

CITY OF FORT LAUDERDALE
CITY FACILITY USE
AGREEMENT

THIS IS A FACILITY USE AGREEMENT, made and entered into on this _____ day of _____, 2020 by and between:

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

and

GOLD COAST SKI CLUB, INC., a Florida not for profit corporation, whose principal place of business is located at 12202 NW 75th Place, Parkland, Florida 33076, hereinafter referred to as "USER"

In consideration of good and valuable consideration, receipt of which is hereby acknowledged and the covenants expressed in this Agreement, the parties mutually agree as follows:

TERMS OF AGREEMENT

1. CITY agrees to use of the Lake by USER for the purposes and in accordance with the terms described in Exhibit A, attached hereto and made a part hereof, and for no other purpose whatsoever, without written consent of the CITY.
2. CITY hereby provides permission for the non-exclusive use of a portion a City owned facility located at Mills Pond Park (hereinafter "Park") more specifically known as the "Lake" and depicted on Exhibit B, attached hereto and made a part hereof.
3. CITY agrees to use of the Lake by USER for the purposes and in accordance with the terms described in Exhibit A, attached hereto and made a part hereof, and for no other purpose whatsoever, without written consent of the CITY.
4. The use of the facility is to commence on November 1, 2020 and end on October 31, 2022. The dates and times agreed to by CITY and USER for use of the facility is more fully described in Exhibit A. This Agreement may be extended for up to two additional consecutive one year terms providing all terms, conditions and specifications remain the same and the extension is approved by USER and CITY.
5. USER agrees to pay \$515.87 per month, plus the current applicable Florida sales tax during the term of the Agreement and any extensions pursuant to paragraph 4 herein. Monthly fees and taxes are to be paid in full on the first of each month in advance of use of the facility identified herein.
 - CITY reserves the right to cancel, reschedule or relocate USER to another location other than the facility listed above, in the case of scheduling conflicts or for any other reason as deemed appropriate by the City Manager.

COMPLIANCE WITH LAWS, PERMITS AND FEES

6. USER is responsible for complying with all applicable local, state and federal taxes, permitting and licensing requirements. USER shall at all times comply with all federal, state, county, and municipal laws, rules, regulations and ordinances or any other governmental agency that has jurisdiction. USER shall obtain and pay for, in advance, any permit, license and applicable fees required during USER's use of facility.

ASSIGNABILITY

7. USER shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement, whether by assignment or novation, without prior written approval of CITY.

SEVERABILITY

8. If any section, subsection, sentence, clause, provision, or portion of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall not be affected thereby.

NON-WAIVER

9. Failure of the CITY to insist upon the strict performance of any of the covenants, conditions and agreements of this Agreement in any one or more instances shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements.

INSURANCE

10. As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Watercraft Liability

Coverage must be afforded in an amount not less than \$1,000,000 per occurrence and must cover the utilization of watercraft, including Bodily Injury and Property Damage arising out of ownership, maintenance, or use of any watercraft, including owned, non-owned, and hired.

Coverage may be provided in the form of an endorsement to the Commercial General Liability policy, or in the form of a separate policy covering Watercraft Liability or Protection and Indemnity for Bodily Injury and Property Damage.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act,

if applicable.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Contractor that

excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Contractor's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

INDEMNIFICATION

11. USER 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 or related to this Agreement or arising from, related to, or caused by USER's use of, or occupancy of the property described herein, 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. USER 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.

NON-LIABILITY OF CITY

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

AMENDMENT

13. No modification, amendment or alteration of terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith. Any changes regarding the use of the facility must be mutually agreed upon by both USER and CITY and incorporated in a written amendment(s) to this Agreement.

TERMINATION

14. CITY has the unqualified and absolute right to terminate this Agreement at any time and

that the permission granted by this Agreement shall immediately terminate upon exercise by CITY of such right, provided, however, that the CITY shall give notice to USER of termination at least 24 hours before the effective time of such termination.

15. CITY has right to terminate this Agreement without notice to USER if the facility or other integral parts of the facility are destroyed or damaged by any foreseen or unforeseen instance and fulfillment of the Agreement is impossible by CITY. USER shall pay rental for facility only up to the time of such termination. If the facility is so damaged as to render fulfillment of the entire Agreement impossible before the USER has used the facility, then all advance payments made by USER to CITY shall be refunded.

