

## MEMORANDUM OF UNDERSTANDING

THIS IS AN AGREEMENT, dated this \_\_\_\_ day of February, 2018, between:

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

and

SWIM FORT LAUDERDALE MASTERS BOOSTER CLUB, INC., a Florida non-profit corporation ("Booster Club"), supporting the City's US Masters Swimming, adult competitive swimming club team.

WHEREAS, both the City and the Booster Club are desirous of entering into this Agreement which shall allow the Booster Club to provide administrative and volunteer support for certain events for the adult competitive swimming team at the City's Aquatic Complex, hereinafter referred to as "Aquatic Complex"; and

WHEREAS, the City Commission by motion at its meeting of February 6, 2018, authorized the execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set out below, the parties agree as follows:

### 1. RESPONSIBILITIES OF THE CITY

The City agrees to provide the following with regard to the events set forth on Exhibit A, as may be amended:

- A. Access to the Aquatic Complex for events as set forth on Exhibit A. Exhibit A may be modified to change or add events under the same terms and conditions contained herein upon written approval of the City's Parks and Recreation Director or his/her designee.
- B. Certified lifeguards and professional staff support for venue set up, clean up and supervision.
- C. Assistance from PIO with event promotions and communications as needed.
- D. City staff person to serve as Co-Meet Director.

E. City staff person assigned by City Manager to serve as advisor/non-voting member of Booster Club.

F. Set up and operate a field of play, as mutually agreed upon for prelims and, or finals competition to include a maximum of two (2) 10-lane courses with Colorado Timing System (CTS), including stopwatches and lap counters.

G. Hytek Meet Management software and related computer equipment for use at the Aquatic Complex during events.

H. Use of copy and fax machine.

I. Use of available tents, umbrellas, coolers, equipment, tables, chairs, hospitality service supplies, awards stand, clipboards, two-way radios and PA system.

J. Assist with helping secure and provide refreshments for event officials, volunteers and committee members.

## 2. RESPONSIBILITIES OF THE BOOSTER CLUB

Booster Club agrees to provide the following with regard to the events set forth on Exhibit A, as may be amended:

A. Provide event volunteers and staff including, but not limited to, a co-meet director, meet manager/Hytek operator(s), CTS operators, officials, referees, lane timers, announcer, runners, hospitality, registration, awards, gate admission staff and any other necessary administrative personnel and/or items to effectively manage/host the competition.

B. Pay 50% of net revenues derived from the each event, as set forth on Exhibit A, to the City of Fort Lauderdale within sixty (60) days following conclusion of each event.

C. Purchase and/or provide event merchandise, souvenirs, awards, gifts and necessary office supplies such as batteries, paper, labels, envelopes, pencils and pens.

D. Create and compile the meet heat sheets and all meet programs at its sole expense.

E. Provide all paper products, ice, beverages, perishable and non-perishable refreshments for hospitality service.

- F. Add City of Fort Lauderdale as an event host on all printed materials, press releases, and marketing tools.
- G. Pay for parking lot and overnight security personnel.
- H. Provide and distribute meet information, heat sheet and final results and related printing.

### 3. TERM

This Agreement shall commence on February 6, 2018 and terminate on the earlier of: December 31, 2018; the date on which the Aquatic Complex closes; or the date the City determines is necessary in order to facilitate the closure of the Aquatic Complex for construction of a new aquatic center, without further notice to the Booster Club, but which date shall be evidenced in writing by the City.

With reasonable cause, City may terminate this Agreement effective immediately upon presentation of written notice of termination for cause. CITY has right to terminate this Agreement without notice to Booster Club if the Aquatic Complex or integral parts of the facility are destroyed or damaged by any foreseen or unforeseen instance and fulfillment of the Agreement is impossible by CITY or in the event the City Manager determines that termination is necessary to protect the public health or safety.

### 4. TERMINATION

With reasonable cause, City may terminate this Agreement effective immediately upon presentation of written notice of termination for cause. CITY has right to terminate this Agreement without notice to Booster Club if the Aquatic Complex or integral parts of the facility are destroyed or damaged by any foreseen or unforeseen instance and fulfillment of the Agreement is impossible by CITY or in the event the City Manager determines that termination is necessary to protect the public health or safety.

