

**BOARD REPORT**

NO. 18-163 REVISED

DATE August 08, 2018

C.D. Various

**BOARD OF RECREATION AND PARK COMMISSIONERS**

SUBJECT: CITYWIDE AQUATICS FACILITIES – AGREEMENT WITH THE LOS ANGELES PARKS FOUNDATION AND LOS ANGELES ORGANIZING COMMITTEE FOR FUNDING IN SUPPORT OF SWIMLA; ACCEPTANCE OF GRANT

AP Diaz	_____	V. Israel	_____
R. Barajas	_____	S. Pina-Cortez	_____
H. Fujita	_____	*N. Williams	<u>Nbw</u>

  
 \_\_\_\_\_  
 General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn X

RECOMMENDATIONS

1. Authorize the Department of Recreation and Parks (RAP) General Manager to accept and receive a grant from the Los Angeles Organizing Committee for the Olympic and Paralympic Games 2028 (LA 2028) in the amount of one million, two hundred thousand dollars (\$1,200,000.00), to be used in support of the SwimLA Program for operating expenses and subsidization of swim program scholarships for youth from eligible low-income households, as more fully set forth in the Three Party Agreement (Agreement) attached hereto as Attachment 1 ("Grant");
2. Approve the Agreement, substantially in the form set forth in Attachment 1 to this Report, between RAP, the Los Angeles Parks Foundation (LAPF), and LA 2028 for the acceptance of the Grant, subject to approval of the Mayor and City Council pursuant to Los Angeles Administrative Code Section 14.7 et seq., as may be amended, and approval of the City Attorney as to form;
3. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the proposed Agreement to the City Attorney for review and approval as to form; and,
4. Authorize RAP's General Manager to execute the Agreement upon receipt of the necessary approvals.

SUMMARY

LA 2028 is the officially recognized Los Angeles based committee organizing the Olympic and Paralympic Games to be held in L.A. in 2028. LA 2028 has secured funding in the amount of one million, three hundred twenty-five thousand dollars (\$1,325,000.00) through a separate agreement with the International Olympics Committee (IOC) and United States Olympic Committee (USOC), as part of the financial proceeds awarded to the City of Los Angeles through its winning bid to host the Olympic Games in 2028. In an effort to expand youth participation in

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participation in SwimLA aquatics classes, LA 2028 will provide portions of such funding to RAP and the LAPF to financially support SwimLA during the 2018 summer swim season at various aquatics facilities operated by RAP through the Grant. LA 2028 will provide One Million, Two Hundred Thousand Dollars (\$1,200,000.00) in Grant funds to RAP to pay SwimLA operating expenses and offer program scholarships on a first-come, first-served basis, to underprivileged youth from eligible low-income households. One Hundred Twenty-Five Thousand Dollars (\$125,000.00) will be provided to the LAPF to pay for contracted marketing and promotional services aimed at increasing youth participation in SwimLA during the 2018 summer swim season.

To commence marketing and promotion efforts as soon as possible, the LAPF portion of the funds (\$125,000.00) was provided to LAPF by LA 2028 on April 30, 2018. LAPF agreed to coordinate program promotion and marketing efforts with RAP and LA 2028, and use its share of the funding received exclusively for the promotion of SwimLA through various media. LAPF is working to maximize public outreach through direct contracts with marketing firms with the objective of increasing youth participation in SwimLA.

In accordance with the payment schedule included in the proposed Agreement's Section 3 (Funding Requirements; Timeline), the funding allocated to RAP is being disbursed incrementally over four (4) specified payments which began on July 1, 2018, and will continue through October with subsequent payments made on the first of August, September, and October. If necessary, and based on an agreed-upon plan to be discussed by the Parties in October, a final payment may also occur in December, 2018. Section 3 of the proposed Agreement specifies the amount of each payment. The Grant funds may be applied to approved expenses incurred by RAP between April 30, 2018 and December 31, 2018.

RAP has used its share of LA2028 funding to pay for SwimLA program expenses, including lifeguards, pool attendants, and maintenance staff; as well as to provide swim scholarships to eligible youth from low-income households on a first-come, first served basis. RAP's portion of the LA 2028 Funding has been combined with grant funds awarded to RAP by the LA84 Foundation (LA84) and Kaiser Foundation Hospitals Southern California (Kaiser), basically allowing RAP to optimize available resources to increase youth participation in the 2018 Summer and fall swim seasons. The Aquatics Division is tracking expenditures and participation data through a monthly activity update report included in the proposed Agreement as Annex 4.

With the Board's approval of the proposed Agreement, the Aquatics Division will continue to coordinate with LAPF and LA 2028, with confidence that additional, necessary funding and resources will continue to be available to facilitate the continued expansion of summer swim programming, including the extension of the summer swim season at certain facilities into the fall.

### FISCAL IMPACT STATEMENT

Approval of the proposed Agreement and acceptance of Grant funding from LA 2028 will have no adverse impact on the RAP General Fund, likely resulting in a possible one-time cost

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savings to RAP in its operation of summer swim programs through SwimLA.

This report was prepared by Raymond Chang, Management Analyst, Partnership Division.

LIST OF ATTACHMENTS

- 1) Proposed Agreement

**THREE PARTY AGREEMENT  
BETWEEN  
THE CITY OF LOS ANGELES,  
THE LOS ANGELES PARKS FOUNDATION,  
AND LOS ANGELES ORGANIZING COMMITTEE  
FOR THE OLYMPIC AND PARALYMPIC GAMES 2028  
FOR GRANT FUNDING IN SUPPORT OF  
SWIMLA**

**THIS AGREEMENT** (“AGREEMENT”) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (“EFFECTIVE DATE”), by and between the City of Los Angeles (the “CITY”), a municipal corporation acting by and through its Department of Recreation and Parks ( “RAP”), the Los Angeles Parks Foundation, a California nonprofit public benefit corporation (“LAPF”), and the Los Angeles Organizing Committee for the Olympic and Paralympic Games 2028 (“LA 2028”), to provide financial support to expand youth enrollment in RAP aquatics programs. RAP, LAPF and LA 2028 may each be referred to individually as “PARTY” and/or collectively as the “PARTIES.” RAP and LAPF are collectively referred to as “GRANTEE”.

