



FIRST AMENDMENT TO INDEPENDENT AGREEMENT FOR COMPETITIVE SWIM TEAM & INSTRUCTIONAL PROGRAMMING SERVICES

THIS IS AN AGREEMENT ("Agreement"), dated this _____ day of _____, 2019, by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation organized and operating under the laws of the State of Florida, with an address of 601 City Center Way, Pembroke Pines, FL 33025, hereinafter referred to as "CITY",

and

ANDERSON AQUATICS LLC., D/B/A SOUTH FLORIDA AQUATIC CLUB, a limited liability company as listed with the Florida Division of Corporations, authorized to do business in the State of Florida, and with a business address of **1273 SW 167 Avenue, Pembroke Pines, FL 33027**, hereinafter referred to as "CONTRACTOR". "CITY" and "CONTRACTOR" may hereafter be collectively referred to as the "Parties".

WHEREAS, on **April 9, 2018**, the CITY and CONTRACTOR entered into the Original Agreement ("Original Agreement") for an initial **term period**, commencing on **April 1, 2018** and expiring on **December 31, 2019**; and,

WHEREAS, the Original Agreement authorized the renewal of the Agreement at the expiration of the initial term for **two (2) additional four (4) year terms** evidenced by a written amendment to the Original Agreement; and,

WHEREAS, to date the Parties have been satisfied with the performance and execution of the Agreement and desire to amend the Original Agreement and renew the terms of their contractual relationship as set forth herein; and,

WHEREAS, the Parties desire to amend the Original Agreement to correct certain provisions required by statutory amendments; and,

WHEREAS, the Parties further desire to execute the first **four (4) year renewal** option and amend the Original Agreement, in accordance with the terms and conditions set forth herein.

W I T N E S S E T H

NOW, THEREFORE, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION 1. The recitations set forth in the above "WHEREAS" clauses are true and



correct and incorporated herein by this reference.

SECTION 2. Section 3.3 of Article 3 of the Original Agreement is hereby repealed and replaced as set forth below:

3.3 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

SECTION 3. Article 17 of the Original Agreement is hereby amended by the addition of Section 17.17 – “Scrutinized Companies” as set forth below:

17.17 CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

17.17.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

17.17.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

17.17.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

17.17.2.2 Is engaged in business operations in Syria.

SECTION 4. The Original Agreement, is hereby renewed for the first **four (4) year** renewal period commencing on **January 1, 2020** and terminating on **December 31, 2023**.

SECTION 5. In the event of any conflict or ambiguity by and between the terms and provisions of this First Amendment, and the Original Agreement, the terms and provisions of this First Amendment shall control to the extent of any such conflict or ambiguity.

SECTION 6. The Parties agree that in all other respects the Original Agreement, as amended by this First Amendment, shall remain in full force and effect, except as specifically modified herein.

SECTION 7. Each exhibit referred to in the Original Agreement, except as repealed herein, forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.



IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

ATTEST:

CITY:

CITY OF PEMBROKE PINES

MARLENE D. GRAHAM,
CITY CLERK

BY: CHARLES F. DODGE
CITY MANAGER

APPROVED AS TO FORM

Print Name: _____
OFFICE OF THE CITY ATTORNEY

CONTRACTOR:

ANDERSON AQUATICS LLC., D/B/A SOUTH
FLORIDA AQUATIC CLUB

WITNESSES

Sandra A. Unfuerres
Print Name

BY:
Print Name: Christopher Anderson Jr

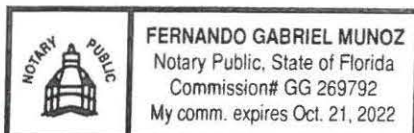
ANGELA C. HUME
Print Name

Title: Owner + CEO

STATE OF Florida)
COUNTY OF Broward) ss:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Christopher Anderson as CEO of **ANDERSON AQUATICS LLC., D/B/A SOUTH FLORIDA AQUATIC CLUB**, an organization authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of **ANDERSON AQUATICS LLC., D/B/A SOUTH FLORIDA AQUATIC CLUB**, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 31 day of OCT, 2019.



