

**SERVICE AGREEMENT BY AND BETWEEN
THE CITY OF NATIONAL CITY AND
EXOS COMMUNITY SERVICES LLC**

This Service Agreement (this “Service Agreement”) is entered into by and between the CITY OF NATIONAL CITY, a municipal corporation (the “CITY”), and EXOS COMMUNITY SERVICES, LLC, a New Jersey limited liability company (“EXOS”).

RECITALS

- A. The CITY owns the real property commonly known as Las Palmas Pool, located at 1800 East 22nd Street, National City, California (the “Premises”) as depicted in Exhibit “A.”
- B. EXOS is a privately-held fitness and wellness management and consulting company in the business of designing, managing, and operating all aspects of mixed-use health, fitness and aquatics centers similar to Las Palmas Pool.
- C. The CITY wishes to have EXOS operate the Las Palmas Pool with EXOS programs serving the local community.
- D. The CITY is responsible for repair and maintenance of the Premises, which includes improvements, landscaping, facility maintenance, janitorial maintenance, chemical maintenance and information technology. The City desires to engage EXOS to operate the Premises, which includes, personnel, programming, events and operating procedures and policies.

NOW, THEREFORE, in consideration of the foregoing facts, and in consideration of the promises and covenants hereinafter set forth, the parties agree as follows:

**ARTICLE 1
TERM OF AGREEMENT**

1.1 Term. The term of this Service Agreement shall be for the period beginning January 1, 2023 (the “Commencement Date”) and terminating on June 30, 2027.

1.2 Option to Extend Term. If EXOS is not in default of any provision of this Agreement upon the expiration of the term described in Article 1.1, the City Council may extend the term upon mutual agreement between the parties. The CITY and EXOS may mutually agree to extend the term of this Service Agreement for up to two (2) additional five (5) year terms. The initial period, and any extension pursuant to this Article 1.2, shall collectively be referred to hereafter as the “Term.”

1.3 Transition Period. Should the CITY or EXOS not extend this Service Agreement pursuant to Article 1.2, EXOS will make every effort to transition operations to the CITY over the six (6) month period that precedes expiration of the Term.

ARTICLE 2 PREMISES AND PERSONAL PROPERTY

2.1 Facilities to be Operated. The CITY hereby engages EXOS to operate the Premises as of the Commencement Date. EXOS will operate the Premises for the benefit of the citizens of National City subject to the covenants and conditions set forth in this Service Agreement. Facilities to be operated include: (1) the Olympic-size pool; (2) the activity pool; (3) the locker rooms; (4) pump and storage rooms; (5) lobby; and (6) administrative offices (the “Facilities”). Upon completion of construction of the new proposed pool building, EXOS will operate the aquatic program and administration in the new building and may utilize sections of the old pool building as deemed appropriate by the CITY.

2.2 Ownership of Personal Property and Improvements. The rights and obligations of the parties regarding the ownership of personal property and improvements on the Premises shall be as follows:

2.2.1 Ownership of Personal Property. All of the CITY’s personal property not permanently affixed to the Premises, such as, but not limited to, furnishings, office equipment and supplies (“Personal Property”) shall remain the property of the CITY. All improvements existing on the Premises (“Improvements”), together with all fixtures permanently attached to the Premises (“Fixtures”), as of the Commencement Date shall remain the property of the CITY during the Term. EXOS shall not remove any Personal Property, Improvements, or Fixtures from the Premises, nor waste, destroy, or modify any Personal Property, Improvements, or Fixtures on the Premises. All new Improvements, together with all new Fixtures permanently attached to the Premises, after the Commencement Date shall remain the property of the CITY during the Term. EXOS shall not remove any of the CITY’s Personal Property, Improvements, or Fixtures from the Premises nor waste, destroy, or modify any Personal Property, Improvements, or Fixtures on the Premises.

2.2.2 Ownership of Improvements and Equipment. All of EXOS’s personal property not permanently affixed to the Premises shall remain the property of EXOS.

ARTICLE 3 PERMITTED USE

3.1 Permitted Uses. EXOS shall operate the Premises by providing for and facilitating the following proposed activities which may be amended or replaced periodically by agreement of the authorized representatives of the parties:

3.1.1 Open swim on Saturday and Sunday throughout the year and open swim seven (7) days a week during the months of June, July, and August. Open swim also during the National School District two (2) week fall break that occurs during September and October. In addition, consideration based on need will be given for an expanded open-swim schedule during the National School District two (2) week winter and spring breaks.

3.1.2 Learn to swim classes throughout the year based on community needs. The number of classes offered will increase during the months of June, July, and August. A variety of learn-to-swim classes for youth and adults with varying levels of experience will be offered. Cancellation of classes is permitted if enrollment is less than three (3) participants.