**WHEREAS**, on September 13, 2017, the International Olympic Committee (“IOC”) elected the CITY to host the Olympic and Paralympic Games 2028 (the “2028 GAMES”); and

**WHEREAS**, pursuant to the Host City Contract 2028 – Principles, entered into September 13, 2017, by and between the City, the IOC and the United States Olympic Committee (“USOC”), and the Memorandum of Understanding Between the City, LA 2028 and the USOC, regarding the organizing of the 2028 Olympic and Paralympic Games, dated August 16, 2017, LA 2028 expressed its strong commitment to support youth sports programming, including funding up to \$160,000,000 to significantly enhance access to sport for the CITY’s youth over the ten (10) years leading up to the 2028 Games (the “2028 YOUTH SPORTS COMMITMENT”); and

**WHEREAS**, the terms of LA 2028’s 2028 YOUTH SPORTS COMMITMENT will be developed in collaboration with the CITY and with the approval of the IOC, and ultimately memorialized in the “Los Angeles 2028 Games Agreement” between LA 2028 and the CITY, no later than September 14, 2019; and

**WHEREAS**, RAP operates certain year-round and summer season aquatics facilities and will implement aquatics programs at various RAP pools, swim facilities, and open water areas; and

**WHEREAS**, RAP has launched the Mayor’s *SwimLA* youth, aquatic program to provide affordable swim lessons for kids throughout the City; and

**WHEREAS**, in 2017, RAP enrolled 18,000 youth in free or low-cost swim classes; and

**WHEREAS**, RAP desires to double enrollment in free or low-cost swim classes to approximately 36,000 per year through the expansion of youth participation in the upcoming 2018 aquatics classes operated by RAP (“SWIMLA”) in Los Angeles; and

**WHEREAS**, LAPF supports the objectives of RAP through its mission to enhance, expand, preserve and promote public recreation, parks and open space for the people of Los Angeles; and

**WHEREAS**, in advance of the completion of the LA 2028 Games Agreement, GRANTEE have requested funding from LA 2028 in the amount of one million, three hundred twenty-five thousand dollars (\$1,325,000) to financially support SWIMLA, which amount shall be credited against the 2028 YOUTH SPORTS COMMITMENT in the Los Angeles 2028 Games Agreement; and

**WHEREAS**, LA 2028 is prepared to make the grant to GRANTEE in accordance with the terms and conditions of this AGREEMENT; and

**WHEREAS**, a portion of the grant in the amount of one million, two hundred thousand dollars (\$1,200,000) (“RAP FUNDING”) shall be used by RAP for SWIMLA direct program expenses related to expanding staff and facility hours and to subsidize swim scholarships for youth from eligible low-income households; and

**WHEREAS**, a portion of the grant in the amount of one hundred twenty-five thousand dollars (\$125,000) (“LAPF FUNDING”) shall be used by LAPF for the promotion of the SWIMLA through various media, to maximize public outreach through direct contracts with one or more marketing firms, with the objective of increasing youth participation in the SWIMLA; and

**NOW, THEREFORE** in consideration of the forgoing and the terms and conditions contained herein, and the performance thereof, the PARTIES to this AGREEMENT hereto mutually agree as follows:

1. **GRANT**

- A. Pursuant to the terms and conditions of this AGREEMENT, LA 2028 shall grant to RAP and LAPF a sum of no more than one million, three hundred twenty-five thousand dollars (\$1,325,000.00) (the “GRANT”), as set forth in Section 3 below.
- B. LA 2028 is awarding the GRANT in reliance on the written project plan submitted by GRANTEE to LA 2028, attached hereto as Annex 1 and incorporated by reference herein (the “PROJECT PLAN”). Accordingly, the GRANTEE shall notify LA 2028 immediately, in writing, of any material change in the facts set forth in the PROJECT PLAN. Unless RAP and LAPF have obtained the prior written approval of LA 2028, GRANT funds (including any interest income derived from the deposit

and/or investment of GRANT funds, "GRANT FUNDS") are to be expended solely for the purposes, activities, items, contractors (if any) and amounts outlined in the PROJECT PLAN. All GRANT FUNDS must be expended for charitable, educational, religious, and other exempt purposes specified in Section 501(c)(3) of the Internal Revenue Code.

- C. GRANTEE shall act in accordance with the fiduciary duty attached to the receipt and expenditure of GRANT FUNDS intended to benefit the public. Consistent with that fiduciary duty and the public trust from which it flows, GRANTEE shall ensure the proper expenditure at all levels of all GRANT FUNDS pursuant to this AGREEMENT. All expenditures shall be the result of arm's length transactions and not the result of, or motivated by, self-dealing on the part of a GRANTEE or LA 2028, or any employee or agent of a GRANTEE or LA 2028. GRANTEE shall not offer or provide money, the promise of advantage or other things of value directly or indirectly to anyone in order to unlawfully influence any decision or action relating to the PROJECT PLAN, GRANTEE or LA 2028.
- D. In addition to the limitations set forth above, GRANT FUNDS may never be used:
- (i) To support a political campaign, party or to candidate for public office, or to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive;
  - (ii) To support or attempt to influence any government legislation, or carry on propaganda, within the meaning of Section 4945(d)(1) of the Internal Revenue Code;
  - (iii) To reimburse expenses incurred prior to the GRANT PERIOD (see Section 6, below).
  - (iv) In violation of, or in support of activities violating, APPLICABLE LAW, (see Section 2(xiv), below).
  - (v) To make a sub-grant which does not comply with Section 4945(d)(3) or (4), or for purposes other than those specified in Section 170(c)(2), of the Internal Revenue Code (26 U.S.C. §§1 et seq.).

