

**FACILITY USE AGREEMENT
BETWEEN CITY OF RIVERSIDE AND
YOUNG MEN'S CHRISTIAN ASSOCIATION OF ORANGE COUNTY**

(City of Riverside Aquatics Facilities)

THIS FACILITY USE AGREEMENT ("Agreement") is entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (hereinafter referred to as "City") and YOUNG MEN'S CHRISTIAN ASSOCIATION OF ORANGE COUNTY, a California corporation (hereinafter referred to as "User Group"). City and User Group are sometimes referred herein individually as "Party" and collectively as "Parties."

RECITALS

A. City is fee owner of certain real property with pool facilities at the following addresses, hereinafter referred to as "Premises", depicted in Exhibit "B," attached hereto and incorporated herein.

Arlington Park – 3860 Van Buren Blvd. Riverside, CA 92503
Bobby Bonds Park – 2060 University Avenue, Riverside, CA 92507
Hunt Park – 4015 Jackson Street, Riverside, CA 92503
Islander Park – 3794 Mount Vernon Avenue, Riverside, CA 92507
Reid Park – 701 North Orange Street, Riverside, CA 92501
Shamel Park – 3650 Arlington Avenue, Riverside, CA 92506
Villegas Park – 3091 Esperanza Street, Riverside, CA 92504

B. User Group desires to use the Premises and City is willing to allow User Group use of the Premises for the purpose of providing pool space for aquatic activities described in the Scope of Services, attached hereto and incorporated herein as Exhibit "A." User Group shall provide services for the following residents of the City: youth under age 18, adults, seniors ages 55 and older, and special needs residents as defined in Paragraph 15 below. User Group will provide the following services at no cost and/or subsidize cost to Riverside residents of all age groups: water safety presentation and drowning prevention. User Group will provide additional services described in Exhibit "A" to the City at no cost: aquatics training (lifeguard, water safety instruction) and staff training (part-time).

NOW, THEREFORE, in consideration of the above facts and for the promises and mutual covenants contained herein, the receipt and adequacy of which are hereby acknowledged; the Parties agree as follows:

1. Effective Date, Term, and Termination.

1.1 This Agreement shall become effective on the date first written above ("Effective Date"), on which all of the following are true:

- (i) This Agreement has been approved and executed by the appropriate authorities of User Group and this Agreement has been delivered to User Group; and
- (ii) Following all legally required notices and hearings, this Agreement has been approved by the User Group governing board, has been executed by the appropriate authorities of User Group and delivered to City.

1.2 Term. Upon the Effective Date, City hereby allows use to User Group, on the terms and conditions hereinafter set forth, of the Premises. The term of this Agreement ("Term"), shall commence on the Effective Date and shall remain in effect for one year.

1.2.1 Either party may terminate this Agreement at any time and for any or no reason by giving sixty (60) days prior written notice.

1.2.2 If User Group breaches this Agreement City may give written notice of the default to User Group and if the same shall not be corrected within ten (10) days after the giving of such notice, or such longer period provided in said notice, City, acting through its City Manager, may treat such default as a total breach of this Agreement and thereupon rescind this Agreement. If after service of a notice of default, User Group fails to cure such default within the time provided in said notice, City may at any time thereafter recover possession of the Premises by any lawful means and remove User Group or other occupants and any possessions thereof. If this Agreement is so terminated by City, City shall have the right to any other remedy or remedies provided by law. City's failure to enforce any right or provisions of this Agreement shall not be construed as a waiver of the right to do so without written notice by City of the intent to waive such right. City's waiver of any default by User Group shall not constitute a waiver of any future default or defaults in the absence of written notice of City's intent to waive such default.

1.3 Termination upon End of Term or Failure of Conditions Precedent. Notwithstanding the foregoing, this Agreement shall automatically terminate without any action or notice by either Party upon the end of the Term.

2. Terms of Use.

2.1 Maintenance and Access to Designated Spaces. Subject to the terms of this Agreement, in consideration of the City's Agreement to provide access to User Group of the Premises, User Group shall provide janitorial services at the Premises, including the girls and boys locker room and restroom areas, and designated User Group office/storage space. The Premises areas that User Group will have access to are described on the attached Exhibit "B." User Group agrees to keep the Premises in proper order and User Group also agrees to provide appropriate storage and care for all equipment pertaining to the use and maintenance of the Premises. City will invoice the User Group for cleaning the facility if not properly maintained.

2.2 Months of Use and Scheduling. User Group shall have access, during specified days and hours, to use of the Premises for each month of the calendar year. User Group's access shall be permitted consistent with all City requirements and will be scheduled behind all City and City co-sponsored programs/activities.

User Group shall complete the City of Riverside Facility Request Application, attached hereto and incorporated herein as Exhibit "C," in order to request use of the Premises, in the same manner as all other User Groups. In the event of a conflict, the terms and conditions of this Agreement take precedence over the Facility Request Form. Scheduling of User Group events at the pool shall be coordinated by User Group's designated representative and the designee of the City of Riverside, Parks, Recreation and Community Services Department ("PRCSD designee"). The primary contact for scheduling events at the pool for the entire year shall be the PRCSD designee.

2.3 Permitted Use. The Premises shall be used solely for the purpose of providing pool space for aquatic activities. A Schedule of User Group Usage for anticipated dates will be mutually agreed upon by User Group and City and is attached hereto and incorporated herein as Exhibit "D." All additional requests for use of the Premises shall be mutually agreed upon between User Group and City. User Group is strictly prohibited from transferring or subleasing its use/access to the Premises to any other User Group and any actions that are contrary to the Permitted Uses shall be grounds for immediate termination of this Agreement. User Group shall not change the use of the Premises to a purpose other than described in this Agreement, without obtaining the prior written consent of the City which consent may be withheld by City in its sole and absolute discretion. The foregoing notwithstanding, User Group in its possession, use and occupancy of the Premises agrees to observe and comply with all restrictions, laws and ordinances affecting the Premises or occupancy thereof. User Group further agrees that no use shall be made of the Premises, which will cause cancellation of any insurance policy covering the Premises.

2.3.1 Other User Groups. In the event User Group is requested by another User Group (i.e. a high school, college or other swim organization) to use the pool during User Group's scheduled use time, User Group will refer the User Group to the PRCSD Designee. User Group and the City will coordinate in the event User Group permits another User Group to utilize the Premises during User Group's designated use time. (For purposes of this agreement, the term "designated use time" shall mean the dates/times that User Group is approved, by the City, to use the Premises.)

2.4 Permits and Licenses. User Group shall keep any and all permits and licenses required by any federal, state or local authority in connection with the permitted use of the premises, in good standing at all times during the Term of this Agreement. In addition, User Group will maintain proper supervision of participants while using the Premises pursuant to existing requirements and policies established through American Red Cross Guidelines with a ratio of one (1) certified lifeguard to every twenty-five (25) swimmers.

2.5 Keys. City shall provide User Group with up to two (2) keys to the Premises for the sum of Thirty Five Dollars (\$35.00) for each such key. User Group shall submit

a Key Request Form, attached hereto and incorporated herein as Exhibit "E" and to the PRCS D designee for Aquatics/Facilities for all keys checked out to User Group. Should the Pools ever need to be re-keyed, City shall immediately furnish User Group with new keys. User Group will only open the doors/gates to the Premises during the hours it is permitted to use the Premises. In the event the locks to the doors/gates to the Premises must be replaced or re-keyed for any reason excepting the sole fault of City, User Group shall pay the actual costs for such replacement or re-keying including the replacement of all keys. User Group must provide the City with a list of all individuals (Name, Title/Affiliation to User Group) who are issued a key to the Premises. User Group shall lock the Premises when User Group is not using the pool facilities. User Group is strictly prohibited from duplicating or sharing keys to the Premises.

2.6 Pool Cover. User Group will be responsible to cover and remove the pool covers for the months it uses the Premises. User Group understands that the pool cover is necessary for utility conservation and savings to the City. City will invoice User Group for cost or repairs or replacement of pool covers due to damage caused by User Group.

2.7 Pool Water Testing and Maintenance. City shall be responsible for the costs of pool water testing and maintenance. In the event that User Group or another User Group causes significant pollution to the pool water such that additional pool water testing and maintenance is required, City will seek reimbursement for the costs incurred for such additional pool water testing and maintenance.

2.8 Certifications. User Group shall provide an updated list of all certificates and qualifications of their personnel, lifeguards and instructors on an annual basis. Minimum requirement for lifeguards include lifeguard certification and First Aid/CPR/AED.

2.9 Personnel. User group shall have all personnel contact the Parks, Recreation and Community Services Department to schedule a Live Scan/Department of Justice background check with the Human Resources Department. User group will be responsible for costs of the Live Scan check \$32.75 (per person) - consistent with the procedures set forth by the City's Human Resources Policy I-14, attached hereto and incorporated herein as Exhibit "F," and payment is due at the time of the Live Scan. After receipt of the scan results the City will notify user group of individuals that are eligible to lifeguard, instruct and volunteer. User group shall only utilize those eligible individuals for the performance of this

2.10 Reservation of Right to Use by City. City shall retain an exclusive right to use the Premises during all hours other than User Group's designated use time.

2.11 Other User Groups. User Group shall direct all User Groups seeking access to the Premises to the City of Riverside, Parks, Recreation and Community Services Department ("PRCS D"). User Group shall not permit User Groups to enter the Premises during User Group designated use time unless the User Group has completed an approved Facility Request Form or has an Agreement with the City, and has provided the necessary insurance documents that must be approved by the City's Risk Manager or City Attorney, or a designee. City will schedule and assign staff to open the Premises for non- User Group events.

2.11 Incidents of Vandalism. In the event an incident of vandalism occurs on the Premises, User Group shall report the incident to the PRCSO designee as soon as possible so that the City may repair/correct the Premises. In the event that any vandalism is caused by User Group, User Group shall be responsible for reimbursement for all repair costs incurred by the City. Any other acts of vandalism will be repaired, corrected and paid for by the City.

2.12 Emergency Call-Out Services. User Group shall be responsible for all costs associated with any emergency response services provided to User Group.

3. Compensation. User Group will be required to pay facility usage at \$18/hour. Parks, Recreation and Community Services Department staff will be required to open/close facility.

The above fees are contingent upon User Group's agreement to offer services to youth, seniors and special needs residents of the City including, but not limited to, water safety, presentations, and drowning prevention education.

City will invoice User Group based on time requested on their Facility Request Application and all fees will be due in advance of User Group's use of the Premises. Fees should be paid in the form of a credit card, cashier's check or money order and paid payable to:

City of Riverside Parks, Recreation and Community Services Department
Attn: PRCSO Designee – Aquatics
3900 Main Street
Riverside, CA 92522

4. Utilities.

4.1 All Utilities (Excluding Telephone). City shall pay the appropriate suppliers for all water, gas, electricity, light, heat, power and other utilities used by User Group on the Premises during the Term of this Agreement.

4.2 Telephone. If applicable, User Group shall be responsible for telephone installation, operation and costs for the months it has use of the Premises.

5. Insurance.

5.1 General Provisions. Prior to the City's execution of this Agreement, User Group shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

5.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on User Group's indemnification obligations under Section 13 hereof.

5.1.2 Ratings. Any insurance policy or coverage provided by User Group as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

5.1.3 Cancellation. The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

5.1.4 Adequacy. The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by User Group pursuant to this Agreement are adequate to protect User Group. If User Group believes that any required insurance coverage is inadequate, User Group will obtain such additional insurance coverage as User Group deems adequate, at User Group's sole expense.

5.2 Workers' Compensation Insurance. By executing this Agreement, User Group certifies that User Group is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for Workers' Compensation, or to undertake self-insurance before commencing any of the work. User Group shall carry the insurance or provide for self-insurance required by California law to protect said User Group from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement User Group shall file with City either (1) a certificate of insurance showing that such insurance is in effect, or that User Group is self-insured for such coverage, or (2) a certified statement that User Group has no employees, and acknowledging that if User Group does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days prior written notice before modification or cancellation thereof.

5.3 Commercial General Liability Insurance. Prior to City's execution of this Agreement, User Group shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance as required to insure User Group against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of User Group. The City, and its officers, employees and agents, shall be named as additional insureds under User Group's insurance policies.

5.3.1 User Group's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractors liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

5.3.2 Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, for commercial general liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policy shall be in the usual form of a commercial general liability insurance policy, but shall include the following provisions:

“It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.”

5.3.3 The insurance policy shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after expiration of this Agreement. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Consultant will be considered primary and not contributory to any other insurance available to the City.

5.4 Personal Property. User Group shall, at User Group's sole cost and expense, at all times during the Term of this Agreement, keep all personal property on the Premises insured for its full replacement value by insurance companies authorized to do business in the State of California against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the United States. No provision of this Agreement shall be construed to impose any obligation upon City to insure User Group's personal property.

5.5 Increases in Coverage. City may, from time to time, require User Group to obtain (at User Group's expense) increases in both the types and amounts of coverage provided by the insurances required to be maintained by User Group hereunder. City's determination that such increases are reasonably necessary to maintain the level of protection provided to City hereunder as of the Effective Date.

6. Cleanliness, Waste, and Nuisance. User Group shall keep the Premises in a neat, clean and sanitary condition, free from waste or debris and shall neither commit, suffer nor permit any waste or nuisance in or about the Premises nor store materials hazardous to health or

safety, and shall not permit the use of the Premises for any illegal purposes.

7. Assignments and Subleases. Neither party shall transfer any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. User Group is strictly prohibited from transferring or subleasing its use/access to the Premises to any other User Group and any actions that are contrary to the Permitted Uses shall be grounds for immediate termination of this Agreement. User Group shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City's Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 5. User Group acknowledges that any transfer of rights may require City Manager and/or City Council approval.

8. Condition of Premises. User Group represents that User Group has inspected and examined the Premises and accepts the Premises in its present condition and agrees that City shall only make repairs or improvements to the Premises on an as needed basis.

9. Damage to Premises and Abandonment. User Group agrees that User Group is jointly and severally liable for all damages to the Premises caused or permitted by the User Group or the guests, invitees, visitors, agents, employees and contractors of User Group. User Group shall not vacate or abandon the Premises at any time during the Term of the Agreement.

10. Alterations and Improvements. User Group shall not, without the prior written consent of City, make any alterations, improvements or additions in or about the Premises.

11. Surrender of Leased Premises and Improvements.

11.1 Surrender. Upon the termination of the Agreement, User Group shall surrender the Premises in good order and condition, ordinary wear and tear or condemnation excepted.

11.2 Improvements. All improvements on the Premises at the expiration of the Term or earlier termination of this Agreement shall, without compensation to User Group, then automatically and without any act of User Group or any third party become City property. User Group shall surrender the improvements to City at the expiration of the Term or earlier termination of this Agreement, free and clear of all liens and encumbrances, other than those, if any, permitted under this Agreement or otherwise created or consented to in writing by City. User Group agrees to execute, acknowledge, and deliver to City any instrument requested by City as necessary in City's opinion to convey or otherwise perfect City's right, title, and interest to the improvements and the Premises.

12. Right of Entry and Inspection. User Group shall permit City or City's agents, employees and representatives to enter the Premises without notice for the purpose of inspecting the Premises.

13. Indemnification. Except as to the sole negligence or willful misconduct of the City, User Group shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with, the performance of work, activities, operations or duties of User Group, or anyone employed by or working under User Group, and from all claims by anyone employed by or working under User Group for services rendered to User Group in the performance of this Agreement, notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of User Group or of anyone employed by or working under User Group.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City' self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

14. Duty to Defend. User Group agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: (1) the work, activities, operations, or duties of User Group, or of anyone employed by or working under User Group, or (2) any breach of this Agreement by User Group. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. User Group agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

15. Nondiscrimination. During User Group's performance of this Agreement, User Group shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, User Group agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

User Group shall not discriminate against special needs persons defined as persons with physical or mental impairments that substantially affect major life activities, those with records of such impairments, and those who are regarded as so impaired. Physical or mental impairment is a physiological disorder or condition, cosmetic disfigurement, or anatomical loss such as epilepsy, paralysis, HIV infection, AIDS, or substantial hearing or vision impairment or a mental

or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities. Examples of conditions that would not be disabilities are short-term, non-chronic conditions such as a broken leg, a sprain or the flu.

16. Events of Default. The following occurrences shall constitute “Events of Default” under this Agreement:

16.1 User Group files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors;

16.2 User Group breaches any of the other agreements, terms, covenants, or conditions that the Agreement requires User Group to perform, and the breach continues for a period of ten (10) calendar days after notice by City to User Group.

17. Remedies. If any one or more Events of Default set forth in Section 16 occurs and User Group has not cured in the time provided for, then City may, at its election, terminate this Agreement and recover possession of the Premises. Nothing contained herein shall limit City from pursuing, at any time, any remedy available to it at law or equity.

18. Miscellaneous.

18.1 No Waiver. No waiver or any condition or agreement in this Agreement by either City or User Group shall imply or constitute a further waiver by such Party of the same or any other condition or agreement.

18.2 Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of User Group each represent and warrant that they have the legal power, right and actual authority to bind User Group to the terms and conditions hereof and thereof.

18.3 Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement shall be written and shall be deemed to have been given when personally delivered, sent by overnight delivery, or sent by certified or registered mail, return receipt requested, addressed to:

City: Parks, Recreation & Community Services Dept.
Attn: Recreation Superintendent
3900 Main Street
Riverside, CA 92522

User Group: Young Men’s Christian Association of Orange County
Attn: Jeff McBride
13821 Newport Avenue, Suite 200
Tustin, CA 92780

Either City or User Group may change its address or addressee for purposes of this paragraph by giving ten (10) calendar days' prior notice according to this paragraph.

18.4 Venue, Attorneys' Fees, and Arbitration. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs thereof, including reasonable attorneys' fees, to be set by the court in such action. Any dispute, claim or controversy between the Parties arising from or relating to this Agreement may, at the election of either party, be submitted to non-binding arbitration. Arbitration pursuant to this section shall follow the rules of procedure established by the American Arbitration Association. The arbitration shall be conducted in Riverside County, California.

18.5 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, City's successors and assigns. This Agreement shall inure to the benefit of, and shall be binding upon, User Group's successors and assigns so long as the succession or assignment is permitted by Section 7.

18.6 Interpretation. City and User Group acknowledge and agree that this Agreement is the product of mutual arms-length negotiations and accordingly, the rule of construction, which provides that the ambiguities in a document shall be construed against the drafter of that document, shall have no application to the interpretation and enforcement of this Agreement.

18.6.1 Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of the Agreement or any of its terms. Reference to section numbers are to sections in the Agreement unless expressly stated otherwise.

18.6.2 This Agreement shall be governed by and construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

18.7 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between User Group and City as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the party to be bound thereby. This Agreement, along with the exhibits attached hereto, constitutes the entire Agreement between the City and User Group relative to the Premises.

18.8 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties thereto, to any person or entity other than the Parties hereto.