3.1.3 Aquatic exercise classes for various ages and abilities and offered based on community needs. Cancellation of classes is permitted if enrollment is less than five (5) participants.

3.1.4 Adult masters swim program with structured workouts provided by a certified coach.

3.1.5 Lap swimming offered, based on community needs.

3.1.6 Youth recreational and competitive swim program with structured workouts provided by a certified coach.

3.1.7 Facility rentals for athletic teams or clubs looking to use the Premises for practices or competitions. Facility rentals shall follow City Council Policy 801, Recreational Field and Sports Facility Rules and Regulations.

3.2 Hours of Service. EXOS may provide programming between the hours of 5:00 a.m. and 10:00 p.m. seven (7) days a week. Hours of service may be changed upon mutual, written agreement.

3.2 CITY Use. The City may use the Premises for special events, including National Night Out and Summer Movies in the Park. The CITY may use the Premises for up to ten (10) additional events or programs per year. Dates and times of such uses will be agreed upon by the CITY and EXOS.

3.3 Consideration. EXOS's performance under this Service Agreement shall serve as the sole consideration due to the CITY for EXOS's right to operate the Premises.

3.4 CITY Residents. Participants seeking day use of the Premises who prove to EXOS's satisfaction that they are residents of the CITY shall not be required to become members of EXOS and shall be offered reduced resident rates.

ARTICLE 4 SERVICES

4.1 EXOS shall render the management services listed below (the "Services") to the CITY for the on-site management and supervision of the Premises. The Services shall be performed in accordance with generally-accepted standards in the fitness and wellness management industry. The Services shall be performed in accordance with those requirements or restrictions as may be imposed by any governmental authority. EXOS shall provide the Services as follows:

4.1.1 EXOS shall formulate an annual budget in accordance with financial targets for net operating income/surplus and meeting agreed upon benchmarks. The budget shall be mutually agreed upon by the CITY and EXOS in February of each year.

4.1.2 EXOS shall endeavor to increase program participation through the development and execution of effective marketing and retention plans.

4.1.3 EXOS shall provide open swim, learn to swim classes, aquatic exercise classes, adult masters swim program, lap swim, facility rentals and other programs at affordable resident rates approved by the CITY.

4.1.4 EXOS shall endeavor to meet or exceed budgeted net operating income/surplus goals as set forth in the annual budget approved by the CITY. Financial results will be monitored by and reviewed with the CITY on a monthly, quarterly and annual basis.

4.1.5 EXOS shall provide annual reports to the City, each of which must contain the total number of (a) National City residents who participated in EXOS events; (b) all participants who participated in EXOS events; (c) events and programs coordinated; and (d) reservations and use by third parties, such as athletic teams, and any other pertinent statistics.

4.1.6 EXOS shall recruit, hire and employ, as employees of EXOS, all persons who will work at, or provide services to the Premises, managed by EXOS in furtherance of the CITY operations (all such persons being referred to herein, collectively as "Managed Personnel"). Salaries and other expenses of Managed Personnel will be charged to CITY as an operating expense only to the extent such Managed Personnel are actually employees of EXOS.

Both parties hereto in the performance of this Service Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. Neither EXOS nor, to EXOS'S knowledge, EXOS'S employees are employees of the CITY, and are not entitled to any of the rights, benefits, or privileges of the CITY'S employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Service Agreement contemplates the personal services of EXOS and EXOS'S employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Service Agreement was, and is, the professional reputation and competence of EXOS and its employees. Neither this Service Agreement nor any interest herein may be assigned by EXOS without the prior written consent of the CITY. Nothing herein contained is intended to prevent EXOS from employing or hiring as many employees as EXOS may deem necessary for the proper and efficient performance of this Service Agreement. All agreements by EXOS with third parties shall require the third party to adhere to the applicable terms of this Service Agreement.

4.1.7 EXOS will manage personnel, facilities and programs/services in a manner consistent with the mission and values of the CITY. EXOS will provide personnel as it deems reasonably necessary to perform the Services set forth in this Service Agreement. Personnel will be trained by EXOS to properly perform the Services. When hiring for the general manager position, EXOS will present the CITY with general manager candidates for review prior to hiring. The CITY will have the right to disapprove of general manager candidates.

4.1.8 EXOS will establish and implement policies and procedures designed to operate the Premises in a manner that promotes safety, customer service and financial accountability.

4.1.9 EXOS will work closely with the CITY and the Community Services Department in designing and implementing effective and low cost program marketing campaigns, including community outreach to find programming opportunities. EXOS will develop and launch outdoor fitness and program initiatives.

