



BOARD OF COMMISSIONERS
Agenda Item Summary

Agenda Category: Agreement	Item No:
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Date: July 30, 2019

Originating Department: Klamath County Sheriff’s Office

Issue: In the matter of approving the Klamath County Sheriff to enter into an agreement between the Klamath County Sheriff’s Office (KCSO) and the City of Klamath Falls regarding the use of the Ella Redkey Municipal Pool.

Background: In the Ella Redkey Pool Facility Use Agreement, the City of Klamath Falls is granting access to the Klamath County Dive Rescue instructors and volunteers for training purposes. The agreement, which will be in effect from July 15, 2019 through December 31, 2019, addresses terms and conditions of use including storage, rules, insurance, indemnification, liability, payment, renewal and termination. The agreement is renewable for two additional one-year terms which would be in effect January 1st through December 31st of the given year.

Fiscal Impact: There is no fiscal impact.

Recommended Motion: Approve the Sheriff to sign the Ella Redkey Pool Facility Use Agreement between Klamath County and the City of Klamath Falls for the period July 15, 2019 to December 31, 2019 which allows the KCSO Dive Rescue team to use the facility for training purposes. There is no fiscal impact.

DONE AND DATED this _____ day of _____, 20__.

Chair	Vice-Chair	Commissioner
Approved <input type="checkbox"/>	Approved <input type="checkbox"/>	Approved <input type="checkbox"/>
Denied <input type="checkbox"/>	Denied <input type="checkbox"/>	Denied <input type="checkbox"/>

**ELLA REDKEY POOL
POOL FACILITY USE AGREEMENT**

Effective Date: July 15, 2019

This Pool Facility use contract is between the City of Klamath Falls, hereinafter referred to as "CITY" as the Pool Facility Owner, and Klamath County Sheriff, Dive Rescue Unit, hereinafter referred to as "USER." This Agreement sets forth the terms and conditions applicable to the USER's use of the Pool Facility.

1. DEFINITIONS

The terms used in this Agreement have the following meanings:

- 1.1. **"Instructor"** means the person or persons that USER has hired, trained, and certified to instruct and/or supervise all swimming and other Pool Facility usage by USER participants.
- 1.2. **"Pool Facility"** means The Ella Redkey Municipal Pool consisting of a 25 yard, 11 lane swimming pool and its associated premises (including parking lot), equipment, locker rooms, grass areas, and other facilities located at 1805 Main Street, Klamath Falls, Oregon 97601.
- 1.3. **"User"** includes its instructor and its adult participants in any Pool Facility related activity or observation of activity.

2. TERM AND TERMINATION

- 2.1. The term of this Agreement shall commence on July 15, 2019 and shall continue through December 31, 2019 and is renewable, for two additional one-year terms (January 1 – December 31), unless sooner terminated.
- 2.2. CITY and/or USER may terminate this Agreement at any time without cause by giving at least thirty (30) business days' written notice to the USER, specifying the effective date of termination.

CITY may immediately terminate this Agreement at any time upon giving written notice to USER in the event USER engages in any: (i) theft or damage of Pool Facility property; or (ii) violent or verbally abusive behavior directed toward anyone including City staff or USER personnel; or (iii) acts or omissions detrimental to the Ella Redkey Municipal Pool's reputation; or (iv) gross or repeated failure or refusal to adhere to the written or verbal policies of the CITY.

- 2.3. Either party may terminate this Agreement in the event the other party commits: (i) any material default that is not cured within ten (10) days after written notification from the non-defaulting party describing the material default and expected cure in detail; or (ii) any

material default that occurs on a repeated basis notwithstanding the defaulting party's cure including repeated defective or non-conforming Services; or (iii) a failure to provide the non-defaulting party, upon written request with reasonable assurance of adequate future performance.

2.4. In the event of any termination by CITY under section 2.3, CITY may retain any Pool Facility usage payments or other sums paid by USER in addition to all other remedies at law or equity. CITY has the right to offset any usage payments or other sums paid by USER against any damages sustained by CITY that were caused by USER.

