

**CITY OF LAUDERHILL, FLORIDA
PARKS AND LEISURE SERVICES DEPARTMENT**

Program Service Contract
Non-exclusive use

THIS IS AN AGREEMENT, made on _____, 2019, between the City of
Lauderhill, a municipal corporation of Florida, Parks and Leisure Services Department
(hereinafter referred to as the “Department”) and

Aquanauts, LLC d/b/a Aquanauts Scuba Academy _____
(Name of Instructor(s) or Company) (Phone Number)

801 N.E. 33 Street, Oakland Park, FL 33334
(Address)

hereinafter referred to as the “Instructor”.

In consideration of mutual obligations of the parties and for good and valuable
consideration, the adequacy and receipt of which are acknowledged, the parties agree as
follows:

1. Instructor shall conduct Adaptive Scuba Programs
(Name of Class)

Class at: Veteran’s Park Pool, John Mullin Pool, Wolk Park Pool, if available, located in
Lauderhill, Florida, for a time period beginning the date this contract is executed, to be
ongoing until notice is provided of the termination of said Program, but in no event shall
continue for more than a five (5) year term without the need to have a written renewal.
The Instructor’s services shall be performed during the following days and hours, which
may be subject to modification with prior written consent of the City:

See Schedule attached hereto as Exhibit “A”

(Description of Number of sessions of class; days of week and hours for each session)

2. The fees to be paid by each participant for services when provided by the for-profit
branch of the entity in the above-stated program shall be as provided in the Fee Schedule
attached hereto as Exhibit “B” and incorporated herein. These fees shall be collected by
Instructor. There shall be no fees for services performed under the not-for-profit branch of
the company.

3. The Instructor shall keep 80% of the total gross fees collected and shall pay the City 20% of the total gross fees collected. Instructor shall pay City at the end of each month for any and all fees collected by the Instructor that month. Instructor shall include a copy of the sign-in rosters of paid participants for the month together with payment each month.

When non-profit programming is conducted, the Instructor shall pay the City a flat rate of \$25.00/hour for each hour that the pool is rented instead of the above-referenced 80/20 split. The Instructor shall pay the City at the end of each month for the total of hours rented per month for non-profit programming.

4. It is the responsibility of the Instructor to pay all applicable local, state and federal taxes, and to acquire and pay for all necessary permits and licenses. City shall keep track of all payments made and shall send instructor a 1099 tax form for tax purposes.

5. The Instructor acknowledges that it has an “entity for profit” branch of the company as defined in Ordinance No. 83-154 of the City of Lauderhill and attached hereto its pro-forma statement of projected fees and revenues as required by said Ordinance. The company also operates a not-for-profit branch of the company known as Aquanauts Adaptive Aquatics which contracts Aquanauts Scuba Academy to conduct all services on its behalf.

6. The Instructor shall not assign this non-exclusive license agreement, nor sublet the premises, or any part thereof for any other purposes than as above stipulated, nor make any alterations therein, and any additions thereto, without the prior written consent of the City.

7. No sales or advertising of merchandise of any description shall be made during class times or on City property by Instructors (including any assistant or substitute instructors) or participants without approval of City.

8. The Instructor shall promptly execute and comply with all statutes, Ordinances, Rules, Orders, regulations and requirements of the Federal, State and Municipal governments and of any and all of their departments and bureaus applicable to said premises.

9. The performance of satisfactory instructional services named and such other Rules and Regulations as may be hereafter made by the City, with such compliance to be determined in the sole discretion of the City, are the conditions upon which the agreement is made and accepted and any failure on the part of the Instructor to comply with the terms of the said agreement, or any of said Rules and Regulations now in existence, or which may be hereafter adopted by City, shall constitute a default of this agreement and the City shall have the right to enter said premises and remove all persons therefrom and the Instructor thereby expressly waives any and all notice required by law to terminate said tenancy and also waives any and all legal proceedings to recover the possession of said premises and expressly agrees that upon any violation of any of the terms of this

agreement, the City, his agent or attorneys, may immediately enter said premises and dispossess Instructor without legal notice or the institution of any legal proceedings whatsoever.

10. The Instructor hereby accepts the license to have the non-exclusive use of the premises in the condition they are in at the beginning of this agreement and agrees to maintain said premises in the same condition, order and repair as they are in at the commencement of said term, and to compensate the City of Lauderhill immediately upon demand for any damages to the premises caused by any act, or failure to act, of the Instructor, Instructor's employees, volunteers, agents, assistants, substitutes, or any person who is controlled by the Instructor, or any person attending or participating in the program during the non-exclusive use of the premises.

