AM No. 10-204 (C4)

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: October 19, 2010

SUBJECT: **AUTHORIZE THE MAYOR TO SIGN A LEASE AGREEMENT WITH WAVE AQUATICS FOR THE OPERATION OF REDMOND POOL**

I. RECOMMENDED ACTION:

Authorize the Mayor to sign a lease agreement with WAVE Aquatics for the operation of the Redmond Pool from October 20, 2010 until December 31, 2012.

II. DEPARTMENT CONTACTS:

Craig E. Larsen, Parks Director	425-556-2310
Sandra Bettencourt, Recreation Manager	425-556-2319
Mark Hickok, Assistant Recreation Manager	425-556-2356

III. DESCRIPTION:

The Redmond Pool Operator Request for Proposal (RFP) was sent out in August, at which time the Purchasing Division received three proposals. The selection team chose WAVE Aquatics for their direct expertise in operating the Forward Thrust Pool at Juanita High School, their current working relationship with the Lake Washington School District officials and swim team directors, and their working knowledge of the Redmond Pool through several years of competitive swim activities and events.

The City has negotiated a contract with WAVE Aquatics to operate the Redmond Pool from October 20, 2010, to December 31, 2012. After December 31, 2012 the City reserves the right to extend the term of the contract for two additional two-year periods if mutually agreed upon by the parties.

WAVE Aquatics will begin operating the pool on October 20, 2010, after the pool repairs are completed, and includes compliance with Health Department standards and the Federal Virginia Graeme Baker Pool and Spa Safety Requirements. WAVE Aquatics will prepare the pool for swimmers and select an opening date, which we anticipate will be sometime at the end of October.

IV. IMPACT:

Under our previous operating agreement with Northwest Centers, the City provided $100,000 a year to support pool operations. The proposed 2011-2012 budget includes $303,000 to respond to major maintenance needs that may emerge during the biennium. The 2011-2012 budget does not include any funds for other operating support.

In the proposed agreement, WAVE Aquatics will provide day-to-day maintenance and operations of the Redmond Pool in a safe and professional manner; they will provide public programs and hours of operation which are similar to the hours the pool operated in the past, and will pay the monthly utility bills for the pool.

WAVE Aquatics will share 50% of net revenues with the City of Redmond to offset a portion of future maintenance and capital costs for the pool. The City will be responsible for major capital repairs and will communicate with WAVE to determine a fiscally sound method to proceed with repairs when needed; and make a good faith effort to minimize disruptions in service.

WAVE Aquatics and the City of Redmond will partner to provide a quality swimming program for our citizens. This contract provides a method for communication and revenue sharing that will enhance the pool experience for all users. WAVE will also provide up to 50 hours of pool time per year for city programs on a mutually agreed upon schedule.

V. ALTERNATIVES:

A. The City Council could choose not to approve the attached lease agreement. If the lease is not approved, the pool would remain closed or the City would need to take over operation of the pool.
B. If the lease is accepted, WAVE Aquatics will begin operation of the pool on October 20, 2010 and upon signing the agreement.

VI. TIME CONSTRAINTS:

The Pool will be ready for operation upon the completion of maintenance work and award of this contract.

VII. LIST OF ATTACHMENTS:

A. Proposed Lease Agreement with WAVE Aquatics

/s/ 10/12/2010
Craig E. Larsen, Parks Director Date

Approved for Council Agenda /s/ 10/12/2010
John Marchione, Mayor Date

ATTACHMENT A

AGREEMENT BETWEEN THE CITY OF REDMOND AND WAVE AQUATICS FOR THE OPERATION OF THE REDMOND POOL

THIS OPERATING AGREEMENT ("the Operating Agreement") is entered into by and between the City of Redmond, a Washington municipal corporation ("the City"), and WAVE Aquatics, a § 501(c)(3) private non-profit corporation ("WAVE").

RECITALS

A. The Redmond Pool ("the Pool"), located at 17535 NE 104th Street, Redmond, Washington, was built as part of the Forward Thrust Initiative in approximately 1974.

B. From the date of its construction until April 1, 2003, the Pool was owned and operated by King County on land owned by the City, pursuant to a forty (40) year ground lease dated May 28, 1970.

