

CITY OF KNOXVILLE

REQUEST FOR PROPOSALS

Lease and Use of the Carl Cowan Pool

**Proposals to be Received by 11:00:00 a.m., Eastern Time
October 20, 2017**

Submit Proposals to:
City of Knoxville
Office of Purchasing Agent
City/County Building
Room 667-674
400 Main Street
Knoxville, Tennessee 37902

**City of Knoxville
Request for Proposals**

Lease and Use of the Carl Cowan Pool

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City of Knoxville
Request for Proposals

Lease and Use of the Carl Cowan Pool

I. Statement of Intent

The City of Knoxville is seeking proposals from organizations that wish to lease and make use of a City-owned building located at 3124 Wilson Avenue; Knoxville, Tennessee. This indoor pool was previously a YMCA pool before becoming a City facility in 2005. The successful proposer will be responsible for cleaning, maintaining, and programming the pool and its environs, which are located in a building staffed and programmed by City staff for recreational services and programs. The pool is in good condition and is situated in a key location within the community.

The term of the lease will be for one year with two optional one-year renewals.

II. RFP Time Line

Availability of RFPSeptember 20, 2017

On-Site Pre-Proposal Conference October 9, 2017**

****11:30 a.m.; 3124 Wilson Avenue; Knoxville, Tennessee**

Deadline for questions to be submitted to the
Assistant Purchasing Agent October 13, 2017

Proposals Due Date October 20, 2017

This timetable is for the information of submitting entities. These dates are subject to change. **However, in no event shall the deadline for submission of the proposals be changed except by written modification from the City of Knoxville Purchasing Division.**

IMPORTANT NOTICE: An on-site pre-proposal conference shall be held at the E.V. Davidson Community Center located at 3124 Wilson Avenue, Knoxville, Tennessee, at 11:30 a.m. on October 9, 2017.

III. Background

The City of Knoxville owns a single story, approximately 2900-square foot brick building located at 3124 Wilson Avenue in the E.V. Davidson Community Center. The building currently is used to provide free after-school and summer programs for children, as well as youth basketball team practices in the winter and other programs for the community. The City's Department of Parks and Recreation currently staffs the recreation center, while the pool has been staffed and operated by Emerald Youth Foundation the past three (3) years.

The building is in good condition. The pool was closed in 2012, then reopened in August of

2014. Located about one mile from Interstate 40, the building and indoor pool are situated in a key location with the community. The area to be leased consists of the pool and pool area, restrooms, and associated locker and mechanical rooms. Utilities average approximately \$850 per month. The area that the selected organization will lease is approximately 90 feet x 60 feet. There is parking outside the pool's door and a new playground located adjacent to the parking lot (installed in 2015).

The City will staff and program the community center, excluding the pool area. The successful proposer will staff, program, maintain, and operate the pool area.

The City is not prepared to invest capital resources into the building in order to render the building functional for a new tenant's programs.

IV. General Conditions

4.1 The following data is intended to form the basis for submission of proposals for the lease and use of the Carl Cowan Pool at the Dr. E.V. Davidson Community Center.

4.2 This material contains general conditions for the procurement process, the scope of service requested, contract requirements, instructions for submissions of proposals, and submission forms that must be included in the proposal. The RFP should be read in its entirety before preparing the proposal.

4.3 All materials submitted pursuant to this RFP shall become the property of the City of Knoxville.

4.4 To the extent permitted by law, all documents pertaining to this Request for Proposals shall be kept confidential until the proposal evaluation is complete and a recommendation submitted to City Council for review. No information about any submission of proposals shall be released until the process is complete, except to the members of the Evaluation Committee and other appropriate City staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

4.5 Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made **in writing and be in the hands of Penny Owens, Assistant Purchasing Agent, by the close of the business day on October 13, 2017.** Questions can be submitted by letter, fax (865-215-2277), or emailed to powens@knoxvilletn.gov. The City of Knoxville is not responsible for oral interpretations given by any City employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this Request for Proposals, the Purchasing Division will post them to the City's website at www.knoxvilletn.gov/purchasing. Submitting organizations are strongly encouraged to view this website often to see if addenda are posted. Failure of any proposer to receive such addendum or interpretation shall not relieve such Proposer from any obligation under his proposal as submitted. All addenda so issued shall become part of the Contract

Documents.

4.6 The City of Knoxville reserves the right to (a) accept or reject any and/or all submissions of proposals; (b) to waive irregularities, informalities, and technicalities; and (c) to accept any alternative submission of proposals presented which, in its opinion, would best serve the interests of the City. The City shall be the sole judge of the proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The City also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the City deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

4.7 Included in the Submission Forms is an affidavit that the undersigned has not entered into any collusion with any person with respect to this proposal. The proposer is required to submit this affidavit with their proposal submission.

4.8 Also included in the Submission Forms section is the Diversity Business Program contracting packet. Submissions must indicate on the enclosed form whether or not the proposer intends to use sublessees and/or suppliers from one of the defined groups. Proposers are advised that the City tracks use of such use, but it does not influence or affect evaluation or award.

4.9 Subsequent to the Evaluation Committee's review and the Mayor's recommendation of a firm(s), Knoxville City Council approval may be required before the final contract may be executed.

4.10 All expenses for making a submission of proposal shall be borne by the submitting entity.

4.11 Any submission of proposals may be withdrawn up until the date and time for opening of the submissions. **Any submission not so withdrawn shall, upon opening, constitute an irrevocable offer for a period of 120 days to the City of Knoxville for the services set forth in the Request for Proposals until one or more of the submissions have been duly accepted by the City.**

4.12 Prior to submitting their proposals, proposers are to be registered with the Purchasing Division by setting up a Vendor Self-Service Account. Instructions for registering on-line are available at www.knoxvilletn.gov/purchasing. **Proposals from un-registered proposers may be rejected.**

4.13 **NO CONTACT POLICY:** After the posting of this solicitation to the Purchasing Division's website, any contact initiated by any proposer with any City of Knoxville representative concerning this proposal is strictly prohibited, unless such contact is made with the Purchasing Division representative listed herein or with said representative's authorization. Any unauthorized contact may cause the disqualification of the proposer from this procurement transaction.

4.14 **INCLEMENT WEATHER:** During periods of inclement weather, the Purchasing Division will enact the following procedures with regard to solicitations and weather delays:

- If City offices are closed due to inclement weather on the date that bids/proposals/qualifications/letters of interest are due into the Purchasing Office, all solicitations due that same day will be moved to the next operational business day.
- The City of Knoxville shall not be liable for any commercial carrier's decision regarding deliveries during inclement weather.

V. Scope of Service

Note to Proposers:

Proposers are advised to take special notice of the sentences shown in **boldface** in each of the sections below; these sentences refer to specific information which must be included in the submitted proposal.

The City of Knoxville is seeking proposals from organizations that wish to lease and make use of the pool and pool area inside the City-owned building located at 3124 Wilson Avenue; Knoxville, Tennessee. The City will entertain proposals from organizations with a track record of community service and the financial capacity to maintain the structure over a multi-year term. The term of the lease will be for one year with two optional one-year renewals.

5.1 Programming

All programs and activities offered in the City-owned facility must be open to the public to serve a public purpose. **Proposals must provide detailed list of the activities and programs to be provided by the lessee.** The following information must be provided for each program/activity on the list:

- Target market(s)
- Any costs to the public associated with the program/activity
- Who will be conducting/leading the program/activity

5.2 Hours of Operation

Proposals must include hours of operation and must note if there will be seasonal changes to the hours of operation.

5.3 Rental Payments

As consideration for the use and occupancy of, and as rental for the leased premises, the Lessee may remit rental payments to the City. **Proposals may include a proposed rental schedule for the first two years of the agreement, clearly stating the amount and frequency of payments.**

5.4 No Assignment or Sublease Without Written Consent

Lessee will not assign, transfer, or encumber any interest in the lease agreement, nor assign or sublet Lessee's leasehold interest in the leased premises, without obtaining the prior written consent of the City. The form of any sublease agreement shall contain contractual obligations substantially similar to Lessee's obligations stated herein and such additional terms and conditions as Lessee deems appropriate and shall be subject to written approval by the City.

5.5 Utilities

Lessee will be responsible for and will reimburse the City 50 percent of any and all utility services for the leased premises, including but not limited to any electricity charges assessed on the leased premises during the term of the lease. The City will invoice the Lessee for its portion of these charges.

5.6 Taxes

Lessee will pay, or cause to be paid, before they become delinquent, any applicable ad valorem, real property, business taxes and related assessments on the leased premises of every kind or character which accrue against the leased premises and any personal property placed on the leased premises by the Lessor or any permitted subtenants or assigns. Non-profit Lessee may be liable for property tax, as determined by the property assessor.

