

CITY OF COCOA BEACH SWIMMING POOL UTILIZATION CONTRACT

ARTICLE 4 - INSURANCE

During the performance of work and services under this Agreement, the Contractor agrees to comply with all Federal, State and Local laws and regulations now in effect or hereinafter enacted that are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

Contractor shall maintain in full force and effect during the life of the Contract, Worker's Compensation insurance covering all employees in performance of work under the Contract. Contractor shall make this same requirement of any of its subcontractors. Contractor shall indemnify and hold the City harmless for any damage resulting to them for failure of either Contractor or any subcontractor to take out or maintain such insurance.

ARTICLE 5 - INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of the Contractor, its agents, servants or employees in the performance of this Contract.

The Contractor further agrees to indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Contractor not included in the paragraph above and for which the City, its agents, servants or employees are alleged to be liable.

ARTICLE 6 - INDEPENDENT CONTRACTOR

The Contractor is, and shall be, in the performance of all work services and activities under this contract, an Independent Contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work; the City's interest is in the results obtained.

ARTICLE 7 - ASSIGNMENT

This Contract may not be assigned without the prior written consent of the City. Any attempt to assign this Contract without prior written consent of the City shall render the Contract null and void with respect to the attempted assignee.

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ARTICLE 8 - CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 9 - ENTIRETY OF CONTRACTUAL AGREEMENT

The City and the Contractor agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein.

ARTICLE 10 - AMENDMENTS AND MODIFICATIONS

Any cardinal change in the terms and conditions set forth in this Contract must be mutually agreed to by both the City and the Contractor, and may be implemented only after this agreement has been amended in writing.

ARTICLE 11 - TERMINATION

This contract may be terminated at any time upon thirty- (30) days' prior written notice by either party. This contract may also be terminated by the City in the event payments and late charges are not paid as specified in Exhibit B.

The City of Cocoa Beach shall be paid for services actually rendered to the date of the termination and for late charges as specified in Exhibit B.

ARTICLE 12 - EXCLUSIVITY

This is not an exclusive Contract. The City may, at its sole discretion, contract with other entities for work similar to that to be performed by the Contractor hereunder.

ARTICLE 13 - REMEDIES

The laws of the state of Florida shall govern this contract. Any and all legal action necessary to enforce the Contract will be held in Brevard County and the Contract will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

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ARTICLE 14 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 15 – BEVERAGE & EQUIPMENT SALES

The Contractor will be permitted to bring alcoholic beverages for private use at the Pavilion only.

At any function selling alcoholic beverages the alcoholic beverage must be purchased from the snack bar at the Golf Course, the State of Florida Alcoholic Beverage permit holder.

Sales of soft drinks, other concession items and equipment sales in the pool area by the Contractor or his personnel are prohibited. The Contract Administrator may allow exceptions at his discretion.

ARTICLE 16 – PROMOTIONAL ACTIVITY

Promotional support for Contractor swim meets will be as determined by the City.

ARTICLE 17 – USE OF PAVILION

The use of the Pavilion is excluded from this agreement. The Contractor may use the Pavilion subject to the fees, deposits, and conditions of use in the City's rental agreement for this purpose.

ARTICLE 18 – DAMAGES TO FACILITIES & EQUIPMENT

The Contractor recognizes and agrees that the City of Cocoa Beach will be the sole authority in the determination and assessment of damages by the Contractor. The Contractor must pay any charges for damages within thirty (30) days after notification. The Contractor Representative signing this agreement accepts full responsibility for damages if the Contractor does not pay within the thirty-day period above. No further notice to the Contractor Representative is required.

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Exhibit A Scope of Services & Rate Schedule

The City of Cocoa Beach will provide use of the pool facilities to the Contractor subject to the following specific conditions:

The Contractor will be required to substantiate that background checks for each employee have been done.

The Contractor conducts any and all aquatic activities in a safe, workmanlike and professional manner.

Coaches, awards, and clerical support personnel are the Contractor's responsibility.

Office supplies and similar consumable items are for the Contractor's account.

The City reserves the right to remove from the premises any individual the City believes is not exhibiting good conduct. The Contract Administrator or his on site representative will make the decision regarding conduct and that decision is final.

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Exhibit B Fee Schedule

Pool utilization agreement for the purpose of a swim meet:

Security and damage deposit \$ 250.00

Fees and Deposit are due prior to the date of the event.

A flat fee of one hundred (\$100) dollars per hour, with a four (4) hour minimum.
(i.e. four hundred \$400 dollars).

Swim meet data:

December 5-
6,2020

Saturday and
Sunday

7:00 AM to 5:00 PM Each day

DATE

DAY

TIME

Pool Rental Fee \$ 2000.00
Security and damage deposit \$ 50.00

Total \$2050

Fees and Deposit are due prior to the date of the event.
Security and damage deposit is refundable within 7-10 business days.

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DocuSigned by:

Aisha M Davis

AB09A280D7584BF...
City Representative

10/20/2020

Date

DocuSigned by:

[Signature]

3EEECAB8EC25479...
Contractor's Contract Representative

Please Sign

10/16/2020

Date

101 North Monroe Street, Ste. 1000
Street

Tallahassee, FL, 32301
City/State/Zip Code

850-577-7205
Telephone Number

mguse@playinflorida.com
E-mail of Contact
