

RESOLUTION NO. _____

A RESOLUTION APPROVING A LICENSING AGREEMENT WITH AMERICAN NATIONAL RED CROSS TO HOST AMERICAN RED CROSS INSTRUCTOR TRAINER ACADEMIES AT THE KINGSPORT AQUATIC CENTER AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the Kingsport Aquatic Center has been diligently working towards becoming the host for the Water Safety Instructor Trainers Course (WSIT) and the Lifeguard Instructor Trainers (LGIT) Course; and

WHEREAS, these academies play a pivotal role in teaching and certifying Lifeguard and Water Safety Instructors.

WHEREAS, the Kingsport Aquatic Center (KAC) has not only met but has exceeded the stringent criteria set forth by the American Red Cross, and the city has the only facility in the Eastern Region of Tennessee that will be holding an academy; and

WHEREAS, it is anticipated to host one academy in 2025 and two academies in 2026, each typically attended by 10 students; and

WHEREAS, there is no cost to the Red Cross for utilizing the facility, and KAC receives one free LGIT and WSIT spot per academy hosted.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the Standard Form of Temporary Class Space License Agreement for Use of the Aquatic Facilities with the American National Red Cross, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Standard Form of Temporary Class Space License Agreement for Use of the Aquatic Facilities with the American National Red Cross, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set put below:

**STANDARD FORM OF
TEMPORARY CLASS SPACE LICENSE AGREEMENT
FOR THE USE OF
AQUATIC FACILITIES
(POOL AND ADJACENT SPACE)
TERMS AND CONDITIONS**

Effective Date: The date upon which this Agreement is effective, which will be the later of the dates of the signatures of Host and Pool User on this Form.

Owner or Manager of the Facility (the "Host"):

City of Kingsport

Legal Name of the User of Space at the Facility (the "Pool User"):

The American National Red Cross, a nonprofit corporation, a Federally chartered instrumentality of the United States, and a body corporate and politic under the laws of the United States (36 U.S.C. §§ 300101-300111 (1998)).

Date Upon which the Pool User May Begin to Use Space at the Facility (the "Start Date"):

02/01/2024

Date Upon Which the Pool User Must Vacate Space at the Facility (the "Expiration Date"):

02/02/2027

Building Owner and Host's Business Addresses:

City of Kingsport 1820 Meadowview Parkway Kingsport, TN 37660

Pool User's Business Address:

431 18th Street NW Washington, DC 20006

Street Address of the Building Where the Space is Located (the "Facility"):

1820 Meadowview Parkway Kingsport, TN 37660

General Description of Licensed Classroom and Pool Space:

This Temporary Class Space License Agreement (the "Agreement") is dated and intended to be effective as of the Effective Date set forth above, and made by and between the Host and the Pool User named above. Under the Agreement, the Pool User is permitted to use and occupy, on a temporary basis, the space described above. Together with the attached Aquatics Facility Checklist, Pool User has the non-exclusive right to use, in common with Host and the other users, all exterior and interior, if any, common and public areas and facilities benefitting the Facility, including, without limitation, as applicable, all lobbies, bathrooms, lockerrooms, stairwells, freight and passenger elevators, hallways, beneficial easements, driveways, sidewalks, parking, loading areas, and landscaped areas benefitting the Facility (the "Space") at the Facility.

1. **Grant of License.** Host grants Pool User the right to use the Space for the purpose of teaching aquatic classes. This Agreement is not a lease and Pool User is granted no leasehold interest in the Space.

2. **Term.** Pool User's right to use and occupy the Space shall begin on the Start Date and shall end on the Expiration Date. On or before the Expiration Date, Pool User shall vacate the Space.

3. **License Fee.** Pool User shall pay, as a license fee, the amount of \$ 0.00.

4. **Condition of Space and Facility.** Host shall comply with all legal codes, requirements, rules and regulations regarding the cleanliness, maintenance and safety conditions of the Space and the Facility, and pursuant to those requirements of the Aquatics Facility Checklist, as attached. If Host shall know or shall have reason to know of a latent danger either existing as of the Effective Date or as reasonably anticipated, Host will notify Pool User promptly and offer a reasonable, proportionate and timely remedy. Host will address any concerns regarding safety immediately.

5. **Pool User's Conduct.** Pool User agrees to keep the space in clean and neat condition.

6. **Indemnification.** To the extent permitted by Tennessee law, including but not limited to Article II, Section 29 of the Tennessee Constitution and the Tennessee Governmental Tort Liability Act (Tenn. Code Ann. § 29-20-101 *et. seq.*), Host agrees to defend, indemnify and hold harmless the Red Cross, its governors, employees and representatives from any claims, including reasonable attorney fees, in respect to bodily injury, death, and property damage arising from its negligence in its responsibilities in performance of this Agreement.

7. **Warranties.**

a. **Space.** Host represents and warrants that Space is in compliance with the attached Aquatics Facility Checklist, and agrees to maintain the Space, and to provide and actively manage certified lifeguards at the Space, in compliance with all applicable local, state and federal rules and regulations.

b. **Limit of Liability.** Host is a sovereign governmental entity chartered under the laws of the State of Tennessee and as such its ability to indemnify, hold harmless, and its limits of liability are governed by Tennessee state law which cannot be waived except by an act of the Tennessee General Assembly.

8. **Insurance.** Host is self insured through Public Entity Partners for general liability insurance and automobile insurance. However, any and all claims against Host and/or its employees are governed by the provisions of the Tennessee Governmental Tort Liability Act with statutory limits of liability of \$300,000.00 for bodily injury or death of any one person in any one accident, occurrence or act, \$700,000.00 for bodily injury or death of all persons in any one accident, occurrence or act, and \$100,000.00 for injury or destruction of property of others in any one accident, occurrence or act. Host does not have the authority to waive its governmental immunity which can only be waived through an act of the Tennessee General Assembly. Additionally, Host is self-insured under

Tennessee law for Workers' Compensation and which covers all Hosts employees. Host retains its right provided under Tennessee law, currently Tennessee Code Annotated § 50-6-106(6) to withdraw from coverage under the Workers' Compensation law, either in whole or by departments or divisions.

9. Casualty or Condemnation Affecting Space. Notwithstanding anything in this Agreement to the contrary, in the event that damage or casualty to all or a part of the Space, this License shall terminate as of the date of the event.

10. Termination for Convenience. This license agreement may be terminated by Host upon 180 days written notice to Red Cross. Such termination will not be deemed a breach of this license agreement by Host. Should Host exercise this provision, Host will compensate Red Cross for all satisfactory and authorized services/charges as of the termination date, and Red Cross will refund to Host any funds paid by Host in excess of such amount. Upon such termination, Red Cross will not have any right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

11. Governing Law. This agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.

12. Notice. Notice shall be deemed to have been duly given three (3) business days after having been mailed by certified or registered mail, return receipt requested, to the party's address set forth at the beginning of the Agreement, or upon receipt if delivered by hand or recognized overnight delivery service. Either party may change its address for the purpose of notice hereunder by providing the other party with notice of the new address.

Authority. Each party represents and warrants that it has the full power and authority to execute, deliver and perform under this Agreement.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of February, 2024.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY