

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Dennis Andresky, Parks & Recreation Director, 954 797-1150

SUBJECT: Resolution

AFFECTED AREA: Townwide

TITLE OF AGENDA ITEM: A resolution of the Town of Davie, Florida, authorizing the Mayor to execute a contract with SwimAmerica Services to provide aquatics program service.

REPORT IN BRIEF: The Town conducted a competitive solicitation for Aquatic Programming Services. SwimAmerica Services was the sole responder. SwimAmerica Services has provided complete aquatics programming service to the Town for the past three years. Their performance during this time period has been excellent. They have consistently expanded the variety of programs offered in response to customer desires and have a proven record of professionalism, reliability and quality customer service. The new agreement will provide the Town 25% of Total Monthly Gross Income received by the vendor during the first year of the agreement. Projected revenue to the Town for the first year of the contract is \$20,000. In the event the projected revenue is not achieved in the first year of the contract, the Town has the option to require payment of a Fixed Monthly Amount of \$1,000 per month for all renewal periods of the contract.

PREVIOUS ACTIONS: R-2001-125

CONCURRENCES: Contract has been reviewed by the Town Attorney.

FISCAL IMPACT:

Has request been budgeted? N/A

If yes, expected cost:

Additional Comments: Projected first year revenue of \$20,000.

RECOMMENDATION(S): Motion to approve resolution.

Attachment(s): Resolution and Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH SWIMAMERICA SERVICES TO PROVIDE AQUATICS PROGRAM SERVICE.

WHEREAS, the Town desires to offer aquatics programs at the Davie Pine Island Park Aquatics Center and Betty Booth Robert's Park Pool; and

WHEREAS, the Town solicited sealed proposals for such service; and

WHEREAS, the Town's Selection Committee authorized the Parks and Recreation Department to negotiate the terms of the agreement with SwimAmerica Services; and

WHEREAS, the Town has verified SwimAmerica Services qualifications, experience and capability to provide the required service; and,

WHEREAS, it is in the Town's best interest to execute a contract for this service; and

WHEREAS, after review, the Town Council wishes to authorize the Mayor to execute a contract with SwimAmerica Services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie authorizes the Mayor to execute a contract with SwimAmerica Services to provide Aquatics Program Service.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004.

AGREEMENT BETWEEN THE TOWN OF DAVIE
AND SWIMAMERICA SERVICES FOR PROVISION OF
AQUATICS PROGRAM SERVICE

THIS AGREEMENT, made and entered into this _____ day of _____, 2004, by and between:

Town of Davie, Florida
a municipal corporation
6591 Orange Drive
Davie, Florida, 33314
(hereinafter referred to as "TOWN")

AND

SwimAmerica Services
Karen Leonard
2808 NW 10th Avenue
Ft. Lauderdale, FL 33311
(hereinafter referred to as "CONTRACTOR")

WITNESSETH

WHEREAS, the Town is desirous of providing aquatics programming at the Davie Pine Island Park Aquatics Center and Betty Booth Robert's Park Pool; and

WHEREAS, a formal RFP was disseminated, and SwimAmerica Services was the sole responding bidder; and

WHEREAS, the Town has verified SwimAmerica Services qualifications, experience and capability to perform the required service; and

WHEREAS, this agreement has been reviewed by the Town Attorney; and

WHEREAS, the Town and SwimAmerica Services wish to enter into this Agreement for the provision of aquatics program service as specified in the agreement.

IN CONSIDERATION of the mutual covenants and agreements as herein set forth, sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

TERMS OF AGREEMENT

The term of this agreement is for a (1) year period beginning on October 1, 2004 and ending on September 30, 2005. The contract may be extended for two additional (1) year periods by mutual agreement of the parties. The Town reserves the right to add new pool locations to this agreement upon mutual agreement of the parties. It is at the sole discretion of the Town to award or not award this contract as it deems appropriate.

1. Conditions:

- A. Contractor shall conduct business in a professional and courteous manner to the satisfaction of designated Town staff. Contractor and all personnel and instructors under the direction of the Contractor must obey all Town and Parks & Recreation Department rules, regulations and policy.
- B. Contractor shall provide qualified/trained instructors for all programs offered and provide proof of Florida Dept. of Law Enforcement background screening for themselves and all personnel and instructors prior to the start of any program, class or service being provided.
- C. Contractor shall provide each participant with a fee schedule for all offered services and program packages. Program information and fees shall be posted at the lobby service counter at Davie Pine Island Park Aquatics and Fitness Center and in the Town provided public notice bulletin board at Betty Booth Roberts Park Pool.
- D. Contractor must coordinate all program schedules with designated Town Staff in advance in order to prevent conflict of use situations and to allow for proper public notice and Town staffing adjustments. Contractor or Contractor Designee with authority to make decisions in the absence of the Contractor, must be available either in person or by phone to communicate with Town Staff as needed on a daily basis to resolve operational concerns and problem situations.
- E. Contractor is required to provide a minimum of twenty five (25) scholarships for aquatic services for children of the community that cannot afford these services.
- F. Town will provide lifeguard services during normal operating hours:

Summer Hours

Weekdays from 10 am to 7:45 pm.