5.7 Parking

The building sits on the corner of two residential streets with one fully paved parking lot on either side of the building, as well as some parking along the side street. With the building will come rights to parking for approximately 30 vehicles. **Proposals should address the organization's parking needs and how the organization will minimize parking impacts on the community.**

5.8 Capital Improvements

The building appears to be structurally sound and the roof is in good condition. Lessee will not be permitted to alter the leased premises without the prior written approval of the Director of Public Service. Additionally, should consent be granted to construct improvements, the Lessee shall acquire no ownership, title, property rights, or property interest in or to the leased premises other than the leasehold interest conveyed by the lease agreement between the Lessee and the City.

5.9 Cleaning and Maintenance

Day-to-day cleaning, repairs, and maintenance of the pool area, pool restrooms, and associated locker rooms will be the sole responsibility of the successful proposer; Lessee shall assist with cleanup of the parking lot and playground if used as part of Lessee's programming. Lessee shall be contractually bound to keeping the leased premises in a clean, sanitary, and safe condition in accordance with all applicable federal, state, and local regulations at its sole cost and expense. Lessee shall not allow any nuisance(s) to exist with respect to the leased premises.

Ongoing pool maintenance will be defined in a contract as mutually agreed upon by the City and the most responsive entity. Lessee shall maintain a maintenance log; the City reserves the right to inspect the maintenance log. **Proposers must indicate in their proposals exactly what responsibilities they expect to assume, and what responsibilities they expect the City to assume; these responsibilities will be negotiated prior to the award of contract.**

5.10 No Liability for Property Maintained on Leased Premises

All property owned by the Lessee, its agents, employees, invitees, or tenants, on or about the leased premises will be kept at the leased premises at the sole risk and hazard of such party. The

City will not be liable or responsible for any loss of or damage to the Lessee, or anyone claiming under or through the Lessee, or otherwise.

5.11 Other Costs

In addition to its obligations stated in the lease agreement, the Lessee shall pay, or cause to be paid, all other costs necessary for its use and operations of the leased premises.

5.12 City's Right of Entry

The City or the City's representatives shall have the right at any time to enter upon any part of the leased premises for the purposes of (1) determining whether the conditions and covenants contained in the lease are being kept and performed; or, (2) at its sole option, and without a duty to do so, performing the Lessee's conditions and covenants in the event the Lessee fails to do so and such failure continues for thirty (30) days after written notice from the City to the Lessee, or, in the event of an emergency, immediately upon the occurrence thereof, and charging the cost thereof back to the Lessee, which the Lessee shall be contractually bound to immediately pay.

The City's right of entry will not require the City to take any action to enter the leased premises during the term of the lease.

5.13 Hazardous Materials and Environmental Covenants

Lessee shall have no liability for hazardous materials which are on, in, or under the leased premises prior to the date of the Lessee's occupancy thereof.

Neither the Lessee nor its permitted subtenants or assigns shall use or store any Hazardous Materials on the leased premises other than reasonable amounts of supplies for cleaning and operation of the improvements on the leased premises which shall be used and stored in accordance with applicable laws and regulations. In the event that hazardous materials are discovered on, in, or under the leased premises, which are present as a result of the Lessee's use or occupancy of the leased premises or as a result of the use or occupancy, or any acts or omissions, of the Lessee's employees, agents, lessees, invitees, licensees, permitted subtenants or assigns, or any person who comes upon the leased premises with the Lessee's permission, Lessee, at its sole expense, shall immediately institute and complete, on an emergency basis, all proper, requisite, and thorough procedures for the removal of hazardous materials in accordance with all applicable laws, rules, ordinances, and regulations. Lessee shall indemnify and hold the City and its successors and assigns harmless from and against any costs, attorney's fees, expenses, fines, or claims arising out of the presence or existence of hazardous materials on, in, or under the leased premises or as a result of any acts or omission of the which are present as a result of the Lessee's use or occupancy of the leased premises or as a result of the use or occupancy, or any acts or omissions, of the Lessee's employees, agents, lessees, invitees, licensees, permitted subtenants or assigns, or any person who comes upon the leased premises with the Lessee's permission.

5.14 City Responsibilities

The City will provide a dumpster for garbage removal and will provide pest extermination services, such as routine preventative spraying and pest control.

