

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GREEN COVE SPRINGS AND CONTRACTOR**

**THIS AGREEMENT** is awarded and entered into this \_\_\_\_\_ day of \_\_\_\_\_, **2022** between the CITY of Green Cove Springs, a political subdivision of the STATE OF FLORIDA hereinafter referred to as the "CITY" and Planet Swim, LLC a Florida Corporation, hereinafter referred to as the "CONTRACTOR".

**WITNESSETH**

**WHEREAS**, the CITY desires to obtain the professional services of said CONTRACTOR to provide and perform professional services as further described hereinafter to be referred to and identified as **OPERATING AND MANAGING ALL SERVICES THAT WILL TAKE PLACE AT SPRING PARK CITY POOL** and

**WHEREAS**, the CONTRACTOR hereby certifies that CONTRACTOR has been granted and possesses all necessary, valid, current licenses/certifications to do business in the State of Florida and in the CITY of Green Cove Springs, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the services to be provided and performed by the CONTRACTOR pursuant to this Agreement; and

**WHEREAS**, the CONTRACTOR has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform all such professional services in accordance with the provisions, conditions and terms hereinafter set forth; and

**WHEREAS**, the selection and engagement of the CONTRACTOR has been made by the CITY in accordance with the provisions of the CITY's Purchasing Policy and the solicitation made by the CITY through its BID No. .

**WHEREAS**, all parties hereto agree with all terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a Contract shall exist between both parties consisting of:

**ARTICLE 1.00 - DEFINITIONS**

The following are definitions for the terms associated with this Agreement and are provided to establish a common understanding, between the parties, regarding the intended usage, application, and interpretation of same.

**1.01** **AGREEMENT** - As it relates to the requirement of the work contemplated herein, this Agreement shall include **Exhibit A** and any documentation by reference, and shall constitute the entire agreement or understandings, written or oral, relating to the matters set forth herein. Any prior Agreements entered into by the parties hereto, for other services shall not be affected by this Agreement nor shall they have any affect, whatsoever, on this agreement.

**1.02** **AMENDMENTS** - Any additions, modifications or alterations made to this agreement. All amendments shall be made in accordance with Article 23.00.

**1.03** **"CONTRACTOR"** the individual or firm offering professional services, who has executed this Agreement, and who is legally obligated, responsible, and liable for providing and performing any and all services as required under the covenants, terms and provisions contained herein and any and all Amendments hereto. Any reference hereinafter made to the CONTRACTOR shall also include any employees of the CONTRACTOR, and any SUB-CONTRACTORS or employees

thereof, who are engaged by the CONTRACTOR for the purpose of performing professional services pursuant to this Agreement.

**1.04** "CITY" a political subdivision of the State of Florida, and any official and/or employees thereof, who shall be duly authorized to act on the CITY'S behalf, relative to this Agreement.

**1.05** "PARTIES" CITY and the CONTRACTOR as defined hereinabove.

**1.06** "PROFESSIONAL SERVICES" all services, work, materials and other professional, technical and administrative activities as set forth in Exhibit A, which are necessary to be provided and performed by the CONTRACTOR and its employees, and any and all sub-consultants and sub-CONTRACTORS the CONTRACTOR may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions contained herein.

**1.07** "PROJECT MANAGER" the CITY's City Manager or his designee. The PROJECT MANAGER shall be responsible for acting on behalf of the CITY to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements as set forth in this Agreement, or any AMENDMENT(S) hereto. The PROJECT MANAGER shall also serve and act on behalf of the CITY, to provide direct contact and communication between the CITY and the CONTRACTOR, providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the CONTRACTOR, pursuant to this agreement, and any Amendment(s) hereto. The PROJECT MANAGER shall also review and approve any and all requests, submitted by the CONTRACTOR, for payment of services performed, pursuant to this Agreement.

