

**FACILITY USE AGREEMENT
BETWEEN CITY OF OTHELLO AND OTHELLO BARRACUDAS SWIM TEAM**

This Agreement is made this Monday, the 12th of March, 2018, by and between the CITY OF OTHELLO (CITY) and the OTHELLO BARRACUDAS SWIM TEAM (USER), a member of the Mid-Valley Swim League, upon the following terms and conditions:

1. PREMISES. The CITY owns and operates an aquatic center including a swimming pool located at 235 North 12th Avenue, Othello, Washington, commonly known as the Othello Community Pool, which the CITY has made available to the USER. The CITY grants USER the right to use the Othello Community Pool for swim team practices and swim meets, as agreed upon between USER and the CITY Parks and Recreation Council Committee and ratified by the CITY Council in Resolution 2015-10. The real property so described shall hereinafter be referred to as the Premises .

2. CONSIDERATION. The USER shall pay to the CITY the sum of Three-Thousand two hundred and fifty Dollars (\$3250.00) each year this contract is in effect. Payment of this amount shall be due on August 1st of each year this Agreement is in effect. In the event of the nonpayment by USER to CITY in the full amount and at the time required by this Agreement, with such nonpayment continuing for more than ten (10) days after due, then the full amount of delinquent payment, without notice or demand, shall commence to bear interest from the due date at the rate of twelve percent (12%) per annum until paid in full.

3. DURATION. The USER shall have the right of use of the Premises on the practice and meet dates and times listed in Attachment A , during the Mid-Valley Swim League season, June 1st through September 1st. The USER shall additionally have the right of use of the Premises for two bye dates per season, for up to two hours per date, each year this Agreement is in effect. The USER shall provide the full and complete schedule to the CITY no later than May 1st of each year this agreement is in effect. The CITY reserves the right, after consultation with the USER, to delay the use of the Premises or to cancel use if severe conditions will not adequately support the activity and may cause long term damage to the facility. Consideration will be given to weather conditions and use in determining delays or cancellation. If possible, ten days notice will be given to the USER prior to any delays or cancellations. The USER reserves the right, after consultation with the CITY, to delay, shorten or cancel practices and/or meets due to weather conditions or operational/mechanical issues. If possible, ten days notice will be given to the CITY prior to any delays or cancellations.

4. TERM. The term of this Agreement shall commence upon the date of execution by both parties and shall terminate on March 12, 2020. Either party may terminate this Agreement upon thirty (30) days written notice sent by certified mail to the addresses listed in Section 12 of this Agreement.

5. REPORTING. The USER shall submit to the CITY a post-season report containing the following information: the number of participants registered, their ages, any special honors earned, special programs, camps or clinics held, cost of registration, names of those serving on Board of Directors, and a financial statement for the most recent fiscal year. Financial statements will be used for auditing purposes only. Post-season report shall be due by October 1st of each year this Agreement is in effect.

6. USER RESPONSIBILITIES.

6.1 USER agrees to comply with the rules and regulations of the Othello Community Pool, and applicable city, state, and Federal laws and regulations. USER shall be responsible for monitoring facilities during use and shall be responsible for ensuring its participants follow pool rules and all applicable laws and regulations. USER has been advised of and agrees to abide by Othello Municipal Code (OMC) 8.09.010, prohibiting the possession or consumption of alcohol in any CITY park, building, or enclosed structure. USER reserves right to contact police and/or emergency services should enforcement of CITY park rules and all applicable laws and regulations extend beyond USER control.

6.2 USER agrees to operate practices and meets in the safest manner possible. If an accident occurs, a coach must report all accidents and incidents to a Pool Manager or Lifeguard, and complete an incident/accident form.

6.3 USER shall provide the CITY with the most recent edition of the USER's operating manual, regulations, charter, guidelines and by-laws each year this Agreement is in effect.