## 2. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. RAP hereby represents, warrants and covenants that:

- (i) RAP does and will maintain its swim and pool facilities in a safe and clean manner.
- (ii) RAP's swim facilities are and shall be used exclusively for recreation and play activities for so long as the swim facilities remain open to the public.
- (iii) RAP's swim sessions for Summer 2018 are as follows:
  - Session 1: 6/18/28 - 6/29/18 (Monday through Friday)
  - Session 2: 7/2/18 - 7/13/18 (Monday through Friday)
  - Session 3: 7/16/18 - 7/27/18 (Monday through Friday)
  - Session 4: 7/30/18 - 8/10/18 (Monday through Friday)
  - Session 5: 8/13/18 - 8/24/18 (Monday through Friday)
- (iv) RAP aquatics staff (including lifeguards and volunteers) shall have completed fingerprint submissions and cleared a background check prior to providing aquatics related services under the SWIMLA program. A copy of such clearances will be made available to LA 2028 upon request, to the extent permitted by law.
- (v) RAP aquatics staff involved in providing the aquatics related services under the SWIMLA program shall complete the following training classes annually:
  - First Aid and CPR;
  - Mandated Reporters - Reporting Suspected Child Abuse;
  - Sexual Harassment;
  - Discrimination Complaint Procedure;
  - Title 22 - Community Care Licensing Regulations (Pre-hospital EMT);
  - Patron and Facility Safety Training, Emergency Response (i.e. Active Shooter, Earthquake, Fire, Flood, and Civil Disturbance);
  - Workplace Violence Prevention and Response;
  - Acceptable and Unacceptable Employee Conduct;
  - Customer Service; and,
  - Volunteer Protocol.
- (vi) Prior to providing aquatics-related services under the SWIMLA program, all such RAP aquatics staff shall certify that they have completed the training classes specified in Subsection 2(A)(v). A copy of such certifications will be made available to LA 2028 upon request.

- (vii) To ensure a safe and a healthy environment, RAP will provide a ratio of 1:7 management staff per pool facility and a ratio of 1:10 swim instructors per swim students for all SWIMLA-related activities carried out according to the PROJECT PLAN (the "ACTIVITIES").
- (viii) RAP shall provide swim scholarships to eligible youth on a first come-first served basis, provided such candidate demonstrates a financial need. Financial need shall be assessed through a self-certification form requesting household family size and total annual income. A copy of such certifications will be made available to LA 2028 upon request, to the extent permitted by law.
- (ix) RAP shall cancel any contemplated swim session during expanded hours of operation when such session has less than 5 participants enrolled and there shall be no expanded operations (nor any reimbursed operational expenses) for such pool during such canceled session.
- (x) At all times relevant herein, the CITY is, has been and will be a tax-exempt municipal corporation.
- (xi) RAP has obtained all required approvals, consents and authorizations and RAP is authorized to enter into and perform under this AGREEMENT.
- (xii) This AGREEMENT constitutes a legal, valid and binding obligation of RAP, and, to RAP's best knowledge, does not violate any provisions of RAP's charter, ordinances, or rules; nor any laws or regulations; nor any orders, writs, judgments, decrees, determinations or awards to which RAP is a party (collectively, "ORDERS").
- (xiii) RAP shall maintain, in full force and effect, all required governmental or professional licenses, approvals, consents, permits, authorizations and credentials for itself, its facilities, and for its employees and all other persons engaged in work in conjunction with this AGREEMENT, the PROJECT PLAN and the ACTIVITIES.
- (xiv) RAP has complied, and shall at all times during the GRANT PERIOD comply, in all material respects in the provision of the PROJECT PLAN and the ACTIVITIES, with all applicable local, state and federal laws, regulations, ORDERS and other governmental actions ("APPLICABLE LAW").
- (xv) RAP does not and shall not discriminate on the basis of race, color, national origin, age, sex, sexual orientation, marital status, creed, religion, citizenship, ancestry or political affiliation.

- (xvi) To the best of RAP's knowledge, no audit, investigation, proceeding or other inquiry is pending by the Internal Revenue Service, the Franchise Tax Board or the Attorney General of any state with respect to RAP.

B. LAPF hereby represents, warrants and covenants that:

- (i) Pursuant to the terms and conditions of this AGREEMENT, LAPF shall contract with marketing firms ("CONTRACTORS"), and shall make associated invoice payments directly to such CONTRACTORS for costs and expenses related to the outreach, advertising, and marketing of the SWIMLA, with the goal to expand youth enrollment, at no additional expense to RAP.
- (ii) At all times relevant herein, LAPF is, has been and will be a California nonprofit corporation.
- (iii) LAPF is authorized to enter into and perform under this AGREEMENT.
- (iv) This AGREEMENT constitutes a legal, valid and binding obligation of LAPF, and does not violate any provisions of LAPF's articles of incorporation, bylaws, ordinances, or rules; nor any laws or regulations; nor any Orders to which LAPF is a party.
- (v) LAPF has complied, and shall at all times during the GRANT PERIOD comply, in all material respects with all APPLICABLE LAW.
- (vi) LAPF does not and shall not discriminate on the basis of race, color, national origin, age, sex, sexual orientation, marital status, creed, religion, citizenship, ancestry or political affiliation.
- (vii) No audit, investigation, proceeding or other inquiry is pending by the Internal Revenue Service, the Franchise Tax Board or the Attorney General of any state with respect to LAPF.

C. LA 2028 hereby represents, warrants and covenants that:

- (i) LA 2028 is authorized to enter into and perform under this AGREEMENT.
- (ii) Using GRANT FUNDS to support the ACTIVITIES listed in the PROJECT PLAN are consistent with the purposes specified in Section 170(c)(2)(B) of the Internal Revenue Code.