**1.08** "SUB-CONTRACTOR" any individual or firm who offers professional services to the CONTRACTOR, to assist providing and performing the professional services, work and materials for which the CONTRACTOR is contractually obligated, responsible and liable to provide and perform under this Agreement. The CITY shall not be a party to, held responsible or liable for, or assume any obligation whatsoever for any provision under any Agreement entered by the CONTRACTOR and any and all SUB-CONTRACTORS.

**1.09** ADDITIONAL DEFINITIONS - RESERVED

**ARTICLE 2.00 - SCOPE OF PROFESSIONAL SERVICES**

The CONTRACTOR agrees to provide to the CITY the services identified in Exhibit A under the price schedule contained therein.

**ARTICLE 3.00 - TERM**

The Agreement Term shall terminate on October 31<sup>st</sup> , 2022

**ARTICLE 4.00 FUNDING**

This Agreement or any amendments hereto shall be subject to fund availability.

**ARTICLE 5.00 - OBLIGATIONS OF THE CONTRACTOR**

The obligations of the CONTRACTOR, with respect to the services provided herein, shall include, but not be limited to, the following:

**5.01** LICENSES

The CONTRACTOR agrees to obtain and maintain, throughout the term of this Agreement, and any extensions hereof, all licenses/certifications as required to do business in the State of Florida and the CITY of Green Cove Springs, including, but not limited to, licenses required by any State Boards, or other governmental agencies, responsible for regulating and licensing the professional services provided and performed by the CONTRACTOR pursuant to this Agreement.

**5.02** PERSONNEL

(1) Qualified Personnel - The CONTRACTOR agrees to employ and/or retain only qualified personnel where, under Florida law, requires a license, certificate of authorization, or other form of legal entitlement, to practice such services.

(2) CONTRACTOR's Project Manager - The CONTRACTOR agrees to employ and designate, a qualified professional to serve as its Project Manager. The CONTRACTOR's Project Manager shall be authorized to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the professional services to be provided and performed, pursuant to this Agreement, and/or any Amendment(s) hereto. The CONTRACTOR'S Project Manager shall have full authority to bind and obligate the CONTRACTOR on any matter arising under this Agreement or any Amendment(s) hereto, except upon express written agreement of the CITY. The CONTRACTOR agrees that its Project Manager shall devote whatever time is required to satisfactorily manage the professional services performed by the CONTRACTOR, throughout the entire term of this Agreement and any extension hereof. The person or individual selected, by the CONTRACTOR, to serve as its Project Manager is subject to prior approval and acceptance of the CITY.

(3) Removal of Personnel - The CONTRACTOR agrees to promptly replace its Project Manager or any other persons in its employ, including SUBCONTRACTORS(s) or employees thereof, who were engaged by the CONTRACTOR to perform professional services pursuant to this Agreement, if the CITY requests, with or without cause, that the individuals be stopped from performing professional services under this Agreement.

(4) Sub-CONTRACTORS – If the CONTRACTOR utilizes SUBCONTRACTORS to assist in providing and performing the professional services, CONTRACTOR will solicit and consider Minority-Owned Businesses.

### **5.03 STANDARDS OF PROFESSIONAL SERVICE**

The CONTRACTOR agrees to provide and perform the professional services set forth in this Agreement, or any Amendments hereto, in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and policies, of any governmental agencies which may regulate, or have jurisdiction over the professional services to be provided and/or performed by the CONTRACTOR, pursuant to this Agreement.

### **5.04 INDEMNIFICATION**

(1) The CONTRACTOR shall be, and agrees to be and remain liable for any and all damages, losses, and expenses incurred by the CITY caused by the errors, omissions, negligence, or delay(s) of the CONTRACTOR or by any sub-consultant(s) and/or SUBCONTRACTOR(s) engaged by the CONTRACTOR in providing, performing and furnishing services, work and materials pursuant to this Agreement.

(2) The CONTRACTOR shall be liable and agrees to be liable for and shall indemnify, defend and hold the CITY harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the CONTRACTOR'S errors, omissions, negligence, or delay(s), or those of any and all sub-consultants and/or SUBCONTRACTORS engaged by the CONTRACTOR during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Amendments thereto.