4.1.9.1 Use by Others. EXOS may allow use of the Premises to other groups or organizations such as athletic teams and clubs. Any third party group users such as athletic teams and clubs shall be required to adhere to City Council Policy 801 Recreational Field and Sports Facility Rules and Regulations, to obtain a facility use permit from the CITY, and pay fees to the CITY for use of the Premises.

4.1.9.2 Social Media. EXOS shall be responsible for social media marketing for the Premises and will adhere to the City's Social Media Policy 01.13.

4.1.10 EXOS will develop and enhance measurement and analytics capabilities to help optimize revenue.

ARTICLE 5 EQUIPMENT

5.1 The CITY shall provide such items as office furniture and equipment, telephones, computers and software for the Premises. The CITY also agrees to, at its sole expense, maintain such equipment to the best of their ability. The CITY will consider the nature and priority of the maintenance and available funding to determine if and when such repairs and maintenance will be completed.

5.2 EXOS shall, provide general administrative supplies, marketing materials, and all aquatic-related exercise equipment, and safety and first aid equipment necessary for the operation of the Premises at the CITY'S sole cost and expense. The CITY shall pay for such supplies and materials within thirty (30) days of receipt of EXOS'S invoice therefor. EXOS shall prepare and distribute marketing materials and CITY shall assist with the distribution of marketing materials.

ARTICLE 6 UTILITIES

6.1 Utility Services. The CITY shall maintain utility services to the Premises. The CITY shall pay for all utilities costs necessary for EXOS' use and operation of the Premises during the Term. Utility services to the Premises include gas, water, electricity, trash, sewer charges and telephone. The CITY shall pay directly to the applicable utility company such charges, and EXOS shall have no obligation to pay for such utility services.

ARTICLE 7 REPAIRS; MAINTENANCE

7.1 CITY Repair and Maintenance Obligations. The CITY shall, at its own cost and expense, repair, maintain in good and tenable condition, ordinary wear and tear excepted, and replace, as necessary, the Premises. The CITY is responsible for all repair and maintenance including but not limited to, landscape maintenance, facility maintenance, and janitorial maintenance. The CITY shall work with EXOS to maintain public safety, hygiene and fire safety of the Premises. The CITY shall consider the nature and priority of the work and available funding to determine if and when such repairs and maintenance will be completed.

7.1.1 Landscape Maintenance. The CITY is responsible for all outdoor cleaning and landscape maintenance at the Premises.

7.1.2 Facility Maintenance. The CITY is responsible for all facility maintenance, including but not limited to, electrical, lighting, plumbing, pool chemicals, paint, flooring, HVAC systems, and heat and air conditioning.

7.1.3 Janitorial Maintenance. The CITY is responsible for all janitorial maintenance at the Premises, including but not limited to, routine cleaning of office, lobby, restrooms and locker rooms which includes waste removal, window cleaning, sweeping and mopping floors, and dusting and wiping counters and surfaces. The CITY will also stock janitorial items such as toiletries and cleaning supplies in all bathrooms located at the Premises. The CITY has the sole discretion to determine the frequency of janitorial maintenance and the amount of janitorial items stocked at the Premises.

7.1.4 Information Technology. The CITY is responsible for providing internet access, telephones and support services.

7.2 EXOS Repair and Maintenance Obligations. EXOS shall operate the Premises in a manner that promotes the safety and security of the public while EXOS personnel is on the Premises. Safety and security issues must be reported to the designated CITY contact promptly and EXOS personnel will endeavor to protect the safety and security of the public until the CITY can address the safety and/or security issue.

Except for normal wear and tear occurring in the ordinary course of business, EXOS agrees to repair or replace any damage or injury done to the Premises, or Personal Property, or any part thereof, caused by EXOS or EXOS'S agents or employees, at EXOS'S own cost and expense. If EXOS fails to make such repairs or replacements promptly, CITY may, at its option, make such repairs or replacements, and EXOS shall repay the cost thereof to the CITY within thirty (30) days of written demand. However, for any repair work, costing over Five Hundred and no/100 Dollars (\$500.00) to be performed by EXOS or EXOS's agents, EXOS shall not perform such repair work without the CITY's prior written consent. Any repairs or replacements in or to the Premises, other than repair work in emergency situations, which would require an expenditure exceeding Forty-Five Thousand and no/100 Dollars (\$45,000.00) and which constitute a "public project" under Section 20161 of the California Public Contract Code, shall be contracted for/by CITY and let to bid pursuant to those procedures described in National City Municipal Code Chapter 2.62.

7.3 CITY Right to Inspect. EXOS shall permit the CITY to enter the Premises at all times to inspect the Premises, provided, however, that such entry shall not unreasonably interfere with EXOS'S operation of the Premises. Nothing contained in this Article 7, however, shall be construed as creating any duty on the part of the CITY to do any work which, under any provision of this Service Agreement, EXOS may be required to do.

