



# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 13-043

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of September 17, 2012  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION APPROVING A PARTNERSHIP AGREEMENT WITH THE LAS CRUCES AQUATIC CLUB, INC., A NEW MEXICO LIMITED LIABILITY CORPORATION AND THE CITY OF LAS CRUCES PARKS AND RECREATION DEPARTMENT.

**PURPOSE(S) OF ACTION:**

To approve an agreement.

<b>COUNCIL DISTRICT:</b> All		
<b>Drafter/Staff Contact:</b> Claudia Chavez	<b>Department/Section:</b> Parks & Recreation	<b>Phone:</b> 541-2550
<b>City Manager Signature:</b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

Over the past year, City staff and representatives from the Las Cruces Aquatic Club, Inc., (LCAC) have been working cooperatively with the goal of enhancing programming and increasing youth aquatic activities. At this time, staff is recommending that the Parks and Recreation Department enter into a formal partnership agreement with LCAC that outlines expectations and responsibilities. As a result, the agreement will afford LCAC the opportunity to seek additional grant funding opportunities for enhanced programming. In addition, the agreement will establish guidelines and ensure a cooperative approach leveraging the number of programs provided and reduce any duplication of services.

The agreement will also allow the City of Las Cruces and LCAC, in partnership with Swim America, a national learn to swim program operated by the American Swimming Coaches Association, to expand learn-to-swim programs to all ages. This newly expanded program will teach a variety of swimming skills for all levels and age groups. The agreement will provide advanced swimmers, with an avenue to continue improving their skills and act as a feeder program with progression into competitive swimming.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", City of Las Cruces and Las Cruces Aquatic Club, Inc.

**SOURCE OF FUNDING:**

Is this action already budgeted?  N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>1000</u> in the amount of <u>\$1200</u> for <u>FY 13.</u>
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
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**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the resolution and agreement.
2. Vote "No"; this will not approve the resolution and agreement.
3. Vote to "Amend"; and provide changes required.
4. Vote to "Table"; and provide staff with further direction.

(Continue on additional sheets as required)

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 13-043**A RESOLUTION APPROVING A PARTNERSHIP AGREEMENT WITH THE LAS CRUCES AQUATIC CLUB, INC., A NEW MEXICO LIMITED LIABILITY CORPORATION AND THE CITY OF LAS CRUCES PARKS AND RECREATION DEPARTMENT.**

The City Council is informed that:

**WHEREAS**, the parties set forth in writing an agreement and understanding as to their respective responsibilities in establishing this cooperative agreement for the purpose of developing youth swim programs; and

**WHEREAS**, these opportunities will provide athletic recreational opportunities and scheduled use of outdoor/indoor swimming pools; and

**WHEREAS**, through this cooperative agreement skilled management of this unique program and City facility will be gained at no cost to the City and which will provide swim lessons to the community in conjunction with the City of Las Cruces Parks & Recreation Department Aquatic's Section.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

(I)

**THAT** the City Council approves the agreement between the Las Cruces Aquatic Club, LLC and the City of Las Cruces subject to the terms and conditions set forth in Exhibit "A", attached hereto, and made a part of this resolution.

(II)

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

*A. D. (lib) Connolly*  
City Attorney

**CITY OF LAS CRUCES AND LAS CRUCES AQUATIC CLUB  
PARTNERSHIP AGREEMENT**

**THIS** Partnership Agreement entered into between the Las Cruces Aquatic Club, LLC, a New Mexico limited liability company and a non-profit organization, hereinafter referred to as "LCAC" and the City of Las Cruces, a New Mexico municipal corporation, hereinafter referred to as "City".

**WHEREAS**, the parties desire to set forth in writing this Partnership Agreement their understanding as to their responsibilities in establishing a cooperative agreement for the purpose of developing youth swim programs, which will provide athletic recreational opportunities and scheduled use of outdoor/indoor swimming pools. The purpose of the partnership is to manage, operate and provide swim lessons to the community in conjunction with the City of Las Cruces Parks & Recreation Department Aquatic's Section programming.

**IT IS THEREFORE AGREED AS FOLLOWS:**

1. The LCAC will:

- A. Provide proof of Section 501c3 non-profit status with the Internal Revenue Service and proof of 501c3 (or equivalent) non-profit corporation status with the State of New Mexico Public Regulation Commission on an annual basis, showing that LCAC is in good standing. If for any reason its non-profit corporate status expires during the term of or prior to the conclusion of this Agreement, LCAC will provide proof of reinstatement or will be billed for usage of space and programming.
- B. Provide program administration and provide certified swim coaches

to supervise participants during programming.