NOTARY PUBLIC
Fernando Gabriel Munoz
(Name of Notary Typed, Printed or Stamped)

**INDEPENDENT CONTRACTOR AGREEMENT FOR COMPETITIVE SWIM TEAM &
INSTRUCTIONAL PROGRAMMING SERVICES**

THIS IS AN AGREEMENT, dated the 9th day of April, 2018, by and between:

THE CITY OF PEMBROKE PINES, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY")

and

ANDERSON AQUATICS LLC., an organization authorized to do business in the State of Florida, with a business address of **1273 S.W. 167th Avenue, Pembroke Pines, FL 33027** (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

W I T N E S S E T H:

WHEREAS, CITY owns the Academic Village Aquatic Center, and other aquatic facilities;
and

WHEREAS, pursuant to Section 35.18 (C) (2) of the City's Code of Ordinances, the contemplated services are not subject to the competitive procurement requirements, as they involve professional services involving peculiar skill ability, experience or expertise which are in their nature unique and not subject to competitive bidding, or competitive proposals; and

WHEREAS, CITY desires to enter into a relationship with CONTRACTOR, a Florida LLC corporation to provide a complete and full service USA Swimming program or any other nationally recognized aquatic program approved by the parks and recreation director; and

WHEREAS, CONTRACTOR has agreed to provide such services within the constraints of available facilities to serve the needs of CITY, as more particularly described herein below subject to the terms of this Agreement; and

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

PREAMBLE

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

ARTICLE 1
TERM AND RENEWALS

- 1.1 The term of this Agreement shall commence April 1, 2018 and shall terminate on December 31, 2019, subject to prior termination as provided in Article 9 of this Agreement. At the expiration of this Agreement the City shall have the option to renew for two (2) additional four-year terms upon the same terms, conditions and limitations imposed hereby.
- 1.2 Both parties agree the fees and payment for services may be renegotiated at the end of the first and second terms of this Agreement. The CITY shall give notice to the CONTRACTOR of the CITY's intent to extend this Agreement at the end of the first and second three (3) year terms; however, such notice shall be delivered to CONTRACTOR by Certified Mail, Return Receipt Requested, no later than one hundred and eighty (180) calendar days prior to termination.

ARTICLE 2
CONTRACTOR SERVICES AND RESPONSIBILITIES

- 2.1 Development and Implementation of a USA Swimming Program or any other nationally recognized aquatic program approved by the parks and recreation director: CONTRACTOR shall formulate, implement, direct, manage and control a complete and full service aquatic program for persons of all ages and skill levels within the constraints of available facilities to serve the needs of CITY. The CONTRACTOR shall provide the only competitive swim program authorized by the CITY to use any CITY facility, including any facility the CITY may lease to other entities. CONTRACTOR shall not subcontract any of the services provided herein without the CITY Director of Parks and Recreation's written approval. The duties of CONTRACTOR pertaining to the USA Swimming or other aquatic program approved by the CITY Director of Parks and Recreation under his/her direction and control are as follows:
- (1) Organize, provide and supervise a comprehensive competitive swim program, individual and group instruction, training camps, summer camps, clinics, stroke and video analysis, fun and fitness program;
 - (2) Recruit, direct, supervise, administer and coach a competitive CITY recognized swim program;
 - (3) Ensure team membership within all approved nationally recognized aquatic associations and operate in accordance with their rules and policies;
 - (4) Solicit, organize, host, promote and supervise swim meets and competitions as more fully defined in Section 2.3 of this Agreement;
 - (5) Use CONTRACTOR'S best efforts to promote the swim/aquatic programs and shall further endeavor to heighten public interest in and awareness of

the sport of swimming through a series of public demonstrations, clinics and lectures;