### **5.05 NOT TO DIVULGE CERTAIN INFORMATION**

During the term of this Agreement and forever thereafter and except for the provisions of paragraphs 17 and 18 below, the CONTRACTOR agrees not to divulge, furnish or make available, to any third party, without the express written permission of the CITY, any non-public information, where such information has not been properly subpoenaed, concerning the services rendered by the CONTRACTOR.

## **ARTICLE 6.00 - OBLIGATIONS OF THE CITY**

**6.01 AVAILABILITY OF CITY INFORMATION**

At the CONTRACTOR'S request to the PROJECT MANAGER, the CITY agrees to make available all pertinent information, known by the CITY to be available, to assist the CONTRACTOR in providing and performing the professional services required herein. Such information may include, but not be limited to, customer billing information, consumption records, other related data. The CONTRACTOR shall be entitled to reasonably rely on the accuracy and completeness of such information.

**6.02 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES**

The CITY agrees that the PROJECT MANAGER shall be available within a reasonable period, with reasonable prior notice, given by the CONTRACTOR, to meet and/or consult with the CONTRACTOR on matters pertaining to the professional services to be provided hereunder. The CITY further agrees that the PROJECT MANAGER shall respond, within a reasonable period, to written requests submitted by the CONTRACTOR.

**ARTICLE 7.00 - COMPENSATION AND METHOD OF PAYMENT**

**7.01 COMPENSATION AND METHOD OF PAYMENT**

For the professional services performed by the CONTRACTOR, pursuant to this agreement, the CITY hereby agrees to pay the CONTRACTOR in accordance with the provisions set forth by the State of Florida's Prompt Payment Act (Florida Statutes Section 218.70) and the schedule and provisions as set forth in **Exhibit A**. The CONTRACTOR shall only be allowed to make one payment draw per month, all draws must be signed off on by the City's Representative and presented to the Accounts Payable Department.

**7.02 PAYMENT WHEN SERVICES ARE TERMINATED**

(1) In the event of termination of this Agreement by the CITY and not due to the fault of the CONTRACTOR, the CITY shall compensate the CONTRACTOR for: (1) all services performed prior to the effective date of termination; and (2) shall pay the costs of such as set forth in Section 7.01 of this agreement.

(2) In the event of termination of this Agreement, due to the fault of the CONTRACTOR or at the written request of the CONTRACTOR, the CITY shall compensate the CONTRACTOR for: (1) all services completed prior to the effective date of termination, which have resulted in a usable product or otherwise tangible benefit to the CITY; and (2) shall pay the costs of such as set forth in Section 7.01 of this agreement. Any such payments shall be subject to a set-off, for any damages incurred by the CITY, resulting from delays occasioned by the termination.

**7.03 PAYMENT WHEN SERVICES ARE SUSPENDED**

In the event the CITY suspends the professional services required to be performed, by the CONTRACTOR, pursuant to this Agreement, the CITY shall compensate the CONTRACTOR for all services performed prior to the effective date of suspension and shall pay the costs thereto as set forth in Section 7.01 of this agreement.

**7.04 NON-ENTITLEMENT TO ANTICIPATED FEES**

In the event the professional services to be performed under this Agreement are terminated, eliminated, canceled, or decreased due to: (1) termination; (2) suspension, in whole or in part; or (3) modification by the subsequent issuance of an Amendment, the CONTRACTOR shall not be entitled to receive compensation for anticipated professional fees, profit, general and or administrative overhead expenses, or for any other anticipated income or expenses.

**ARTICLE 8.00 - TIME AND SCHEDULE OF PERFORMANCE**

**8.01 TIMELY ACCOMPLISHMENT OF SERVICES**

The timely and expeditious completion, by the CONTRACTOR, of all professional services provided under this Agreement, or any Amendments hereto is expected. The CONTRACTOR agrees to employ an adequate number of personnel throughout the period of this Agreement, and any extension hereof, so that all professional services to be provided, pursuant to this Agreement, or any Amendments hereto will be provided, performed and completed in a timely and expeditious manner. Time of completion agreed to for this project is 176 days.