7.4 Prevailing Wages. EXOS shall pay prevailing wages if required by law for work performed on the Premises.

ARTICLE 8
FEES AND PAYMENT TERMS

8.1 Fees. The CITY shall pay EXOS a monthly base management fee, actual payroll and staffing expenses, and marketing and administrative costs as set forth in the annual budget approved by the CITY.

8.1.1 Base Management Fee. As compensation for the Services, the CITY shall pay EXOS a monthly base management fee (the “Base Management Fee”) for each month beginning January 1, 2023 in the amount of \$5,200 per month. Thereafter, the Base Management Fee shall increase by 5% at the beginning of each fiscal year. The Base Management Fee shall be invoiced on a monthly basis and shall be due thirty (30) days after receipt.

8.1.1.1 Learn to Swim Class. The Base Management Fee may increase by an amount not to exceed 10% of said fee during the five (5) months when the CITY provides the “Learn to Swim” classes to the National School District. Upon completion of the “Learn to Swim” classes the Base Management Fee will revert to the amount prior to commencement of the Learn to Swim classes.

8.1.2 Payroll and Staffing Expenses. EXOS shall recruit, hire and employ, as employees of EXOS, all persons who will work at, or provide services at the Premises. Monthly payroll and staffing expenses are estimated as set forth in the annual budget approved by the CITY and will be charged to the CITY as an operating expense only to the extent such Managed Personnel are actually employees of EXOS.

8.1.3 Marketing and Administrative Costs. EXOS shall provide such items as general administrative supplies and marketing materials necessary for the operation of the Premises. Monthly marketing and administrative costs are estimated as set forth in the annual budget approved by the CITY and the cost of the marketing materials and the administrative supplies shall be paid for by the City within thirty (30) days after receipt of an invoice setting forth the amount of such costs.

8.2 Payment Terms. At the end of each month during the Term, EXOS shall submit to the City an invoice for monthly operating expenses as agreed upon in the annual budget approved by the CITY.

8.2.1 Monthly Balance Payment. EXOS shall submit an invoice to the CITY after each month during which Services are rendered to the CITY. To the extent applicable, each

invoice will reflect the monthly Base Management Fee, actual payroll and staffing expenses, and actual marketing and administrative costs, together with all amounts payable to EXOS, as set forth in the annual budget approved by the CITY. EXOS shall also submit to the City supporting documents for payroll and staffing expenses, and marketing and administrative costs. Supporting documents may be, but are not limited to, copies of payroll and receipts for purchases.

8.5 Revenue Collected by EXOS. Revenue collected by EXOS for its programming of open swim, learn to swim, aquatic exercise classes, adult masters swim program, lap swim, youth recreational and competitive swim program, and facility rentals will be collected and handled by EXOS and deposited with the CITY. EXOS shall submit cash and credit card receipts to the CITY two (2) times per week or at any time the amount of cash at the Premises exceeds \$500.00.

8.6 Notwithstanding any other provision contained herein, in the event that CITY'S outstanding balance for fees and charges to EXOS is greater than ninety (90) days past due, EXOS will have the right to immediately and unilaterally terminate this Agreement.

8.7 The CITY shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by the CITY hereunder.

ARTICLE 9 TAXES

9.1 Definition. "Taxes" shall mean all taxes, governmental bonds, special assessments, charges, or transfer taxes, license and transaction fees, including, but not limited to, (a) any state, local, federal income tax, or any real or personal property tax, (b) increases in taxes attributable to EXOS's operation of the Premises, or (c) any taxes which are essentially payments to a governmental agency, other than the CITY, for the right to make improvements to the Premises. EXOS recognizes and agrees that this agreement may create a possessory interest subject to property taxation and that EXOS may be subject to the payment of taxes levied on such interest. EXOS agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises.

9.2 Responsibility for Payment of Taxes. The CITY shall not be obligated to pay any Taxes accruing against EXOS.

ARTICLE 10 INDEMNIFICATION, LIMITATION OF LIABILITY, AND INSURANCE

10.1 EXOS's Indemnity. EXOS agrees to defend, indemnify and hold harmless the City of National City, its officers, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands,

suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, brought by a third-party, resulting from or arising out of EXOS' established negligence in its (a) performance of or (b) failure to uphold its other obligations under this Service Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its agents, officers, employees or volunteers.

The indemnity, defense, and hold harmless obligations contained in this Article 10 shall survive the termination of this Service Agreement for any alleged or actual omission, act, or negligence under this Service Agreement that occurred during the term of this Service Agreement.

