

ALPENA COUNTY BOARD OF COMMISSIONERS
BOARD ACTION #14

TO: County Clerk, County Treasurer,

FROM: Alpena County Board of Commissioners

SUBJECT: Synchronizations, LLC Agreement

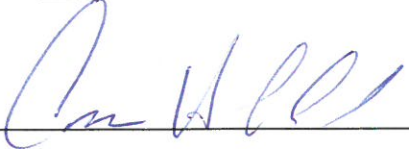
BOARD ACTION:

ACTION ITEM #BC-2: The Committee recommends we approve a new agreement between the County of Alpena and Synchronizations, LLC for five years (1/1/18 - 12/31/22) with attorney approval.

Moved by Commissioner Kozlowski and supported by Commissioner Fournier to approve the Consent Calendar which includes actions as listed above and filing of all reports. Roll call vote was taken: AYES: Commissioners McRoberts, Adrian, Fournier, McDonald, Kozlowski and Habermehl. NAYS: None. Commissioners Modrzynski and Peterson excused. Motion carried.

This action was xx APPROVED DISAPPROVED

BY: Ayes 6 Nays 0 Excused 2 Absent 0

Alpena County Board Chairman's Signature 

Alpena County Board Vice-Chairman's Signature _____

Date of the Board Meeting October 31, 2017

PARTICIPATING MANAGEMENT AGREEMENT

This Agreement is entered into as of January 1, 2018 (Effective Date), by and between

a. **County of Alpena** (Owner), of 720 W. Chisholm, Suite # 7, Alpena, MI 49707

and

b. **Synchronizations, LLC (a Michigan Limited Liability Company)** (Manager), of P.O. Box 644, Alpena, MI 49707

(collectively, the "Parties").

Recitals:

1. The Owner desires to hire a manager to oversee the activities of the **Alpena County Plaza Pool** ("Pool"), situated at 3303 S. Third St, Alpena, MI 49707 (Location).
2. The Manager desires and is willing to assume the duties and obligations of the management of the Pool at the Location.
3. The Parties desire to enter into a written agreement stating the duties and obligations of the Manager in the lawful management of the Owner's Business.

Agreement

Therefore, it is agreed:

1. Purpose

The purpose of this Agreement is to establish provisions regulating the everyday management and operation of the activities of the Pool and define the duties and obligations of the Manager. The Pool shall be operated for the benefit of the residents of Alpena County, to provide aquatic activities to all such residents. The overall intent of this agreement is to maximize the use of the Pool by Alpena County residents.

2. Engagement of Services

The Owner engages the Manager during the Term (as defined in paragraph 3 below), and Manager agrees to accept the terms and conditions as provided in this Agreement.

3. Term

The term of this Agreement shall be for five (5) years from the Effective Date (Term). The Term may be modified, provided that the modification is in writing, executed by the Parties.

4. Consideration

The Manager shall receive compensation as set forth in attached Schedule "A". The compensation shall be paid monthly. The management fee will be separated into two (2) categories, as follows:

- (1). Professional Contractual Services—This fee shall provide for the management of the Pool;
- (2). Contractual help—This fee shall provide for the staffing of the Pool.

5. Liability and Control

The Owner shall not in any way assign or transfer to Manager

- a. Owner's liability for Owner's existing contracts, including, by way of example and not limitation, rental and lease agreements, utility bills, taxes, or other costs and expenses;
- b. Owner's obligations and duties that are necessary for the retention of the "incidents of ownership" and control of the Pool by the Owner;
- c. The Owner shall be responsible for any and all damages to existing facility, equipment, and grounds as a result of work under this contract. The cost of repairing or replacing of such damaged facilities shall be borne by the Owner. However, the Manager will oversee all existing facilities, equipment, and grounds at the Pool as a result of work under this contract. The repair or replacement work shall be done in a manner as to leave the facilities in the same condition or better as before the damage occurred, to the

complete satisfaction of the Owner. However, the Owner shall not be responsible for any cost or expense the Manager incurs in implementing the requirements of this Agreement. The Manager will notify the owner immediately when there is damage to any part of the building or equipment.