Should the CONTRACTOR not be able to complete the services for a project in accordance with the Scope of Services and Schedule agreed to in **Exhibit A**, the CONTRACTOR shall provide the PROJECT MANAGER a revised schedule and narrative indicating the reasons for the delay within a reasonable period of time prior to the expiration date of the original schedule. The PROJECT MANAGER shall review this information and either approve the revised schedule as submitted or provide a written response indicating the deficiencies in the schedule. Once the revised schedule has been approved by the PROJECT MANAGER, it shall then become the schedule for the project. Requests for changes to **Exhibit A** that are denied by the PROJECT MANAGER shall be further reviewed as proposed contract Amendments pursuant to Article 23.00.

#### **8.02 NOTICE TO PROCEED**

A written Notice to Proceed (NTP) will be issued by the PROJECT MANAGER, following the execution of each Scope of Services pursuant to **Exhibit A** and upon receipt of the insurance certificates and related documentation required herein. The CONTRACTOR shall only be authorized to commence work after issuance of the NTP. Thereafter, the CONTRACTOR shall commence work promptly and shall carry on all such services as may be required hereunder in a continuous, diligent and forthright manner.

#### **8.03 FAILURE TO PERFORM IN A TIMELY MANNER**

Should the CONTRACTOR fail to commence, provide, and/or perform any of the professional services required, pursuant to this Agreement, in a timely, continuous, diligent, professional and expeditious manner, the CITY may consider such failure as justifiable cause to terminate this Agreement.

#### **ARTICLE 9.00 - CONFLICT OF INTEREST**

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of services required hereunder. The CONTRACTOR further agrees that no person having any such conflict of interest shall be employed or engaged by the CONTRACTOR for performance hereunder.

If the CONTRACTOR, for itself and on behalf of its SUBCONTRACTORS, is about to engage in the representation of another client, who it in good faith believes could result in a conflict of interest with the services being rendered pursuant to this Agreement, then the CONTRACTOR shall promptly bring such potential conflict of interest to the CITY'S attention in writing. The CITY will decide in a timely manner. Upon determination that there is a conflict of interest, the CITY will submit written notice of same to the CONTRACTOR and the CONTRACTOR shall decline the new representation. If the CITY determines that there is not any such conflict, then the CITY shall give its written consent to such representation. If CONTRACTOR accepts such a representation without obtaining the CITY'S prior written consent, and if the CITY subsequently determines that there is a conflict of interest, the CONTRACTOR agrees to promptly terminate such new representation. CONTRACTOR shall require each sub-CONTRACTOR to comply with the provisions of this Section. Should the CONTRACTOR fail to advise or notify the CITY, as provided herein above, of representation, which may, or does, result in a conflict of interest, or should the CONTRACTOR fail to discontinue such representation where a conflict is determined to exist, the CITY may consider such failure as justifiable cause to terminate this Agreement.

#### **ARTICLE 10.00 - ASSIGNMENT/TRANSFER**

Any assignments or transfer of rights, benefits or obligations hereunder shall only be allowed if approved

as an amendment pursuant to Article 23.00.

**ARTICLE 11.00 - APPLICABLE LAW/VENUE**

This Agreement shall be governed by the ordinances of the CITY of Green Cove Springs, the laws, rules, and regulations of the State of Florida, procedural and substantive, and applicable federal statutes, rules and regulations. The venue for any and all litigation, arising under this Agreement, shall lie in Clay County, Florida.

**ARTICLE 12.00 - WAIVER OF BREACH**

Waiver by the CITY, of a breach of any provision of this Agreement, by the CONTRACTOR, shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

**12.01 JURY TRAIL WAIVER**

Each Party waives the right to trial by jury on any issues or suits arising hereunder.

**ARTICLE 13.00 - INSURANCE COVERAGES**

**13.01 GENERAL REQUIREMENTS**

The CONTRACTOR shall purchase and maintain such insurance meeting the requirements of the CITY of Green Cove Springs and as will protect it from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts may be liable:

Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR or (2) by any other person; and

Claims for damages because of injury to or destruction to tangible property, including loss of use resulting there from.

Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least thirty (30) days prior WRITTEN NOTICE has been given to the OWNER.

The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified;

CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations

be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Upon award, the bidder shall provide a certificate of insurance providing at least thirty (30) calendar days guaranteed written notice of cancellation and the CITY listed as an additionally insured with the following minimums:

Workmen's Comprehensive: meeting State Statutes  
Product Liability: \$ 100,000 single/\$ 500,000 aggregate  
General Liability: \$ 100,000 single/\$ 500,000 aggregate  
Commercial General Liability: \$ 1,000,000 combined single limit  
Automobile Liability: \$ 500,000 combined single limit  
Owned  
Hired  
Non-owned  
Current Form/Comprehensive Form  
Premises Operations  
Explosion and Collapse Hazard  
Underground Hazard  
Products/Completed Operations Hazard  
Contractual Insurance  
Broad Form Property Damage  
Independent CONTRACTORS

The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the CITY, the CONTRACTOR, and SUBCONTRACTORS as their may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENT to fully complete the PROJECT.

The CONTRACTOR shall procure and maintain at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provision, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarity to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk

Insurance for WORK to be performed. Unless specifically authorized by the CITY, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious, mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the CITY. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the CITY.

The CITY shall be specifically included as an additional insured. This does not pertain to workers compensation.

All certificates of insurance must be on file with, and approved by, the CITY before the

commencement of any work activities.

**ARTICLE 14.00 - DUTIES AND OBLIGATIONS IMPOSED ON THE CONTRACTOR**

The duties and obligations imposed on the CONTRACTOR, and the rights and remedies available hereunder shall be in addition to, and not a limitation on, any such duties and obligations or rights and remedies otherwise imposed or available by law or statute.

**ARTICLE 15.00 - REPRESENTATION OF THE CITY**

The CONTRACTOR, in performing the professional services required pursuant to this Agreement, or any Amendments hereto, shall only represent the CITY in the manner, and to the extent, as specifically set forth in this Agreement or any Amendments hereto.

The CITY will neither assume nor accept any obligation, commitment, responsibility or liability, which may result from a representation by the CONTRACTOR, which is not specifically provided for and or authorized by this agreement or any Amendments hereto.

**ARTICLE 16.00 - OWNERSHIP OF DOCUMENTS**

All documents, including but not limited to, drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and any other records or data, specifically prepared and/or developed by the CONTRACTOR, pursuant to this agreement, shall be the property of the CONTRACTOR until the CONTRACTOR has been paid for performing such services as required to produce such documents. The CONTRACTOR shall submit reports and other documents, to the extent directed by the CITY, in the format as specified in **Exhibit A**. Upon natural expiration or termination of this Agreement, of the above documents shall be promptly delivered to and become the properties of the CITY.

The CONTRACTOR, at its expense, may retain copies of all documents, generated pursuant to this Agreement, and subsequently delivered to the CITY, for reference and internal use. The CONTRACTOR shall not use any documents, data and/or information, generated here from, on any other project or for any other client without the express written permission of the CITY.

**ARTICLE 17.00 - MAINTENANCE OF RECORDS**

The CONTRACTOR shall maintain adequate records and supporting documentation, applicable to all services, work, information, expenses, costs, invoices and materials, provided and performed, pursuant to the requirements of this Agreement. Said records and documentation shall be retained by the CONTRACTOR for a minimum of five (5) years from the date of natural expiration or termination of this Agreement.

The CITY and its authorized agents shall, after providing reasonable notice, have the right to audit, inspect and copy all such records and documentation, as often as the CITY deems necessary during the term of this Agreement, and during the five (5), year period thereafter, as required above, provided that such activity is conducted during normal business hours and at the expense of the CITY.