- (6) Promote goodwill and maintain good public relations by working and cooperating with municipal, state, national and international masters swimming groups.
- (7) Select, hire and employ at CONTRACTOR'S sole expense, all coaches, instructors, assistants and staff necessary to fulfill CONTRACTOR'S performance of his duties and obligations under the terms of this Agreement. CONTRACTOR shall comply with Section 34.07 of the City's Code of Ordinances, as may be amended from time to time, requiring background screening through the City's Police Department for all coaches, managers, officials, or volunteers prior to the CONTRACTOR 's use of the Property under this Agreement. CONTRACTOR shall not allow any coach, manager, official, or volunteer who does not meet the requirements of Section 34.07, as may be amended from time to time, to provide any service under this Agreement. The CONTRACTOR shall be responsible for the cost of all background screening required pursuant to this section. Any person who is deemed eligible to volunteer ("Covered Individual") by the Police Department will receive a City of Pembroke Pines Volunteer Identification Card. All teaching staff shall be over the age of eighteen (18).
- (8) Manage, control and supervise all coaches, instructors, assistants, volunteers and staff under CONTRACTOR'S employ.
- (9) Be fully responsible for the payment and maintenance of all insurances, taxes and other incidents of employment for those persons hired by CONTRACTOR to assist in the fulfillment of CONTRACTOR'S obligations under this Agreement.
- (10) Provide consulting services, assistance, expertise and technical advice as may be requested by the Department of Parks and Recreation for conducting and improving the Swimming program.
- (11) Lend CONTRACTOR'S name and professional reputation to the promotion of the contractor's swim program in the City of Pembroke Pines, and to, that end, agree not to enter into any agreement with any other municipality in Dade, Broward or Palm Beach County during the term of this Agreement for the purpose of providing a competitive swim program, unless CONTRACTOR received written approval from the CITY's Director of Recreation and Cultural Arts.
- (12) Assist CITY by providing information to the Parks and Recreation Department on all changes in the rules and regulations which affect the sport of swimming as related to programs provided by CONTRACTOR.

- (13) Advise the Parks and Recreation Department personnel of swimming clinics, meets, demonstrations or seminars being held in the South Florida area.
- (14) Maintain records and accounts of all transactions that result from doing business pursuant to this Agreement for a period of three (3) years. Such records shall include membership and enrollment records as well as financial records which shall include all records of fundraising activities. Such records shall be kept so as to satisfy standard bookkeeping requirements. Such records shall be made available to CITY for inspection, review and auditing upon written ~~ten-twenty four~~ (1024) calendar days' notice from CITY.
- (15) Maintain all necessary licenses and permits as required by law.
- (16) Supervise and be responsible for the safety and conduct of all participants at any event or activity conducted by CONTRACTOR and their agents, volunteers or employees engaged in the performance of CONTRACTOR'S duties under this Agreement. CONTRACTOR or their authorized agent must remain on the subject premises until all participants in events or activities conducted pursuant to this Agreement have vacated the premises or made other arrangements to remain and utilize the facility or a portion thereof immediately following practice.
- (17) Ensure that all swim team members and other participants in the swim program have liability releases and waiver forms signed by their legal guardian. All swim team members shall be insured by USA Swimming, United States Masters Swimming, or other aquatic organization approved by the parks and recreation director or the Comprehensive General Liability policy outlined in this Agreement, as determined by their program's participation.
- (18) Pay for all expenses, regardless of their nature, incurred in connection with travel for the swim team. Such expenses, including expenses for any coaches or assistants shall be at no cost to CITY.
- (19) Maintain all CITY property in an "as is" condition. No such property may be moved to another location unless first obtaining the approval of the Director of Parks and Recreation.
- (20) Not permit any signs or advertising at any CITY facility unless specifically approved in writing by the Director of Parks and Recreation.
- (21) Police and clean up all teaching and coaching areas at the close of each coaching or teaching session so that such area may be utilized by CITY without further assistance from CITY personnel.

- (22) Perform all tasks which are reasonably necessary to be done in order to accomplish the work and objectives as otherwise provided for under this Agreement.
- (23) Contractor shall meet with the city's aquatic coordinator quarterly to discuss matters related to the performance of this agreement.
- (24) A minimum of ten (10) scholarships will be made available by the CONTRACTOR for participation on the swim team for children of the City of Pembroke Pines that cannot afford these services. If such an interest exists, scholarships shall be provided for children under the age of 18 residing in the City of Pembroke Pines. To qualify for a scholarship, a child must be a participant of a public school free or reduced lunch program and bring a copy of their voucher as proof of participation in the public school free or reduced lunch program.
- (25) Instruction and Coaching Services: Contractor is responsible for the safety and the conduct of all swim team members, the participants in all swim programs and all persons in attendance with members at all activities held in City aquatic facilities. Contractor will provide adequate, responsible adult supervision to be present on the pool deck during all use of City aquatic facilities. Instruction and coaching services shall be provided in accordance with recommended guidelines established by USA Swimming or the governing authority of any program approved by the parks and recreation director.
- (26) CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for delivery of service.