5.15 Basic Lessee Requirements

Lessee shall, at minimum:

- Provide adult supervision at all times when pool is being used
- Provide the number of lifeguards required by the State of Tennessee Department of Health when the pool is in use
- Provide certification documents for all individuals prior to his/her working as a lifeguard
- Provide certification documents for all individuals prior to his/her working as a Water Safety Instructor (WSI)
- Provide certification documentation for all individuals prior to his/her working as a Certified Pool Operator (CPO) or Aquatics Facility Operator (AFO). This person(s) shall be the only individual(s) who oversee the chemicals and maintenance of the pool.
- Enforce the rules and regulations of the Dr. E.V. Davidson Community Center, City Ordinances, and state laws
- Provide certification documentation for a Certified Pool Operator (CPO) or AFO
- Meet all OSHA standards for proper chemical storage in the facility at all times
- Submit a monthly schedule of all planned activities (including but not limited to swim lessons, open swim for the community, party rentals, etc.)
- Provide the City with the alarm code for the pool
- Registered as a licensed American Red Cross Learn to Swim provider site
- Provide American Red Cross course records with number of students for each session
- Pay for an alarm system and telephone line
- Bear the cost of pool chemicals
- Perform the day-to-day monitoring of chemicals and heating of the water
- Meet with City staff quarterly
- Clean the changing rooms and pool area
- Pay for needed repairs which exceed \$2,000 in a timely fashion with the City's maximum liability for repairs limited to \$2,000 for the life of the contract, including any contract extensions
- Ensure the pool is locked and secured when not in use
- Reimburse the City monthly for 50% of the previous months's utility bill for the pool and pool environs
- Purchase any and all safety and cleaning equipment necessary for the upkeep and operation of the pool

VI. Contract Requirements

Submitting entities, if selected, must be willing to sign a contract with the City which will include certain provisions, among which are the following:

6.1 Contract Documents. The contract shall consist of (1) the RFP; (2) the proposal submitted by the lessee to this RFP; and (3) the contract. In the event of a discrepancy between the contract, the RFP and the submitted proposal, the terms that provide the greater benefit to the City and/or impose the greater obligation to the lessee will prevail.

6.2 Administration. The contract will be administered by the City of Knoxville Department

of Parks and Recreation.

6.3 Invoices. Invoices for services will be submitted to the City in accordance with the contract terms.

6.4 Independent Lessee. The relationship of lessee to the City will be that of independent lessee. The lessee will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and sublessees done during the performance of the contract. All services performed by the lessee shall be provided in an independent lessee capacity and not in the capacity of officers, agents, or employees of the City.

6.5 Assignment. The lessee shall not assign or transfer any interest in this contract without prior written consent of the City of Knoxville.

6.6 Indemnification and Hold Harmless. The successful proposer will be required to sign a contract with the City which contains the following indemnification clause. This indemnification clause will not be altered in any way. Failure to agree with this indemnification clause in the contract may result in the City moving to the next responsible responsive proposer.

Lessee shall defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of Lessee in performance of this Agreement or from Lessee's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees.

Lessee shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and Lessee shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. Lessee will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Lessee may request. Lessee will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Lessee shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City alleging liability referenced above.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

6.7 Termination. The City may terminate this Agreement at any time, with or without cause, by written notice of termination to the Lessee.

If the City terminates this Agreement, and such termination is not a result of a default by the Lessee, the Lessee shall be entitled to receive as its sole and exclusive remedy the following amounts from the City, and the City shall have no further or other obligations to the Lessee: the amount due to the Lessee for work executed through the date of termination, not including any future fees, profits, or other compensation or payments which the Lessee would have been entitled to receive if this Agreement had not been terminated.

The City may, by written notice of default to the Lessee, terminate the whole or any part of this Agreement if the Lessee fails to perform any provisions of this Agreement and does not cure such failure within a period of ten (10) days (or such longer period as the Purchasing Agent may authorize in writing) after receipt of said notice from the Purchasing Agent specifying such failure. If this Agreement is terminated in whole or in part for default, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those terminated.

6.8 Insurance. When applicable and prior to the commencement of the contract, Lessee must, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. Lessee shall furnish the City of Knoxville with properly executed certificates of insurance which shall clearly evidence all insurance required by the City. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better. Such insurance shall be at a minimum the following:

- A. **Commercial General Liability Insurance**; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than two million dollars each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

- (a.) Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.
- (b.) For any claims related to this project, Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Lessee's insurance

and shall not contribute with it.

(c.) At the sole discretion of the City, dedicated limits of liability for this specific project may be required.