NOTICE

16. When 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, 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. For the present, the parties designate the following as respective places for giving notice, to wit:

As to City:

Parks & Recreation Department
Attn: Director of Parks &
Recreation 701 South Andrews
Avenue
Fort Lauderdale, Florida 33316

As to USER:

Gold Coast Ski Club, Inc.
12202 NW 75th Place
Parkland, FL 33076

DAMAGE TO FACILITY AND REIMBURSEMENT

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

NON-DISCRIMINATION

19. USER shall not in exercising any of the rights or privileges granted to USER 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. USER 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. USER understands that USER 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.

MISCELLANEOUS

20. CITY, through its authorized representatives, reserves the right to enter the facility at any time. CITY, through its authorized representatives, reserves the right to eject any person(s) from facility and upon exercise of this right, USER waives any right or claim for damages against CITY.
21. CITY reserves the right to remove from facility any of USER's effects or any effects of USER's agents or patrons remaining in the facility after the time periods of the specified use of the facility described in Schedule A. USER shall be responsible for any charges levied by CITY for the storage of these effects.
22. USER shall pay all reasonable attorney's fees to CITY for collection of all or any part of the terms of this agreement.
23. Pursuant to CITY Ordinance, Section 19-2, USER or USER's agents are prohibited from selling food of any kind, goods, wares or merchandise without first obtaining written approval by City Manager or by obtaining an award of an appropriate contract.

GOVERNING LAW

24. This Agreement shall be governed by the laws of the State of Florida, with venue in lying in Broward County, Florida.

EXTENT OF AGREEMENT

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

[This Space Intentionally Left Blank]

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

CITY

ATTEST:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida.

JEFFREY A. MODARELLI
City Clerk
(SEAL)

CHRISTOPHER J. LAGERBLOOM, City Manager

Approved as to form:
ALAIN E. BOILEAU, City Attorney

TANIA MARIE AMAR, Assistant City Attorney

USER

WITNESSES

GOLD COAST SKI CLUB, INC., a Florida not for profit corporation.

[Witness type/print name]

RICHARD DECARLO, President

ATTEST:

[Witness print/type name]
(CORPORATE SEAL)

GAYLE CARR, Secretary

STATE OF FLORIDA:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020, by RICHARD DECARLO as President for GOLD COAST SKI CLUB, INC., a Florida not for profit corporation.

(SEAL)

(Signature of Notary Public)
Notary Public, State of _____

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ____ OR Produced Identification ____

Type of Identification Produced _____

EXHIBIT A

USER is permitted to use the Lake on a non-exclusive basis during the following times: Tuesdays through Sundays, 7:30 A.M. to dusk each day, for the following specified activity (activities) only:

- (a) Tournament waterski practices (slalom, jump, tricks, and special activities such as barefooting and show skiing);
- (b) Tournament skiing;
- (c) All Club sponsored activities in connection with promotion of waterskiing; and
- (d) Public waterskiing.

USER agrees to offer discount memberships to Fort Lauderdale citizens showing a need for the discount and as follows:

- (1) Fifty (50%) percent discount for those qualifying for the school reduced lunch program; and
- (2) Seventy-five (75%) percent discount if qualify for the school free lunch program; and
- (3) Discount amount as appropriate for individual's income level, and as determined by Club and Director.

During and after permitted Lake use, USER shall, at its expense, maintain the Lake in a clean, attractive and orderly condition. USER shall be responsible for the prompt removal of all trash, litter, and debris which accumulates on or about the Lake and which is attributable, directly or indirectly, to or arising out of its use, specifically including any litter left by USER members, visitors or spectators. USER shall deposit all such trash, litter and debris in the containers provided by the CITY for pick up at locations to be determined by the CITY. USER shall further be responsible for and reimburse CITY for any damage to any plants, shrubs, trees, or any CITY improvements such as sidewalks and paved surfaces in the vicinity.

USER shall be responsible to provide and pay for any required portable toilet facilities during tournaments or large club outings, until such time as permanent toilet facilities are available at the Park. All equipment and any other personal property of USER shall be protected and maintained solely by USER. USER acknowledges City assumes no responsibility whatsoever for any such item, and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly and solely the responsibility of USER. Storage of any items on or about the Lake, while the Lake is not in use, is at the sole risk of the USER.

The CITY shall be responsible for opening and closing the Park and its facilities and shall control gate admissions. Park keys will not be provided to USER's members.