3. POOL FACILITY USE AND PAYMENT

3.1. Pool Facility Access. CITY will provide USER with access to the Pool Facilities during the prearranged dates and time periods. At the sole discretion of the CITY, Pool access may be modified at any time consistent with Pool Facility time changes. Use of the locker rooms will provide for 10 minutes of changing time prior to and following the scheduled pool usage.

No other uses of the Pool Facility are included in this scope of access and any additional Pool Facility use that is desired by USER and approved by the CITY will be billed as separate Pool Facility usage.

3.2. Storage. CITY will provide storage for USER equipment at no-charge with the agreement that the equipment can remain in storage containers year-round and will have shared use by other programs at the pool.

3.3. USER will cause its instructor and adult participants in any Pool Facility related activity or observation of activity to comply with the terms and conditions of this agreement

4. USER COMMITMENTS

USER warrants, represents, covenants and agrees that its instructors and participants will fully comply with each of the following requirements:

4.1. A certified and qualified instructor will be present at the Pool Facilities at all times while the Pool Facilities are being used by USER and must remain until all USER participants have left the Ella Redkey Municipal Pool premises.

4.2. All instructor and USER participants will fully comply with all Pool Facility written and verbal rules, policies and guidelines including being neat in appearance and being courteous to others and refraining from the use of derogatory language, belittlement or physical or verbal abuse of others.

- 4.3. Instructors will offer lessons solely to USER participants and will not give instructions to non-members of the USER group or to the general public.
- 4.4. USER will cause its instructor and adult participants in any Pool Facility related activity or observation of activity to comply with the terms and conditions of this Agreement.
- 4.5. USER agrees to reimburse the CITY for any damage to property that may be caused directly or indirectly as a result of the USER's use of the pool facilities pursuant to this Agreement.

5. INDEMNITY AND INSURANCE

- 5.1. General Indemnification. USER shall indemnify, defend and hold the CITY, and its officers, agents and employees (collectively "City Officials") harmless against any and all claims and demands, including court costs and reasonable attorney fees at trial and on appeal, arising from: the use of Pool Facility by USER pursuant to this Agreement; the negligence of USER, its officers, agents, invitees and/or employees, in conjunction with or arising out of this Agreement; and the failure of USER to comply with any term of this Agreement on its part to be performed. The foregoing indemnity provisions shall not apply to claims or demands arising solely from the negligence of CITY or its officers, agents or employees. The CITY shall give prompt and timely notice to USER and USER shall also give such notice to the CITY of any claim made or suit instituted which might directly or indirectly affect the other party hereto. Both parties shall have the right to compromise or participate in the defense of any such matter to the extent of its own interests.
- 5.2. Insurance. Prior to any use of the Pool Facilities and at all times during the term of this Agreement, USER shall carry the following insurance coverage. Nothing contained in the following insurance provisions shall be construed as limiting the liability assumed by USER under the express indemnifications in Section 5 of this Agreement.
 - (a) *Commercial General Liability Insurance*, including contractual liability, products liability, completed operations and personal injury liability coverage, with limits of \$1,000,000 each occurrence, \$2,000,000 aggregate.
 - (b) *Workers' Compensation Insurance* at the minimum limits as required by statute for the State of Oregon.
- 5.3. Additional Insurance Requirements. USER shall abide by the following additional insurance requirements:
 - (a) Add to Policies as Additional Insured. All liability insurance policies purchased and/or maintained in compliance with this Agreement shall name "The City of Klamath Falls" as additional insured.
 - (b) Primary Insurance. All insurance policies purchased and maintained in compliance with this Agreement shall be endorsed to provide that the coverage provided by

USER's insurance shall always be primary coverage and non-contributing with respect to any insurance carried by the CITY.

- (c) Contractual Liability Endorsement. All insurance policies purchased and maintained in compliance with this Agreement shall be endorsed to provide coverage for liability assumed by USER under all written contracts between the CITY and USER.
- (d) Waiver of Subrogation. USER will not have any right of subrogation against any Indemnified Parties.
- (e) Certificates. USER shall furnish CITY, prior to the commencement of any use of the Pool Facilities, with a certificate showing all the insurance described in this Agreement to be in force.

