord requirements. TST shall not use Concord Community Pool at any time unless the required number of coaches/supplemental responders are present.
2. TST members (including family members) are not to enter the Community Pool facility until the coach is present and supervising the program. Terrapin members must use the side gate. TST Coaches are required to monitor gates at all times while on deck.
3. Only USA registered swimmers may use the swimming pool.
4. Consumption of food and drink is limited to the lawn area. Terrapin coaches are to check facility to assure participants are in compliance.
5. Complete cleanup of locker area and pool deck associated with use is required. All equipment must be stored neatly in designated areas. City shall provide storage space, but is not responsible for any lost, damaged or stolen equipment or items.
6. TST members and personnel are subject to all pool rules. TST Coaching staff is responsible for compliance with pool rules by TST swimmers and families.
7. Foul language and deck changing will not be tolerated.
8. Voices are to be kept to a minimum in the lobby and shower area.
9. Terrapin coaches are responsible for securing, locking, and successfully setting the alarm to the Community Pool facility at the conclusion of practice when there are no city programs being conducted.

- 1 10. TST swimmers are not to be left on their own inside the facility after practice. Coaches
- 2 must remain inside the facility until all participants have exited.
- 3 11. TST are responsible for the cost of any additional maintenance/custodial service
- 4 required due to damage or excessive cleanup.
- 5 12. Use of diving boards is prohibited during scheduled practice.
- 6 13. TST is required to maintain a first aid kit on the premise at all times.

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EXHIBIT "B"

SEASON	Days/Times/Lanes/Hours
	<u>DAY</u> <u>TIME</u> <u>LANES</u> <u>HOURS</u>
Winter (12 weeks)	Jan (4) part of larger Winter Season
	T & Th 5 - 7a 6lc 96
	M-F 4-7p 8lc 480
	M-Th 3:30-5:30p 6sc 192
	M-Th 5:30-6:30p 4sc 64
	Sat 8-10a 8lc 64
High School (15 weeks)	Feb-March (8)/ Apr-May below (7)
	T & Th 5 - 7a 6lc 192
	M-F 4-7p 8lc 960
	M-Th 5:30-6:30p 4sc 128
	meet days 3:30-5:30p Allsc
	Sat 8-10a 8lc 128
	T & Th 5 - 7a 6lc 168
	M-F 3:30-7p 7lc 857.5
	M-Th 5:30-6:30p 1-4sc 112
	meet days 3:30-5:30p 1-4sc
	Sat 8-10a 8lc 112
Pre-Summer (4 weeks)	Pre-Summer (4)
	T & Th 5 - 7a 6lc 96
	M-F 3:30-7p 8lc 560
	M-Th 4:30-6:30 4sc 128
	Sat 8-10a 8lc 64
Summer (9 weeks)	Summer (9)
	M-F 5:30 - 8a 5lc 562.5
	M-F 8:00 - 10a 6lc 540
	M-F 4-7p 8lc 1080
	M-Th 7-8p 2lc 72
	Sat 7-9a 8lc 144
Summer Break (2 weeks)	Summer Break (2)
Polo (10 weeks)	Polo (10)
	T & Th 5 - 7a 6lc 240
	M-F 4 - 6p 1-4sc 400
	GameDays 3:30-5:30p 1-4sc
	M-F 5 - 7p 9lc 900
	M-F 6-7:30p 6sc 450
	Sat 8-10a 8lc 160
Winter (12 weeks)	Winter: Nov/Dec (8)
	T & Th 5 - 7a 6lc 192
	M-F 4 - 7p 8lc 960
	M-F 3:30-6:30p 6sc 720
	Sat 8-10a 8lc 128
	Total 10950

EXHIBIT "C"