Either party may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

### 5. AMENDMENTS

Changes which are mutually agreed upon by the City and Booster Club shall be incorporated in written amendments to this Agreement signed by both parties with the same favorability herewith.

## 6. INDEMNIFICATION

Booster Club agrees to indemnify and hold harmless City, as well as its employees and agents, against any and all damage of any nature whatsoever including but not limited to death or injury, property damage, claims, suits, actions, judgments, attorney fees and court costs arising out of, attributable to or in any way connected with, the acts, omissions, negligence, willful or intentional misconduct of Booster Club, its subcontractors, employees and agents in connection with activities arising out of or related to this Agreement.

This indemnification shall survive termination or expiration of this Agreement and shall not be limited by any insurance required under this Agreement.

## 7. INSURANCE

The following insurance coverage shall be provided to City by the Booster Club, meet sponsors and any vendors at the competition. Additional insurance may be required by the City if the vendor /sponsor are involved in any activity that is determined to increase the City's exposure, in the City's sole discretion.

### *Commercial General Liability Insurance*

- General Aggregate \$2,000,000.
- Combined Single Limit Bodily Injury/Property Damage \$1,000,000.
- Covering premises-operations, products-completed operations, independent contractors and contractual liability.

The insurer affording coverage must be licensed in the State of Florida, and the coverage must remain in force at all times during the contract period.

The City of Fort Lauderdale shall be named as additional insured.

Furthermore, any costs associated with adding the City of Fort Lauderdale as "ADDITIONAL INSURED" are to be solely at the expense of Booster Club.

The City requires an original certificate to be mailed to the following address:

City of Fort Lauderdale  
Fort Lauderdale Aquatic Complex  
501 Seabreeze Boulevard  
Fort Lauderdale, FL 33316

\*All certificates of insurance are subject to approval by the City of Fort Lauderdale Risk Manager

Booster Club shall be responsible for securing the proper insurance documentation outlined above from meet sponsors and vendors that will be participating each of the events no later than thirty (30) days prior to the start of the event. The updated, correct certificate of insurance needs to be an original copy, not an electronic copy such as sent via email, or fax. The original, updated, correct copy should be delivered to the Fort Lauderdale Aquatic Complex, ATTN: Laura Voet, 501 Seabreeze Boulevard, Fort Lauderdale, Florida 33316.

The insurance certificate shall be valid during the term of this Agreement and any extensions thereto.

8. LIMITATION OF LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$100. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$100 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$100 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes.

9. GOVERNING LAW

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

10. EXTENT OF AGREEMENT

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

11. NOTICE

Whenever any party desires to give notice unto any other party, it must be given by written notice sent by registered U.S. Mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until changed by written notice in compliance with the provisions of this Section:

CITY

City of Fort Lauderdale  
ATTN: Aquatic Complex Manager  
501 Seabreeze Boulevard  
Fort Lauderdale, Florida 33316

BOOSTER CLUB  
ATTN: Kristin Volz  
501 Seabreeze Blvd.  
Fort Lauderdale FL 33316

12. SEVERABILITY

If any provision of this Agreement or the application of any provision to any party of 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.

13. WAIVER

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

14. ASSIGNMENT OR MODIFICATION

It is understood and agreed by the parties that this Agreement may not be assigned, transferred or sublet in whole or in part by the Booster Club.

15. SITE SECURITY

Booster Club acknowledges and agrees that City assumes no responsibility whatsoever for any property, materials, or equipment of the Booster Club, and that security and protection of any such item from the theft, vandalism, the elements, acts of God, or any other cause are strictly the responsibility of the Booster Club.

16. COMPLIANCE WITH LAWS

Booster Club shall at all times comply with all federal, state, and local laws, rules, regulations and ordinances of CITY and any other governmental agency having jurisdiction, including but not limited to, those relating to noise, building, zoning, gambling, fire protection, liquor regulations and laws of operation. Booster Club shall further take all precautions and use extreme care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors.

In the performance of the services contemplated under this Agreement, Booster Club shall comply with applicable regulatory requirements including federal, state and local laws, rules, regulations, ordinances, orders, codes, criteria and standards. Booster Club 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 Booster Club 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.