18.9 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

18.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

18.11 No Partnership or Joint Venture. Nothing in this Agreement shall be construed to render the City in any way or for any purpose a partner, joint venture or associate in any relationship with User Group other than that of City and User Group, nor shall this Agreement be construed to authorize either to act as agent for the other.

18.12 Execution of Agreement; No Option. This Agreement shall not constitute a reservation of or option for User Group to lease, or otherwise create any interest of User Group in the Premises. Execution of this Agreement by User Group and its return to City shall not be binding on City notwithstanding any time interval until City has in fact signed and delivered this Agreement to User Group.

18.13 Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

18.14 Time of Essence. Time is expressly declared to be of the essence of this Agreement.

18.15 General Compliance with Law. User Group shall keep fully informed of federal, state, and local laws and ordinances and regulations which in any manner affect those employed by User Group, or in any way affect its use of the Premises pursuant to this Agreement. User Group shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances, and regulations. User Group represents and warrants that it has obtained all necessary licenses, if applicable, to perform pursuant to this Agreement and that such licenses are in good standing. User Group further represents and warrants that the services provided herein shall conform to all ordinances, policies and practices of the City of Riverside.

(Signatures on Following Page)

IN WITNESS WHEREOF, City and User Group have executed this Agreement as of the date first written above.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF ORANGE COUNTY,
a California corporation

By: _____
City Manager

By: Jeff McBride
Name: JEFF MCBRIDE
Its: CEO

ATTEST:

By: _____
City Clerk

By: Cara Owens
Name: CARA OWENS
Its: COO

APPROVED AS TO FORM

By: Susan Wilson
Assistant City Attorney

EXHIBIT “A”

SCOPE OF SERVICES

Exhibit A – Scope of Service

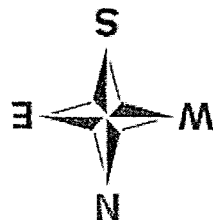
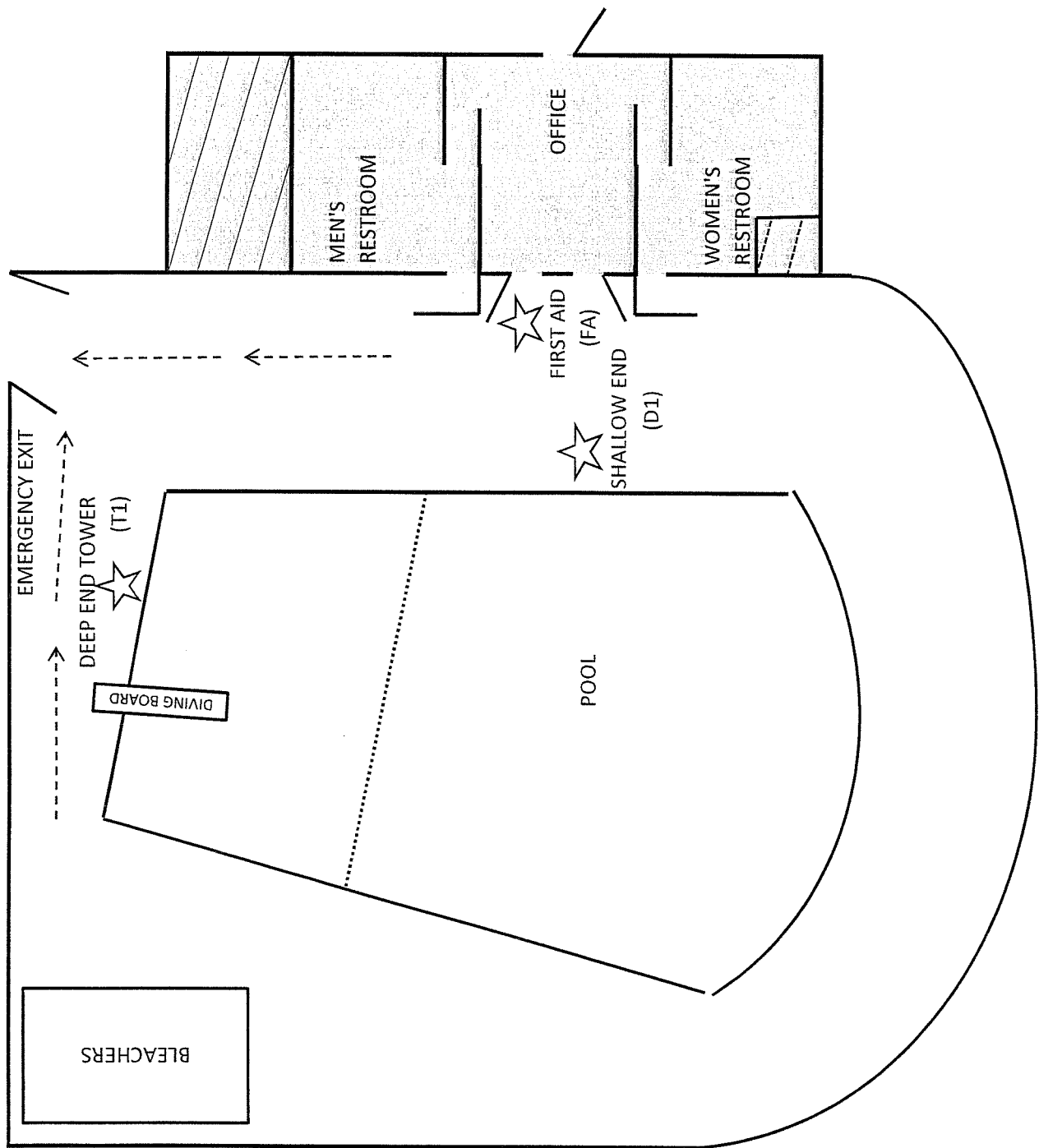
User group (YMCA) shall provide the following minimum services to include:

1. Free/subsidized water safety presentations to Riverside residents. Class rosters and participant contact information must be submitted to PRCSD designee one week after the start of the session.
2. Provide a schedule of classes to PRCSD designee at least two months before the start date.
3. Provide appropriate levels of supervision at all times while conducting classes at a city facility. For aquatic activities, User group must provide an updated list of all certificates and qualifications for their personnel, lifeguards and instructors. Certification must be submitted to PRCSD designee 30 days prior to the start of a class. User group must maintain proper supervision of participant and abide by American Red Cross guidelines.
4. Enforce all PRCSD facility rules and regulations.
5. Provide and distribute all marketing materials for programs conducted on city facilities for review prior to distribution. User group shall provide City with all bulk email messages, fliers, and similar promotional materials, which must bear the City logo and list City as a collaborator 30 days prior to distribution date. All publicity items must be approved by PRCSD designee prior to publishing.
6. No-cost trainings to City aquatic staff during the months of June – September. Trainings will be held bi-weekly. Dates, times and topics of trainings will be agreed upon by PRCSD designee and user group. Training topics include, but will not be limited to: CPR, First Aid, Water Safety Instruction and Lifeguarding.
7. No cost trainings to City staff bi-annually. Dates, times and topics of trainings will be agreed upon by PRCSD designee. Training topics include, but will not be limited to: CPR, First Aid, Customer Service, Group Games/Activities, Heat related illness, etc.

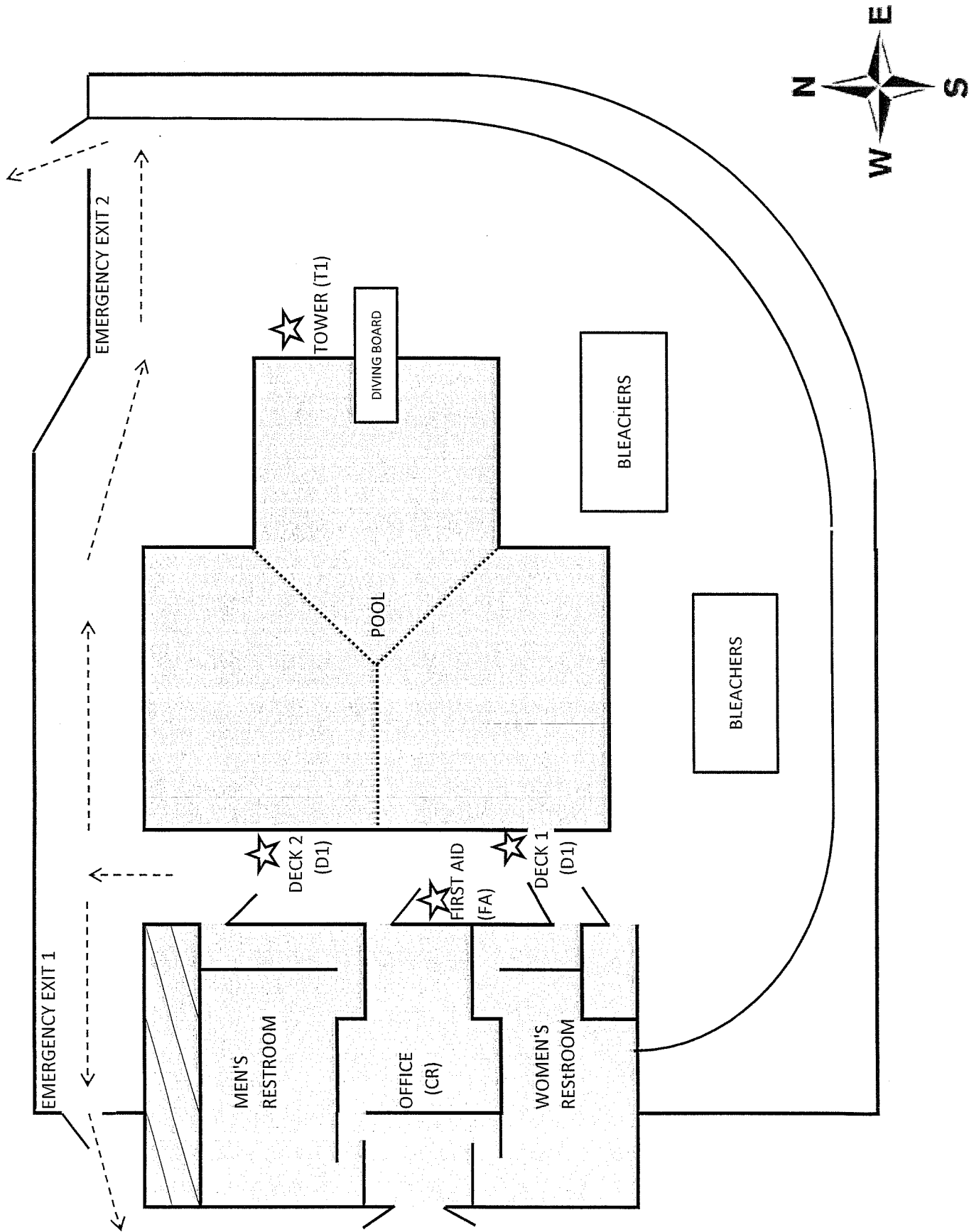
EXHIBIT “B”

