

RECREATION CONTRACT INSTRUCTOR AGREEMENT

THIS NON-EXCLUSIVE INDEPENDENT CONTRACTOR AGREEMENT (this “**Agreement**”), is made and entered into this 20th day of December, 2016, by and between the CITY OF HALLANDALE BEACH, a municipal corporation of the State of Florida (the “**City**”), and Dolphin Aquatic Swim School, (the “**Instructor**”).

WITNESSETH

WHEREAS, the City operates special recreation programs for the purpose of providing recreation and education to the general public; and

WHEREAS, the City has accepted the Instructor’s proposal to provide a special interest recreation program for the City’s Parks and Recreation Department; and

WHEREAS, the operation of said program will mutually benefit the parties hereto and the residents of the City of Hallandale Beach.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Special Interest Recreation Program:

The Instructor is hereby authorized to conduct the following special interest recreation program (the “**Program**”) for the City’s Parks and Recreation Department commencing January 1, 2017 and terminating on June 30, 2017. (the “**Term**”):

Dolphin Aquatic Swim School Swim Team

The Program shall be conducted strictly in accordance with the guidelines set forth on **Exhibit “A”** attached hereto and the course outline set forth on **Exhibit “B”** attached hereto and both incorporated by reference (together, the “**Guidelines**”).

2. Payments:

The City shall pay to the Instructor, a sum equal to seventy percent (70%) of the gross registration fees collected by the City for the Program. In no event shall registration be closed and sessions for the Program commence until such a time as the minimum number of registrants designated in the Guidelines have registered and their fees received by the City.

3. Registration and Collection of Fees:

The City assumes sole responsibility for the registration of participants, issuance of the City's Recreation Cards to participants, collection of the City's Authorization, Release and Waiver of Liability and Indemnity, collection of the City's Recreation Department's Registration Form and the collection of fees for the Program. The City shall also be responsible for the collection and/or payment of any sales tax or other tax that may be required by federal, state, or local laws.

4. Right to Audit Records:

In the performance of this Agreement, the Instructor shall keep books, records, and accounts of all activities related to this Agreement.

All documents, papers, books, records and accounts made or received by the Instructor in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the Parks and Recreation Department and shall be retained by the Instructor for a period of one (1) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and section 119.071, *Florida Statutes*. All records or documents created by the Instructor or provided to the Instructor by the Parks and Recreation Department in connection with the activities or services provided by the Instructor under the terms of this Agreement, are public records and the Instructor agrees to comply with any request for such public records or documents made in accordance with section 119.07, *Florida Statutes*.

5. Obligations of the Instructor:

The Instructor agrees as follows:

- a. To conduct all sessions for the Program described herein in accordance with the Guidelines.
- b. Unless as otherwise provided for herein, to be responsible for all costs and expenses for all materials and labor relating to or arising from performance of the Program.
- c. To secure and maintain, without cost to the City, all licenses required and to pay when due all taxes and assessments which shall be imposed by any governmental body in connection with the Program described herein, and to otherwise comply with all applicable laws, ordinances, rules, regulations, policies and procedures established by the City of Hallandale Beach, the Parks and Recreation Department, or any other local, state, or federal governmental entity.
- d. In no event shall any person other than the Instructor or an authorized agent of the Instructor from the Instructor's company conduct any session of the Program unless and until specifically authorized by the City.
- e. To maintain good public relations; to conduct the Program in a manner which is

courteous and fair to the public; and to be responsive to public requests and complaints.

f. To cooperate fully with City officials in all matters relating to the Program.

g. To immediately advise the City of any convictions for felonies, misdemeanors, or violations of law where jail or prison time can be imposed as a punishment or sanction even though such jail or prison time is not imposed. For the purpose of this Agreement conviction includes situations of adjudication and withholding of adjudication.

6. City's Obligations:

The City agrees as follows:

a. Unless otherwise herein set forth, provide the facilities (the "**Facilities**") and to pay all utility charges required for the Program.

b. Provide to the Instructor on or before the first day of class, a roster for the Program which will include the participants' names, contact information and payment status.

7. Indemnification:

The Instructor shall indemnify, hold harmless and defend the City and its officers, directors, agents, servants, volunteers, and employees from and against any and all liabilities, damages, actions, costs, losses, claims and expenses (including attorneys' fees and court costs), caused by or resulting from, in whole or in part, any tort or act, omission, negligence, intentional misconduct, fault or violation of law or ordinance, committed by the Instructor or the Instructor's employees, agents or contractors, which occurs during (i) the use or occupancy of the Facilities by the Instructor for the Program; or (ii) the exercising of any other rights or obligations under this Agreement.

All personal property housed or placed at the Facilities shall be at the risk of the Instructor, and the City shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Instructor agrees and understands that the City does not and shall not carry liability, fire, or theft insurance on the operation of the Facilities to cover the Instructor's interest therein.

8. Insurance:

During the Term of this Agreement the Instructor shall provide, pay for, and maintain insurance with companies authorized to do business in Florida, with an A.M. Best rating of B+ (or better) Class VII (or higher), or otherwise be acceptable to the City if not rated by A.M. Best. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. All liability policies shall provide that the City of Hallandale Beach is an additional insured as to the operations of the Instructor under this Agreement including the additional insured endorsement, the subrogation waiver endorsement, and the Severability of Interest Provision. In lieu of the additional named insured requirement, if the Instructor's company has a declared existing

policy which precludes it from including additional insureds, the City of Hallandale Beach may permit the Instructor to purchase an owners and contractors protective liability policy. Such policy shall be written in the name of the City of Hallandale Beach at the same limit as is required for general liability coverage. The policy shall be evidenced on an insurance binder which must be effective from the date of issue until such time as a policy is in existence and shall be submitted to the City of Hallandale Beach in the manner described below as applicable to certificates of insurance. The insurance coverages and limits required must be evidenced by properly executed Accord 25 Certificates of Insurance form (or its equivalent). Each certificate must be personally and manually signed by the authorized representative of the insurance company shown in the certificate with proof that he/she is an authorized representative thereof. Thirty (30) days written notice must be given to the City of Hallandale Beach of any cancellation, intent not to renew, or reduction in the policy coverages, except in the application of the aggregate liability limits provisions. Should any aggregate limit of liability coverage be reduced, it shall be immediately increased back to the limit required by this Agreement. The insurance coverages required herein are to be primary to any insurance carried by the City of Hallandale Beach or any self-insurance program thereof.

The City of Hallandale Beach may waive any or all of these requirements based on the specific nature of goods or services to be provided under this Agreement.

The Instructor shall provide, pay for and maintain commercial general liability insurance on the most current Insurance Services Office (ISO) form or its equivalent. The amount of commercial general liability insurance shall not be less than \$1,000,000 per occurrence and a \$2,000,000 general aggregate. Also, all policies must include sexual and physical abuse liability coverage.

If the City of Hallandale Beach determines, in its sole discretion, that the following additional insurance is required, the Instructor shall also provide and pay for the following:

- a. Automobile Liability Insurance shall be maintained in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased, or hired vehicles. The amount of Automobile Liability Insurance shall not be less than the amount specified below:
 - i. If this Agreement is for less than \$100,000, then the amount of Automobile Liability Insurance shall not be less than \$500,000 combined single limit each occurrence bodily injury & property damage.
 - ii. If this Agreement is for more than \$100,000, then amount of Automobile Liability Insurance shall not be less than \$1,000,000 combined single limit each occurrence bodily injury & property damage.
- b. Worker's Compensation and Employer's Liability Insurance shall be provided for all employees engaged in the work under this Agreement, in accordance with the laws of the State

of Florida. The amount of the Employer's Liability Insurance shall not be less than the amount specified as follows:

iii. Worker's Compensation: Florida Statutory Requirements

iv. Employer's Liability:

1. If this Agreement is for less than \$100,000, then amount of Employer's Liability Insurance shall not be less than \$500,000 bodily injury by accident and each accident, bodily injury by disease policy limit, and bodily injury by disease each employee.

2. If this Agreement is for more than \$100,000, then amount of Employer's Liability Insurance shall not be less than \$1,000,000 bodily injury by accident and each accident, bodily injury by disease policy limit, and bodily injury by disease each employee.

c. Excess Liability Insurance (Umbrella Policy) may compensate for a deficiency in general liability, automobile, or worker's compensation insurance coverage limits.

These insurance requirements shall not relieve or limit the liability of the Instructor. The Recreation Department does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Instructor's interests or liabilities, but are merely minimums. A certificate of insurance indicating the Instructor has coverage in accordance with the requirements of this Agreement shall be furnished by the Instructor to the Recreation Department within ten (10) days from the date of the execution of this Agreement.

9. Independent Contractor:

THE INSTRUCTOR SHALL PERFORM THE TERMS AND CONDITIONS OF THIS AGREEMENT AS AN INDEPENDENT CONTRACTOR, AND NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO BE INCONSISTENT WITH THIS RELATIONSHIP OR STATUS. NOTHING IN THIS AGREEMENT SHALL, IN ANY WAY, BE CONSTRUED TO CONSTITUTE THE INSTRUCTOR OR ANY OF ITS AGENTS OR EMPLOYEES AS THE REPRESENTATIVE AGENTS OR EMPLOYEES OF THE CITY OF HALLANDALE BEACH. THE ASSIGNMENT BY THE CITY OF A TIME FOR THE PROGRAM IS BASED SOLELY ON THE AVAILABILITY OF THE APPROPRIATE FACILITY AND IS NOT A DICTATE WHICH WOULD CHANGE THIS INDEPENDENT CONTRACTOR'S RELATIONSHIP TO ONE OF AN EMPLOYEE. NEITHER THE INSTRUCTOR, NOR ANY OF HIS/HER EMPLOYEES SHALL BE ENTITLED TO RECEIVE ANY EMPLOYEE BENEFITS FROM THE CITY.

10. Background Investigation Check:

The Instructor hereby acknowledges that background check, inclusive of a check pursuant to the Florida Jessica Lunsford Act, has been conducted by the City with satisfactory results. The Instructor agrees to submit to future background checks, in the event the City receives

information which gives rise to a reasonable suspicion that the initial background check was inaccurate or that there has been recent occurrences which could affect the Instructor's continued relationship with the City.

The Instructor shall be bound by the provisions set forth in the City's Administrative Policy No: 1002.007/R00 (Arrest of Employees), which is hereby attached as (Exhibit C) and incorporated as a part of this agreement. The Instructor further agrees that this agreement may be terminated effective immediately for violation of the administrative policy or for arrest on any charges directly related to the Instructor's duties and responsibilities under this agreement.

11. Music Performance:

The Instructor shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Instructor shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The Instructor agrees to indemnify and hold harmless the City of Hallandale Beach from damages for unauthorized use or performance of copyrighted music, including the defense of the City in any resulting litigation.

12. Attorneys' Fees:

In the event litigation is required by either party to enforce the terms of this Agreement, the prevailing party of such action shall, in addition to all other relief granted or awarded by the court, be entitled to judgment for reasonable experts, attorneys' and/or paralegal fees and costs incurred by reason of such action and all costs of suit and those incurred in preparation thereof, whether related to trial, collection or appeals. This provision shall survive any termination of this Agreement.

13. Governing Law:

This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

14. Venue:

The parties agree that personal jurisdiction over them may be properly exercised in, and that exclusive venue for any action arising out of or related to this Agreement shall be in, the state courts located in Broward County, Florida, and each party waives any defenses to such venue.

15. Waiver of a Jury Trial:

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE PREMISES, THIS AGREEMENT OR ANY DOCUMENTS EXECUTED IN CONNECTION HERewith, OR IN RESPECT OF ANY COURSE OF

CONDUCT, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY WITH RESPECT THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH OF THE PARTIES TO ENTER INTO THIS AGREEMENT AND SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

16. Unauthorized Alien Workers:

The City will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a. The City shall consider the employment by the Instructor of unauthorized aliens a violation of 8 U.S.C. Section 1324a. Such violation by the Instructor of the employment provisions contained in 8 U.S.C. Section 1324a shall be grounds for unilateral cancellation of this Agreement by the City.

17. Emergencies:

In the case of a declared state of emergency by the City of Hallandale Beach or the State of Florida, the City retains the right to immediately resume occupation, management, and maintenance of the Facilities, to use the Facilities to meet any emergency needs of the residents of the State of Florida for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the City in its absolute and sole discretion.

18. Copyright:

The Instructor hereby grants to the City of Hallandale Beach a non-exclusive perpetual right to use any and all reports, data, or promotional materials produced, in whole or in part for the benefit and use of the City, under this Agreement which are or shall become subject to copyright by the Instructor in the United States or any other country.

19. Modification:

No modification of this Agreement shall be binding on the City or the Instructor unless reduced to writing and signed by a duly authorized representative of the City and the Instructor.

20. Termination:

This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. When it is determined to be in the best interest of the City, the City may terminate this Agreement upon written notice thereof being delivered by the City to the Instructor. Upon termination of this Agreement, the Instructor shall have fifteen (15) days within which to remove his/her personal property from the Facilities. Any personal property not removed within said (15) day period shall become the property of the City and may be disposed of at the option and in a manner determined by the City. Upon the termination of this agreement, the Instructor shall not remove any City equipment from the facility.

21. Notice:

Notices hereunder shall be given to the parties set forth below and shall be made by hand delivery, facsimile, overnight delivery or by regular mail. If given by regular mail, notice shall be deemed to have been given within a required time if deposited in the United States mail, postage prepaid, within the time limit. If given by facsimile, notice shall be deemed received when sent so long as the sending party retains a facsimile confirmation sheet. For the purpose of calculating time limits, which run from the giving of a particular notice, the time shall be calculated from actual receipt of the notice. If any date hereunder shall fall on a Saturday, Sunday or a federally recognized holiday, then such date shall carry over and be extended to the next following business day. Notices shall be addressed as follows:

If to the City:

City Manager
Hallandale Beach, Florida
400 S. Federal Highway
Hallandale Beach, Florida 33009

With copy to:

Hallandale Beach Parks and Recreation
410 SE 3rd Street
Hallandale Beach, FL 33009
Attn: Cathie Schanz, CPRE
Telephone: (954)457-1452
Facsimile: (954)457-1467

And:

City Attorney
400 S. Federal Highway
Hallandale Beach, Florida 33009

If to the Instructor:

Dolphin Aquatic Swim School
1722 Mango St #101
Hollywood, FL 33020
Attn: Edgardo de Leon
Telephone: 954-864-2237

Any of the aforementioned parties may change its address for the receipt of notices, demands, consents, requests and other communications by giving written notice to the other in the manner provided above. The provisions of this section shall survive any termination of this Agreement.

22. Severability:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

23. Counterparts:

This Agreement may be executed in any number of counterparts copies, each of which shall constitute an original and all of which when taken together, shall constitute one agreement. Facsimile copies of this Agreement shall be valid for all purposes.

24. Headings:

Headings used herein are for convenience only and do not constitute a substantive part of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

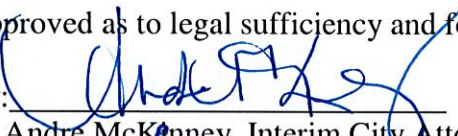
ATTESTED:

THE CITY OF HALLANDALE BEACH


By: 
Mario Batialle, City Clerk

By: 
Jennifer Frastai, Interim City Manager
or designee

Approved as to legal sufficiency and form:

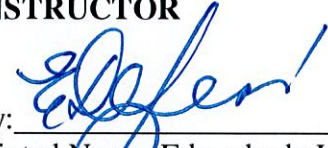
By: 
Andre McKenney, Interim City Attorney

WITNESS:

By: 
Printed Name: Colbie Shaw

By: _____
Name _____

INSTRUCTOR

By: 
Printed Name: Edgardo de Leon
Title: Instructor

**EXHIBIT “A”
SPECIAL INTEREST PROGRAM GUIDELINES**

**Dolphin Aquatic Swim School
Swim Team
effective 01/01/17**

Ages:

Youth: 4 through 17 years old
Masters: 18 years and older

Dates and Times:

to be coordinated with Facility as staffing is available. Classes are up to 2 hours in length. Multiple sessions may be offered per day. Course is offered on a monthly basis and is offered 4-5 days per week.

Location(s):

BF James Pool

Course fee:

Youth:

Non-resident \$160.00 per person, per month, per session
Resident \$70.00 per person, per month, per session – first person in family
Resident \$65.00 per person, per month, per session – sibling

Masters:

Non-resident \$160.00 per person, per month, per session
Resident \$70.00 per person, per month, per session

Minimum/ Maximum Class Size:

15 minimum/ 25 maximum After Open Swim Hours
5 minimum/ 10 maximum During Open Swim Hours

Supplies Fee(s):

None

Requirements:

Participants must provide own kickboard, poolboy, fins, goggles, cap, swim suit, towel, and sunblock.
Optional: Register with USA Swim League (\$100 paid to USA Swim)

The Swim Team training program will be modified to ensure safety of all participants. High intensive swim training activities will not be offered. Participants per lane will be limited to avoid collisions. The program will be limited to techniques and low intensity swim activities.

EXHIBIT “B”

COURSE OUTLINE/DESCRIPTION

Dolphin Aquatic Swim School Swim Team effective 01/01/17

If you are looking for an awesome swim team program, come to the City of Hallandale Beach for the **Dolphin Aquatic Swim School Swim team**. Swim with the Dolphin team and you will be successful in swimming. Learn how to swim faster with highly qualified instructors. The swimming program better, fun, & safety like Dolphin at Hallandale Beach. We are the best with children. Just come to try one day for free.

Bio

Swimming coach Edgardo De Leon was born in Panama where, since three years of age, he was part of the swim team of his state. He earned a scholarship through swimming to study and swim in the capital of Panama. He earned another scholarship to study in Mexico and swim for the Saltillo's Tech Institute as a member of the swim team of that prestigious University. During his swim training, he obtained a degree as Industrial Engineer at Saltillo's Tech Institute, and his Master in Business Administration at the private university of UANE-Mexico. December 2014 Coach Ed will earn another bachelor in Supervision and Management at Broward College.

Over the years, he has participated in a lot of state and national swimming championships receiving achievements like:

- Most Valuable Swimmer of the year- Monterrey Tech Institute-Mexico 1985
- Central America and the Caribbean Swimming Championship 2nd Place-100 Fly-Venezuela 1989
- First Place 200 Fly CCAN- Merida-Mexico 1991
- Swimming Judge in State Championship in 1992

Coach Ed, as everybody called him, ran his father's swimming school in Panama. After that founded his second swimming school in Mexico. When he arrived in the USA, he founded DASS in 1996 offering swim team programs, after swimming program for youth, summer camps, and a unique swim program for children with disabilities at several location in Dade and Broward County. Coach Ed wrote a book in Panama and is writing another book here in Miami about a swimming technique to teach children with disabilities.

Here in USA, Coach Ed is a member of Florida Gold Coast Swimming; ASCA; and the American Red Cross where he is also a volunteer. Coach Ed is a certified Water Safety Instructor, Lifeguard, and is certified in CPR, First Aid, etc. He is the head swimming coach for the Dolphin Swim School offered at Hollywood Pool, Broward College Central Campus, and the Bluesten Pool. He has also been the Aquatic Supervisor at Beth Moshe School for their Summer Camp with more than 400 kids since 2007.

Coach Ed loves this sport, and his best slogan is "If you do what you love with passion and respect, nobody can stop you to the way of success."

EXHIBIT "C"

CITY OF HALLANDALE BEACH ADMINISTRATIVE POLICY

DATE OF ISSUE: December 07, 2007 POLICY NUMBER: 1002.007/R00
EFFECTIVE DATE: December 07, 2007 SUBJECT: Arrest of an Employee or Applicant
REVISION DATE:

APPROVED: _____
D. Mike Good, City Manager

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POLICIES CROSS REFERENCED:

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I. PURPOSE/INTENT

To require all employees who have been arrested to self report so The City of Hallandale Beach can determine if that employee shall return to the workplace. This is part of the City's effort to maintain a safe working environment.

II. DEFINITIONS

Arrested - A situation in which the police detain a person in a manner that, to any reasonable person, makes it clear he/she is not free to leave. A person can be "under arrest" even though the police have not announced it; nor are handcuffs or physical restraint necessary.

III. POLICY/PROCEDURES

- A. Any City of Hallandale Beach employee who is arrested on or off duty for any reason shall notify the respective Department Director or his/her designee by the end of the next day or within a reasonable amount of time, not to exceed three calendar days after the incident. If the employee is incarcerated, a family member or representative must call on the employee's behalf.
1. Any employee (full time, part time, contract or temporary) who is arrested by any law enforcement agency including international, on duty or off duty, for any reason, shall notify his/her Department Director or his/her designee of the arrest.
 2. An applicant for employment with the City of Hallandale Beach who has received a Conditional Offer of Employment shall be required to disclose to the Personnel Department in writing any and all criminal charges, arrests, and/or convictions pending against the applicant at the time of the conditional offer of employment and to advise the Personnel Department in writing as to the anticipated time frame for resolution of the charges, arrest, and/or convictions.
- B. Upon notification of the employee's arrest, the Director shall immediately notify the Director of Personnel.

- C. Based on a review of all documentation and information related to a criminal offense the City Manager shall make a determination for disciplinary action up to and including termination of employment.
- D. An employee's failure to report an arrest within the specified time period absent a valid explanation as determined by the City Manager may result in disciplinary action up to and including termination of employment.

IV. ADDITIONAL INFORMATION, REQUIREMENTS AND RESPONSIBILITIES

This policy shall be updated and kept current by the Personnel Department.