**ARTICLE 18.00 – PUBLIC RECORDS REQUIREMENTS**

Notwithstanding any provision in this agreement to the contrary, the following public records requirements shall apply:

The CONTRACTOR, or provider of services hereunder, shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the CONTRACTOR in conjunction with this Contract. Specifically, the CONTRACTOR must:



- (1) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being performed by the CONTRACTOR.
- (2) 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 in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (4) Meet all requirements for retaining public records and transfer at no cost to the CITY for all public records in possession of the CONTRACTOR 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.

The City's point of contact for all Public Records requests is Erin West, City Clerk, ewest@greencovesprings.com.

The CONTRACTOR shall promptly provide the CITY with a copy of any request to inspect or copy public records in possession of the CONTRACTOR and shall promptly provide the CITY a copy of the CONTRACTOR's response to each such request. Failure to grant such public access will be grounds for immediate termination of this Contract by the CITY.

THIS ARTICLE WILL BE DEEMED TO APPLY TO ALL SERVICE CONTRACTS UNLESS THE CONTRACTOR CAN DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT IT IS NOT ACTING ON BEHALF OF THE CITY UNDER FLORIDA LAW.

#### **ARTICLE 19.00 - HEADINGS**

The HEADINGS of any Articles, Sections, and/or Attachments, to this Agreement, are for convenience only and shall not be deemed to expand, limit or change any of the provisions contained herein.

#### **ARTICLE 20.00 - RESERVED**

#### **ARTICLE 21.00 - NOTICE AND ADDRESS OF RECORD**

##### **21.01 NOTICE BY CONTRACTOR TO CITY**

All notice to the CITY, pursuant to this Agreement, shall be made in writing and shall be delivered through the United States Postal Service, first class mail, postage prepaid and addressed to the following, CITY, address of record:

*The City of Green Cove Springs*  
*City Manager*  
*321 Walnut Street*  
*Green Cove Springs, Florida 32043*

##### **21.02 NOTICES BY CITY TO CONTRACTOR**

All notices to be given to the CONTRACTOR, pursuant to this agreement, shall be made in writing and shall be delivered through the United States Postal Service, first class mail, postage prepaid and addressed to the following, CONTRACTOR'S address of record:

*Planet Swim, LLC*  
*148 Wayfare Ln*  
*Ponte Vedra, FL 32081*

**21.03 CHANGE OF ADDRESS OF RECORD**

Either party may change its address of record, at any time, by written notice to the other party given in accordance with the requirements as set forth in Article 20.01, above.

**ARTICLE 22.00 - TERMINATION**

**22.01 GENERAL PROVISIONS**

This Agreement may be terminated by the CITY or the CONTRACTOR, with or without cause by giving thirty (30) days written notice to the other party as required in Article 20.00 above.

**22.02 TERMINATION DUE TO BANKRUPTCY OR INSOLVENCY**

If the CONTRACTOR is adjudged bankrupt or insolvent, if it makes a general assignment for the benefit of its creditors, if a trustee or receiver is appointed for the CONTRACTOR or for any of its property or if it files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or other similar laws the CITY may, without prejudice to any other right or remedy, and after giving the CONTRACTOR written notice, terminate this Agreement.

**22.03 CONTRACTOR TO DELIVER MATERIAL**

Upon termination for any reason, the CONTRACTOR shall promptly deliver to the CITY all documents, papers, drawings, models, or any other materials, which the CITY has exclusive rights, by virtue of this Agreement or any other services performed by the CONTRACTOR on behalf of the CITY.

**ARTICLE 23.00 - AMENDMENTS**

The covenants, terms, and provisions contained herein may be amended, altered and/or modified upon express written consent of the parties hereto. In the event of conflicts between the covenants, terms, and/or provisions hereof, and any amendment(s) hereto, the latest executed Amendment(s) shall take precedent.

**ARTICLE 24.00 ADMINISTRATIVE PROVISIONS**

In the event the CITY issues a purchase order, memorandum, letter, or other instruments addressing the professional services, to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the CITY'S internal control purposes only, and any and all terms, provisions, and conditions contained therein, shall in no way modify the covenants, terms and provisions of this Agreement, or any amendments hereto, and shall have no force or effect hereon.