6. Duties

The Manager shall have the following duties on behalf of and for the benefit of Owner:

- a. To manage and operate the Pool under its name or legally adopted assumed name at the Location.
- b. Manager is responsible for overseeing the operation of the Pool, including programming and staffing;
- c. Manager is responsible for hiring of employees.
- d. The Manager is responsible for the upkeep of building and equipment; and
- e. Will provide a safe and secure environment for patrons.
- f. Manager is responsible for applying for grants, and other funding.
- g. To purchase all supplies needed for operation out of the income of the Pool to facilitate its daily operations.
- h. To hire or dismiss employees as necessary to run the everyday operations of the Pool. Manager shall provide an adequate number of qualified, experienced personnel. All workmen and subcontractors performing work shall be skilled in their respective trades and must have criminal background checks.
- i. To oversee and arrange for the following:
 - (1) Payment in a timely manner of all bills and expenses related to the operation of the Pool, including but not limited to Employment, Unemployment, Sales, and Payroll Taxes.

(2) Timely filing and payment of all reports, returns, and all associated liability payments.

(3) On a monthly, quarterly or annual basis, (in accordance with the filing date requirements) the Manager shall provide to the Owner copies of the required tax returns before the due date, along with the check for payment or proof of payment.

(4) The Manager shall deposit all revenue from operations of the facility with the County Treasurer. The Manager will request payment for bills with a Payment Request Form with detail attached from the County Clerk. The Manager shall provide monthly financial reports to the Owner which shall detail all monthly revenues and expenses. The Owner shall have the right, upon reasonable request, to inspect those books, receipts, tapes, and all other financial records of the Pool operation. Annually, the Manager shall report to the Owner a report of all services performed by the Manager under this agreement. The Manager shall adhere to the Alpena County Board of Commissioners Accountability Standards set forth in Attachment "B", which are incorporated herein by reference.

j. To manage and operate the Pool in a businesslike manner governed by a reasonable person standard.

k. To pay all maintenance and repair costs or other expenses related to the everyday operation of the Pool, including payment of all creditors, on behalf of Owner, out of the gross operating income;

l. To cause the Pool to be operated during all regularly scheduled hours of the day and during all normal operating days of the week. Specifically, the Manager shall provide a complete year-round schedule of activities to the Alpena County Board of Commissioners Office by January 1st of each year and each time it is updated;

m. To operate the activities of the Pool in the best interests of the people of the County of Alpena;

n. To comply with all municipal, state, and federal laws, rules, and regulations;

o. Manager shall, pursuant to the Executive Order 11246 as amended, ensure that all contractors and subcontractors hired by

Manager for any services hereunder, are obliged to provide equal employment opportunity without regard to race, creed, color, national origin, age or sex. Further, Manager shall provide services at the Pool to the community, without regard to recipients/users race, creed, color, national origin, age or sex;

p. To cooperate at all times, fully and completely, with the accountant for the Owner; keeping and maintaining the books of account and records of the activities of the Pool that are fully correct, accurate, and consistent with the directions given by the accountant for the Owner;

q. To perform such other and further duties that are consistent with the management of the activities of the Pool or that shall be directed by the Owner.

r. The Manager shall, at its own expense, keep insurance in place as follows:

(1). Comprehensive General liability insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Workers' compensation insurance with Employer's Liability limits of \$1,000,000, Auto Liability limits of \$1,000,000 and an Umbrella with \$1,000,000 limit. Coverage provided by these policies must be appropriate for the exposure involved. These limits may be changed by the Owner as needed. (The Owner shall provide property insurance).

Certificates should include the County of Alpena as an additional insured including a waiver of subrogation. The Owner must be notified of any cancellation by the insurance company per the same cancellation provisions as provided the Manager.

Certificates of insurance, in duplicate, indicating Alpena County Plaza Pool and evidencing all required coverage, must be approved by the County prior to the commencement of any contract.

In addition to the Certificate of Insurance, the Manager agrees to notify the Owner of its intent to the cancel the policy at least 30 days prior to any cancellation.

(2). The Manager shall indemnify, defend and hold harmless the Owner, its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever arising from or connected with the Manager's operations or services provided by the Manager.

7. Termination

a. This Agreement may be terminated by either Party for good cause shown or on the showing of misconduct or bad faith by the other Party.

b. On the showing of good cause or misconduct, this Agreement shall terminate within thirty days of written notice of such termination. Any material breach of this Agreement will constitute "good cause."