6.4 USER shall only permit coaches, swimmers, league, and team representatives inside the pool area during swim meets and training. USER is responsible for adhering to and enforcing occupancy regulations (maximum 400 persons inside pool area) during all meets and training.

6.5 USER shall be responsible for cleanup of the Premises after its use, including the disposal of all trash, litter, or other refuse in or on the Premises as a result of USER use.

6.6 USER shall be financially responsible for any repairs or damage, beyond the expected reasonable wear and tear, to the Premises caused by its use. The cost of any cleaning or repair related to use that require CITY personnel time shall be assessed to USER at the cost of time and materials, as determined by the Public Works Director. The CITY and USER shall conduct an inspection to confirm the existing condition of the Premises. The CITY shall inspect the Premises to ensure it is returned in the condition it was received. The CITY

shall notify USER within ten (10) business days in the event that the Premises are found to be damaged.

6.7 USER shall not make any modifications, alterations, additions, or deletions, temporary or otherwise, to the Premises without prior written approval from the CITY. USER shall be permitted to display team heat sheets during meets and may provide a display board for mounting by the CITY in a mutually agreed location. The display board shall be removed by the CITY at the end of the pool season and returned to the USER.

6.8 USER shall return equipment such as kick boards, fins, lane ropes, starting blocks and backstroke flags to its proper storage place after each use. Any additional equipment brought in by USER must be in safe condition and removed at the end of each practice or meet.

7. CITY RESPONSIBILITIES.

7.1 CITY shall operate, administer, and staff the Premises as prescribed by, and in compliance with, all Federal and State laws, CITY Ordinances, Health Codes and Safety Regulations governing the use of the Premises for public and private use.

7.2 The CITY shall maintain the Premises and all improvements thereon for normal pool operation and use.

7.3 The CITY reserves the right to provide concession staffing for two (2) hours during meets. The CITY reserves the right to delay and/or shorten concession sales due to weather conditions, operational/mechanical issues or customer inactivity.

7.4 The CITY shall make available the Premises sound system to USER during meets.

7.5 The CITY agrees to maintain accessible points of entry and egress during use of the Premises by USER.

8. COMPLIANCE. USER agrees to strictly comply with and operate program in compliance with the CITY Management of Concussions and Head Injuries in Youth Sports Programs Policy and the Zackery Lystedt Law (RCW 28A.600.190). Any youth athlete suspected of sustaining a concussion must be removed from swimming activity immediately and may not return until the athlete is evaluated by a licensed health care provider trained in the evaluation and management of concussions and receives written clearance to return to swim activity from that health care provider. USER agrees to comply with the CITY Gender Equity in Community Athletics Program Policy and RCW 49.60.500, made applicable to community athletics programs by RCW 35A.21.350, and prohibit discrimination on the basis of gender with respect to all activities undertaken in connection with this Agreement.

9. INDEMNIFICATION. USER shall defend, indemnify, and hold harmless the CITY, its officers, officials, employees, and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of Premises or from any activity, work, or thing done, permitted, or suffered by USER in or about the Premises, provided that injury or damage was not caused by the sole negligence of the CITY.

10. INSURANCE. The USER shall procure and maintain for the duration of the Agreement, general liability insurance covering premises, products-completed operations, and contractual liability with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate against claims for injuries to persons or damage to property which may arise from or in connection with the use of the Premises. The CITY shall be named as an additional insured on the insurance policy and such policy shall provide that the USER's insurance coverages shall be primary insurance as respects the CITY. USER shall provide a certificate of insurance evidencing the required insurance before using the Premises. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII. USER's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the USER to the coverage provided by such insurance, or otherwise limit the CITY's recourse to any remedy available at law or in equity. If the purpose of use of the Premises is to hold an athletic participant event, USER shall also secure general liability insurance coverage for participant liability with limits of not less than \$250,000 per occurrence.

11. ASSIGNMENT. This Agreement shall be for the exclusive use and benefit of the USER and the use of the Premises shall not be transferred, shared, or assigned without the written consent of the CITY.