PREMISES

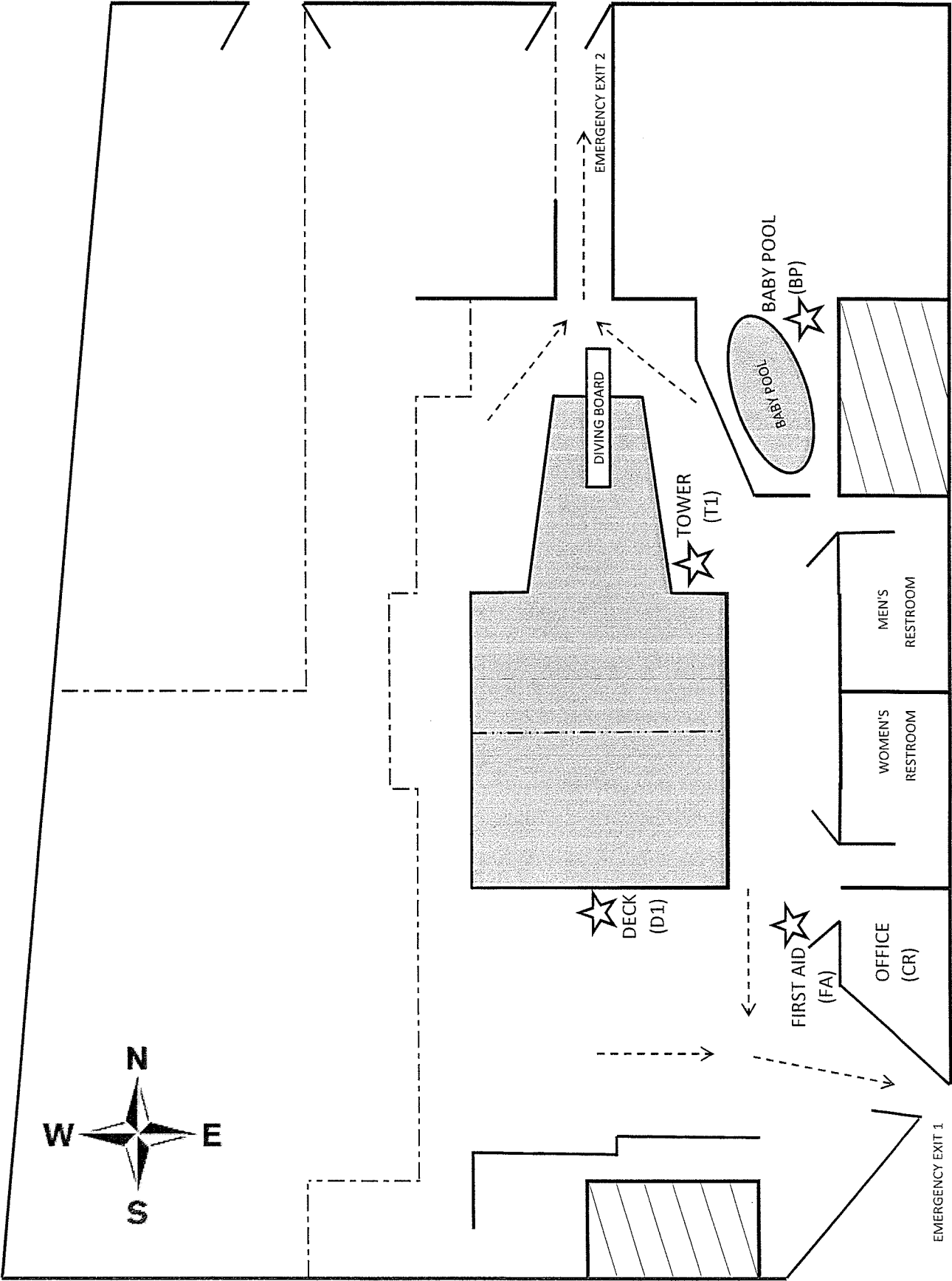
ARLINGTON PARK POOL



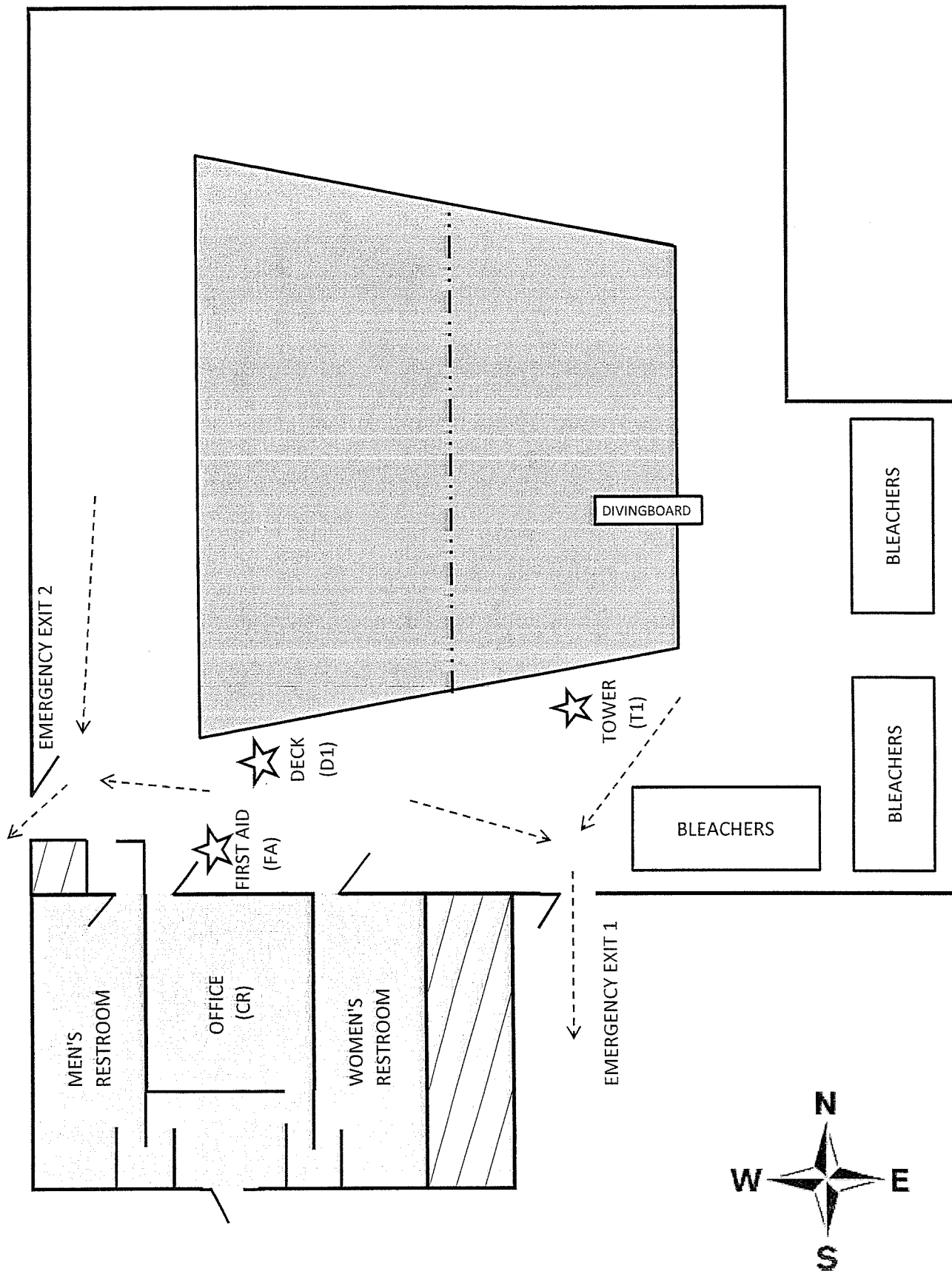
HUNT PARK POOL



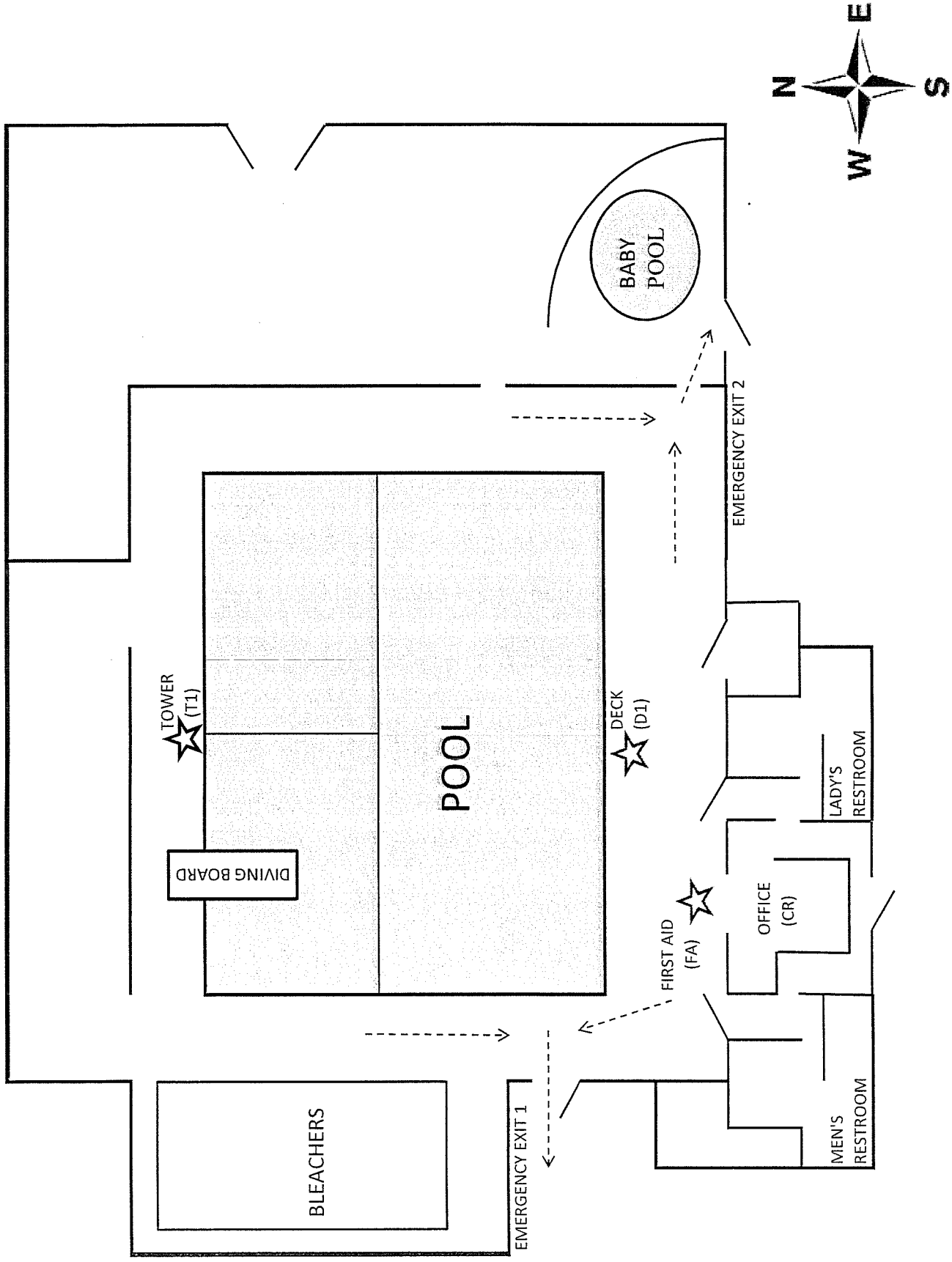
ISLANDER PARK POOL

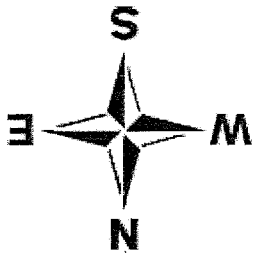


REID PARK POOL

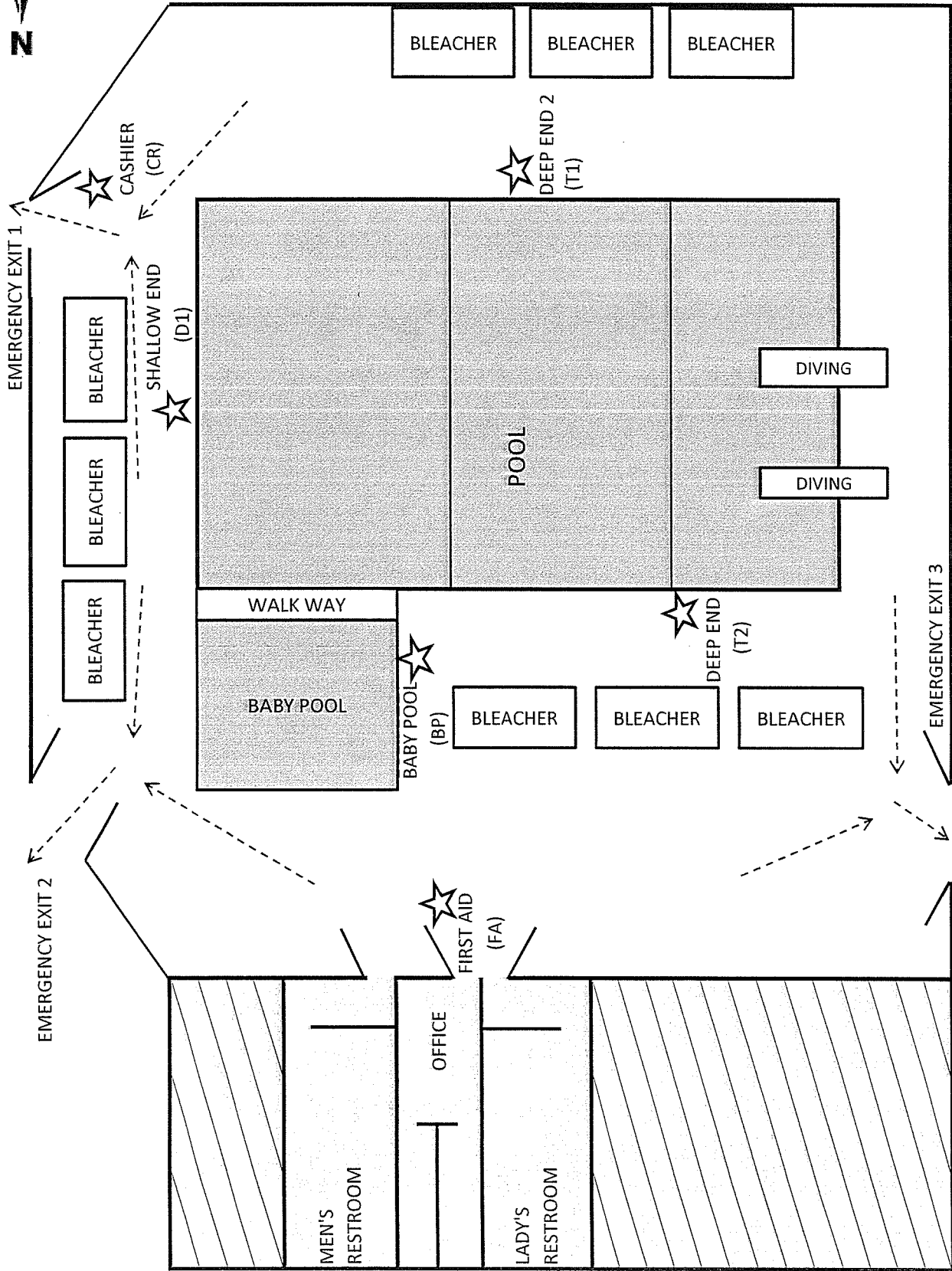


SHAMEL PARK POOL





SIPPY WOODHEAD POOL



VILLEGAS PARK POOL

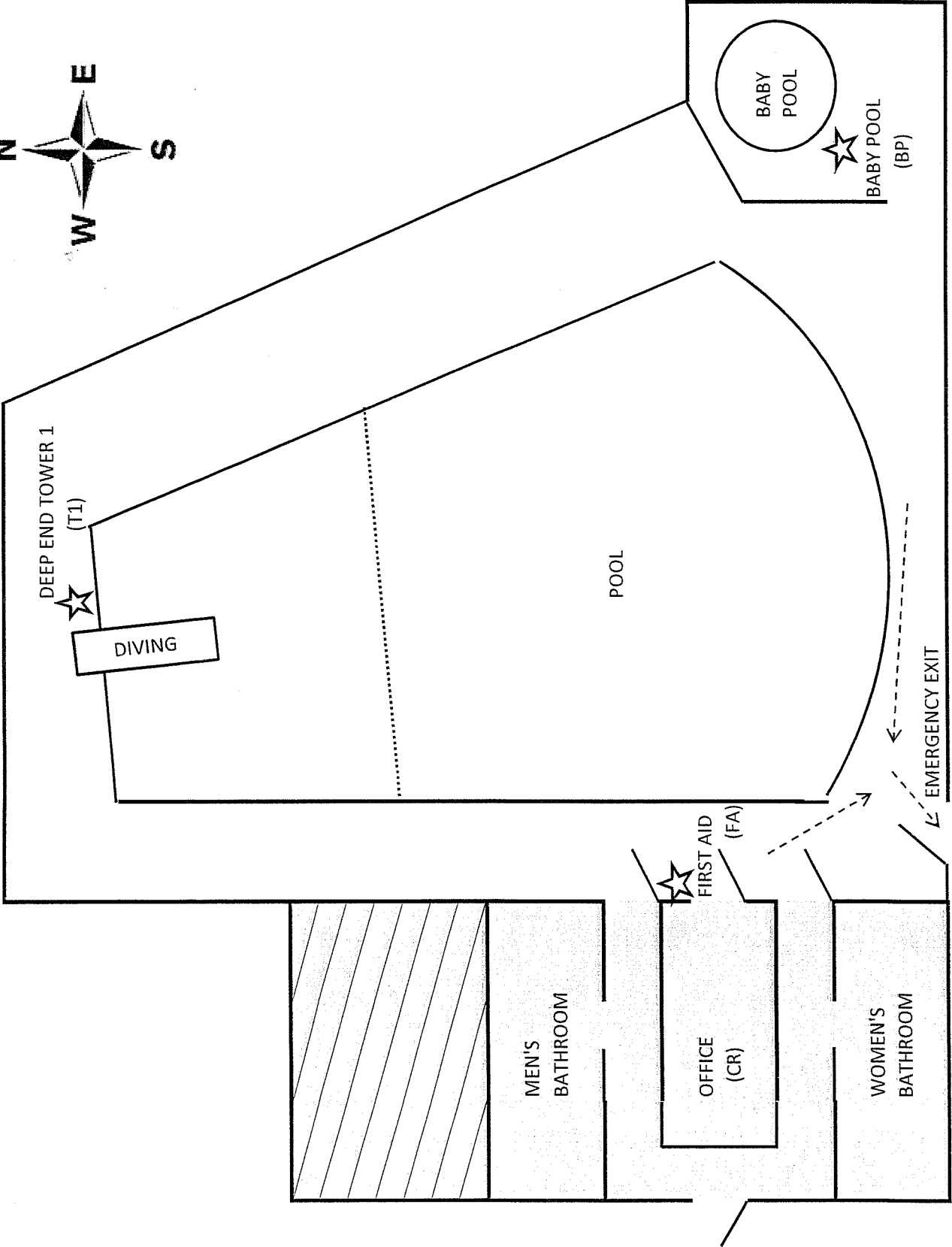
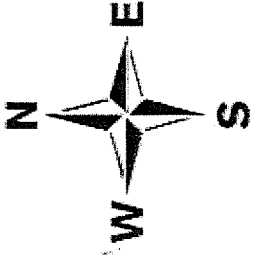


EXHIBIT “C”

FACILITY REQUEST APPLICATION



City of Arts & Innovation

City of Riverside – Parks, Recreation and Community Services Department (PRCSD)

FACILITY RENTAL APPLICATION

Please print legibly in ink



City of Arts & Innovation

This Facility Rental Application (FRA) should be submitted to the PRCSD at least (30) calendar days prior to the date requested in order to ensure adequate approval time. Facility use permits are issued to adults 21 years and older. The minimum time required per date is two (2) hours. This is an application only and is not an approved contract for facility rental. If approved, a Facility Rental Contract/Agreement outlining the rules, regulations and fees will be forwarded to the applicant. **THE PROCESSING FEE IS NON-REFUNDABLE.** Pending staff review, security services and liability insurance may be required. Do not advertise your event until an approved permit has been issued. Please initial that you have read and understand the information above. Initial: _____

Organization: <u>YMCA of Orange County</u> Applicant Name: <u>Jack Salceda</u> Primary Phone: <u>714-293-5607</u> Secondary Phone: <u>866-242-9622</u> Non-Profit Tax ID 501(c)(3) #: _____	Title of Applicant: <u>Director of Operations</u> Street Address: <u>13821 Newport Ave, Suite 200</u> City: <u>Testin</u> Zip: <u>92780</u> Fax: <u>909-404-4404</u> E-Mail: <u>jsalceda@ymcaoc.org</u>
Facility: <u>Pool</u> Field/Room(s): _____	

Single Use	Recurring Use (Insurance Required)
Day of Week: <input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUE <input type="checkbox"/> WED <input type="checkbox"/> TH <input type="checkbox"/> FRI <input type="checkbox"/> SAT (Check Applicable) Date: _____ Setup Time: _____ am/pm to _____ am/pm Event Time: _____ am/pm to _____ am/pm Cleanup Time: _____ am/pm to _____ am/pm	Day of Week: <input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUE <input type="checkbox"/> WED <input type="checkbox"/> TH <input type="checkbox"/> FRI <input type="checkbox"/> SAT (Check Applicable) <u>See attached schedule</u> Check One: <input type="checkbox"/> Daily <input checked="" type="checkbox"/> Weekly <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Other _____ Start Date: <u>06/01/2016</u> End Date: <u>09/30/2016</u>
Comments: _____	

Additional Amenities:	
<input type="checkbox"/> Kitchen	Kitchen will be reserved for the duration of the rental and the applicant is responsible for providing the caterer's valid Riverside County Health Permit and Food Transport Certificate to the PRCSD at least two (2) weeks prior to the event. The applicant is responsible for making sure that the caterer has a City of Riverside Business Tax Certificate.
Athletic Fields:	