2.2 Swim Team Facilities/Practice Time

- (1) The Academic Village Aquatic Complex shall be available for practice sessions except when in use by Pembroke Pines Charter High School and approved Florida High School Athletic Association activities. All practice sessions shall be conducted during established hours for which the facility is open and staffed by city lifeguards. The exact days and times of such practice sessions shall be designated by the Director of Parks and Recreation.
- (2) CITY shall provide space to CONTRACTOR for use as administrative offices. This space is located in the Academic Village Aquatic Center. The CITY will be responsible for daily cleaning of the locker-rooms and pest

control services.

- (3) CITY shall use its best efforts to maintain pool water temperature between seventy-five (75) and eighty-two (82) degrees; and to maintain the chemical ranges as follows: PH 7.2 -7.8, CI 1.0 - 10.0.
- (4) Any requested changes in scheduled hours must be submitted by CONTRACTOR in writing to the Director of Parks and Recreation and shall be subject to review and final approval by the Director of Parks and Recreation. If the Academic Village pool is temporarily closed due to unforeseen conditions other city aquatic facilities will be made available when possible.

2.3 Meets, Competitions and Fund Raising Activities

- (1) CONTRACTOR shall, with the authorization and approval of CITY, solicit and complete all documents necessary to acquire hosting privileges for sanctioned competitions and other major national and international events.
- (2) CONTRACTOR is entitled to secure hosting privileges for sanctioned competitions at the Academic Village Complex. CITY shall not be responsible for expenses related to hiring meet officials, additional supplies or equipment and other costs associated with conduct of these meets.
- (3) The scheduling of said meets and competitions shall be subject to the approval of the Director of Parks and Recreation; however, that approval shall not unreasonably be withheld.
- (4) CONTRACTOR shall promote, publicize, direct and personally attend all regular and special swim meets and competitions to be planned and conducted at the Academic Village Aquatic Complex throughout the term of this Agreement.
- (5) CONTRACTOR shall be entitled to conduct fundraisers approved by the Director of Parks and Recreation as a means of generating revenue for the South Florida Aquatic Club. CONTRACTOR may explore and secure corporate sponsorship monies for the promotion and development of the South Florida Aquatic Club.

2.4 Group and Individual Swim Lessons

- 2.4.1 CONTRACTOR is authorized to provide swimming instruction in accordance with the standards, regulations, and requirements of a governing authority from which the CITY has approved CONTRACTOR to obtain such license, i.e., Swim America or Red Cross program. In the event CONTRACTOR'S license to conduct swimming instruction is terminated, revoked, rescinded or otherwise modified by the governing

authority, CONTRACTOR shall immediately notify CITY in writing and all rights and privileges granted herein with respect to the conduct of said program shall terminate immediately upon receipt of such notice.

- 2.4.2 CONTRACTOR shall be solely responsible for the payment of all license and/or franchise fees and all costs and expenses associated with the conduct of CONTRACTOR'S programs.

2.5 Pro Shop

Under the terms of this contract CONTRACTOR has authority to sell equipment and apparel to swim team members, utilizing the Academic Village Aquatic facilities. CONTRACTOR shall do so at its own risk and shall be solely responsible for its merchandise, monies and security therefore. The CITY shall assume no responsibility or liability for any loss incurred by CONTRACTOR associated with such merchandise or revenues whether such loss is due to theft, disaster, an act of God, or otherwise.

ARTICLE 3 **COMPENSATION AND METHOD OF PAYMENT**

3.1 CONTRACTOR shall pay the CITY 10% of all gross revenues on an annual basis for approved activities noted in Article 2 except for those revenues derived from Section 2.5 at the Pro Shop. Revenues shall be calculated using the time period of January 1 through December 31. For the first year of the agreement the vendor shall include the full calendar year of revenues when calculating the annual payment. The payments shall be made according to the following milestones:

- 10% of gross revenues up to \$175,000 shall be paid prior to September 30 of each calendar year
- 10% of gross revenues from \$175,001 up to \$400,000 shall be paid prior to December 31st of each calendar year
- 10% of gross revenues in excess of \$400,000 shall be paid prior to April 20th of the following calendar year

3.2 CONTRACTOR shall pay to the CITY on an annual basis the following fees for all participants for every season:

Registration Fees City Residents:	\$5.00 per participant
Registration Fees Non City Residents:	\$35.00 per participant
Participation Non-Resident Fee	\$65.00 per participant

CONTRACTOR shall submit the roster to the CITY by September 1st of each calendar year for address verification and the fees shall be forwarded in one lump sum, to the Director of Recreation and Cultural Arts by September 20th of each calendar year.