12. NOTICES. For purposes of this Agreement, notices shall be addressed to the following:

CITY OF OTHELLO
ATTN: City Administrator
500 East Main Street
Othello, WA 99344

OTHELLO BARRACUDAS SWIM TEAM
ATTN: Dulcye Field, President
1247 East Fir Street
Othello, WA 99344

13. FORCE MAJEURE. If Premises or any portion thereof are destroyed or damaged by fire or other casualty so as to prevent the use of the Premises for the purposes intended and during periods specified by this Agreement, or if the use of the Premises by the USER will be prevented by an act of God, strike, lockout, material or labor restrictions by any governmental authority, civil riot, flood, or any other cause beyond the control of the CITY, then this Agreement will terminate. The CITY shall not be liable or responsible to the USER for any

damages caused thereby and the USER hereby waives any claim against the CITY for damages by reason of such termination.

14. CONSTRUCTION AND VENUE. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any legal action brought to enforce or dispute this Agreement shall be in Adams County.

15. ENTIRE AGREEMENT. The Parties represent that this is the entire agreement and understanding among the Parties, and that there are no representations, warranties, terms, covenants or conditions made by any other party except as herein expressly contained. This Agreement shall not be altered, waived, modified or canceled in any respect except in writing, duly executed by all of the Parties hereto, and no oral agreement or course of conduct to the contrary, shall be deemed an alteration, amendment, modification of cancellation.

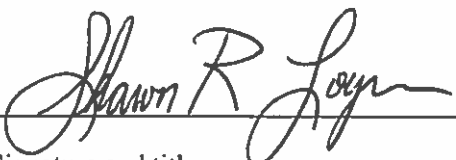
16. THIRD-PARTY BENEFICIARIES. This Agreement is not intended to and does not create rights, remedies, or benefits of any kind whatsoever in favor of any persons, corporations, associations, or entities other than the Parties herein, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

17. DISPUTE RESOLUTION. The prevailing party in any legal action filed to enforce or dispute any provision of this Agreement shall be entitled to recover their attorney fees and costs incurred in pursuing and/or defending against the legal action.

In Witness Whereof, the Parties hereto have signed their names the day, month and year provided below.

City of Othello

500 East Main Street Othello WA, 99344



Signature and title

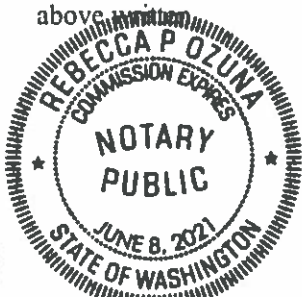
March 20, 2018

Date

(CITY) On this 20th day of March, 2018 before me personally appeared Shawn R. Logan to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed the same as his/her own free and voluntary act and deed, for the purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first

above written.



Rebecca P. Ozuna

Notary Public in and for the State of Washington, residing

Othello, Washington My commission expires June 8, 2021

Dulcye Field, President Barracuda Swim Team

Use/Organization

Othello Barracudas Swim Team

Signature and Title

Dulcye Field Secretary

Date

(USER) On this 22nd day of March, 18, before me personally appeared DulcyE Field, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed the same as his/her own free and voluntary act and deed, for the purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



Rebecca P. Ozuna

Notary Public in and for the State of Washington, residing

Othello, Washington My commission expires June 8, 2021

**ATTACHMENT A
DURATION
2018 USER PRACTICE SCHEDULE**

ATTACHMENT A (CONTINUED)
DURATION
2019 USER MEET SCHEDULE

ATTACHMENT A (CONTINUED)
DURATION
2020 USER PRACTICE SCHEDULE

ATTACHMENT A (CONTINUED)
DURATION
2018 USER MEET SCHEDULE

ATTACHMENT A (CONTINUED)
DURATION
2019 USER PRACTICE SCHEDULE

ATTACHMENT A (CONTINUED)
DURATION
2020 USER MEET SCHEDULE