Will you need ball field lights? <input type="checkbox"/> YES <input type="checkbox"/> NO League: <input type="checkbox"/> Youth <input type="checkbox"/> Adult	Field Use for: <input type="checkbox"/> Practice <input type="checkbox"/> Organized Games <input type="checkbox"/> Tournament <input type="checkbox"/> Other _____ Applicant is responsible for scheduling lights for practice/games. Curfew for turning off lights is 10:00 pm

Event Type: _____	Is this event for a person under 18? <input type="checkbox"/> YES <input type="checkbox"/> NO
Attendance:	
How many guests (Over 21 yrs. old): _____ (16-20 yrs. old): _____ (under 16 yrs. old): _____	Total Number of Guests: _____
Is the event open to the public? <input type="checkbox"/> YES <input type="checkbox"/> NO Will there be deliveries? <input type="checkbox"/> YES <input type="checkbox"/> NO Will there be food? <input type="checkbox"/> YES <input type="checkbox"/> NO Will there be inflatables? * <input type="checkbox"/> YES <input type="checkbox"/> NO (Additional Fee Per Unit) # of Units _____	Will admission be charged? <input type="checkbox"/> YES <input type="checkbox"/> NO Will there be dancing? <input type="checkbox"/> YES <input type="checkbox"/> NO How will the event be advertised? <input type="checkbox"/> Flyers <input type="checkbox"/> Invitations <input type="checkbox"/> Word of mouth <input type="checkbox"/> Internet <input type="checkbox"/> Other: _____
Will there be live animals? * <input type="checkbox"/> YES <input type="checkbox"/> NO Will there be live entertainment (DJ/Band)? * <input type="checkbox"/> YES <input type="checkbox"/> NO	Invitations should not be sent out before an approved permit is issued. A copy of all advertising material must be provided to PRCSD prior to distribution. *Insurance required
If you answered yes to any of the above questions, please explain: _____	

Alcohol Permit* Request: (Additional fee)	Will alcohol be served at the event? <input type="checkbox"/> YES (Security guards will be required) <input type="checkbox"/> NO *The applicant is responsible for providing a copy of security contract to the PRCSD at least two (2) weeks prior to event. *Service or consumption of alcohol by minors will result in immediate termination of event, loss of entire security deposit and subject to citation.
---	--

Acknowledgement: I hereby state that the information above is correct to the best of my knowledge.
Applicant Signature: <u>9-R.S.</u> Date: <u>05/10/2016</u>

STAFF USE ONLY			
FRA Received Date: _____ Entered into RecWare: _____ Security Contract Received: _____ <input type="checkbox"/> Copy of advertising material for event <input type="checkbox"/> Copy of Liability Insurance	Initial: _____ Initial: _____ <input type="checkbox"/> Co-Sponsorship Letter <input type="checkbox"/> 501(c)(3) Letter of Determination	Received By: _____ Insurance Binder Received: _____ Deposit Received: _____ <input type="checkbox"/> Copy of Security Contract <input type="checkbox"/> Other: _____	Initial: _____ Initial: _____ Initial: _____

FACILITY CONTRACT/AGREEMENT

FACILITY USE RULES AND REGULATIONS

(page 1-2)

RESERVATION AND PAYMENT