3.3 All payments shall be governed by the Florida Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

3.4 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

ARTICLE 4 **ADVERTISING AND PROMOTION**

4.1 CONTRACTOR may utilize advertising in promoting swimming services at the assigned CITY facility(s). CONTRACTOR may specifically use the name of those facilities provided that when so doing they are identified as a City of Pembroke Pines Parks and Recreation facility. The cost of all advertising promulgated by CONTRACTOR shall be met by CONTRACTOR. The Director of Parks and Recreation shall review and approve advertising text and format, in advance.

4.2 CITY also reserves the right to advertise and promote the services of CONTRACTOR. CITY shall be allowed to use CONTRACTOR'S name and appropriate likeness in any such advertising or promotion without additional compensation to CONTRACTOR. The cost of advertising for promotion promulgated by CITY will be met by CITY.

ARTICLE 5 **PREMISES**

5.1 ALL CITY FACILITIES ARE PROVIDED IN "AS IS" CONDITION. CITY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED AS TO THE CONDITION OF THE PREMISES AND EQUIPMENT OF THE USE AND OCCUPANCY AUTHORIZED OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

5.2 CITY'S Parks and Recreation Department will provide the following facilities subject to their availability and/or terms of usage:

- (1) Fifty (50) meters by twenty-five (25) yard heated pool with overhead deck lighting at Academic Village pool.
- (2) Locker rooms with showers at the Academic Village Aquatic Center.
- (3) Use of other Academic Village facilities as alternate training sites upon approval of Parks and Recreation Director, including but not limited to gym, weight room and track.
- (4) Use of Charter Middle pool, Towngate and Price pools, upon approval of Parks and Recreation Director. Additional fees will be charged for these facilities.

- (5) The expenses for the repair and replacement of timekeeping, equipment (touch pads, starting system, cables, timing consoles, pace clocks, i.e.) will be evenly split (50%/50%) between the CITY and CONTRACTOR.

5.3 CITY shall be responsible for all utilities except long distance telephone service. All other supplies and materials shall be furnished by CONTRACTOR at CONTRACTOR'S expense.

5.4 CONTRACTOR shall exercise due diligence to maintain and preserve all property belonging to CITY.

5.5 CONTRACTOR'S Duty to Inspect and Make Safe

- (1) CONTRACTOR shall conduct a thorough examination and inspection of the premises and equipment to identify any unsafe condition or defect prior to the commencement of any of its duties, operations and services under this Agreement. CONTRACTOR shall have the continuing duty to ensure that all patent defects or conditions on the premises and equipment provided are remedied and the premises and equipment made safe prior to commencing its duties, operations or services each day during the term of this Agreement. CONTRACTOR assumes full legal liability and responsibility for all patent defects or conditions on the subject premises once it commences its daily duties, operations or services.
- (2) If in the course of its use and/or operations, CONTRACTOR or any agent, representative, employee or volunteer of CONTRACTOR becomes aware or should become aware of any dangerous condition in or on the premises or equipment, CONTRACTOR or its agent, representative, employee or volunteer shall immediately notify the Facility manager or other CITY authorized designee of such dangerous condition or immediately correct the dangerous condition, or cease operations so as not to endanger persons or property in the vicinity of the premises or equipment.

ARTICLE 6

INDEMNIFICATION AND INSURANCE

6.1 The LICENSEE shall indemnify and hold harmless the CITY and its officers, employees, elected officials, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents, elected officials, or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the LICENSEE or its employees, agents, servants, partners principals or subcontractors. The LICENSEE shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The LICENSEE expressly understands

and agrees that any insurance protection required by this Agreement or otherwise provided by the LICENSEE shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

6.2 LICENSEE shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the LICENSEE allow any subcontractor to commence work on his subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

6.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

6.4 Policies shall be endorsed to provide the CITY thirty (30) days notice of cancellation or the LICENSEE shall obtain written agreement from its Agent to provide the CITY thirty (30) days notice of cancellation.