C. The ground lease expired on May 28, 2010 and The City took ownership of the Pool from the Northwest Center.

D. WAVE and the City have agreed to set forth the terms and conditions of their agreement in writing.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF the terms and conditions set forth below, the parties agree as follows:

1. <u>WAVE to Operate Pool</u>. WAVE shall operate the Pool during the term of this Agreement. Operation includes providing the following at WAVE's expense, in addition to any other duties prescribed in this Agreement:

A. Providing for the day-to-day operation, maintenance, and repair of the pool in compliance with all federal, state, and local laws and regulations and in a clean, safe, and professional manner;

B. Providing programs and hours of operation that are reasonably similar to those programs and hours of operation under Northwest Centers; and working with the City of Redmond Parks and Recreation Department to assess program and event needs, and to address accommodation for persons with disabilities and other special needs; and providing timely information for City brochure and web promotions. WAVE will also provide up to 50 hours of pool time for city programs per calendar year through either making pool space available at staffing cost, or by allowing up to 40 registered participants in Parks and Recreation Programs to use the pool during regular open swim times at no cost.

C. Obtaining all necessary licenses and permits for operation of the pool;

D. Managing pool advertising and promotions, patron registrations, agreements with various user groups, drop in use and instruction, and specialty programming provided by outside agencies, such as SCUBA training or Redmond Parks and Recreation;

E. Maintaining pool water quality standards and arranging and paying for water quality sampling, laboratory analysis, and field testing of pool water as prescribed by WAC 246-260-111. Copies of the results of such sampling and testing shall be provided to the City;

F. Complying with all monitoring, reporting, and recordkeeping requirements of a pool owner under WAC 246-260-121;

G. Establishing and implementing standard operating procedures and developing and maintaining a written operations manual as required by WAC 246-260-131. A copy of the procedures and written operations manual shall be provided to the City;

H. Checking each physical component of the pool facility routinely in order to ensure that the requirements of WAC 246-260-131 are met, and maintaining and repairing pool equipment, such as diving boards, diving blocks, and other equipment used for programming;

I. Providing, maintaining, and repairing pool depth markings and signage specifying user rules and safety information as required by WAC 246-260-131;

J. Providing trained lifeguards and other appropriate trained personnel to provide monitoring of the pool facilities and to perform other tasks required by this Agreement and WAC 246-260-131, and ensuring that all such persons have been subjected to appropriate background checks for persons with access to children and vulnerable adults and possess any required certifications;

K. Providing prompt and timely payment of all applicable taxes and remittance of all employee-related withholdings, including but not limited to all personnel, employment, and sales taxes:

L. Preparing and implementing an emergency response plan as required by WAC 246-260-131. A copy of the emergency response plan shall be provided to the City;

M. Providing all uniforms, office equipment, office systems, and office supplies necessary for WAVE to operate the pool as required by this Agreement;

N. Providing ordinary, routine maintenance for the pool facility, including but not limited to, cleaning restrooms, offices, public spaces, electrical rooms, and equipment rooms, and performing minor maintenance and repairs; and

O. Providing the necessary supplies for pool operations, including but not limited to pool chemicals, paper towels, restroom supplies, and light bulbs. WAVE shall provide the City with copies of the MSDS forms for all chemicals used at the Pool.

P. Providing compliance with state law and City policies prohibiting use of tobacco or tobacco products, use of any alcohol or drugs or other controlled substances on the premises.

2. Pool Revenues. The net revenues from pool operations shall be split between the parties as follows: WAVE shall pay the City 50% of net revenues commencing on the 15th day of January, 2011 for the quarter ending December, 2010; and ending on the 15th day of January, 2012 for the quarter ending December 31, 2011; unless the contract is extended by mutual consent of the parties. Startup costs up to $32,000 may be amortized and deducted from the net revenues from the date of opening until January 31, 2011. Payments shall be made to the City on a quarterly basis by the 15th of the month following the end of the quarter.

3. Capital Improvements and Major Repairs. Except as provided in this Section, the City shall be responsible for all capital improvements and major repairs to the Pool, including but not limited to, improvements and repairs to the building shell (building structure, exterior walls, and roof), pool drains, electrical system, plumbing system, and HVAC system. WAVE shall be responsible for repairs necessitated by the negligent acts, errors, or omissions of WAVE in operating the Pool. WAVE shall not make any alterations, additions, renovations, or capital improvements or major repairs to the Pool without the City's express written consent. Nothing in this Agreement obligates the City to make any capital improvement or major repair to the Pool which the City determines, in its sole discretion, is not financially prudent for the City, and the City's responsibility to make capital improvements and repairs under this section is expressly subject to the City's right to terminate this Agreement as set forth in Section 12 below.