- 1) **Application** - Person signing the Rental Contract must be present during the event. Reservations may not be made less than 14 days nor more than 18 months prior to the date of the event. In addition to facility rental fees, applicant is responsible for all costs of City staff that may be assigned to the event. The number of staff assigned is at the sole discretion of the Parks, Recreation and Community Services Director or his assignee. The number of staff assigned is determined by the type of event, the number of expected participants and safety or security issues that may arise during the event.
- 2) **Fees** - All fees must be paid 30 days in advance of the event. Failure to meet this deadline will subject the reservation to cancellation and forfeiture of any and all fees paid. Events scheduled less than 30 days prior to the event must be paid in full by credit card or money order. Payment schedules for recurring events may be approved by the Department. The City will not reimburse applicant for other costs (entertainment, publicity, security, supplies, etc.) associated with the rental. A processing fee must be submitted with the application. **The application processing fee is non-refundable.** An additional Alcohol Permit fee will be charged if alcohol is to be served.
- 3) **Security Deposit** - The required Security Deposit is due when the Rental Application is approved. This deposit is not applied to the balance of rental or staff fees. The Security Deposit will be refunded to the applicant identified on the Rental Application in approximately 4 weeks after the event providing the facility was returned to pre-event condition and no additional costs were incurred by the City for the event.
- 4) **Insurance** - Applicant may be required to obtain insurance for the event. The Department will determine if insurance is needed and notify the applicant. (Generally this consists of a \$1,000,000 general liability certificate that lists the City as additionally insured.)
- 5) **Special Event Permit** - Certain events require a Special Event Permit obtained from the City's Development Department. The Department will notify the applicant if such a permit is needed. If a Special Event Permit is required and is not obtained at least 30 days prior to the event, then the reservation is subject to cancellation.
- 6) **Event Security** - Security is required for all events open to the public at the ratio of 1 officer/100 participants. The Department will determine if security is required. If so, it must be obtained from the Riverside Police Department or another Department approved provider. Security will be required if alcohol is served.
- 7) **Discrimination** - For all events open to the public, the applicant agrees not to deny any participation to a qualified person on the basis of race, color, national origin, age or disability.
- 8) **Reschedule/Cancellation** - Applicant requested actions are subject to the following charges
 - a) 6 months prior to event - No charge
 - b) 5 months prior to event - 10% of deposit
 - c) 4 months prior to event - 20% of deposit
 - d) 3 months prior to event - 30% of deposit
 - e) 2 months prior to event - 40% of deposit
 - f) 59-31 days prior to event - 50% of deposit
 - g) 30-15 days prior to event - 100% of deposit
 - h) 14- 6 days prior to event - 100% of deposit & 50% of rental fees
 - i) 5 -0 days prior to event - 100% of deposit & 100% of rental feesNote: Application fee is non-refundable.