**ARTICLE 25.00 - ACCEPTANCE**

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties hereto, in the space provided, and be attested to as indicated hereafter.

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have executed this Agreement effective this \_\_\_\_\_ day of \_\_\_\_\_, **2022**.

**CITY OF GREEN COVE SPRINGS, FLORIDA**

**CITY OF GREEN COVE SPRINGS, FLORIDA**

By: \_\_\_\_\_  
Edward R. Gaw, Mayor

By: \_\_\_\_\_  
Steve Kennedy, City Manager

ATTEST: \_\_\_\_\_  
Erin West, CITY CLERK

Approved as to form only:

\_\_\_\_\_  
L.J. Arnold III, CITY ATTORNEY

**CONTRACTOR – Planet Swim LLC**

By: \_\_\_\_\_  
CEO – Gustavo M. Calado

\_\_\_\_\_  
Witness as to CONTRACTOR

**Exhibit A**

<p><b><u>Services Provided by the Contractor</u></b></p>	<ul style="list-style-type: none"> <li>• Manage the day-to-day operations at the Spring Park Aquatic facility.</li> <li>• Open Swim/Lap Swimming access to the public.</li> <li>• Swim Lessons &amp; Summer League to anyone 5 years and older</li> <li>• Staffing for all programming and management</li> <li>• The contractor may add more programming as needed.</li> <li>• Install lane line hooks and provide lane lines when needed.</li> </ul>
<p><b><u>Services Provided by the City of Green Cove Springs</u></b></p>	<ul style="list-style-type: none"> <li>• Pool water management. i.e. Draining the pool on Mondays and cleaning of the pool concrete surface.</li> <li>• Repair physical damages to the aquatic facility as required by code.</li> </ul>
<p><b><u>Pool opening date:</u></b></p>	<p>Friday, May 6<sup>th</sup>, 2022</p>
<p><b><u>Pool closing date:</u></b></p>	<p>Sunday, October 30<sup>th</sup>, 2022</p>
<p><b><u>Pool operating hours:</u></b></p>	<p><u>May/October</u> Friday, Saturday, Sunday – 11:00 am - 7:00 pm</p> <p><u>June/July/August/September</u> Tuesday through Sunday – 11:00 am - 7:00 pm</p> <p>*Swim Lessons &amp; Summer League to be programmed outside of public swim hours.</p>
<p><b><u>Seasonal Passes Fee:</u></b></p>	<p>Individual – Adult: \$100 Individual – Active Military/Senior (65+): \$75 Individual – Child (2-17): \$75 Family (5) - \$225</p>
<p><b><u>Daily Entrance Fee:</u></b></p>	<p>Adults: \$5 Active Military/Seniors (65+): \$3 Children (2-17): \$3</p>
<p><b><u>Swim Lesson Fee Structure:</u></b></p>	<p>Group Lesson (2x per week): \$50 one-time seasonal registration fee + \$150 per month*</p> <p><b><u>Note:</u></b> <i>*Split among 3 parties: Planet Swim Foundation, Inc., the City of Green Cove Springs and the participant's parents. The parents are responsible for paying the seasonal registration fee (\$50) Planet Swim Foundation, Inc. is responsible for paying \$50 per month per child per month and the City of Green Cove Springs is responsible for paying \$50 per month per child for up to 240 swimmers per season.</i></p>
<p><b><u>Payment method:</u></b></p>	<p>Cash, Check or Credit/Debit Card</p>
<p><b><u>Management Fee and Swim Lesson Fee Schedule:</u></b></p>	<p>05/15/2022 - \$12,000.00 (Management Fee) 06/15/2022 - \$12,000.00 (Management Fee) 07/15/2022 - \$12,000.00 (Management Fee) 08/15/2022 - \$12,000.00 (Management Fee) 09/15/2022 - \$12,000.00 (Management Fee) 10/15/2022 - \$12,000.00 (Management Fee) 11/15/2022 - Up to \$12,000.00 (Swim Lessons &amp; Summer League Fees)</p>