The City agrees to consult with WAVE before making any final decision on whether or not to make any capital improvement or repair, but the City has the sole discretion as to whether or not to make such an improvement or repair. A good faith effort will be made to make repairs with a minimum disruption to the program schedule. Any improvements proposed to be made or constructed by the Operator are subject to the City's input and approval. All improvements made, and trade fixtures installed by the Lessee, shall become the property of the City at the expiration or termination of the operating agreement without further compensation to the Operator. The Operator must provide the City with verification of the actual cost to complete any agreed upon improvements.

4. Utilities. WAVE shall be responsible for paying the monthly charges for water, sewer, storm water, electricity, and natural gas provided to the Pool facility. WAVE will also be responsible for paying the monthly charges for telephone, internet, and cable television service, if any.

5. Reports. WAVE shall provide the following reports to the City:

A. WAVE shall immediately report any accident to the City requiring 911 response and shall provide the City with copies of all accident reports required by WAC 246-260-121;

B. WAVE shall immediately report any violation noted by the Department of Health to the City and shall provide the City with copies of any report or notice generated by the

Department of Health and any response or report of corrective action generated by WAVE.

C. WAVE shall immediately report any other emergency building response that will require the City to allocate any staff or resources to resolve.

D. WAVE shall provide quarterly reports to the City regarding usage, maintenance, and operation of the Pool, including but not limited to, usage and revenue there from, pool uses including location of residency, where available, repairs and improvements, fee schedules, utility costs, staffing costs, hours of operation, available programs, and maintenance costs.

6. Inspections. The City shall have the right to enter the Pool at any time in order to inspect the facility and to ensure that all provisions of this Agreement and all state, federal and local building, fire, and pool operation regulations are being complied with.

7. Records-Audits. Each party shall have the right, at any time during regular business hours, to review the books and records maintained by the other party with respect to pool operations, maintenance, revenues, and expenditures, including but not limited to, programming materials, maintenance logs, safety and accident reports, Department of Health reports, income and expense statements, inspection reports, and registration information and reports, in order to audit the same and determine compliance with this Agreement.

8. Pool Closures.

A. The parties acknowledge that the Pool may have to be closed temporarily from time to time during the term of this Agreement in order to perform required maintenance or to make necessary repairs. In the event that either party determines that closure is necessary for such purpose, the parties shall meet and confer regarding the need for such closure and the duration thereof. The final decision on any such closure shall rest with the City. WAVE shall not be entitled to any compensation from the City for lost revenues as the result of a closure for required maintenance or repairs.

B. In the event that the Department of Health orders the Pool closed because of any non-compliance by WAVE with Department of Health requirements, or in the event that the Pool must otherwise be closed because of the failure of WAVE to comply with any other term or condition of this Agreement, WAVE shall be liable for all closure related expenses, including but not limited to, any actual expenses incurred by the City in physically closing the Pool and any program or contract refunds. WAVE shall not be held accountable for a Department of Health closure that is the result of City not performing the necessary maintenance and repairs.

9. Indemnity.

A. WAVE shall release, protect, save harmless, indemnify, and defend, at its own expense, the City, its officers, elected officials, agents, volunteers, and employees from any and all costs, claims, judgments or awards of damages of any kind (including attorney's fees and costs) arising out of or in any way resulting from the negligent acts, errors, or omissions of WAVE, its officers, employees, contractors, subcontractors, agents, and volunteers in performing

this Agreement.

B. The City shall release, protect, save harmless, indemnify, and defend, at its own expense, WAVE, its officers, agents, volunteers, and employees from any and all costs, claims, judgments or awards of damages of any kind (including attorney's fees and costs) arising out of or in any way resulting from the negligent acts, errors, or omissions of the City, its officers, elected officials, employees, contractors, subcontractors, agents, and volunteers in performing this Agreement.

C. In the event of either party's liability for damages or any nature whatsoever arising out of the performance of this Agreement, including claims by either party's own officers, officials, employees, agents, contractors, subcontractors, or volunteers, or claims by third parties, caused by or resulting from the concurrent negligence of the parties, their officers, officials, employees, contractors, subcontractors, or volunteers, each party's liability hereunder shall be limited to the extent of that party's negligence.

D. No liability shall be attached to either party by reason of entering into this Agreement except as expressly provided herein.