**3. FUNDING REQUIREMENTS; TIMELINE**

A. Subject to GRANTEE’S compliance with the terms and conditions of this Agreement, LA 2028 shall make payments of the GRANT to RAP and LAPF in the amounts and on the timeline specified below:

(i) Funding Allocation:

RAP FUNDING	LAPF FUNDING	GRANT TOTAL
Up to \$1,200,000.00	\$125,000.00	Up to \$1,325,000.00

(ii) Timeline for Disbursement of GRANT installments:

<b>Funding Timeline</b>		
<b>Effective Date</b>		<b>\$125,000</b>
<i>To LAPF for Marketing expenses</i>		<i>\$125,000</i>
<b>Remaining Installments from and after July 1, 2018 through December 31, 2018</b>		<b>Up to \$1,200,000</b>
<i>July 1, 2018 to RAP for Sessions 1 and 2 (“Payment Request 1”)</i>	<i>Reimbursable operational costs</i>	<i>Up to \$261,696.40</i>
	<i>Swim Scholarships</i>	<i>Up to \$241,600</i>
<i>August 1, 2018 to RAP for Sessions 3 and 4 (“Payment Request 2”)</i>	<i>Reimbursable operational costs</i>	<i>Up to \$261,696.40</i>
	<i>Swim Scholarships</i>	<i>Up to \$241,600</i>
<i>September 1, 2018 to RAP for Session 5 (“Payment Request 3”)</i>	<i>Reimbursable operational costs</i>	<i>Up to \$77,372.10</i>
	<i>Swim Scholarships</i>	<i>Up to \$116,035</i>
<i>October 1, 2018 to RAP for fall sessions at 16 year -round pools (“Payment Request 4”)</i>	<i>TBD based on mutually agreed plan for remaining funds</i>	<i>TBD (based on unused funds)</i>

<i>December 1, 2018 (if applicable based on mutually agreed plan developed in October)</i>	<i>Final payment to RAP</i>	--
<b>Total Funding</b>		<b>Up to \$1,325,000</b>

The funding schedule above constitutes an estimate of the GRANTEE’s needs based upon the PROJECT PLAN, subject to the terms and conditions of this AGREEMENT, including the funding conditions below. Any funding for any session not requested during the schedule above as a result of this AGREEMENT being executed after the dates stated in the schedule above shall automatically be included in the next installment.

**B. Funding Conditions:**

- (i) **LAPF FUNDING:** One installment of \$125,000 shall be provided to LAPF on the Effective Date to be used for the purposes set forth in the PROJECT PLAN. No later than December 1, 2018 (or the date upon which this AGREEMENT is terminated in accordance with Section 8), LAPF shall provide evidence to LA 2028 of the expenses incurred in accordance with the PROJECT PLAN, and to the extent such expenses do not equal or exceed the amount of the LAPF FUNDING, LAPF shall immediately return the unused portion of the LAPF FUNDING to LA 2028.
- (ii) **RAP FUNDING:** From and after July 1, 2018 and thereafter on each payment date, LA 2028 shall make installment payments to RAP within fifteen (15) days of receipt of a written funding request (a “PAYMENT REQUEST”) which certifies that the following conditions have been met:
  - The amount requested (which shall not exceed the amount set forth in Section 3(A)(ii)) was determined in good faith in accordance with Section 3(B)(iii).
  - The excess class offerings or swim scholarship requests have not been subsidized by another source.
  - No legal, administrative or other proceeding shall, to RAP’s knowledge, be pending that questions the legality of the GRANT.
  - RAP is in compliance with all material terms of this AGREEMENT.
  - The ACTIVITIES have not been modified, enhanced, reduced or otherwise altered in any substantive manner without the prior written approval of LA 2028.
  - The GRANT has not been terminated pursuant to Section 8 of this AGREEMENT.

- With respect to the final installment requested (either in October 2018 or such earlier session wherein final payment of the GRANT FUNDS is requested) RAP shall also certify to the matters on Annex 2.

(iii) Payment Requests:

- In addition to the foregoing certifications, each PAYMENT REQUEST shall reflect (i) a determination of the actual excess operational hours for each participating pool in the subject session as reflected in the monthly report, if available, or a reasonable estimate for the excess operational hours for each pool in the subject session (based on enrollment to date), in each case multiplied by the per hour reimbursable operational costs for each pool; (ii) the projected “excess” scholarships to be funded for all participating pools in the subject session, computed by multiplying \$33.33 (which is the total scholarship allocation divided by the projected number of increased enrollments), with the number of increased subsidized enrollments.
- For each PAYMENT REQUEST from and after August 1, 2018, RAP shall calculate any difference between the amount of the payment request based on the estimated reimbursable operational expenses and estimated scholarships reflected in the immediately prior PAYMENT REQUEST and the actual reimbursable operational expenses incurred and scholarships funded (as evidenced by the monthly report). To the extent of any difference in the estimated and actual amount of reimbursable expenses and/or scholarships funded, the amount of the difference shall be deducted from or added to the PAYMENT REQUEST being then submitted.
- Prior to October 1, 2018, to the extent of any remaining GRANT FUNDS (whether then unfunded or previously funded in excess of actual use for the prior PAYMENT REQUEST), the parties shall meet to mutually determine adjustments to the PROJECT PLAN for the use of such funds at year-round pools.
- On December 1, 2018, RAP shall submit a final reconciliation of the GRANT FUNDS, and to the extent such reconciliation provides that excess funds were received, RAP shall return the unused portion of the RAP FUNDING to LA 2028 prior to the end of the calendar year.

#### 4. **INSURANCE**

- A. No later than the EFFECTIVE DATE and for the duration of the GRANT PERIOD, and for such period after during which claims may reasonably be expected, GRANTEE shall maintain, and ensure that any third-party partners, contractors or subcontractors maintain, insurance coverage sufficient to cover the risks and any potential omissions with respect to the conduct of the SWIMLA program, ACTIVITIES, facilities (including any third party facilities where ACTIVITIES may occur), or the activities of the GRANTEE. Required coverage includes, at a

minimum, comprehensive general liability, improper sexual conduct liability, and volunteer liability, each with a minimum limit of \$5 million per occurrence; and professional liability; worker's compensation; property; automobile; and crime and fidelity coverage in adequate amounts. GRANTEE may self-insure these risks.