11. Access to and use of the following equipment or materials will be provided by the City:

12. Neither the Instructor, nor his/her volunteers, assistants, substitutes or persons in the employ or under the control of the Instructor, shall be considered under the provisions of this Agreement, or otherwise, as having employee status or as being entitled to participate in any employment benefits of the City, such as medical insurance or Workers' Compensation. The Instructor, his/her volunteers, assistants, substitutes or persons in the employ or under the control of the Instructor at all times shall be considered an independent contractor and at no time shall be considered an employee of the City. The Instructor, his/her volunteers, assistants, substitutes or persons in the employ or under the control of the Instructor agree at no time to represent or cause to be represented that they are employees, agents or representatives of the City. This is merely a non-exclusive license agreement and is not a lease and does not convey any property rights.

14. The City reserves the right to cancel or reschedule any of Instructor's classes in the case of scheduling conflicts or other emergencies, as determined by the Department. City sponsored events shall take precedence over the Program.

15. The City shall have the right to terminate this Agreement immediately upon notification by the Director of the Department if the City has determined, in its sole discretion, that it is in the best interest of the City, the Program participant(s,) or any spectators. The City also has the discretion to remove a participant from the Program or to prohibit their continued participation in the Program due to behavior, conduct, activities, or other facts and circumstances if such action is deemed necessary by the City.

16. All assistants, substitutes, volunteers, or additional instructors utilized by Instructor must have the prior approval of the Department.

17. The Instructor agrees to indemnify and hold harmless the City of Lauderhill from and against any and all liabilities, claims, causes of action, demands, debts, costs, obligations or expenditures, including court costs and attorney's fees, arising out of any claim for personal injury, death, any claims for property damage, copyright, use of musical works, or for any other claims sustained either directly or indirectly by Instructor, Instructor's agents, assistants, substitutes, volunteers, or employees, or by any program participant, or by any person attending but not participating in the program (including any parent or guardian of a minor child) arising out of or in connection with the services subject to this Agreement. This provision is subject to the limitations of liability as provided in Florida Statute §768.28 and does not act as a waiver of the City's entitlement to sovereign immunity as a matter of statutory and common law.

18. The Instructor agrees to pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection therewith, including but not limited to, attorney's fees and costs to defend all claims or suits, in the name of CITY when applicable and shall pay all costs and judgments which may issue thereon, or in connection with the litigation of the terms of this Agreement.

19. The Instructor is required to furnish the City at the time this Agreement is signed by the Instructor, a Certificate of Insurance in an amount of not less than One Million Dollars (\$1,000,000.00). The City shall be named on the face of the policy as an additional insured.

20. This agreement shall be interpreted under the laws of the State of Florida and in the event of litigation and venue shall lie in Broward County, Florida.

21. Special provisions. The Instructor specifically represents that he/she or the Instructor's agents, assistants, substitutes, volunteers, employees, or any person under the control of the Instructor, has not been convicted of a criminal offense involving sexual assault, sexual misconduct, lewd and lascivious behavior, sexual battery or any other criminal offense involving inappropriate sexual conduct or behavior towards another person. A misrepresentation under this provision is grounds for immediate termination of this Agreement.

22. Compliance with Revenue Procedure 2017-13, Internal Revenue Bulletin 2017-6. Notwithstanding anything in this Agreement to the contrary, the City and the Instructor agree to the following provisions, which are intended to meet the requirements of Revenue Procedure 2017-13 for a safe harbor from private use for a management or service agreement.

(a) The schedule of fees, attached hereto as Exhibit B, has been approved by the City. Any modifications of these fees by the Instructor must be approved by the City.

(b) The annual budget for the property at which the services will be performed, any capital expenditures with respect to such property, any disposition of property that is part

of such property, any rates charged for the use of such property and any change in the nature and use of such property must be approved in advance by the City.

(c) The City bears the risk of loss upon damage or destruction of the property at which the services will be performed.

(d) The Instructor agrees that he/she is not entitled to and will not take any tax position inconsistent with being a service provider. The Instructor agrees not to take any depreciation or amortization, investment tax credit or deduction for any payment as rent with respect to the property at which the services will be performed.

Entered into and signed on _____, 2019.

INSTRUCTOR:

Signature: _____

Printed Name: _____

Duly Authorized Representative of Aquanauts, LLC d/b/a Aquanauts Scuba Academy

CITY OF LAUDERHILL:

By: _____ Supervisor
Director of Parks & Leisure
Services Department

By: _____
City Manager (If Agreement is
for more than \$3,000.00)