E. It is further specifically and expressly understood that either party's indemnification provided herein constitutes such party's waiver of immunity under the Industrial Insurance Act, Title 51 RCW, solely for the purpose and solely to the extent required to provide the indemnification required in this Section.

F. The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance. Throughout the term of this Agreement, WAVE shall maintain a combination of commercial general liability, automobile insurance, and excess coverage of not less than $2 million per occurrence. WAVE shall maintain workers' compensation insurance in amounts sufficient pursuant to the laws of the State of Washington. The City shall be named as an additional insured on all such policies, with the exception of workers' compensation coverage. WAVE shall provide certificates of insurance and an endorsement copy of such insurance concurrent with the execution of this Agreement. All insurance policies shall contain a clause or endorsement providing that they may not be terminated or materially amended during the term of this Agreement, except after thirty (30) days prior written notice to the City.

11. Duration. This Agreement and the obligations of the parties under it shall become effective upon execution by both parties and shall expire at the close of business for the Pool on December 31, 2012. The City of Redmond reserves the right to extend the term of any awarded contract for two (2) two year periods as necessary if mutually agreed upon by both parties unless sooner extended or terminated.

12. Termination. This Agreement may be terminated as follows:

A. By mutual agreement of the parties;

B. By either party without cause upon the giving of sixty (60) days' written notice to the other party;–All terms of the agreement remain in effect until the stated termination date. Final cost settlement shall be made thirty (30) days after termination of the contract.-

C. By either party for material breach of this Agreement's terms by the other party, provided, that no such termination shall become effective unless the non-breaching party provides at least thirty (30) days' written notice to the other party and an opportunity to cure the breach within that thirty (30) day period. If the breach cannot reasonably be cured within thirty days, this Agreement shall not terminate if the breaching party has commenced cure within thirty (30) days and diligently pursues the same to conclusion.

13. Dispute Resolution. The parties mutually agree to use a formal dispute resolution process, such as mediation, through an agreed upon mediator, if agreement cannot be reached regarding interpretation or implementation of any provision of this Agreement. All costs for mediation services will be divided equally among the parties to the dispute. Each party will be responsible for their own legal representation, provided, that nothing in this Section 13 shall be construed to limit or negate the parties' ability to indemnify and defend as set forth in Section 9 above. In the event that agreement cannot be reached through the formal dispute resolution process contemplated by this Section, the parties reserve the right to seek any available legal or equitable remedy, including litigation, to resolve the dispute.

14. Notices. Notices required by this Agreement shall be given to the parties at the following addresses:

To the City:

Craig E. Larsen
Director of Parks and Recreation
City of Redmond
15670 N.E. 85th Street
P.O. Box 97010
Mail Stop 4NPK
Redmond, WA 98073-9710
(425) 556-2310

To WAVE:

WAVE Aquatics
Jeff Burn
PO Box 2953
Kirkland, WA 98083-2953

Notices shall be deemed given upon personal delivery to the individuals named above, or in the case such notice is mailed, three days after the written notice is placed in the United States Mail, postage prepaid, addressed to the individuals named above.

15. Miscellaneous Provisions.

A. Assignment and Subcontract. WAVE shall not assign or subcontract its rights or obligations under this Agreement without the express written consent of the City.

B. No Waiver. Waiver by any party of any breach of this Agreement shall not

constitute a waiver of any subsequent breach or of a breach of any other provision.

C. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision.

D. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Subject to the dispute resolution provisions of Section 13, venue for any action brought to enforce any provision of this Agreement or to seek redress for any breach thereof shall be in the superior court of King County, Washington.

E. Attorney's Fees. In the event that either party commences litigation against the other party to enforce any provision of this Agreement or to seek redress for any breach thereof, the prevailing party in any such litigation shall be entitled to recover its costs and reasonable attorney's fees incurred in the litigation from the other party.

F. Construction. Both parties participated equally in the drafting of this Agreement and this Agreement shall not be construed against either party as drafter.

G. Amendment. This Agreement may be amended only by a written instruments signed by both parties.

H. Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning its subject matter and supersedes all prior understandings and agreements.

EXECUTED by the parties on the dates hereinafter written.

CITY OF REDMOND	WAVE AQUATICS
_____	_____
John Marchione, Mayor	(Signature)
Date:_____	By:_____
	(Print name)
	Title:_____
	Date:_____