- B. Upon request of LA 2028, GRANTEE shall provide to LA 2028 the respective policy or policies of insurance carried by or otherwise benefitting RAP and/or LAPF, or written evidence thereof, if applicable, satisfactory to LA 2028.
- C. Except in the circumstance where GRANTEE is self-insured, GRANTEE shall each name LA 2028 as an additional insured on all policies of insurance carried by such PARTY that provide coverage related to the RAP FUNDING, LAPF FUNDING, SWIMLA, facilities and ACTIVITIES, including those policies providing the coverage described in Section 4.A, and provide LA 2028 with certificates of insurance evidencing the same. All such insurance policies shall include a waiver of any right to subrogation against LA 2028 in accordance with clause D below. If RAP chooses to self-insure as and through the City of Los Angeles, RAP will, upon request from LA 2028, provide LA 2028 with evidence of such self-insurance.
- D. Each of RAP and LAPF, respectively, waives its right to recover damages against LA 2028 for any loss, damage or liability against which each of RAP and LAPF is required to be insured under Section 4.A. The effect of such release and waiver is not limited by the amount of insurance carried or required, or by any applicable deductibles. Each of RAP and LAPF agrees to cause its insurance carriers to waive any right to subrogation on the part of the insurer against LA 2028.
- E. GRANTEE shall immediately notify LA 2028 in writing, to the extent permitted by law, of any accident or injury relating to SWIMLA or the ACTIVITIES that requires medical treatment of personnel, any program participant(s) or third party(s), or of any other circumstances, which accident, injury or circumstances may reasonably be anticipated to lead to a claim involving LA 2028.
- F. GRANTEE shall immediately notify LA 2028 in writing in the event that it becomes aware that either RAP or LAPF has failed to comply with APPLICABLE LAW, or that a violation of APPLICABLE LAW has occurred, which arises out of or relates to SWIMLA, ACTIVITIES or this AGREEMENT.

## 5. **NOTICES**

All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, E-mail or certified mail (postage prepaid, return receipt requested) to the other parties as follows:

RAP: City of Los Angeles Department of Recreation and Parks

Executive Office  
221 North Figueroa Street, Suite 350  
Los Angeles, CA 90012  
Attn: Anthony-Paul Diaz, Executive Officer and Chief of Staff

LAPF: The Los Angeles Parks Foundation  
2650 North Commonwealth Avenue  
Los Angeles, CA 90027  
Attn: Judith Keiffer, Executive Director

LA 2028: Los Angeles Organizing Committee for the Olympic and Paralympic Games 2028  
10960 Wilshire Blvd, Suite 1050  
Los Angeles, CA 90024  
Attn: Gene Sykes, Chief Executive Officer  
Email: legal@la28.org

or to such other address as the party to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

## 6. **TERM**

The performance period under this AGREEMENT shall commence upon the EFFECTIVE DATE, and shall expire one (1) year from the EFFECTIVE DATE, except for those provisions of this AGREEMENT that by their terms require performance by a PARTY after termination of this AGREEMENT, including provisions related to termination, waiver of subrogation and indemnification, audit, evaluation, governing law and dispute resolution, which shall survive any termination of this AGREEMENT. Notwithstanding the foregoing, GRANT FUNDS may be applied only to expenses incurred between April 30, 2018 and December 31, 2018, unless otherwise agreed to in writing by LA 2028 and GRANTEE (the "GRANT PERIOD").

## 7. **RAP ACCOUNTING, AUDIT, REPORTS**

- A. Throughout the GRANT PERIOD, RAP and LAPF agree to maintain complete, accurate and current operating and financial books, records, and related documentation regarding ACTIVITIES relating to the GRANT and the performance under this AGREEMENT, and further agree to allow LA 2028 and its representatives, at LA 2028's expense, reasonable access to review, copy and audit such books, records, and other documentation as they relate to the GRANT and the implementation of this AGREEMENT throughout the GRANT PERIOD and for five (5) years following the GRANT PERIOD (such period, the "ACCESS PERIOD"). This documentation may be provided electronically (i.e. on a flash drive or via email).

- B. On the first of each month starting from the EFFECTIVE DATE and through the end of the GRANT PERIOD, RAP will provide an update on the progress of registered swimmers in the month prior and the ACTIVITIES hereunder in the form attached as Annex 4. Each such written report (as well as a final cumulative written report due thirty (30) days after the conclusion of the GRANT PERIOD) shall be submitted to LA 2028 and shall describe in detail, for the period covered, the use of GRANT FUNDS (e.g., number of enrollees at each pool, number of staff hours at each pool, number of scholarships granted to each pool and the associated GRANT values attributable to each of the foregoing); progress made toward achieving GRANT purposes; and contain certifications as to Grantee's compliance with this Agreement. Reports shall be signed by the General Manager of the Department of Recreation and Parks or his designee.
- C. GRANTEE understands that LA 2028 is required to appear quarterly and upon request before the City Council to provide a briefing on, inter alia, LA 2028's support for youth sport programs increasing access to sport for CITY youth. LA 2028 is further required to submit an annual report to the CITY similarly covering LA 2028's support for such programs. Additionally, LA 2028 has reporting requirements to its Board of Directors and to the IOC regarding the same. GRANTEE agrees to cooperate fully and timely with any reasonable LA 2028 requests for information reasonably necessary for LA 2028 to fulfill such requirements. GRANTEE further acknowledges that LA 2028 may share any information provided under this Agreement with its accountants, attorneys, advisors, representatives, agents, affiliates and other third parties (including without limitation the IOC, International Paralympic Committee, USOC, any joint venture between the USOC and LA 2028, and any sponsors of the foregoing), provided to the extent that if any personally identifiable information is included it shall be redacted.
- D. If GRANTEE is audited by its internal audit department or by a third party and such audit covers any transactions, expenditures or accounting relating to the ACTIVITIES, PROJECT PLAN, GRANT or AGREEMENT, GRANTEE will notify LA 2028 and provide such audit report to LA 2028 upon request.