- B. **Automobile Liability Insurance;** including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Lessee.
- C. **Workers' Compensation Insurance.** Lessee shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Lessee shall require each of its sublessees to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Lessee's workers' compensation insurance coverage.
- D. **Other Insurance Requirements.** Lessee shall:
- Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville; P.O. Box 1631; Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.
 - Upon the City's request, provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsements(s), proof of such policy wording or endorsement(s) will be required.
 - Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
 - Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.

- If Lessee cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Lessee may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
- Require all sublessees to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless sublessee's employees are covered by Lessee's insurance) in the same manner as specified for Lessee. Lessee shall furnish sublessees' certificates of insurance to the City without expense immediately upon request.
- Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions may require proof of financial ability as determined by the City.
- Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Lessee for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
- Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis, unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the City. Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.

6.9 Ethical Standards. Attention of all firms is directed to the following provisions contained in the Code of the City of Knoxville: Chapter 24, Article II, Section 24-33 entitled "Debts owed by persons receiving payments other than Salary;" Chapter 2, Article VIII, Division 11. the Lessee hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

A. Section 2-1048. Conflict of Interest.

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefore, where

to the employee's knowledge there is a financial interest possessed by:

- (1) the employee or the employee's immediate family;
- (2) A business other than a public agency in which the employee or member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
- (3) Any person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

B. Section 2-1049. Receipt of Benefits from City Contracts by Council Members, Employees and Officers of the City.

It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

C. Section 2-1050. Gratuities and Kickbacks Prohibited.

It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- (1) An official action taken, or to be taken, or which could be taken;
- (2) A legal duty performed, or to be performed, or which could be performed; or
- (3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity, or benefit to be made by or on behalf of a sublessee or any person associated therewith as an inducement for the award of a subcontract or order.

D. Section 2-1051. Covenant Relating to Contingent Fees.

(a) **Representation of Lessee.** Every person, before being awarded a contract in excess of ten thousand dollars (\$10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) **Intentional Violation Unlawful.** The intentional violation of the representation specified in subsection (a) of this section is unlawful.

E. Section 2-1052. Restrictions on Employment of Present and Former City Employees. Contemporaneous employment prohibited. It shall be unlawful for any city employee to

become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

- (1) Oral or written warnings or reprimands;
- (2) Cancellation of transactions; and
- (3) Suspension or debarment from being a Lessee or sublessee under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Lessee or sublessee under a city contract.

6.10 Firms must comply with the President's Executive Order No. 11246 and 11375 which prohibit discrimination in employment regarding race, color, religion, sex or national origin. Firms must also comply with Title VI of the Civil Rights Act of 1964, Copeland Anti-Kick Back Act, the Contract Work Hours and Safety Standards Act, Section 402 of the Vietnam Veterans Adjustment Act of 1974, Section 503 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, all of which are herein incorporated by reference.

6.11 Firms shall give consideration to the inclusion of minority firms or individuals in this project, and shall advise the city in this proposal of their efforts to do so.

6.12 Firms shall give consideration to the use of environmentally sustainable best practices, and shall advise the city in this submittal of qualifications of their efforts to do so.

6.13 Federal, State, and Local Requirements. Each submitting entity is responsible for full compliance with all laws, rules and regulations which may be applicable.

6.14 Licenses. Before a contract is signed by the City, the submitting entity, if selected, **must** provide the City Purchasing Division with a copy of its valid business license **or** with an affidavit explaining why it is exempt from the business licensure requirements of the city or county in which it is headquartered. If a contract is signed, the lessee's business license shall be kept current throughout the duration of the contract, and the lessee shall inform the City of changes in its business name or location. The lessee must be a licensed professional as required by the state of Tennessee, see T.C.A. Sections 62-2-101 et. seq., for any services in this contract requiring such licensure.

6.15 Funding. The City's performance and obligation to pay under this contract is subject to funding contingent upon an annual appropriation.

6.16 Governing Law and Venue. This Agreement shall be governed by and construed in

accordance with the substantive laws of the State of Tennessee and its conflict of laws provisions. Venue for any action arising between the City and the Lessee from the Agreement shall lie in Knox County, Tennessee.

6.17 Subcontracts to the Agreement. Lessee shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.

6.18 Amendments. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of the Agreement.

6.19 Captions. The captions appearing in the Agreement are for convenience only and are not a part of the Agreement; they do not in any way limit or amplify the provisions of the Agreement.

6.20 Severability. If any provision of the Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in the Agreement. Failure to enforce any provision of the Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

6.21 No Benefit for Third Parties. The services to be performed by the Lessee pursuant to the Agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to the Agreement. No such person or entity shall be entitled to rely on the Lessee's performance of its services hereunder, and no right to assert a claim against the City or the Lessee, its officers, employees, agents, or lessees shall accrue to the Lessee or to any sublessees, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety, or any other third party as a result of this Agreement or the performance or non-performance of the Lessee's services hereunder.