17. HEADINGS

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

18. DAMAGES TO FACILITY–REIMBURSEMENT

Booster Club shall not allow any injury, defacement, change, alteration or damage to the facility during its use of the facility by Booster Club, an agent of Booster Club or patron of Booster Club. Booster Club assumes all responsibility for the acts, omission to act and conduct of all persons admitted to the facility by consent of Booster Club or with the consent of any persons acting for or on behalf of the Booster Club.

Booster Club shall reimburse City for all expenses incurred by City that City incurs for the restoration of the facility to its condition at the commencement of this Agreement.

19. NON-DISCRIMINATION

Booster Club shall not in exercising any of the rights or privileges granted to Booster Club herein on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any persons or group of persons in any manner.

Booster Club shall comply with the applicable sections of Americans with Disabilities Act of 1990 (42 USC 126), which prohibits discrimination of handicapped individuals by denying them the right to participate in or benefit from the services provided pursuant to this Agreement. Booster Club understands that Booster Club is responsible for compliance with this Act. To the extent that any provisions of this Agreement are inconsistent with ADA, the requirements of the ADA shall control.

20. MISCELLANEOUS

City, through its authorized representatives, reserves the right to eject any person(s) from the Aquatic Complex and upon exercise of this right, Booster Club waives any right or claim for damages against City.

City reserves the right to remove from the Aquatic Complex any of Booster Club effects or any effects of Booster Club's agents or patrons remaining in the facility after the time periods of the specified use of the facility described herein. Booster Club shall be responsible for any charges levied by City for the storage of these effects.

Booster Club shall pay all reasonable attorneys' fees to City for collection of all or any part of the terms of this agreement.



21. NON-LIABILITY OF CITY

City shall not liable for any acts or omissions of Booster Club for any conditions resulting from any provision under this Agreement or other activities of Booster Club or agents of Booster Club or patrons of Booster Club. City shall not be liable for any damage or injury that may happen to Booster Club, Booster Club's agents, Booster Club's patrons or property from any cause whatsoever, during this Agreement.

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[SIGNATURE PAGES FOLLOW]

AGREEMENT BETWEEN THE CITY OF FORT LAUDERDALE AND  
SWIM FORT LAUDERDALE MASTERS BOOSTER CLUB, INC., a Florida non-profit  
corporation supporting the City's US Masters Swimming, adult competitive swimming  
club team.

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  
a Florida municipal corporation

\_\_\_\_\_  
Print:\_\_\_\_\_

By \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
Print:\_\_\_\_\_

By \_\_\_\_\_  
Lee R. Feldman, City Manager

ATTEST:

\_\_\_\_\_  
JEFFREY A. MODARELLI  
City Clerk

Approved as to form:  
CYNTHIA A. EVERETT, City Attorney

By: \_\_\_\_\_  
KIMBERLY CUNNINGHAM MOSLEY  
Assistant City Attorney

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SWIM FORT LAUDERDALE MASTERS BOOSTER CLUB, INC., a Florida non-profit  
corporation supporting the City's US Masters Swimming, adult competitive swimming  
club team.

SWIM FORT LAUDERDALE MASTERS  
BOOSTER CLUB, INC.

Print: \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Print: \_\_\_\_\_

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_, 2018, by \_\_\_\_\_ as  
\_\_\_\_\_, of SWIM FORT LAUDERDALE MASTERS BOOSTER CLUB,  
INC., on behalf of the corporation. They are personally known to me or have 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

EXHIBIT "A"  
EVENTS, TIMES, FACILITIES

25<sup>th</sup> Annual Fort Lauderdale Masters Challenge, February 16 – February 18, 2018

Set Up:	February 15	Approved Areas	6:00 a.m. to 8:00 p.m.
Competition:	February 16-18	8 lane, 25yd Course	5:30 a.m. to 9:00 p.m.

13<sup>th</sup> Annual June Krauser Summer Splash, June 16 – June 17, 2018

Set Up:	June 15	Approved Areas	6:00 a.m. to 8:00 p.m.
Competition:	June 16-17	8 lane, 25yd Course	5:30 a.m. to 9:00 p.m.

Modifications can be made to the above proposed events, as mutually agreed upon by the City, and Booster Club by the Parks and Recreation Director or his designee due to inclement weather and/or operational and functionality purposes.