10.2 **Limitation of Liability.** NEITHER PARTY OR ITS AFFILIATES WILL HAVE ANY LIABILITY UNDER THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF ANY REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. NO ACTION ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY OR ON BEHALF OF A PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION FIRST AROSE. THE TOTAL LIABILITY OF EACH PARTY AND ITS AFFILIATES ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED \$1,000,000; PROVIDED THAT FOR CLAIMS FOR INDEMNIFICATION UNDER SECTION 10.1, SUCH TOTAL LIABILITY WILL NOT EXCEED THE GREATER OF (A) SUCH AMOUNT AND (B) \$5,000,000. SUCH LIMITATIONS APPLY IN THE AGGREGATE TO ALL CLAIMS BY A PARTY AND ITS AFFILIATES, AGENTS AND PRINCIPALS. THE PARTIES ARE RELYING ON THE FOREGOING ALLOCATION OF RISK IN SIGNING THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 10.2, THE LIMITATIONS IN THIS SECTION 10.2 WILL NOT LIMIT THE RIGHT OF EXOS TO RECEIVE FEES PAYABLE UNDER THIS AGREEMENT.

10.3 **Insurance.** EXOS, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this Service Agreement, the following checked insurance policies:

- A. If checked, **Professional Liability** Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.
- B. **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned, and hired vehicles. The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided.
- C. **Commercial General Liability Insurance, (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and

completed operations, property damage, bodily injury and personal & advertising injury, with minimum limits of \$5,000,000 per occurrence and \$10,000,000 aggregate, covering all bodily injury and property damage arising out of its operations under this Service Agreement. The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this “project” or “location”. The Commercial General Liability required by this Section must include Sexual Misconduct Liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. For the avoidance of doubt, the CITY understands that part of the coverage limits hereunder shall be satisfied by EXOS’s excess umbrella policy. EXOS represents to CITY that its excess umbrella policy does not exclude coverage for Sexual Misconduct Liability.

D. **Workers’ Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of EXOS’S employees and employers’ liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the City. Said endorsement shall be provided prior to commencement of work under this Service Agreement.

If EXOS has no employees subject to the California Workers’ Compensation and Labor laws, EXOS shall execute a Declaration to that effect. Said Declaration shall be provided to EXOS by CITY.

E. The aforesaid policies shall constitute primary insurance, at least as broad as ISO CG 20 01 04 13, as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. EXOS shall endeavor to provide for thirty (30) days, but in no event later than forty-five (45) days, prior written notice to the CITY’s Risk Manager, at the address listed in Article 10. 3(G) below, of cancellation or material change.

F. If required insurance coverage is provided on a “claims made” rather than “occurrence” form, the EXOS shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Service Agreement. In addition, the "retro" date must be on or before the date of this Service Agreement.

G. The Certificate Holder for all policies of insurance required by this Article 10. 3 shall be:

City of National City
c/o Risk Manager
1243 National City Boulevard
National City, CA 91950-4397

H. Insurance shall be written with only insurers authorized to conduct business in California that hold a current policy holder’s alphabetic and financial size category rating of not less than A VIII according to the current Best’s Key Rating Guide, or a company equal financial stability that is approved by the CITY’S Risk Manager. In the event coverage is provided by non-admitted “surplus lines” carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.

I. This Service Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY'S Risk Manager. If the EXOS does not keep all of such insurance policies in full force and effect at all times during the terms of this Service Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Service Agreement and terminate the Service Agreement as provided herein.

J. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY. CITY reserves the right to modify the insurance requirements of this Article 10. 3, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 11 TERMINATION

11.1 This Service Agreement may be terminated with or without cause by the CITY. Termination with or without cause shall be effected by delivery of written Notice of Termination to EXOS as provided for in this Service Agreement. Termination without cause shall be effective only upon 60-day's written notice to EXOS. EXOS shall perform all services in accordance with this Service Agreement during this 60-day period. This Service Agreement may also be terminated immediately, for cause, by the CITY in the event of:

- (a) a material breach of this Service Agreement;
- (b) a misrepresentation by EXOS in connection with the:
 - 1. formation of this Service Agreement;
 - 2. performance of services;
 - 3. the failure to perform services as directed by the CITY;
- (c) the filing of a petition in bankruptcy affecting EXOS;
- (d) a reorganization of EXOS for the benefit of creditors; or
- (e) a business reorganization, change in business name or change in business status of EXOS.

11.2 This Service Agreement may be terminated by EXOS by notice to the CITY, at any time if:

- (a) the CITY becomes insolvent or admits its inability to pay its debts generally as they become due;
- (b) the CITY becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) days or is not discussed or vacated within forty-five (45) days after filing;
- (c) the CITY is dissolved or liquidated or takes any action for such purpose;

- (d) the CITY makes a general assignment for the benefit of creditors; or
- (e) the CITY has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.3 Within thirty (30) days of the termination of this Service Agreement, EXOS shall return to the CITY all property of the CITY, and EXOS shall remove from the Premises all property of EXOS at EXOS's sole cost and expense.