6.22 Non-Reliance of Parties. Parties explicitly agree that they have not relied upon any earlier or outside representations other than what has been included in the Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.

6.23 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots,

landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.24 EEO/AA. The City of Knoxville is an EE/AA/Title VI/Section 504/ADA/ADEA Employer.

6.25 By submitting a proposal, the submitting entity agrees to all terms and conditions established in this RFP, including its contract requirements.

VII. Instructions to Submitting Entities

All submissions of proposals shall comply with the following instructions. These instructions ensure that (1) submissions contain the information and documents required by the City RFP and (2) the submissions have a degree of uniformity to facilitate evaluation.

7.1 General

Submission forms and RFP documentation may be obtained on or after September 20, 2017, at no charge from:

City of Knoxville Purchasing Division
City/County Building
400 Main Street, Room 667
Knoxville, Tennessee 37902

between 8:30 a.m. and 4:30 p.m. (Eastern Time), Monday through Friday or by calling 865/215-2070. Forms and RFP information are also available on the City web site at www.knoxvilletn.gov/purchasing where it can be read or printed using Adobe Acrobat Reader software.

7.2 Submission Information

Proposals shall include five (5) hard copies (one original and four duplicates—**mark the original as such**) and one electronic copy of the proposal (CD only—**mark the disk with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract.

IMPORTANT NOTE: A minimum of one of the submitted proposals must bear an original signature, signed in ink (duplicated signatures substituted for original ink signatures may result in rejection of the proposals). This document is the official, original submission; the required copies may have copied signatures. The signature must be entered above the typed or printed name and title of the signer. All proposals must be signed by an officer of the company authorized to bind the firm to a contract.

Proposals will be received until 11:00:00 a.m. (Eastern Time) on October 20, 2017. Each proposal must be submitted in a sealed envelope addressed to:

City of Knoxville Purchasing Division
City/County Building
400 Main Street, Room 667
Knoxville, TN 37902

IMPORTANT NOTE: Each mailing envelope or carton containing a proposal or multiple copies of the proposal must be sealed and plainly marked on the outside "Lease and Use of the Carl Cowan Pool." Proposers are reminded that the Purchasing Division receives many bids and proposals for any number of solicitations; **unlabeled submissions are extremely difficult to match to their appropriate solicitations and therefore may be rejected.**

Any proposals received after the time and date on the cover sheet will not be considered. It shall be the sole responsibility of the submitting entity to have the proposal delivered to the City of Knoxville Purchasing Division on or before that date.

Late proposals will not be considered. Proposals that arrive late due to the fault of United States Postal Service, United Parcel Service, DHL, FEDEX, any delivery/courier service, or any other carrier of any sort are still considered late and shall not be accepted by the City. Such proposals shall remain unopened and will be returned to the submitting entity upon request.

7.3 Format

The City is committed to reducing waste. Submissions of qualifications must be typed on 8.5 x 11 inch wide white paper, printed on both sides. DO NOT BIND the document; instead, staple or binder clip the submission together and place in a sealed envelope (see Paragraph 7.2). Pages must be consecutively numbered. A table of contents must be included in the proposal immediately after the title page, and each of the following numbered sections must be tabbed.

Proposals shall be structured as follows. Numbered items listed below should have a numbered tab page:

1. Title Page
2. Table of Contents
3. Submission Forms:
 - A. Form S-1
 - B. Non-Collusion Affidavit
 - C. Child Crime Affidavit
 - D. Drug Free Affidavit
 - E. Diversity Business Enterprise Program form
4. Body of Proposal: Refer to Paragraph 7.4 below and include information addressing items outlined in Section V, "Scope of Service" and Section VIII, "Evaluation Criteria"

7.4 Submission Requirements

The body of the proposal must include, at minimum, the following:

- Provide detailed descriptions of how lessee plans to use the pool (programs, services, party rentals, etc.), projected fees for programs/services provided, etc.

- Address the organization's parking needs and how the organization will minimize parking impacts on the community
- Proposers shall include their most recent audited balance sheet and profit-and-loss statement, as proposals shall be evaluated on the basis of their financial strength and their ability to support their long term obligations under this agreement, understanding the fact that the services of this contract could extend for multiple years.
- Proposers must indicate in their proposals exactly what responsibilities they expect to assume, and what responsibilities they expect the City to assume; these responsibilities will be negotiated prior to the award of contract.