8. ASSIGNMENT:

Neither party may assign or encumber, directly nor indirectly, any interest in this Agreement without the prior written approval of the respective other party. Furthermore, neither party may subcontract or delegate any of the services required to be provided in the Agreement, or its' obligations hereunder, without first obtaining the prior written approval of the other party.

9. Notices

Any and all notices permitted or required to be given under this Agreement shall be in writing and shall be given by personal delivery, which shall be effective on delivery; by telecopy, facsimile, or other form of telecommunication, which shall be effective on transmittal; by express mail delivery that guarantees next-day delivery, which shall be effective the day after delivery to such express mail company; or by U.S. Registered or Certified Mail, which shall be effective two days after mailing.

10. Covenants Regarding Ownership

a. The Owner shall retain the "incidents of ownership"; however, the daily management decisions shall be made by the Manager.

b. The Manager shall not in any way represent Manager to be the Owner and shall in no way attempt to injure or harm the Pool operations, or the County of Alpena, its reputation, or goodwill.

11. Independent Contractor

The Parties agree that Manager is an independent contractor and that neither Manager's employees nor contract personnel are, or shall be deemed to be, employees of Owner. In its capacity as an independent contractor, Manager agrees to and represents the following:

a. Manager has the right and does fully intend to perform services for third parties during the term of this Agreement.

b. Manager has the right to hire employees to provide the services required by this Agreement.

c. The services required by this Agreement shall be performed by Manager or Manager's employees or contract personnel, and Owner shall not hire, supervise, or pay any such assistants to help Manager.

d. Neither Manager nor Manager's employees or contract personnel shall receive any training from Owner in the professional skills necessary to perform the services required by this Agreement.

e. Manager shall be fully responsible for the payment of all of its taxes, including all payroll taxes and withholdings for its employees.

The Parties acknowledge and agree that Owner is entering into this Agreement with reliance on the representations made by Manager relative to its independent contractor status.

12. Miscellaneous

a. This Agreement is effective September 4, 2012, and shall be binding on the Parties, their heirs, assigns, or successors in interest, and shall be interpreted pursuant to the laws of the State of Michigan.

b. This Agreement may not be modified unless in writing, signed by the Parties.

c. Failure by either party to insist upon compliance or performance of any covenant, term or condition of this Agreement or failure to exercise any right, term, or remedy in relation to a breach thereof, shall not constitute a waiver of any such covenant, term or condition of this Agreement and the same shall continue in full force and effect with respect to any such provision or remedy.

d. If any provision of this Agreement shall, to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

e. Manager, its personnel, and anyone it may contract with for services who may have access to records protected by the Health Insurance Portability and Accountability Act (HIPAA) shall comply with all applicable requirements of HIPAA and rules and regulations which are promulgated pursuant thereto. Breach of this section shall be a material breach of this Agreement.

f. This Agreement and any additional or supplementary documents incorporated herein by specific reference, contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind either of the parties hereto.

g. The paragraph headings are solely for convenience and shall not be used to effect or interpret the terms or intent of this Agreement.

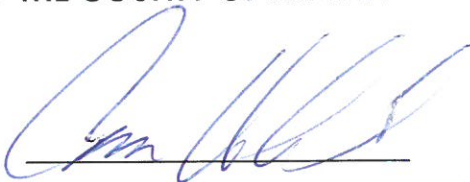
h. If the pronouns and relative words used are written in the masculine and singular, and more than one person joins in the execution as Owner or Manager, or if either party is of the feminine sex, a partnership, or a corporation, such words shall be read as if written in the feminine, plural, or neuter, respectively.

13. CERTIFICATION OF AUTHORITY TO SIGN AGREEMENT

The persons signing on behalf of the parties hereto certify by their signatures that they are duly authorized to sign this Agreement on behalf of said parties, and that this Agreement has been authorized by said parties.

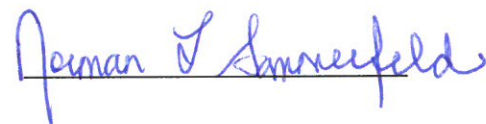
The Parties have executed this Agreement on the date(s) set forth below, to be effective as of the Effective Date first set forth above.

FOR: THE COUNTY OF ALPENA

By: _____

It's: Board Chairman

FOR: SYNCHRONIZATIONS, LLC

By: _____

It's: Owner

Lease/2017/01.plaza pool

tsb