ARTICLE 12 HAZARDOUS MATERIALS

12.1 Hazardous Materials Laws-Definition. As used in this Article, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Property, soil and ground water conditions, or other similar substances or conditions. The following legal authority is a non-exhaustive list of the legal authority that applies to the definition of the term "Hazardous Materials Laws":

- (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 *et seq.*)
- (b) the Hazardous Materials Transportation Act, as amended (49 U.S.C., Section 1801 *et seq.*), and
- (c) the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., Section 6901 *et seq.*)

12.2 Hazardous Materials - Definition. As used in this Section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

12.2.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

12.2.2 is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

12.2.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or

12.2.4 is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or EXOS with respect to any third person under any Hazardous Materials Law.

12.3 EXOS Representations and Warranties. EXOS represents and warrants that, during the Term or any extension thereof, EXOS shall comply with the following provisions of this Section unless otherwise specifically approved in writing by CITY, subject to the terms and conditions of EXOS maintenance obligations provided elsewhere in this Service Agreement:

12.3.1 EXOS shall not cause or authorize any Hazardous Materials to be brought, kept or used in or about the Premises by EXOS, its agents, employees, assigns, contractors or invitees, except as required by EXOS's permitted use of the Premises in the normal course of operations;

12.3.2 Any handling, transportation, storage, treatment or usage by EXOS of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;

12.3.3 Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly reported in writing to CITY;

12.3.4 No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by EXOS in the Premises;

12.3.5 No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by EXOS on the Premises without CITY's prior written consent;

12.3.6 EXOS shall promptly supply the CITY with copies of all notices, reports, correspondence, and submissions made by EXOS to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws with respect to the Premises; and

12.3.7 EXOS shall promptly notify the CITY of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then, within the earlier of (a) twenty (20) days following such filing, or (b) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, EXOS shall either:

(a) pay the claim and remove the lien from the Premises, or

(b) furnish either:

- (1) a bond or cash deposit reasonably satisfactory to the CITY in an amount not less than the claim from which the lien arises, or;
- (2) other security satisfactory to the CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

12.3.8 At the end of this Agreement, EXOS shall surrender the Premises to the CITY free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

ARTICLE 13 ASSIGNMENT

13.1 CITY's Consent Required. EXOS shall not voluntarily or involuntarily assign or otherwise transfer all or any portion of its rights and duties under this Agreement without the CITY's prior written consent. Any attempted assignment or transfer without the CITY'S prior written consent shall be void.

ARTICLE 14 DEFAULTS BY EXOS OR BY CITY; REMEDIES

14.1 Events of Default; Remedies. The following sub-articles shall apply if either EXOS or the CITY neglects, fails to perform, or fails to observe any of their respective obligations under the terms, covenants, or conditions contained in this Agreement ("Default"):

14.1.1 Thirty-Day Correction of Default. If either EXOS or the CITY determines that the other party is in Default, then the non-defaulting party must provide the defaulting party written notice of the Default and thirty (30) days to correct the Default.

14.1.2 Extended Correction of Default. If the defaulting party determines that more than thirty (30) days is required to correct the Default, the defaulting party must provide the other party written notice of the reasons why additional time is required to correct such Default. The defaulting party must use diligent efforts to correct a Default under this Article 14.1.2 and, in any case, must correct such Default within ninety (90) days from the date of the written notice of default.

14.1.3 Remedies for Failure to Correct Default. If the defaulting party fails to comply with Article 14.1.1 or 14.1.2, then the non-defaulting party may immediately terminate

this Agreement. The defaulting party shall be liable to the non-defaulting party for any and all damages sustained by the non-defaulting party as a result of the defaulting parties' breach.

ARTICLE 15 DAMAGE OR DESTRUCTION

15.1 CITY Duty to Repair Casualty. If the Premises is damaged by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature ("Casualty"), the CITY may, in sole discretion, repair any damages to the Premises. The CITY may also repair, restore, and replace any damaged or destroyed Fixtures, Improvements or Personal Property in response to any Casualty loss. If the City does not repair any damage, and such damage renders the Premises inoperable, the City may terminate this agreement as provided in Article 11 (Termination). Application of this Article 15 is subject to the terms and conditions of EXOS' maintenance obligations provided elsewhere in this Service Agreement.