USER is obligated to comply with the following conditions. USER acknowledges and agrees

that breach of any such condition, or any obligation imposed under this Agreement, may result in immediate cancellation of this Agreement by City and, in such event, CITY may retain as its liquidated damages the security deposit:

- (1) No alcoholic beverage of any nature whatsoever may be distributed, consumed, possessed or kept on or about Lake.
- (2) USER agrees to comply with all federal, state, and local laws, rules, and regulations, including the Code of Ordinances of the City of Fort Lauderdale and the City of Fort Lauderdale Parks and Recreation Rules and Regulations, as may be amended.
- (3) Distribution of brochures, pamphlets, and other similar paper products are prohibited, except at tournaments, and only by the Club to promote waterskiing or the particular event being held.
- (4) USER shall not engage in any promotion, distribution, "give-away" program, advertising, or any similar activity, except that prizes for competitive activities may be awarded by USER. It is the responsibility of USER to insure that no prize is given in violation of any law.
- (5) This Agreement does not preclude the right of the CITY to grant approval to another party to operate a water sport activity in the Park. The CITY will give the USER 15 days prior notice if another party will be using the Lake to operate a water sport activity.
- (6) No broadcasting activities and no loud speakers are permitted, and no music, whether live or recorded by any means, may be played, unless such broadcasting, music or both is performed in conjunction with an activity or event approved in advance by the Director or by Event Agreement.
- (7) If USER desires capital improvements to the Lake area, all such work shall be done in accordance with proposals submitted to the CITY. All such work must be approved by the Director and meet all CITY and applicable Building Code requirements. All permitting shall be done by Club at its sole expense. No such construction shall begin prior to all required permits being obtained. USER acknowledges and agrees that the bidding requirements of the CITY apply to hiring of contractors and consultants for capital improvements.

Exhibit "B"
LOCATION MAP



Exhibit 1

FUTURE AHEAD

- BATTING CAGE
 - DUTY ENTERTAINMENT
 - ROLLER RINK
 - TENNIS COURT
 - TENNIS FENCE
- WALKWAYS AND PATHS
 - 2. ADDITIONAL FUTURE PAVES
 - 3. SIDEWALK
 - STREET CROSSINGS
- CONCESSION BUILDING
 - BATTING CAGE ADMINISTRATION
 - HOCKEY RINK ADMINISTRATION
 - CONCESSION STAND
 - RESTROOMS
- ROADWAY ADJUSTMENTS
 - RESIDE PEOPLE / WALKER COMFORT
 - TIGHTEN DRIVEWAY
 - TICKET BOOTH RELOCATION
 - IMPROVE DRIVE CONTROL, ROW
- LANDSCAPING
 - IRRIGATION
 - LIGHTING
- DIRECTIONAL SIGNAGE
 - PAVILION
 - PARKWAY
 - PARKING
- PONIC SHELTERS
 - VOLLEYBALL COURTS
 - OPEN PLAY AREA
- HOLLERLADE AND BIKING PATHS
 - MAIN CLUBHOUSE BUILDING
 - ADMINISTRATION
 - BACKS BAY AND LOUNGE
 - OBSERVATION DECK
 - 1. IMPROVE DRIVEWAY
 - WALKWAY IMPROVEMENTS IN CENTRAL FIELD AREA
 - LANDSCAPING
 - LIGHTING
- WETLAND NATURE TRAIL
 - PARKWAY ENTRY
 - BIKING PATH
 - LANDSCAPING
- OVERALL SIGNAGE
 - OVERALL LIGHTING
 - OVERALL LANDSCAPING

AREA 2

- ORANGE IMPROVEMENTS**
- AIR-SEAL
 - PEDESTAL FLOOR
 - IRRIGATION
 - LANDSCAPING
 - SINCE
 - CHASSIS
 - FOCAL POINT AT INTERSECTION
 - ROADWAY
 - NEW ROADWAY
 - CONNECT TO MAIN CIRCLE
 - PARKING
 - 17 NEW PARKING SPACES
 - LIGHTING
 - SECURITY
 - BALL FIELD
 - ROADWAY
 - SOCCER
 - DIRECTIONAL SIGNAGE
 - NO. TRUCK
 - PAINT LAUNCH SITE (PUMP)
 - CONCESSION BUILDING (PUMP)

AREA 3

NOTE PREVIOUS RECORD
LOCATION OF BATHING GAZE
AND LOCKER DECK

AREA 2

MASTER PLAN

DATE: 12/11/97