Initials CO

City initiated actions - The City reserves the right at its sole discretion to cancel a reservation at any time for:

- a) False or misleading information on a Facility Request Application.
- b) Failure to pay fees when due.
- c) Failure to comply with any safety directive of a City representative.
- d) Failure to abide by the Alcohol restrictions by any event participant.
- e) Failure of an event participant(s) to abide by any safety or liability restrictions that may have been made before or during the event.
- f) Natural disasters, scheduling conflicts or other issues impacting the site or time requested, in which case one of the following will occur: all refundable monies may be returned to the applicant, an alternative location may be provided, or the event may be rescheduled.

Initials CO

SET UP PRIOR TO EVENT

- 9) **Setup Time** - must be included in the rental period. Access to the site is not allowed prior to the contracted start time.
- 10) **Storage** - Storage or pre-staging of event items prior to the contracted start time is not allowed. This includes both personal as well as professionally delivered items.
- 11) **Pre-Event Inspection** - Applicant is required to complete the Pre Event Inspection with a City staff member prior to occupying the facility. This establishes the condition of the facility and equipment prior to applicant's event. Applicant will be responsible to restore facility and equipment to this same condition after the event.
- 12) **Tables and Chairs** - Applicant may supply, at their expense, additional units if on site quantities are not sufficient, subject to Fire Department maximums for the facility and intended use.
- 13) **Motor Vehicles** - The operation of motor vehicles on park grounds outside of designated streets and parking lots is strictly prohibited.
- 14) **Decorations** - Decorations and other environmental enhancements must be free standing and cannot be attached to the facility or fixtures by any means. Removal of existing facility decorations or fixtures, if any, is not allowed.
- 15) **Signs** - Exterior signs are not allowed. Interior signs are allowed provided they are pre-approved by City staff and are free standing.
- 16) **Prohibited Items** - Any type of flame containing, heat or smoke producing devices are not allowed. This includes but is not limited to: candles, smoke/fog machines, barbeques, deep fryers, outdoor ovens, etc.
- 17) **Foreign Substances** - Sand, oil, powder or other substances are prohibited from being spread on dance floors or other surfaces.

FACILITY CONTRACT/AGREEMENT

FACILITY USE RULES AND REGULATIONS

(page 2-2)

RESPONSIBILITIES DURING THE EVENT

- 18) **Alcohol** – An Alcohol Permit is required to serve/consume alcohol. An additional Alcohol Permit fee will be charged. The event must also abide by the following:
 - a. Consumption must be inside the facility and cease 1 hour prior to the beginning of the cleanup time.
 - b. Alcohol is restricted to beer and wine only, no hard liquor is allowed.
 - c. No person under 21 years of age is allowed to drink or serve alcohol.
 - d. Alcohol must be kept and served in non-glass containers.
 - e. An ABC License is required to sell any alcoholic beverage.
 - f. A security guard must be present at all times.
- 19) **Smoking** – is prohibited and unlawful at any City facility including parking lots, trails and athletic fields.
- 20) **Occupancy Limits** – The maximum number of participants for the facility cannot be exceeded. In the interest of everyone's safety, City staff will restrict access to the event once the Fire Code limit has been reached.
- 21) **Supervision of Minors** – All minors must be adequately supervised at all times and are required to be in the appropriate rental area(s). Chaperones must be at least 25 years old. City guidelines for the supervision of minors are: one adult/six minors ages 1-5 years; one adult /14 minors ages 6-12 years; one adult/20 minors ages 13-17 years. If supervision is deemed inadequate by City staff on site, to ensure the safety of patrons and the preservation of City resources, additional staff may be added per the supervision ratios identified above at the applicant's expense.
- 22) **Special Considerations** – Some sites have specific rules not required at other City facilities. The event is also required to adhere to any specific site rules as well.
- 23) **Responsible Party** – The applicant and/or the applicant's organization have primary responsibility for the conduct and safety of all participants at the event. Any additional actions required by the City to maintain lawful conduct, safety of event participants and/or the preservation of City property, will result in additional charges to the applicant or the applicant's organization.

CLEAN UP AFTER EVENT

- 24) **Clean Up Time** – Clean up time must be included in the contracted rental time. Any additional time required beyond the time identified in the contract will be billed to the applicant at the rate of 1.5 times the applicable hourly rental rate.
- 25) **Cleaning Tasks** – Applicant is responsible for completing all cleaning tasks as need. The Department will provide all customary cleaning supplies. Cleaning tasks are defined as but not limited to:
 - a. Placing all trash in proper receptacles; additional trash bags are available as needed.
 - b. Floors must be swept and countertops wiped clean.
 - c. Kitchen, if applicable, must be returned to pre-event condition.
 - d. All event decorations and personal property must be removed from the facility.
- 26) **Post-Event Inspection** – Applicant (same person who completed the Pre-Event Inspection) is required to complete the Post-Event Inspection with a City staff member prior to leaving the facility. This establishes the returned condition of the facility and equipment.
- 27) **Pre & Post Inspection Evaluation** – Applicant will be assessed any additional costs incurred by City to reinstate the Pre-Event Inspection condition of the facility and related equipment for damages caused by applicant's event.

Acknowledgement of Conditions

I understand that I am submitting a Facility Request Application and that an approved reservation is not granted until I receive a signed and executed rental contract from the City. I also understand that events shall be bound by all rules and regulations and all applicable ordinances of the City of Riverside. The violation of any of the above Rules and Regulations or falsifying any other provisions of the application shall be grounds for immediate revocation of permission to use City facilities as well as a basis for refusal of future permits to use City facilities. The applicant shall be liable for loss, damage or injury sustained by the City or any person whatsoever by reason of negligence of the person(s) to whom such permit is issued. Applicant agrees to hold harmless and indemnify the City of Riverside or agents and employees from any and all liability for injury to persons or property occurring as a result of the activity sponsored by the applicant. Said person(s) shall be liable to the City for any and all liability for injury to persons or property occurring as a result of the activity sponsored by the applicant. Said person(s) shall be liable to the City for any and all damage to parks, facilities and buildings owned by the City which results from the activity of applicant or is caused by any participant in said activity or spectator at said activity.

Applicant Signature: X 

Date: 05/10/2016

Print Name: Cara Owens

EXHIBIT “D”

SCHEDULE OF USER GROUP USAGE

Safety Around Water Program Schedule

Session 1 (June, July)				
Saturday class dates: June 4, 11, 18, 25 – July 9, 16, 23, 30 – No class 4th of July weekend				
Sunday class dates: June 5, 12, 19, 26 – July 10, 17, 24, 31 – No class 4th of July weekend				
Saturday	4:15 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	5:15 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	6:15 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
Sunday	10:00 am	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	11:00 am	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	12:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	2:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	3:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	4:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
Session 2 (August, September)				
Saturday class dates: August 6, 13, 20, 27 – September 3, 10, 17, 24				
Sunday class dates: August 7, 14, 21, 28 – September 4, 11, 18, 25				
Saturday	4:15 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	5:15 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	6:15 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
Sunday	10:00 am	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	11:00 am	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	12:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	2:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	3:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards
	4:00 pm	5 classes	4 children/class = 20 total	5 instructors, 3 guards

Target: 300 children/600 parents per Scope of Work, tentative schedule will potentially reach 360 children if all classes are full.

EXHIBIT “E”

KEY REQUEST FORM



Parks, Recreation and
Community Services
Department
(951) 826-2000

Key Request Form

PLEASE PRINT CLEARLY

Please Print

Last Name Salseda First Name Jack
Title Director of Operations Immediate Supervisor Cara Owens
Address 13821 Newport Ave #200 City Tustin State CA
Zip 92780 Home Phone (714) 293-5609 Work Phone (866) 242-9622
Email jsalseda@ymcaofcra.org Emergency Contact & Phone # Cara Owens 714-508-7634

	KEY ID	KEY NAME
1		
2		
3		
4		
5		

I acknowledge I am responsible for the keys issued and the security of the building to which I have access. I understand that I may not use the keys to city facilities or equipment for personal/non-city scheduled activities/programs. I also understand that duplication or sharing of keys is not permitted and doing so may be grounds for discipline up to termination. In addition, I understand that I may be charged a replacement/re-key fee for lost keys.