## 8. **TERMINATION, SUSPENSION AND RETURN OF FUNDS**

- A. LA 2028 may, subject to the requirements of Subsection (C) below, (x) discontinue, modify or withhold payments to be made pursuant to Section 3 of this Agreement; (y) require a total or partial return of GRANT FUNDS, expended or unexpended; and/or (z) terminate this AGREEMENT, in the event that:
- (i) GRANTEE violates or fails to carry out any material provision of this AGREEMENT;
  - (ii) GRANTEE is unable to expend the GRANT FUNDS for approved purposes, or has terminated, concluded, abandoned or cancelled the ACTIVITIES;

- (iii) Any portion of the GRANT FUNDS is used for a purpose prohibited by Section 1, or is otherwise not used for the purposes, activities, items, contractors and amounts outlined in the PROJECT PLAN;
- (iv) There are any material changes to the facts set forth in the PROJECT PLAN or in any other information or documents submitted to LA 2028, which could potentially and materially impact the progress or outcome of the GRANT, including, by way of example and not limitation, changes in GRANTEE'S senior management, organization, control, budget or tax status;
- (v) A claim, suit, audit, proceeding, cause of action or investigation relating to the ACTIVITIES is filed or brought against LA 2028, and/or its directors, officers, employees, volunteers, contractors or third party representatives;
- (vi) Either PARTY knows of a violation of APPLICABLE LAW related to the ACTIVITIES, PROJECT PLAN or this AGREEMENT;
- (vii) GRANTEE misrepresents a material fact in regard to the ACTIVITIES, PROJECT PLAN or this AGREEMENT;
- (viii) GRANTEE fails to maintain or provide access to any material records as required to be maintained or provided under Section 7;
- (ix) Such action is necessary to comply with APPLICABLE LAW.

The foregoing remedies set forth in this Section 8 are in addition to any other remedies provided by APPLICABLE LAW. All such remedies shall be cumulative and not exclusive.

- B. GRANTEE shall immediately provide written notice to LA 2028 upon becoming aware of an event described above in Section 8(A).
- C. Any GRANT FUNDS received by GRANTEE that have not been used or committed prior to the earlier of the expiration of the GRANT PERIOD and the termination of this AGREEMENT, shall be returned promptly to LA 2028.
- D. Prior to discontinuing, modifying or withholding payments, or requiring a total or partial return of GRANT FUNDS, or terminating this AGREEMENT, LA 2028 shall give GRANTEE written notice of such event of default. If GRANTEE does not cure said default within fifteen (15) days after receipt of such notice, LA 2028 may deliver a second written notice to GRANTEE, after which, if GRANTEE fails to cure said default within an additional fifteen (15) days after receipt of such second notice, LA 2028 may, in its discretion, undertake any of the remedies listed in Subsection (A) above or any other remedies provided by APPLICABLE LAW, to the extent such remedy is reasonably related to the event of default.

## **9. PUBLICITY & RECOGNITION**

The PARTIES agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of the SWIMLA and/or this AGREEMENT. GRANTEE shall not represent, directly or indirectly, that SWIMLA or its ACTIVITIES are in any way associated with the 2028 GAMES or LA

2028, or that any product or service provided has been endorsed or approved by them, including by publishing or issuing any statement (factual or otherwise) about the GAMES or LA 2028, without LA 2028's prior written consent. The restrictions in this section shall not apply to any response, lawfully required and provided by RAP, in accordance with the California Public Records Act.

#### 10. **USE OF MARKS**

Notwithstanding any provision herein, no PARTY shall use any other PARTY's trademarks, tradenames, and/or logos (each, a "MARK") without the prior written approval from such PARTY. Each MARK shall remain the sole and exclusive intellectual property of the pertinent PARTY.

#### 11. **INJUNCTIVE RELIEF**

Each of RAP and LAPF acknowledge that Olympic- and Paralympic-related marks (including the logo(s) and any other LA 2028 intellectual property) possess special, unique and extraordinary characteristics that may make difficult the assessment of monetary damages that would be sustained as a result of a GRANTEE's unauthorized use or misappropriation thereof. Each of RAP and LAPF recognizes that irreparable injury would be suffered by LA 2028 in the event of a GRANTEE's unauthorized use or misappropriation of Olympic- or Paralympic-related marks, and therefore agrees that, notwithstanding LA 2028's right to exercise any available remedy, in such event LA 2028 shall have the right to obtain from any court of competent jurisdiction, injunctive and other equitable relief as appropriate. If LA 2028 seeks injunctive or other equitable relief in the event of a breach or threatened breach of this AGREEMENT by RAP or LAPF involving an unauthorized use of Olympic- or Paralympic-related marks (including the logo(s) and any other LA 2028 intellectual property), such GRANTEE shall not allege in any such proceeding that LA 2028's remedy at law is adequate. If LA 2028 seeks any equitable remedies (including injunctive relief), it shall not be precluded or prevented from seeking remedies at law, nor shall LA 2028 be deemed to have made an election of remedies. In no case shall RAP or LAPF be liable to LA 2028 or any third party for exemplary damages.

#### 12. **RELATIONSHIP OF PARTIES**

The PARTIES agree that no PARTY shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of any other PARTY, except as expressly provided herein. The PARTIES are independent entities and this AGREEMENT is not intended to be, nor shall it be construed, as a joint venture, association, partnership, or other form of a business organization or agency relationship. No employee, agent or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party. As between the LA 2028 and the other PARTIES, RAP is solely responsible for the design, implementation, oversight and management of the SWIMLA and all ACTIVITIES, as well as the content and dissemination of any products or material supported by the GRANT. Other than

providing the GRANT, LA 2028 shall not have any programmatic, oversight, management, financial responsibility, or any other responsibility of any kind in connection with the AGREEMENT, SWIMLA and ACTIVITIES.