15.2 No Abatement. In the event of reconstruction, replacement or repair, EXOS shall continue its operations on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. EXOS shall not be entitled to any compensation or damages from the CITY for loss of use of the whole or any part of the Premises, EXOS's Personal Property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

15.3 Major Destruction. Notwithstanding any of the foregoing provisions of this Article to the contrary, if, at any time after the Commencement Date, (a) the Improvements are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (b) the damage is such that the Improvements cannot be repaired and restored within one hundred and eighty (180) days after the Casualty, then EXOS shall have the right to terminate this Service Agreement upon thirty (30) day's prior written notice to CITY.

ARTICLE 16 EMINENT DOMAIN

16.1 Condemnation. EXOS may terminate this Agreement within twenty (20) days after the date that a condemning authority (by a party other than the CITY) takes possession of the Premises by delivery of written notice of such condemnation if:

- (a) If all of the Premises is taken under eminent domain proceedings; or
- (b) Less than all of the Premises is taken under such eminent domain proceeding and the part taken substantially impairs the ability of EXOS to use the remainder of the Premises for the purposes permitted by this Agreement.

In the absence of such written notice from a condemning authority, EXOS may terminate this Agreement within twenty (20) days after the condemning authority shall have taken possession.

16.2 Continuation of Service Agreement After Condemnation. If this Service Agreement is not terminated by EXOS, it shall remain in full force and effect as to any portion of the Premises remaining, and this Service Agreement will end as of the date possession of the part taken by the public entity as to the part of the Premises that is taken.

16.3 Award. All monies awarded in any condemnation shall belong to the CITY. The CITY shall have no liability to EXOS for any award not provided by the condemning authority.

ARTICLE 17 SALE OR MORTGAGE BY CITY

17.1 Sale or Mortgage. The CITY may, pursuant to existing and subsequently enacted CITY ordinances and State laws, at any time, and without the consent of EXOS, vacate, sell, purchase, exchange, transfer, assign, lease, encumber or convey the CITY's interest in whole or in part, in the Premises (collectively referred to in this Article as a "Sale"). CITY shall provide to EXOS written notice of CITY intent to a Sale pursuant to this Article at least ninety (90) days prior to said proposed transfer.

17.2 Release on Sale. From and after a Sale of the CITY's entire interest in the Premises, upon payment of all amounts due or owing to EXOS, the CITY shall be released from all liability to EXOS and EXOS successors and assigns arising from this Agreement because of any act, occurrence or omission of the CITY occurring after such Sale.

ARTICLE 18 SUBORDINATION; ATTORNMENT

18.1 Subordination. This Service Agreement is and shall be junior, subject, and subordinate to:

- (a) any existing or future permits or approvals issued by the United States of America or any local, State or federal agency affecting the control or operation of the Premises. EXOS shall be bound by the terms and provisions of any such permit or approval.
- (b) all mortgages, deeds of trust, and other security instruments of any kind covering the Premises, or any portion thereof, as of the Commencement Date of this Service Agreement.

This Article shall apply to the parties without the necessity of any other document being executed and delivered by EXOS.

ARTICLE 19
CITY'S RIGHT OF ACCESS

19.1 Right of Entry. CITY, its agents, employees, and contractors may enter the Premises at any time, with or without notice to EXOS, to:

- (a) respond to health and safety concerns;
- (b) inspect the Premises and Improvements;
- (c) determine whether EXOS is complying with its obligations in this Agreement (including its obligations with respect to compliance with Hazardous Materials Laws);
- (d) post notices of non-responsibility or similar notices;
- (e) inspect the progress of construction of any improvement;
- (f) make repairs that this Agreement requires or allows CITY to make; or
- (g) make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises

All work enumerated in this Article 19 must be done as promptly as reasonably possible and so as to cause as little interference to EXOS as reasonably possible.

ARTICLE 20
NOTICES

20.1 Notices. Whenever in this Service Agreement it shall be required or permitted that notice or demand be given or served by either party to this Service Agreement to or on the other, such notice or demand shall be in writing, mailed or personally delivered to the other party at the addresses specified below. Mailed notices shall be sent by United States Postal Service, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

CITY: City of National City
 Attention: Brad Raulston, City Manager
 City of National City
 1243 National City Boulevard
 National City, CA 91950-4301

EXOS: EXOS
Attention: Dan Burns, Chief Executive Officer and
Marc Mandel
25 Hanover Road
Building A, Suite 104
Florham Park, New Jersey 07932

ARTICLE 21
NONDISCRIMINATION

21.1 Nondiscrimination. EXOS hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Service Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, age, color, creed, religion, sex, sexual orientation, marital status, national origin, physical handicap, medical condition, or ancestry in the use, operation, or enjoyment of the Premises.