7.5 Evaluation of Proposals

All qualified submissions received by the deadline will be analyzed by the Evaluation Committee according to the criteria outlined in these specifications. Failure to comply with the provisions of the RFP may cause any proposal to be ineligible for evaluation. Each submittal of proposals will be initially analyzed and judged according to the evaluation criteria below. The maximum score is 100 points.

The City reserves full discretion to determine the capability of proposing entities. Proposers, if asked, will provide, in a timely manner, any and all information that the City deems necessary to make such a decision. In addition to materials provided in the written responses to this RFP, the Committee may request additional material, information, references, a site visit, or a live test demonstration from the submitting entity or others.

The Evaluation Committee may or may not decide to interview any or all proposing entities at a time and date determined by the City in order to address questions and more fully ascertain how the solution to this project satisfies the evaluation criteria. Firms and/or teams responding to this Request for Proposals shall be available for interviews with the Evaluation Committee. Discussions may be conducted with responsible submitting entities for purposes of clarification to assure full understanding of and conformance to the RFP requirements. Selection shall be based on the firms' qualifications applicable to the scope and nature of the services to be performed per this request for proposals. Determination of firms' qualifications shall be based on their written responses to this Request for Proposals and information presented to the Evaluation Committee during oral interviews, if any.

In addition to materials provided in the written responses to this Request for Proposals, the Committee may request additional material, information, or references from the submitting entity or others.

Provided it is in the best interest of the City of Knoxville, the firm or team determined to be the most responsive to the City of Knoxville, taking into consideration the evaluation factors set forth in this Request for Proposals, will be selected to begin contract negotiations. The firm or team selected will be notified at the earliest practical date and invited to submit more comprehensive information if necessary. If no satisfactory agreement can be reached with the "most responsive firm," the City may elect to negotiate with the next best and most responsive firm or team.

VIII. Evaluation Criteria

An evaluation team, composed of representatives of the City, will evaluate proposals on a variety of quantitative and qualitative criteria. Upon receipt of proposals, the City will review to determine whether the proposal is acceptable or non-acceptable based on the criteria outlined below.

The criteria, and their associated weights, upon which the evaluation of the proposals will be based includes, but is not limited to, the following:

- **Community Impact and Support - 40 points.** Proposers will be evaluated on how their plan utilizes the building to deliver social and/or community-oriented services to the surrounding community. Note that proposal offering greater variety of programming to a wider constituency will receive higher scores in this category.
- **Experience and Administration - 30 points.** Proposers will be evaluated on the extent to which staff are qualified to administer and provide quality programming that serves the greater public good.
- **Proposed Lease Payments - 15 points.** Proposers will be evaluated based on the costs over the term of the contract to the City and the ability and willingness of the proposer to invest in the building and grounds.
- **Financial Stability - 15 points.**

Submission Forms

CITY OF KNOXVILLE REQUEST FOR PROPOSALS

Lease and Use of the Carl Cowan Pool

Submission Form S-1

Proposals To Be Received by 11:00:00 a.m., Eastern Time; October 20, 2017; in Room 667-674, City/County Building; Knoxville, Tennessee.

IMPORTANT: Proposals shall include five (5) hard copies (one original and four duplicates—**mark the original as such**) and one electronic copy of the proposal (CD only—**mark the disk with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract.

Please complete the following:

Legal Name of Proposer: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Contact Person: _____

Email Address: _____

Signature: _____

Name and Title of Signer _____

Note: Failure to use these response sheets may disqualify your submission.

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

- (1) He/She is the _____ of _____, the firm that has submitted the attached Proposal;
- (2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal is genuine and is not a collusive or sham Proposal;
- (4) Neither the said firm nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other vendor, firm or person to submit collusive or sham proposal in connection with the contract or agreement for which the attached Proposal has been submitted or to refrain from making a proposal in connection with such contract or agreement, or collusion or communication or conference with any other firm, or, to fix any overhead, profit, or cost element of the proposal price or the proposal price of any other firm, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Knoxville or any person interested in the proposed contract or agreement; and
- (5) The proposal of service outlined in the Proposal is fair and proper and is not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the firm or any of its agents, representatives, owners, employees, or parties including this affiant.