6.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the LICENSEE shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The LICENSEE shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. LICENSEE shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

6.6 REQUIRED INSURANCE

6.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for two (2) years after the final payment under this contract.

Policy shall not have an exclusion for athletic participant injury.

The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.

6.6.2 Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the LICENSEE engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the LICENSEE shall require the subcontractor similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the LICENSEE. Coverage for the LICENSEE and his subcontractor shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If LICENSEE claims to be exempt from this requirement, LICENSEE shall provide CITY proof of such exemption along with a written request for CITY to exempt LICENSEE, written on LICENSEE letterhead.

6.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

6.6.4 Professional Liability/Errors & Omissions Insurance, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than two (2) years after final payment of the contract.

6.6.5 Sexual Abuse may not be excluded from any policy.

6.6.6 Participants' Accidental Medical Insurance in an amount of no less than \$25,000.

6.6.7 When applicable, Hosted Tournament Coverage with limits of no less than \$1,000,000 per occurrence. Coverage must be included for both participants and spectators medical payments. The City of Pembroke Pines must be included as an Additional Insured as respects this coverage.

6.7 REQUIRED ENDORSEMENTS

- 6.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the General Liability policies required herein
- 6.7.2 Waiver of all Rights of Subrogation against the CITY
- 6.7.3 30 Day Notice of Cancellation or Non-Renewal to the CITY
- 6.7.4 LICENSEES' policies shall be Primary & Non-Contributory
- 6.7.5 All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY

6.8 LICENSEE shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder.

6.9 Any insurance required of the LICENSEE pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the LICENSEE and provided proof of such coverage is provided to CITY. The LICENSEE and any subcontractor shall maintain such policies during the term of this Agreement.

6.10 The City reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Contract.

6.11 Nothing contained herein is intended nor shall be construed to waive CITY'S rights and immunities under the common law or §768.28, Florida Statutes, as amended from time to time.

ARTICLE 7

ACCIDENT PREVENTION

7.1 CONTRACTOR shall exercise reasonable care and precaution at all times for the protection of persons and property on the premises provided under this Agreement. Safety provisions of all applicable laws and ordinances shall be strictly observed. CITY reserves the right to expel any person from municipal property, who is causing a disturbance, is conducting themselves in violation of CITY rules, regulations, ordinances or whose conduct or activity presents a safety risk or public nuisance. Neither CITY nor any of its officers, agents or employees shall be liable to CONTRACTOR for any damages that may be sustained by CONTRACTOR through exercise by CITY of such right.

ARTICLE 8

CERTIFICATION AND TRAINING

8.1 This Agreement is specifically conditioned on CONTRACTOR having a valid American Swim Coaches Association certification as minimum level III, current certification in safety training for swim coaches by the American Red Cross and current certification in cardiopulmonary

resuscitation ("CPR"), first aid, and Artificial Electronic Defibrillation (AED") certification.

8.2 CONTRACTOR represents to CITY that they have requisite experience and/or education to provide age group, senior and national level coaching to persons of various ages and skill levels.

8.3 CONTRACTOR further represents that each instructor and/or assistant coach hired by CONTRACTOR and working at and under their direction and supervision shall also have sufficient experience and/or education to provide swimming instruction to groups mentioned above and that all assistant coaches shall have valid American Swim Coaches Association certification as at least a Level 1 coach, or (certification at a minimum level of Level 1 coach) or (certification at a level no less than Level coach). All coaches have six months after hire to obtain Level I Certification. All coaches must have a current First Aid, CPR & AED certification. Fifty percent of all coaches on the pool deck at any given time must have a current Lifeguard Card

ARTICLE 9

TERMINATION

9.1 In the event CONTRACTOR shall default in or violate any of terms, obligations, restrictions or conditions of this Agreement, the CITY shall give the CONTRACTOR written notice by certified mail on the default and that such default shall be corrected or actions taken to correct such default shall be commenced within thirty (30) calendar days thereof. In the event the CONTRACTOR has failed to correct the condition(s) of the default or the default is not remedied to the satisfaction and approval of the CITY, the CITY shall have all legal remedies available to it, including, but not limited to, termination of this Agreement. Additionally, this Agreement may be terminated by either party for cause, or by the CITY for convenience, upon one-hundred eighty days (180) days written notice to the other party. In the event the CONTRACTOR abandons this Agreement or causes it to be terminated, he shall indemnify the CITY against any loss pertaining to this termination.

