

Recreational Facility Use Agreement

This Agreement is entered into this 15th day of February, 2023, by and between the City of Litchfield Park, an Arizona municipal corporation (“City”) and The Arizona Dolphins Swim Team (“User”). The City and User may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

In consideration of the mutual promises and covenants contained herein, the Parties agree as follows.

1. **Agreement for Use:** User is authorized to use the City of Litchfield Park swimming pool, shower, and bathroom facilities (“Facility”) upon the terms and conditions set forth in this Agreement.

2. **Permitted Uses:** The Facility may be used for swim practices conducted by User for students in the swimming programs of User.

A. The City shall provide use of Facility during swim practices.

B. User shall be responsible for all acts and omissions of its employees and students participating in User’s swim program and shall provide at least one person who is certified in Lifeguarding and CPR, AED and First-Aid training by the American Red Cross, Star Guard or equivalent certifying entity acceptable to the City. User shall provide evidence of such certifications to City upon request.

3. **Conditions of Use:** User shall comply with the conditions of use set forth in this Paragraph 3 and with all applicable laws and regulations of the Facility and shall not create a nuisance to City or others in connection with use of the Facility. User’s use of the Facility shall comply with the following conditions of use:

A. No glass containers in the Facility.

B. No alcohol shall be present or used at the Facility.

C. No smoking within 20 feet of the Facility.

D. Placement and removal of pool tarps before and after use of the Facility by User shall be supervised by the Litchfield Park Aquatics Manager. User’s swim students shall assist as required by the Aquatics Manager.

E. User shall be responsible for the removal of all personal items and cleanup of the pool area in the Facility and the Recreation Center following its use each day. The cleanup shall include but is not limited to the following: Dispose of all trash into the proper receptacles, return all deck furniture to original positions, return any swim equipment used.

4. **Dates(s) and Time(s) of Use:** During the term of the Agreement, User may use the Facility during the following agreed upon times unless otherwise agreed to by the City Manager or his designee. User shall not use the Facility on City holidays and Sundays.

March 1-3, 2023: 4:00pm – 7:30pm each day
March 6-10, 2023: 4:00pm – 7:30pm each day
March 13-17, 2023: 5:00pm – 7:00pm each day
March 27-29, 2023: 4:00pm – 5:00pm each day
April 3-7, 2023: 4:00pm – 7:00pm each day

5. **Term:** This Agreement shall commence on March 1, 2023, and shall terminate on April 8, 2023, unless terminated sooner as set forth in this Agreement.

6. **Indemnification:** User shall indemnify and hold harmless the City, its officers, agents, and employees from and against any and all loss, injury, death, damage, theft or any other claim whatsoever arising out of the use of the Facility by the User or User's employees, contractors, agents, guests or invitees. User has inspected the Facility and assumes the risk of all conditions in and about the Facility as it exists on the date of this Agreement.

7. **Insurance:** During the term hereof, User shall keep, in full force and effect a policy of public liability insurance satisfactory to the City in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the general aggregate. Certificates of insurance shall be provided to the City naming the City as an additional insured and shall contain a clause that the insurance company will not cancel or materially change the insurance without giving City thirty (30) days prior written notice and a waiver of subrogation against City. The policy shall contain an endorsement that the policy is primary, noncontributory and contain a waiver of subrogation. A copy of the policy or a certificate of insurance shall be delivered to City upon commencement of this Agreement. User's failure to maintain such insurance policy shall be grounds for City's immediate termination of this Agreement.

8. **Termination; Refunds:**

- A. Either Party may terminate the Agreement for convenience with 30 days advance written notice. Further, City shall have the right to immediately terminate this Agreement and User's use of the Facility if any term of this Agreement is not met, in which case termination shall be effective on date of notice. In the event of termination, User shall be entitled to a pro rata refund of any advance permit fee(s) paid.
- B. Notwithstanding anything to the contrary in the Agreement, if the City Manager determines that the Facilities shall be closed due to a public health emergency, City may terminate or suspend this Agreement, at its option. Such termination

or suspension shall be effective immediately upon delivery of written notice to User unless such notice sets forth a different date. User shall be entitled to a pro rata refund of any advance permit fee(s) paid.

9. **Fee:** User shall pay \$3,250.00 to the City on March 1, 2023.
10. **Notices:** All notices required by this agreement shall be sent by first class mail or personal delivery to:

CITY OF LITCHFIELD PARK

City Manager
214 W. Wigwam Blvd.
Litchfield Park, AZ 85340

USER

Paul Root, Head Coach
Arizona Dolphins Swim Team
3546 W Aire Libre Ave
Phoenix, AZ 85053

11. **Attorney's Fees:** In the event suit is brought or an attorney is retained by any Party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, or to collect money damages for breach hereof, the prevailing Party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney's fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

12. **Immigration Law Compliance Warranty:** As required by A.R.S. § 41-4401, User hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). User further warrants that after hiring an employee, User verifies the employment eligibility of the employee through the E-Verify program. If User uses any subcontractor in performance of this Agreement, subcontractor shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractor shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. City retains the legal right to inspect the papers of any User or subcontractor employee who works on this Agreement to ensure that the User or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

13. **Sole Agreement:** There are no understandings or agreements except as herein expressly stated.

14. **Governing Law:** This Agreement shall be governed by and construed or enforced in accordance with the laws of the State of Arizona.

15. **Conflict of Interest:** This Agreement may be terminated pursuant to ARS Section

38-511.

16. **Independent Contractor:** User agrees it is an independent contractor and not an agent or employee of the City, for all purposes including the Federal Insurance Contributions Act, the Income Tax Act, the Arizona Workman's Compensation Act, the Arizona Economic Security Act, and any and all other applicable federal or state statutes, rules, or regulations. User shall supervise and direct the performance of this Agreement, using his best skill and attention.

[Signatures on following page]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and year first herein written.

CITY OF LITCHFIELD PARK

Thomas L. Schoaf, Mayor

ATTEST:

Terri Roth, MMC, City Clerk

APPROVED AS TO FORM:

Gust Rosenfeld, PLC, City Attorney
By: Joseph D. Estes

USER: Arizona Dolphins Swim Team

Paul Root, Head Coach