ARTICLE 22
RECORDS, ACCOUNTS AND AUDITS

22.1 EXOS Duty to Keep Records. EXOS shall, at all times during the Term, and for a period of five (5) years following expiration or earlier termination of this Service Agreement, keep or cause to be kept, true and complete, in all material respects, books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted by this Agreement. The books, records and accounts must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

22.2 CITY's Right to Audit. The CITY shall have the right, no more than two (2) times per year, at any reasonable time, upon reasonable notice, to examine and perform audits of EXOS's records pertaining to its operations on the Premises. The cost of said audits shall be borne by the CITY, except that EXOS shall provide to the CITY, at EXOS's expense, necessary data to enable CITY to fully comply with each and every requirement of the State of California or by the United States of America ("Regulatory Authority") for information or reports relating to this Service Agreement and to EXOS's use of the Premises. Notwithstanding anything to the contrary in this Article, EXOS must permit an audit of the records described in this Article if the CITY is required to perform such an audit at the direction of a Regulatory Authority.

ARTICLE 23

ADMINISTRATIVE PROVISIONS

23.1 Authority. EXOS represents and warrants that it has full power and authority to execute and fully perform its obligations under this Service Agreement pursuant to its governing instruments, without the need for any further action, and that the person executing this Service Agreement on behalf of EXOS is the duly designated agent of EXOS and is authorized to do so.

23.2 Captions. The captions and headings appearing in this Service Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Service Agreement.

23.3 CITY Approval. Except where stated herein to the contrary, the phrases “CITY approval,” and “CITY written approval” or such similar phrases shall mean approval of the City Manager or Deputy City Manager of National City or said person’s representative as authorized by said person in writing.

23.4 Compliance with Laws. EXOS, at its sole expense, shall procure, maintain and hold available for the CITY’s inspection, any governmental license or permit required for the proper and lawful conduct of EXOS operation of the Premises. The CITY shall pay all costs of the County of San Diego and the Department of Environmental Health to obtain any environmental health permits needed to operate a pool. EXOS shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations, orders or requirements of the State of California, the County of San Diego, the CITY, or of other lawful authorities. EXOS shall, at its expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term, regulating the use by EXOS of the Premises.

23.4.1 Cannabis Cultivation Prohibited. Notwithstanding any other provision in this Agreement, or in this Article 23, EXOS shall neither: (a) cultivate; (b) allow the cultivation of; (3) sell; nor (4) allow the sale of cannabis at the Premises.

23.5 Cumulative Remedies. In the event of a default under this Service Agreement, each party’s remedies shall be limited to those remedies set forth in this Service Agreement. Any such remedies are cumulative and not exclusive of any other remedies under this Service Agreement to which the non-defaulting party may be entitled.

23.6 Entire Agreement. This Service Agreement, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

23.7 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference:

Exhibit A: Depiction of Las Palmas Pool

23.8 Force Majeure. If either party is prevented or delayed from performing any act or discharging any obligation hereunder, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormally adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion, acts of terrorism, and fire or other casualty, legal actions attacking the validity of this Service Agreement or the CITY or EXOS operations of the Premises, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

23.9 Governing Law. This Service Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

23.10 Independent Contractor. EXOS acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Service Agreement; and that it, as well as any persons, contractors or agents it may employ, are not employees of CITY for any purpose.

23.11 Interpretation. The provisions of this Service Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Service Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.

23.13 Modification. The provisions of this Service Agreement may not be modified, except by a written amendment signed by both parties.

23.14 Partial Invalidity. If any provision of this Service Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Service Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

23.15 Successors & Assigns. This Service Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein. EXOS shall not assign this Service Agreement to any other party unless approved in writing by CITY.

23.16 Time of Essence. Time is of the essence of each and every provision of this Service Agreement.

23.17 Waiver. No provision of this Service Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed.

23.18 Alcohol. Consumption of alcohol on the Premises is prohibited.

IN WITNESS WHEREOF, the CITY and EXOS have duly executed this Service Agreement as of the day and year first above written.

{Signature page to follow.}

**CITY OF NATIONAL CITY
(CITY)**

By: _____
Ron Morrison, Mayor

APPROVED AS TO FORM:

Barry J. Schultz
City Attorney

**EXOS COMMUNITY SERVICES, LLC
(EXOS), a New Jersey limited liability
company**

*(Corporation – signatures of two corporate
officers required.)*

DocuSigned by:
By: Bill Bourque
BAE85FEDF6A0433...
(Name)

Bill Bourque

(Print)

Chief operations officer

(Title)

DocuSigned by:
By: Trevor Vigfusson
489AFE5A2BA245F...
(Name)

Trevor Vigfusson

(Print)

CFO - EXOS

(Title)

EXHIBIT A
DEPICTION OF THE PREMISES
(PRIOR TO CONSTRUCTION)