ARTICLE 10

COMPLIANCE WITH THE LAW

10.1 CONTRACTOR shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Pembroke Pines and of any other public authority which may be applicable to the use of the City of Pembroke Pines facilities and the operations of CONTRACTOR pursuant to the terms of this Agreement.

ARTICLE 11

INDEPENDENT CONTRACTOR STATUS

11.1 CONTRACTOR and their employees, volunteers and agents shall be and remain independent contractors and not agents or employees of CITY with respect to all of the acts of services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

11.2 This Agreement does not create employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not a CITY employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, The State Workers Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work required hereunder. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages or overtime premiums

11.3 CONTRACTOR does not accrue and is not entitled to any CITY employee benefits, including Worker's Compensation, by virtue of this Agreement.

ARTICLE 2

CHOICE OF LAW

12.01 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

ARTICLE 13

VENUE

13.01 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in Broward County.

ARTICLE 14

SEVERABILITY

14.01 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

ARTICLE 15

NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

15.01 During the performance of the Agreement, neither CONTRACTOR nor its subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified.

Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that he/she/it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 16

PUBLIC RECORDS

16.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

16.1.1 Keep and maintain public records required by the CITY to perform the service;

16.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat., or as otherwise provided by law;

16.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

16.1.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

16.2 The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default in accordance with the provisions set forth in **Article 10**.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

CITY CLERK

601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33026
(954) 450-1050
mgraham@ppines.com

ARTICLE 17
MISCELLANEOUS

17.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.

17.2 **Legal Representation.** It is acknowledged that each party to this agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

17.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

17.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

17.5 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, 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 CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

17.6 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way
Pembroke Pines, Florida 33025
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

Contractor ANDERSON AQUATICS, LLC
Christopher Anderson
1273 SW 167th Ave
Pembroke Pines, FL 33027
E-mail: canderson@swim4comets.com
Telephone No: 954-538-3721
Cell phone No: 954-309-9927

Copy To: White & Twombly, P.A.
9999 NE 2nd Avenue, Ste. 306
Miami Shores, FL 33138
(786) 502-2038

17.7 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

17.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

17.9 **Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

17.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

17.11 **Entire Agreement and Conflicts:** This Agreement is intended by the parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the RFP and the CONTRACTOR's bid proposal, this Agreement shall govern, then the RFP, and then the bid proposal.

17.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be constructed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

17.13 **Disputes.** Any claim, objection, or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit Court in and for Broward County.

17.14 **Attorney's Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

17.15 **Protection of City Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

17.16 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

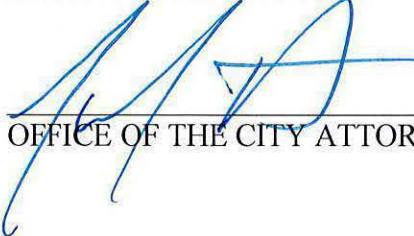
CITY OF PEMBROKE PINES, FLORIDA

ATTEST:


MARLENE D. GRAHAM, CITY CLERK

By: 
CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:


OFFICE OF THE CITY ATTORNEY



CONTRACTOR:

ANDERSON AQUATICS, LLC

By: 
Name: Christopher Anderson Jr
Title: Owner + CEO

STATE OF Florida
COUNTY OF Broward

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Christopher Anderson Jr as Owner + CEO of **Anderson Aquatics, LLC**, a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of **Anderson Aquatics, LLC** for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 26 day of March (2018), «Contract_Signature_Year».


NOTARY PUBLIC



Massiel Gonzalez
Commission # GG041229
Expires: October 24, 2020
Bonded thru Aaron Notary

Massiel Gonzalez
(Name of Notary Typed, Printed or Stamped)