Terrapin Swim Team - Contract Fees Proposed Extension 2013-17

Year	2013	2014	2015	2016	2017
Dates	1/1/13 - 12/31/13	1/1/14 - 12/31/14	1/1/15 - 12/31/15	1/1/16 - 12/31/16	1/1/17 - 12/31/17
Fees	\$30,003 (10,950 luh x \$2.74) + \$9,834 Winter Surcharge	\$30,879 (10,950 luh x \$2.82) + \$10,129 Winter Surcharge	\$31,755 (10,950 luh x \$2.90) + \$10,433 Winter Surcharge	\$32,740 (10,950 luh x \$2.99) + \$10,746 Winter Surcharge	\$33,726 (10,950 luh x \$3.08) + \$11,068 Winter Surcharge
Payment #1	1/1/13	1/1/14	1/1/15	1/1/16	1/1/17
January 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #2	2/1/13	2/1/14	2/1/15	2/1/16	2/1/17
February 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #3	3/1/13	3/1/14	3/1/15	3/1/16	3/1/17
March 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #4	4/1/13	4/1/14	4/1/15	4/1/16	4/1/17
April 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #5	5/1/13	5/1/14	5/1/15	5/1/16	5/1/17
May 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #6	6/1/13	6/1/14	6/1/15	6/1/16	6/1/17
June 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #7	7/1/13	7/1/14	7/1/15	7/1/16	7/1/17
July 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #8	8/1/13	8/1/14	8/1/15	8/1/16	8/1/17
August 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #9	9/1/13	9/1/14	9/1/15	9/1/16	9/1/17
September 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #10	10/1/13	10/1/14	10/1/15	10/1/16	10/1/17
October 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #11	11/1/13	11/1/14	11/1/15	11/1/16	11/1/17
November 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.83	\$3,732.84
Payment #12	12/1/13	12/1/14	12/1/15	12/1/16	12/1/17
December 1	\$3,319.75	\$3,417.33	\$3,515.67	\$3,623.84	\$3,732.84

A \$3.00/lane/hour fee will be billed for use in addition to the contract schedule.

EXHIBIT “D”

WAIVER AND RELEASE OF LIABILITY

I. Participant Information

Participant’s Name _____

Participant’s Age _____

Name of Parent(s) or Legal Guardian(s) _____

Parent(s)/Legal Guardian’s Address _____

Parent(s)/Legal Guardian’s Telephone Number (____) _____

Alternative Emergency Telephone Number (____) _____ Relationship (if other than parent) _____

II. Waiver and Release of Liability

I wish to participate in one or more swimming programs conducted/sponsored by the Terrapins Swim Team (hereinafter “Terrapins) at the City of Concord’s Concord Community Pool. I am aware that serious accidents can and occasionally do occur during aquatic activities, and that even though lifeguards and/or swimming instructors and/or coaches are present, participants in swimming activities occasionally suffer serious personal injury and/or death. I understand that included among the dangerous elements of aquatic activities are risks due to weather, water conditions (including temperature and chlorine content), water impurities, waterborne pathogens and diseases, pool deck surfaces, the conduct of others, and unforeseen impacts/collisions with pool structures and/or other swimmers. I also understand that drowning and permanent physical injuries are inherent risks associated with swimming pool use. I am aware that the pool deck, bottom, sides, diving boards, lane markers, and starting blocks cannot be guaranteed to be smooth or free from defects, and that their use could lead to injury or death. I understand that the forgoing list of potential risks is not intended to be exhaustive or all-inclusive, and that other dangers not listed above may be encountered during my use of the Concord Community Pool.

1 In consideration of my participation in the Terrapins' use of the Concord Community Pool, I
2 voluntarily and knowingly release and hold harmless the City of Concord, its officers, employees,
3 volunteers, agents, successors in interest, insurers, contractors, suppliers, vendors, assigns, and any
4 persons or entities with which/whom the City is affiliated (hereinafter collectively referred to as the
5 "City"), from any and all liability, lawsuits, or claims for injuries, death, or property damage resulting
6 from, arising out of, or in any way connected with such participation. This waiver and release shall
7 apply even in the event that such personal injury, death, or property damage is caused or contributed
8 to in whole or part through the negligence of the City (with the exception of sole, active negligence).

9 This waiver and release shall be binding upon all signatories, their parents, heirs and
10 dependents

11 I HAVE READ THIS WAIVER AND RELEASE IN ITS ENTIRETY. I FULLY
12 UNDERSTAND IT, AND RECOGNIZE THAT THIS WAIVER AND RELEASE IS A LEGALLY
13 BINDING DOCUMENT. I UNDERSTAND THAT BY EXECUTING THIS WAIVER AND
14 RELEASE, AM VOLUNTARY ASSUMING THE RISKS DESCRIBED HEREIN, AND WAIVING
15 MY LEGAL RIGHTS ASSOCIATED THEREWITH.

16 Signature of Participant [If participant is currently a minor, this waiver must also be signed by
17 Participant's parent(s)/legal guardian(s)] _____

18 Today's date _____

19 [The following shall only apply to waivers signed by parent(s)/guardian(s) of minor participants]

20 I/We, the undersigned, hereby certify that we are the parent(s)/legal guardian(s) of the above-
21 named participant, a minor. I/we have read this Waiver and Release of Liability in its entirety,
22 understand its meaning, and agree on behalf of Participant to the terms stated therein. We further give
23 our permission for Participant to utilize the Concord Community Pool for programs
24 conducted/sponsored by the Terrapins Swim Team.

25 Signature of Parent(s)/Guardian(s) _____

26 Today's date _____

27
28