- C. Obtain and maintain a general liability insurance policy covering its operations under this Agreement, with limits of liability no less than the limits of liability set forth in the New Mexico Tort Claims Act (NMSA Sections 41-4-1 et seq.) with the City named as an additional insured with the same coverage as LCAC. Those limits of liability are presently \$1,000,000.
- D. On an annual basis submit proof of the above referenced liability insurance for program operations, and provide a detailed financial statement of all funds received and expended for all league operations to include local, state, regional or national swim meets as required.
- E. Pay the City for use of Aquatic Facilities as per the listed rate:  
\$10.00 per participant that is registered for swim lessons July 1, 2012 through June 30, 2013.
- F. Pay for reserved pool time, whether scheduled time utilized or not, that is not within the regular scheduled time utilized for the purposes of swim lessons and swim team time.  
  
Responsible for notifying City staff at the facility at least 48 hours in advance when practice or program times have been cancelled.
- G. Insure all team members and team usage of the facility will be under the direct supervision and control of adult LCAC certified pool staff.

- H. Exercise reasonable care in the use of the facilities, and follow all pool rules, to include direction from facility staff – LCAC participants are not excluded from City facility rules and policies.
- I. LCAC covenants to save, defend, hold harmless, and indemnify the City and all of its officials, departments, agencies, agents, and employees from and against all claims for property damage or personal injury, loss, damage, injury, fines, penalties, and costs including court costs and attorney's fees, charges, liability, and exposure however caused - resulting from, or in any way connected with LCAC negligent performance or nonperformance of the terms of the Agreement. The liability of LCAC shall be subject to the immunities and limitations of the New Mexico Tort Claims Act §41-4-18 (NM 1966 Supp.) and of any amendments thereto. This is not intended to, nor shall it create any rights to any parties not a part of this agreement.
- J. Ensure that all of its programs, services and activities are accessible to and useable by persons with disabilities in accordance with the Americans with Disabilities Act, including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing and other impairments, integrated seating and the provision of reasonable modifications and/or accommodations and shall adhere to the City of Las Cruces Communication Policy. If portable toilets are going

to be provided, ADA accessible units must also be provided at each bank of standard units.

- K. Provide program registration, contact name and number to Parks & Recreation Department Aquatics Manager at least two weeks prior to start of season.
- L. Provide league schedule to Parks & Recreation Department Aquatics Manager at least two weeks prior to start of season.
- M. Insure that all LCAC team members are picked up after all practices, meets, or meetings, and are supervised by LCAC coaching staff or adult supervision at all times.
- N. Exit the pool area immediately at the end of allotted program times.
- O. Not allow LCAC personnel in the City's office area.
- P. LCAC team and personnel must start and end its programs on time. If not, a fee will be charged in accordance to the Parks & Recreation Fees and Charges/Facility Use Policy.
- Q. Take all payments for swim lessons to the Parks & Recreation Administration Office located at 1501 E. Hadley, Building B – Moñdy Castaneda Center. Payment is due the first of every month. Failure to make payments in a timely manner will forfeit use of lane space.
- R. Provide American Red Cross certified lifeguards to sit stand while the swim team is in the water. Must provide copies of current lifeguard certifications to the Parks & Recreation Administration

Office – Aquatics Section. Must have current lifeguard certifications on site while utilizing the facility.

- S. Provide own safety equipment to include but not limited to, rescue tubers and CPR-mask. The City of Las Cruces will allow the use the AED and First Aid Kit.
- T. Provide own swim equipment to include but not limited to, kickboards, pull buoys, noodles, life jackets, and fitness equipment.

2. The City will:

- A. Allow LCAC free use of swim lanes at City of Las Cruces Aquatic Facilities from July 1, 2012 through June 30, 2013. Times to be negotiated between LCAC and the City Parks & Recreation staff based on the availability of facilities and Parks & Recreation programming needs.
- B. Not be responsible for loss or theft of any team or personal items left at the pool.
- C. Provide a City staff person to open/close the facility for scheduled use. Staff will arrive 15 minutes prior to scheduled start time.

3. **IT IS FURTHER PARTNERSHIP AGREED** by and between the parties that:

- A. This Agreement shall extend from July 1, 2012 through June 30, 2013 and may be renewed in writing on the same conditions or renegotiated. At the end of the contract period, the existing contract will remain in effect for up to one year or as soon as

negotiations are complete with a new contract. In the event the facility is closed or replaced during the term of this agreement, the City and LCAC may agree to terminate this agreement or negotiate a new agreement.

- B. This Agreement may be terminated for cause by the terms of this agreement after ninety (90) days advance written notice to the defaulting party, or without cause by mutual agreement of both parties at any time.
- C. This Agreement is not intended to create third party beneficiary status to any individual or entity not a party to this Agreement.

**DONE AND APPROVED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**LAS CRUCES AQUATIC CLUB**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CITY OF LAS CRUCES, NEW MEXICO**

BY: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney