

**INSTRUCTOR AGREEMENT**

THIS IS AN AGREEMENT, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2013, between:

CITY OF FORT LAUDERDALE, a  
municipal corporation of the  
State of Florida, hereinafter  
referred to as "CITY,"

and

Averett Enterprises, a Florida  
limited liability company,  
hereinafter referred to as  
"INSTRUCTOR."

WHEREAS, CITY desires to retain the services of an Instructor to conduct Competitive Swim Team programs at the Fort Lauderdale Aquatic Complex as determined by City's Parks and Recreation Department; and

WHEREAS, INSTRUCTOR represents to CITY that s/he has the necessary expertise and capability to act as an Instructor; and

WHEREAS, pursuant to Section 2-172 of the City of Fort Lauderdale Code of Ordinances, procurement of recreational program instructors are exempt from the purchasing provisions of the City's Code; and

WHEREAS, pursuant to \_\_\_\_\_ at the City Commission meeting of \_\_\_\_\_, the City Commission authorized the execution of this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained and other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto do agree as follows:

Exhibit 1  
CAM 13-1390

1. SCOPE OF SERVICE

A. INSTRUCTOR shall conduct Competitive Swim Team programs to be scheduled with the CITY'S Parks and Recreation Department ("DEPARTMENT") staff at the Fort Lauderdale Aquatic Complex.

B. INSTRUCTOR is responsible for paying all applicable local, state and federal taxes, and to acquire and pay for all necessary permits and licenses.

C. The INSTRUCTOR shall conduct Competitive Swim Team programs including classes, practices, specialty instruction/clinics at the Fort Lauderdale Aquatic Complex and competitive swimming events, some requiring travel, as may be required.

D. INSTRUCTOR's services shall be performed during the dates and times as mutually agreed upon and as required by the DEPARTMENT.

E. INSTRUCTOR is required to notify the DEPARTMENT immediately upon the cancellation of any scheduled class or practice which INSTRUCTOR is scheduled to teach.

F. 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.

2. GENERAL CONDITIONS

A. COMPENSATION - INSTRUCTOR shall be compensated on a per diem basis for days worked as follows:

For scheduled practices, competitive events, including those requiring travel away from the Aquatic Complex, and all other regularly scheduled team programs:

\$136 per day not to exceed 295 days annually.

Any days beyond 295 days must be approved in advance in writing by the DEPARTMENT.

Specialty clinics, private instruction and other approved programs will be compensated by commission, INSTRUCTOR shall receive a commission of 70% of all money collected by CITY, with the remaining 30% to be retained by the City.

INSTRUCTOR is required to submit all invoices and applicable backup for services rendered. Payment for all invoices submitted shall be received within 30 days from the date of submission.

B. TERM - The term of this Agreement is for a time period beginning on November 13, 2013, and ending November, 12, 2014. The City reserves the right to extend the contract for up to four (4) additional one (1) year terms providing both parties agree to the extension, and such extension is approved by the City. CITY or INSTRUCTOR may cancel this Agreement with or without cause upon thirty (30) days written notice to the other party.

C. LIMITATION OF AUTHORITY - Except upon express permission of the City Commission of CITY, INSTRUCTOR may not incur any obligations on behalf of or in the name of the City of Fort Lauderdale.

D. WORK INITIATION AND COMPLETION OF SERVICES - INSTRUCTOR shall commence work in a timely manner in order to execute the duties enumerated herein. INSTRUCTOR agrees to abide by the directives of the DEPARTMENT.

E. CHANGES - CITY may request changes in the scope of services to be performed by INSTRUCTOR. Changes which are mutually agreed upon by and between CITY and INSTRUCTOR shall be incorporated in written amendments to this Agreement.

F. ASSIGNABILITY - INSTRUCTOR shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of CITY. This Agreement contains all the understandings and agreements between the parties and no modification or amendment shall be effective unless embodied, in writing, executed by both parties.

G. INDEPENDENT CONTRACTOR - INSTRUCTOR at all times during the performance of this Agreement shall be considered an independent contractor and not a CITY employee

and shall receive no benefits or pay from CITY other than as enumerated in this Agreement.

H. BACKGROUND CHECK - INSTRUCTOR shall undergo and pass a background screening completed by the DEPARTMENT at the cost of the INSTRUCTOR prior to commencement of services under this Agreement. INSTRUCTOR must be readily identifiable at all times with a DEPARTMENT issued ID badge.

I. CERTIFICATION - INSTRUCTOR shall maintain all applicable memberships, education and safety certifications as required by USA Swimming in accordance with their rules and regulations. Requirements shall include but are not limited to Athlete Protection Education, Safety Training for Coaches, CPR, First Aid and maintaining a current coaching membership with USA Swimming. Further, as per Chapter 64E-9 of the Florida Health Department Code for Public Swimming and Bathing Places, all owners, managers, lifeguards or swimming instructors in charge of, or working at, public swimming pools shall be responsible for the supervision and safety of the pool. INSTRUCTOR shall abide by the terms of any and all USA Swimming rules, regulations and guidelines.

3. NOTICE - Whenever either party desires to give notice unto the other, it shall be given by written notice, sent certified by U.S. Mail, return receipt requested or via nationally recognized overnight courier addressed to the party to whom it is intended, at the places last specified, and the places for giving notice shall remain such until they are changed by written notice in compliance with this subsection. Notice shall be deemed given on the fourth (4<sup>th</sup>) business day after being mailed by certified mail or on the first (1st) business day after being sent by nationally recognized overnight courier: For the present, the parties designate the following as respective places for giving notice, to wit:

FOR CITY:

City of Fort Lauderdale  
Parks and Recreation Director  
1350 West Broward Boulevard  
Fort Lauderdale, Florida 33316

WITH A COPY:

City of Fort Lauderdale  
City Attorney's Office  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33302

FOR INSTRUCTOR:

Averett Enterprises, LLC  
ATTN: Michael S. Averett  
1579 NE 39<sup>th</sup> Street  
Oakland Park FL 33334-4629

4. INDEMNIFICATION

INSTRUCTOR shall indemnify, defend, save and hold CITY fully harmless from and against any and all liabilities, claims, suits, actions, demands, losses, judgments or fines of every kind and nature, including all costs, expenses, attorney's fees, arising from, related to, or caused by INSTRUCTOR's use of, or occupancy of, or providing of services, or acts or omissions made during the term of this Agreement, including, but not limited to bodily injury, death and property damage. INSTRUCTOR shall be liable for all costs incurred by CITY in and about any such claim, suit, action, demand or loss for investigation of same. This indemnification shall not be limited by any insurance required under this Agreement. This indemnification shall survive the expiration or revocation of this Agreement.

5. INSURANCE

INSTRUCTOR shall provide and maintain continuously during the term of this Agreement, comprehensive general liability insurance with minimum combined single limits of \$1,000,000.00 per occurrence and any other coverage required by law covering all claims arising directly or indirectly out of the services outlined by this Agreement. CITY shall be included under said insurance policy as an additional insured.

INSTRUCTOR acknowledges that as an independent contractor Workers' Compensation Insurance is not required, but may be purchased by INSTRUCTOR at no cost to CITY, for his/her own benefit.

All insurance policies shall be endorsed to provide CITY with ten (10) days prior Notice of Cancellation and/or restriction. INSTRUCTOR shall provide proof of all required insurance coverages to CITY's Risk Manager and receive approval from Risk Manager prior to commencement of services contained in this agreement.

6. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida, with venue lying in Broward County for the purposes of any litigation or administrative proceedings arising out of this Agreement.

7. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement between the CITY and INSTRUCTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

8. SEVERABILITY

If any provision of this Agreement or the application of any provision to any party or circumstance shall be prohibited by or invalid under applicable law, the provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of the Agreement or their application to other parties or circumstances.

9. WAIVER

The CITY's waiver or breach of any term, condition, or covenant of this Agreement shall not constitute the waiver or breach of the same or any other term, condition, or covenant of this Agreement.

10. COMPLIANCE WITH LAWS

In the performance of the services contemplated under this Agreement, INSTRUCTOR shall comply with applicable regulatory requirements including federal, state and local laws, rules, regulations, ordinances, orders, codes, criteria and standards. INSTRUCTOR agrees to comply with public records laws, specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the INSTRUCTOR upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGES FOLLOW]

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

WITNESSES:

CITY OF FORT LAUDERDALE

By

\_\_\_\_\_  
Mayor

By

\_\_\_\_\_  
City Manager

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

WITNESSES:

INSTRUCTOR

\_\_\_\_\_  
Witness type/print name]

By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Manager

\_\_\_\_\_  
Witness type/print name]

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, as Manager of Averett Enterprises, LLC, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed  
or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number