(Signed): _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

NOTARY PUBLIC

My Commission expires _____

Child Crime Affidavit

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

(1) He/She is the owner, partner, officer, representative, or agent of

_____,
_____, the Bidder that has submitted the attached Bid;

(2) The Bidder _____ will abide by the following if
chosen as the successful bidder:

The Bidder _____ agrees not to allow any employee
or volunteer who is awaiting trial or has been convicted of a felony crime involving the
sexual exploitation of children, sexual offenses involving children or violent crimes to
participate in this Agreement at sites where children may be present. Failure by the Bidder
to comply with this requirement is grounds for immediate termination of the Agreement.

Signed: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 2_____.

My commission expires: _____

DRUG-FREE WORKPLACE AFFIDAVIT

State of _____

County of _____

_____, being duly sworn, deposes, and says that:

- (1) He/She is a principal officer of _____, the firm that has submitted the attached Proposal, his or her title being _____ of the firm; and
- (2) He/She has personal knowledge of the policies of the above-named firm with respect to the maintenance of a drug-free workplace; and
- (3) He/She certifies that all provisions and requirements of the Tennessee Drug-Free Workplace Program, as established by Tenn. Code Ann. §§ 50-9-100 et. seq., have been met and implemented.

(Signed)

(Title)

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Commission expires _____

DIVERSITY BUSINESS ENTERPRISE (DBE) PROGRAM

The City of Knoxville strongly encourages prime lessees to employ diverse businesses in the fulfillment of contracts/projects for the City of Knoxville.

The City of Knoxville's Fiscal Year 2017 goal is to conduct 3.33% of its business with minority-owned businesses, 9.21% of its business with woman-owned businesses, and 45.5% with small businesses.

While the City cannot engage (pursuant to state law) in preferential bidding practices, the City does **strongly encourage** prime lessees to seek out and hire diverse businesses in order to help the City meet its goals as stated above. As such, the City encourages prime lessees to seek out and consider competitive sub-bids and quotations from diverse businesses.

For DBE tracking purposes, the City requests that prime lessees who are bidding, proposing, or submitting statements of qualifications record whether or not they plan to employ DBE's as sub-lessees or consultants. With that in mind, please fill out, sign and submit (with your bid/proposal) the following sub-lessee/ consultant statement.

CITY OF KNOXVILLE DIVERSITY BUSINESS DEFINITIONS

Diversity Business Enterprise (DBE's) are minority-owned (MOB), women-owned (WOB), service-disabled veteran-owned (SDVO), and small businesses (SB), who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background. These persons must own at least 51% of the entity and operate or control the business on a daily basis.

Minority: A person who is a citizen or lawful admitted permanent resident of the United States and who is a member of one (1) of the following groups:

- a. African American, persons having origins in any of the Black racial groups of Africa;
- b. Hispanic American, persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
- c. Native American, persons who have origin in any of the original peoples of North America ;

- d. Asian American, person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Minority-owned business (MOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals.

Woman-owned business (WOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women.

Service Disabled Veteran-owned business (SDOV) is a continuing, independent, for profit business that performs a commercially useful function, owned by any person who served honorably on active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service connected. Meaning such disability was incurred or aggravated in the line of duty in the active military, naval or air service, and is at least fifty-one percent (51%) owned and controlled by one (1) or more service disabled veteran.

Small Business (SB) is a continuing, independent, for profit business which performs a commercially useful function and has total gross receipts of not more than ten million dollars (\$10,000,000) average over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Sublessee/Consultant Statement
(TO BE SUBMITTED IN THE BID/PROPOSAL ENVELOPE)

We _____ do certify that on the
(Bidder/Proposer Company Name)

(Project Name) \$ _____
(Amount of Bid)

Please select one:

☐ **Option A: Intent to subcontract using Diverse Businesses**

A Diversity business will be employed as sublessee(s), vendor(s), supplier(s), or professional service(s). The estimated **dollar value** of the amount that we plan to pay is:

\$ _____.
Estimated Amount of Subcontracted Service

Diversity Business Enterprise Utilization			
Description of Work/Project	Amount	Diverse Classification (MOB, WOB, SB, SDOV)	Name of Diverse Business

☐ **Option B: Intent to perform work “without” using Diverse Businesses**

We hereby certify that it is our intent to perform 100 % of the work required for the contract, work will be completed without subcontracting, or we plan to subcontract with non-Diverse companies.

DATE: _____ COMPANY NAME: _____

SUBMITTED BY: _____ TITLE: _____
(Authorized Representative)

ADDRESS: _____

CITY/STATE/ZIP CODE: _____

TELEPHONE NO: _____