Sat/Sun from 10 am to 5:45 pm

Winter Hours

Weekdays from Noon to 7:45 pm

Sat/Sun from 10 am to 5:45 pm

Should the Contractor choose to program pool usage during non normal operating hours, the vendor is responsible for the cost of lifeguard services at the rate of \$20.00 per hour per lifeguard. The Town may grant a variance to this policy for programs conducted by Swim Coaches or Instructors having current Lifeguard Certification with the approval of the Town's Risk Management Department. Requests to use Swim Coaches or Instructors in

lieu of Town Lifeguards must be in written form and include proof of the individuals current lifeguard qualifications and dates and times of the program or activity.

- G. The Town must have one quarter (1/4) of the pool area available for public use during normal operating hours.
- H. The Contractor is permitted use of 3/4 of the pool during normal operating hours except during Town sponsored events/use. Current Town sponsored events and uses include:
 - a. Summer Camp Programs - Three quarters (3/4) of the pool area must be available for use as needed by the Town for joint use by the public and the Town's Summer Camp Program. The summer camp program runs from June through August from 9:00 a.m. to 5:00 p.m.
 - b. March Splash for Trash Event - The entire pool must be available for use by the Town for the March Splash for Trash event. This event is held once per year as a partial day event which varies as to date and runs from 11:30 a.m. to 3:30 p.m.
 - c. July 4th Celebration Event - The entire pool must be available for use by the Town for the July 4th celebration from 10:00 a.m. to 9:00 p.m.
 - d. Labor Day Event - The entire pool must be available for the September Labor Day event from 10:00 a.m. to 5:00 p.m.
 - e. Town Employee Picnic - The entire pool must be available for this once a year partial day event which varies as to date and runs from noon to 4:00 p.m.
- I. The Town reserves the right to schedule additional Town events and use and to make adjustments to the normal hours of operation and portion of pool area needed for public usage with reasonable notice being given to the contractor. The Town also reserves the right to control the pool as needed during inclement weather or in the interest of public safety.
- J. Contractor shall pay the Town 25% of Total Monthly Gross Income during the first year of the contract, payable to the Town on a monthly basis by the 10th of each month for the previous months provided service. Income received by the Contractor from the provision of Swim Central Program Swim Lessons are excluded from Contractors Total Monthly Gross Income calculation. The Town may select, at its' sole discretion, either the 25% of Total Monthly Gross Income or a Fixed Amount of \$1000 per month as payment for provided service for any contract extension periods provided for in the Agreement.
- K. Contractor is responsible for handling, processing and record keeping services related to operations under this agreement including but not limited to: registrations, receipt of payments for programs, accounting of transacted business and record keeping. Contractor shall provide Town a monthly report of all programs, services and rentals provided including fees charged for the provision of said programs, services and rentals. Monthly operations report is due by the 10th of each month for the previous months operations.

- L. Contractor may collect user fees for the following:
 - a. Swim instruction programs and classes.
 - b. Rental of pool deck area and pool patio area for parties per Established Town Parks and Recreation Fee Schedule rates.
 - c. Contractor scheduled group use of the pool.
 - d. Swim team programs.
 - e. Water polo team programs.
 - f. Water aerobics/fitness classes.
 - g. Other aquatic programs or classes upon approval by Parks & Recreation Director.

- M. The Town will collect and retain all fees collected for:
 - a. Pool memberships.
 - b. Daily pool admissions and Non Contractor scheduled group use.
 - c. All use of the planned Water Play area.

N. Contractor will provide a 25% program fee discount to Town Employees.

2. Insurance: The Contractor shall furnish proof of Worker’s Compensation Insurance, General Liability Insurance, and Automotive Liability Insurance as required by State Statute. The Contractor shall carry in force at all times the insurance coverage with the Town included as “Additional Insured”.