**13. DISCLAIMER**

It is expressly understood by PARTIES, that no director, member, officer, employee or other representative of any of the PARTIES shall incur any financial responsibility or liability of any kind or nature whatsoever, in connection with this AGREEMENT, or any amendment and/or subsequent agreement regarding the subject matter hereof. LA 2028 shall have no liability for any debts, liabilities, deficits or cost overruns of RAP and/or LAPF. The PARTIES agree that the liability of LA 2028 hereunder shall be limited to the payment of the GRANT pursuant to the terms and conditions of this AGREEMENT. Any contracts entered into or other obligations or liabilities incurred by RAP and/or LAPF in connection with SWIMLA or ACTIVITIES or otherwise relating to this AGREEMENT shall be the sole responsibility of such PARTY, and LA 2028 shall have no obligation or liability whatsoever thereunder or with respect thereto. In no case shall LA 2028 be liable to the RAP and/or LAPF or any third party for consequential damages.

**14. ENTIRE AGREEMENT**

This AGREEMENT supersedes any prior or contemporaneous oral or written understandings or communications between the PARTIES and constitutes the entire agreement of the PARTIES with respect to its subject matter. This AGREEMENT may not be amended or modified, except in a writing signed by the PARTIES.

**15. GOVERNING LAW**

This AGREEMENT has been negotiated, executed and delivered and will be performed in the State of California and shall be governed by and construed in accordance with its laws.

**16. DISPUTE RESOLUTION.**

Any dispute involving this AGREEMENT will be resolved in accordance with the procedures specified in Annex 3 attached hereto.

**17. COUNTERPARTS:**

This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This AGREEMENT shall not be effective as to any PARTY unless and until it has been executed by or on behalf of every PARTY.

**18. MUTUAL INDEMNIFICATION**

Except for the gross negligence or willful misconduct of any PARTY, or any of its boards, officers, agents, employees, assigns and successors in interest, each PARTY shall defend, indemnify and hold harmless the PARTIES and any of their boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation, damages or liability of any nature whatsoever, for death or injury to any person, or damages or destruction of any property of either party hereto or of third parties, or arising in any manner out of or incident to the preparation, arranging, performance, or sponsoring of this AGREEMENT, by reason of an act, error, or omission by a PARTY, and/or of its board, officers, agents, employees, assigns, and successors in interest. No PARTY shall settle or compromise any claim or consent to the entry of any judgment, without written consent of the other PARTY, which will not be unreasonably withheld. Each indemnified PARTY will reasonably cooperate with the indemnifying PARTY in the defense of any such claims. The rights and remedies of the PARTIES provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT. This provision will survive expiration or termination of this AGREEMENT.

#### **19. IOC APPROVAL**

The PARTIES acknowledge that the terms, conditions and understandings set forth in this AGREEMENT are subject to the written approval of the IOC and shall not be binding upon the PARTIES unless and until such written approval is obtained.

#### **20. USOC AND IOC REQUIREMENT**

The PARTIES acknowledge and agree that RAP and LAPF shall have no right of recovery of any kind against the USOC or the IOC, or any affiliate, director, officer, employee, consultant or independent contractor of either the USOC or the IOC, under this agreement, and that its sole and exclusive recourse or remedy for any claims, demands, actions, suits or other proceedings under this agreement shall be against the assets of LA 2028 only. Each of the USOC and IOC shall be a third party beneficiary of this section with full rights of enforcement thereof. This provision will survive expiration or termination of this AGREEMENT.

#### **21. RECITALS**

The recitals of this AGREEMENT are fully incorporated into this AGREEMENT.

#### **22. ASSIGNMENT**

GRANTEE may not assign or otherwise transfer any rights, nor delegate any of its obligations, under this AGREEMENT without prior written approval from LA 2028.

**23. NO THIRD PARTY RIGHTS**

Except as expressly provided in Section 19 (IOC Approval) and 20 (USOC and IOC Requirement), no third party is intended to be, or shall be deemed to be, a beneficiary of any provision of this AGREEMENT.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, PARTIES have executed this AGREEMENT as of the date first written above.

Executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

By \_\_\_\_\_  
GENERAL MANAGER

Executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_

THE LOS ANGELES PARKS FOUNDATION

By \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

Executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_

LOS ANGELES ORGANIZING COMMITTEE FOR THE OLYMPIC AND PARALYMPIC GAMES 2028

By \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

Approved as to Form:

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

MICHAEL N. FEUER,  
City Attorney

By \_\_\_\_\_

DEPUTY CITY ATTORNEY

By \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_



## Annex 1 Project Plan

### LAPF Uses

To achieve program success through expanded enrollments, an aggressive advance marketing campaign is critical and that must take place prior to the program's opening. The funds will support outreach events, promotional materials (e.g., banners and flyers), and branded equipment (e.g., swim caps and towels).

Description (Firm: Description)	Total
Los Angeles Parks Foundation: Program Management	\$15,000.00
Allan Communications: To draft program messaging, conduct outreach to community organizations, and coordinate with earned media.	\$10,500.00
Allan Communications: To secure paid targeted Facebook advertisements	\$15,000.00
High Pressure Zone (HPZ): For creative development, including illustration and mechanicals, website design, and etc.	\$30,000.00
PVBLIC Foundation: For paid digital media	\$10,000.00
Production & printing of bus shelters and benches	\$10,000.00
Printing and production of Postcards, Flyers, Small Posters, Banners, and etc.	\$30,000.00
Swag	\$1,000.00
Miscellaneous Opportunities	\$3,500.00
	<b>Total</b> \$125,000.00

### RAP Uses

#### *Direct Program Expenses*

RAP requires funding for SWIMLA direct program expenses related to expanding staff and facility hours. The attached spreadsheet sets forth a breakdown of project program expenses.

#### *Scholarships*

Swim scholarships are given on a first come-first served basis to those that demonstrate financial need. Financial need is assessed via a self-certification form that requests family size and total annual family income. This is similar to the free/reduced lunch program provided by LAUSD. All LA28 scholarships will be in addition to (and not duplicative of) the scholarships already provided by Kaiser and LA84, increasing the total number of scholarship opportunities available to participants this summer.