Jack R. Salseda
Signature
Jack R. Salseda
Print Name

05/10/2016
Date

JUSTIFICATION/COMMENTS _____

APPROVALS (INITIALS/DATE)

RSC - _____ SUPT. - _____ DIRECTOR _____
SUP - _____ DEP. DIR. _____

CHECK-OUT

Check-out Date _____ Total # of Keys Checked Out _____ Staff Initial _____
Supervisor Initial _____ Division _____

RETURN

Return Date _____ Total # of Keys Checked In _____ Staff Initial _____
Supervisor Initial _____ Division _____

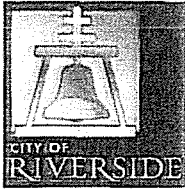
WHITE - Personnel File
PR - Form No. 048 (7-07)

CANARY - Key Inventory File

PINK - Employee

EXHIBIT “F”

HUMAN RESOURCES POLICY I-14



City of Riverside, California
Human Resources Policy and Procedure Manual

Approved:

Minda Stewart
Human Resources Director

Behl G. Johnson
City Manager

Number: I-14 Effective Date: 07/06

SUBJECT: CRIMINAL BACKGROUND AND LIVE SCAN POLICY

PURPOSE:

To establish a policy to ensure that the City of Riverside, its employees and volunteers, and members of the public are protected and to help minimize potential liability, the City Council has authorized a resolution authorizing the City to obtain state summary criminal background information from the Department of Justice for employment purposes. The City desires to identify those employees, prospective employees and volunteers who have a criminal history so that such information may be used in employment decisions.

POLICY:

1. Authority - Under federal and state law, public agencies may enact policies that disqualify applicants with certain criminal convictions from employment positions if the conviction is relevant to the position in question. Furthermore, California Penal Code Section 11105 permits cities to obtain state summary criminal background information from the Department of Justice if the City Council has authorized such access and if the criminal background information is required to implement a statute, ordinance or regulation that contains requirements or exclusions based on specified criminal conduct. The City Council authorized the City to access such information pursuant to Resolution Number 19579.
2. General - The City shall not consider for employment a person or volunteer who has been convicted of a felony or a misdemeanor involving moral turpitude (see Section 4 for specific penal code convictions). Such conviction shall be cause for termination of any employee or volunteer, if the felony or misdemeanor is for a crime specified below, or, if the crime is not actually listed, the City determines that the crime is substantially similar in nature to those specified below. The conviction may be disregarded if it is found and determined by the appointing authority that mitigating circumstances exist, such as, but not limited to, evidence of rehabilitation, length of time elapsed since such conviction, the age of such person at the time of conviction, or the fact that the classification applied for is unrelated to such conviction, and federal or state law does not require such disqualification or termination.
3. Criminal Record Background Checks - The City shall obtain criminal background information pursuant to the procedures set forth below on all prospective employees and volunteers, all current employees and volunteers who work with or supervise minors, and all employees formally considered for promotion.

4. Specific Convictions and Positions

- A. With respect to all prospective employees, current employees and volunteers, a conviction of any of the following Penal Code sections, shall be grounds for disqualification or termination:

Section 68:	Asking for or receiving bribes
Section 72:	Presentation of fraudulent claims
Section 73, 74:	Bribes for appointment to office
Section 187, 189:	Murder
Section 209:	Kidnapping for ransom, extortion or robbery
Section 211:	Robbery - taking personal property in possession of someone by force or fear
Section 245:	Assault with a deadly weapon
Section 261:	Rape
Section 451:	Burglary
Section 484:	Theft
Section 490.5:	Shoplifting
Section 503:	Embezzlement - fraudulent appropriation of property by a person to whom it has been entrusted
Section 518:	Extortion - obtaining property by a wrongful use of force or fear or under a color of official right

- B. With respect to all applicants for and current employees and volunteers in positions that work with or supervise minors, in addition to "A" above, a conviction of any of the following code sections shall be grounds for disqualification or termination:

1. Violations or attempted violations of Penal Code Sections 220, 261.5, 262, 273a, 273d, or 273.5, 288, or any sex offense listed in Section 290.
2. Any crime described in the California Uniform Controlled Substances Act (Division 10 [commencing with Section 11000] of the California Health and Safety Code).
3. Any felony or misdemeanor conviction within 10 years of the City's request for background information for a violation or attempted violation of Chapter 3 of Title 8 of the Penal Code (commencing with Section 207), Sections 211 to 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 of Title 8 of the Penal Code (commencing with Section 236), Chapter 9 (commencing with Section 240), and for violation of any of the offenses specified in subdivision (c) of Section 667.5.
4. Any felony or misdemeanor conviction under Penal Code Section 311, et seq., photographic use of children relative to sexual conduct.

- C. With respect to all applicants for current employees and volunteers in positions that work with public funds or public records, in addition to "A" above, a conviction of any of the following Penal Code sections shall be grounds for disqualification or termination:

Section 115, 115.3: Use of a false or forged public record or alteration of a certified copy of a public record
Section 424: Embezzlement and falsification of accounts
Title 13, Chapter 4: Any violation of forgery and counterfeiting

3. Responsibility of Applicant, Employee or Volunteer - It is the responsibility of an applicant, employee, or volunteer to report any conviction or arrest pending final adjudication to the City. The information shall be included on all employment applications. Arrest pending final adjudication means an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial, pursuant to Labor Code 432.7(a). If any convictions or arrests pending final adjudication occur while the employee or volunteer is working for the City, the employee or volunteer shall report that information to his or her supervisor who shall forward the information to the Department Head or designee and the Human Resources Director. Alternatively, the employee or volunteer may report the information directly to the Human Resources Director.
4. Procedure for Criminal Background Records Checks
 - A. Criminal record checks conducted pursuant to this policy shall comply with applicable federal and state law and the following:
 1. The City shall submit a completed Applicant Fingerprint Card to the Department of Justice accompanied by any other forms or information required by the Department of Justice in order to obtain the criminal background information.
 2. Any information obtained from the Department of Justice shall be used to determine whether the applicant, employee or volunteer is disqualified or subject to termination pursuant to this policy.
 3. The City may hire a prospective employee contingent upon the results of the criminal background information received during the employee's probationary period. Any employee, including an employee hired pending the receipt of criminal background information, will be terminated if the employee is found to have falsified or omitted criminal background information on the employee application
 4. Every employee or volunteer who has been hired or promoted subsequent to the adoption of this policy, who passed the initial screening, must sign an acknowledgment that conviction of crimes listed herein or determined to be substantially similar by the City shall be grounds for disciplinary action up to and including termination.
 - B. The City shall enter into a contract with the Department of Justice to obtain any subsequent conviction or arrest information concerning an employee or volunteer.
 1. Any information about an existing employee's or volunteer's conviction(s) shall be reported to the Human Resources Director.
 2. Upon receipt of information regarding a conviction and/or arrest pending final adjudication, the Department Head or designee, the Human

Resources Director and the City Attorney shall evaluate the effect and potential effect of the employee's or volunteer's record or arrest on his or her position of employment, fellow employees and the public and shall take appropriate action to maximize public safety and minimize potential liability while respecting the rights of the employee or volunteer.

3. If the City finds that an employee or volunteer has failed to report a conviction or arrest pending final adjudication, the appropriate disciplinary action, up to and including termination, will be taken.
5. Confidentiality - State summary criminal history information is confidential and shall not be disclosed, except to those individuals designated to make employment decisions. Persons with access to such information shall sign a form acknowledging that the information is confidential and that civil and criminal penalties, as well as dismissal from employment, may result if the confidential information is misused.

Pursuant to Penal Code Section 11077, the Attorney General is responsible for the security of Criminal Offender Record Information (CORI), and has the authority to establish regulations to assure the security of CORI from unauthorized disclosures. The following are requirements as prescribed by the State of California, Department of Justice, Bureau of Criminal Identification and Information, Field Operations and Record Security for any agency that maintains or receives criminal history information:

- A. Records Security - Any inquiries regarding the release, security or privacy of Criminal Offender Record Information (CORI) is to be resolved by the Human Resources Director or his or her designee.
- B. Record Storage - CORI shall be under lock and key and accessible only to the Department Head or his or her designee who shall be committed to protect CORI from unauthorized access, use or disclosure. Fingerprint records such as fingerprint cards, "no criminal history" notifications and CORI history shall be destroyed by shredding once a hiring decision or volunteer qualification/disqualification determination has been made.
- C. Record Dissemination - CORI shall be used only for the purpose for which it was requested by the hiring department.
- D. Record Destruction - Upon determination of employment, CORI and copies of the same shall be destroyed to the extent the identity of the person can no longer be reasonably ascertained.
- E. Record Reproduction - CORI may not be reproduced for dissemination.
- F. Training - The Department Head and employees with access to CORI are required:
 1. To read and abide by this policy.
 2. To have on file a signed copy of the Employee Statement Form for the Use of Criminal Record Information, which acknowledges an understanding of laws prohibiting misuse of CORI.

- G. Penalties - Misuse of CORI is a criminal offense. Violation of this policy regarding CORI may result in suspension, dismissal and/or criminal or civil prosecution.

PROCEDURE:

Responsibility	Action
Hiring or Promoting Department	1. Selects applicant and offers employment, or selects employee and offers promotion, based on successful background checking.
Human Resources Director or Designee	2. Processes fingerprints and submits to Department of Justice. 3. Makes determination based on report and informs the City Manager, City Attorney and the Department Head.
City Attorney and Department Head	4. In consultation with Human Resources Director, and only if disqualification or termination is not required by law, determines whether any mitigating circumstances exist that permits disregard of the conviction or, for an applicant for promotion, discipline less than termination.
Human Resources Director	5. If the report is acceptable or sufficient mitigating circumstances are found, continues with the hiring or promotion process. 6. Sends disqualification letter if background on applicant for hire or promotion is unacceptable. 7. If the report is not acceptable and sufficient mitigating circumstances are not found, initiates in consultation with the City Attorney and the Department Head, disciplinary action against applicant for promotion.