Insurance requirements are as follows:

A. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE

Limits:	Worker’s Compensation	-	Statutory
	Employer Liability	-	\$100,000 each accident
	Disease	-	\$500,000 policy limit
	Disease	-	\$100,000 each employee

B. COMMERCIAL GENERAL LIABILITY INSURANCE

Limits: Bodily Injury/Property Damage Combined Single Limit - \$1,000,000 each occurrence. This shall include coverage for:

- Premises/Operations
- Products/Completed Operations
- Contractual Liability
- Independent Contractors

Insurance must be furnished to the Town PRIOR TO THE COMMENCEMENT of any work. Failure to do so will result in the recommendation to terminate the contract immediately.

The Town will be given thirty (30) days written notice of any cancellation or material change in any policy.

3. Indemnity Hold/Harmless Agreement: The contractor agrees to indemnify and hold harmless the Town, its officers, agents, and employees from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the Town may suffer as a result of claims, demands, costs, or judgments against it arising from the subject project. Nothing in this agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

4. Independent Contractor: SwimAmerica Services is an independent contractor under this Agreement and the services provided by SwimAmerica Services under this agreement shall be supervised by SwimAmerica Services solely. In providing services under this Agreement, neither SwimAmerica Services nor its agents shall be deemed as officers, employees, or agents of the Town. SwimAmerica Services shall be solely responsible for any wrongful acts or omissions of duty by its employees whether such acts or omissions are due to negligence or are intentional. SwimAmerica Services shall hold the Town harmless from any actions either in equity or at law brought against the Town due to any such acts or omissions.

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

6. Discrimination Clause: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

7. Cancellation: The Town will issue a notice in writing should Contractor fail to reasonably perform the services as specified herein in the sole discretion of the Town. Contractor will have five (5) days after receipt of notice to respond to the complaint and advise any corrective action that will be taken to alleviate the problem. The Town reserves the right to cancel the contract if corrective action is not implemented. This contract will be canceled upon receipt of written notification.

8. Selling, Transferring or Assigning Responsibilities: The Contractor shall not sell, transfer or assign the performance required by this proposal without the prior written consent of the Town. Any award issued pursuant to this Request for Proposal and the monies which may become due hereunder are not assignable, except with the prior written consent of the Town.

9. Permits, Taxes and Licenses: The Contractor shall at their own expense obtain all necessary permits and pay all applicable licenses, fees or taxes.

NOTICE:

Notices required by this Agreement shall be deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses:

AS TO TOWN:

Dennis Andresky or Representative
Parks and Recreation Director
6901 Orange Drive
Davie, Florida 33314

AS TO Contractor

SwimAmerica Services
Karen Leonard
2808 NW 10th Avenue
Ft. Lauderdale, FL 33311

GOVERNING LAW AND VENUE:

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida with venue for any litigation thereon to be found in the Seventeenth Judicial Circuit in and for Broward County, Florida.

SEVERABILITY:

If any part of this Agreement is found to be in conflict with applicable laws, such part shall be null and void insofar as it is found in conflict with the laws of the State of Florida, but the remainder of the Agreement shall be and remain in full force and effect.

LICENSE NOT A LEASE:

This Agreement shall not be deemed to be a lease of any facilities, the use of which is permitted hereunder, but rather a license to use and occupy the respective premises under the terms and conditions stated herein.

NON-DISCRIMINATION:

The Contractor shall comply with Title I and Title II of the Americans with Disabilities Act regarding non-discrimination on the basis of disability in employment and the provision of services, and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation or disability.

No persons, on the grounds of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation or disability shall be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination in the use of said materials or offering of services by the Contractor.

PENALTY FOR DAMAGE:

Town's Municipal Code

Sec. 16-3. Damaging public property prohibited.

It shall be unlawful to wantonly, willfully or maliciously mar, deface, injure or mutilate any of the town buildings, vehicles, equipment, furniture, street signs, traffic signs, or traffic control equipment, or any other property of the town.

(Code 1964, § 10-8)

AGREEMENT BETWEEN THE TOWN OF DAVIE
AND SWIMAMERICA FOR PROVISION OF
AQUATICS PROGRAM SERVICE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

SWIMAMERICA SERVICES

TOWN OF DAVIE, FLORIDA

BY: _____
DIRECTOR

BY: _____
MAYOR

ATTEST:

TOWN CLERK

STATE OF FLORIDA)
) ss.
COUNTY OF BROWARD)

I HEREBY CERTIFY, that on the _____ day of
2004, _____ personally appeared before me, an officer duly authorized to
administer oaths and take acknowledgements, SwimAmerica Services, signed this Agreement on
the _____ day of _____, 2004.

WITNESSETH my hand and official seal at _____,
Broward County, Florida this _____ day of _____ 2004.

My Commission Expires: _____
____NOTARY PUBLIC, State of Florida