The attached spreadsheet sets forth a breakdown of scholarship fees per participating pool; enrollees for 2017 and projected enrollees for 2018.

[ANNEX 1 - SPREADSHEET ATTACHED SEPARATELY]

## Annex 2

LA 2028  
[10960 Wilshire Blvd., Suite 1050  
Los Angeles, CA 90024  
Attention: Gene Sykes, CEO]

Re: FINAL INSTALMENT

Dear Sir or Madam:

This letter has reference to that certain THREE PARTY AGREEMENT, dated [\_\_\_\_\_], BETWEEN THE CITY OF LOS ANGELES, THE LOS ANGELES PARKS FOUNDATION, AND ORGANIZING COMMITTEE FOR THE OLYMPIC AND PARALYMPIC GAMES 2028 FOR GRANT FUNDING IN SUPPORT OF SWIMLA (“Grant Agreement”), and any modifications or alterations thereto dated. Capitalized terms used herein without further definition have the meanings specified in the Grant Agreement.

In consideration of the payment by LA 2028 of the final installment of the Grant under the Grant Agreement:

1. The Grantee hereby reaffirms all of its executory obligations and duties under the Grant Agreement, including, but not limited to, its obligation to indemnify, defend and hold LA 2028 harmless from liabilities and losses pursuant to Section 17 of the Grant Agreement, without setoff or other defense.
2. The Grantee represents and warrants that, in the performance of the Grant Agreement and in the planning, arrangement, implementation, sponsoring and conduct of the SWIMLA program, no losses, injuries or damages were sustained by or to any person or property that have not been reported in writing to LA 2028.
3. The Grantee represents and warrants to its best knowledge (a) that no audit, investigation, proceeding or other inquiry is pending by the internal Revenue Service, the Franchise Tax Board, the Attorney General of any state or any other governmental agency with respect to the Grantee or any affiliated organization and (b) that no legal, administrative or other proceeding is pending that concerns the Grant or the Activities.
4. The Grantee acknowledges and confirms (a) that, upon payment of the final installment of the Grant, LA 2028 has no further duty or obligation to the Grantee and (b) that no officer, director, employee or other representative of LA 2028 had made any statement, representation or warranty that the Grant will be renewed or extended.
5. The Grantee represents and warrants that all promotional and advertising materials produced or authorized by the Grantee relating to the SwimLA Program have complied with the requirements of the Grant Agreement.
6. The Grantee represents and warrants that the Grant has been expended solely for the purposes set forth in the Grant Agreement.

7. The Grantee agrees to repay any portion of the Grant which is not used for the purposes set forth in the Grant Agreement.

LA 2028 shall be entitled to rely on the foregoing representations, warranties, confirmations, acknowledgments and agreements in disbursing the final installment of the Grant.

Sincerely Yours,

City of Los Angeles

Executed by:

Title:

Date:

### Annex 3 Dispute Resolution

The PARTIES shall seek amicably to resolve by negotiation all disputes arising out of or in connection with this AGREEMENT or any agreements, schedules or exhibits ancillary hereto or thereto. If, in spite of such negotiations, no mutually agreeable resolution between the parties is reached, then either party may provide written notice to the other party, pursuant to Section 5, of the existence of such dispute (“DISPUTE NOTICE”). Any DISPUTE NOTICE shall include a detailed description of the disputed matter, any relevant documentation and other materials, and a detailed explanation of the position taken by the PARTY providing such DISPUTE NOTICE.

Within thirty (30) days following the delivery of any DISPUTE NOTICE the chief executive officer of LA 2028 and the Mayor of the City (or the Mayor’s designee) shall meet in person, without others present, to resolve the subject of such DISPUTE NOTICE; provided, however, that if the chief executive officer or the Mayor notifies the other, pursuant to Section 5, that satisfactory resolution of the subject matter of the DISPUTE NOTICE is not practicable unless the chief executive officer and Mayor meet sooner than within a thirty (30) day period, then the chief executive officer and Mayor shall each use reasonable efforts to meet within a shorter period of time.

To the extent that any disputes that are the subject of a DISPUTE NOTICE delivered pursuant to Section 5 remain unresolved after a period of ninety (90) days following the meeting of the chief executive officer and Mayor as prescribed above, then unless the chief executive officer and Mayor mutually agree to an extension of the period in which to meet to resolve any dispute that is the subject of such DISPUTE NOTICE, either PARTY may make a request for arbitration and, in such event, such disputed matters shall be determined by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The place of arbitration shall be in Los Angeles, California. There shall be one (1) arbitrator.

If a request for arbitration is not made prior to the tenth (10th) day following the conclusion of the ninety (90) day period described above or within ten (10) days following such longer period as may be mutually agreed upon, all claims of the PARTY who initiated the dispute resolution procedure shall be deemed waived, notwithstanding any state or federal statute of limitations.

Judgment upon any award(s) rendered by the arbitrator may be entered in any court having jurisdiction thereof. The PARTIES hereby waive all objection which it may have at any time to the laying of venue of any proceedings brought in such courts, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object with respect to such proceedings that any such court does not have jurisdiction over such PARTY.

Each PARTY shall bear its own costs of arbitration, including legal fees, except that the fees for the arbitrator and costs associated with the arbitrator shall be shared equally by the PARTIES; provided, however, that any costs forming the substance of the dispute shall be borne as determined by the arbitral award.

The award shall be rendered within six months of the commencement of the arbitration, unless the arbitral tribunal determines that the interest of justice requires that such limit be extended.

Any arbitration arising under this AGREEMENT shall be consolidated with any other arbitration under this AGREEMENT or any agreements, schedules or exhibits ancillary hereto or thereto. If two or more arbitrators under such agreements issue consolidation orders, the order issued first shall prevail.

Nothing in this AGREEMENT shall prevent the parties hereto from seeking provisional measures from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

Annex 1  
Monthly Activities Form

[ANNEX 4 - SPREADSHEET ATTACHED SEPARATELY]