6. LIMITATION OF LIABILITY

6.1. Liability for Actual Damages Only. Except pursuant to Section 5.1, or in connection with either party's fraud, gross negligence, or willful misconduct, no party will be liable to the other party for, nor will the measure of damages include, any consequential, incidental, indirect, exemplary, punitive, or special damages arising out of or relating to its acts or omissions under this Agreement, regardless of the form of action, whether in contract, negligence, tort, strict liability, products liability or otherwise, and even in foreseeable or is such party has been advised of the possibility of such damages. A party will only be liable to the other party for damages actually incurred by a breaching party or pursuant to an indemnification hereunder.

7. GENERAL TERMS AND CONDITIONS

- 7.1. Setoffs and Counterclaims. All claims for moneys due or to become due from the CITY shall be subject to deduction by the CITY for any setoff or counterclaim arising out of any agreement with USER.
- 7.2. Independent Contractor. USER and CITY hereby acknowledge and agree that USER is an independent contractor and not a joint venture, partnership or employee or agent of CITY. USER participants shall at all times be under the instructor's direction and control. In no event will the CITY be considered a joint employer of USER. USER and its instructors do not have an employee status or any entitlement to participate in any plans, arrangements or distributions by CITY for their respective employees.
- 7.3. Governing Law & Venue. This Agreement and any questions which may arise thereunder shall be governed by the laws of the State of Oregon notwithstanding its conflicts of law provisions. Venue for any action shall be exclusively limited to Klamath County or federal courts located in the State of Oregon.
- 7.4. Assignment. This Agreement is not transferable or assignable by USER without CITY's prior written consent.

7.5. Agreement Construction.

- (a) The parties hereto acknowledge that this Agreement has been read, revised, negotiated and modified by both parties and that any ambiguities found herein shall not be construed against either party as the primary drafter.
- (b) The Indemnified Parties are express third party beneficiaries under this Agreement.
- (c) Except as otherwise specifically limited in this Agreement, the representations, warranties, covenants and indemnifications contained in this Agreement shall survive the expiration, cancellation, or termination of this Agreement.
- (d) If any term, covenant or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be illegal, invalid or unenforceable, then, in such event, the remainder of this Agreement or the application of such terms, covenants and provisions hereof, shall remain valid and enforceable to the fullest extent permitted by law.
- (e) The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of CITY and USER and their respective successors, assigns, estates, next of kin and survivors but this sentence shall not be construed to permit the assignment of this Agreement. Whenever reference is made in this Agreement to either party, such reference shall include the party's successors, assigns estates, next of kin and survivors.

7.6. Entire Agreement. This document constitutes the entire agreement between the parties with respect to the subject matter herein. No other terms or conditions shall be binding upon CITY unless accepted by it in writing. No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding on either party unless in writing, signed by each party. No waiver by either party of any breach by the other party of any of the provisions herein contained shall be construed as a waiver of any subsequent breach, whether of the same or a different provision. This document may be modified only by an amendment, expressly stated as such, signed by both parties.

7.7. Notices. All written notices given to CITY by USER shall be addressed to and filed with the City Manager, at City of Klamath Falls, P.O. Box 237, Klamath Falls, Oregon 97601, or by fax at 541-883-5399. All written notices from the CITY to USER shall be addressed to Klamath County Sheriff's Office, Attn: Chris Kaber, 3300 Vandenberg Avenue, Klamath Falls, Oregon, (541) 883-5130, unless notice of change of address is received by the CITY.

The parties have caused this Agreement to be executed by their respective duly-authorized representatives on the Effective Date indicated above.

Klamath Falls County Sheriff, Dive Rescue Unit

SIGNED BY: Chris Kaber

TITLE: Klamath County Sheriff

SIGNATURE: _____

Date: _____

City of Klamath Falls

SIGNED BY: Scott Souder

TITLE: Development Services Engineer

SIGNATURE: _____

Date: _____