

Recreation Services Contract
City of Waukesha - Kelly Bullard Fitness, LLC

This Contract is entered into by and between the City of Waukesha and its Parks, Recreation and Forestry Department, 1900 Aviation Drive, Waukesha, Wisconsin 53188, referred to herein as the City; and Kelly Bullard Fitness LLC, 340 East Veterans Way, Unit 5, Mukwonago, WI 53149, referred to herein as Provider. City and Provider together are referred to herein as the Parties.

Recitals

Provider wishes to provide certain recreation services that are directed at, and adapted to, individuals that are within the scope of the mission of their organization. These services also fall within the general goal of the City to provide recreational activities to all citizens of the City.

The City is willing to provide facilities for Provider to carry out its recreation service activities, and Provider is willing to use those facilities for such services.

Therefore, the Parties agree and contract as follows:

1. **General Terms.** The City will make space available to Provider, for Provider to carry out its recreation service activities, referred to herein as the Services, subject to all of the terms and conditions of this Contract. The City will have no obligations other than those specifically assumed by the City in this Contract. Provider is an independent contractor, and is solely responsible, at its sole expense, for the conduct of the Services.
2. **Premises.** The City shall designate the Premises within which the Provider will provide its Services. All services to be performed by Provider shall take place within the designated Premises. Provider acknowledges that it has inspected the Premises, is aware of its condition, has found the Premises suitable for the conduct of the Services, and accepts the Premises as-is. The Premises are specifically identified on Schedule 1, attached and incorporated into this Contract.
3. **Permitted Uses of Premises.** Provider shall use the Premises exclusively to provide the Services described in section 5. No other activities may be conducted by Provider in the Premises without the City's prior, express, written approval.
4. **Term.** The term of this Contract commences June 1, 2022 and terminates June 1, 2024, unless terminated earlier as provided herein. The Parties may mutually agree in writing to an extension of this Contract, provided a written contract for such extension is agreed upon no later than June 1, 2022.
5. **Services.** Provider shall provide the Services according to the following terms:
 - a. Provider shall conduct Aqua Fitness classes at Buchner Pool and the Van Male Natatorium, sessions will vary in length from four to nine weeks.
 - b. Provider shall create and deliver to the City an outline of its class offerings and specific dates for Aqua Fitness classes, no later than four months before the program is to be held in that year. Any changes in the submitted schedule must be approved in advance by the City.
 - c. Provider shall be solely responsible for providing all equipment, staffing, volunteers and programming activities for the conduct of the Aqua Fitness program.
 - d. Aqua Fitness shall, at a minimum, address the following goals and objectives:

- i. Providing a safe, group Aqua Fitness program to students of all abilities ages 16 years and older. Modification and props will be used so that movement can be adapted to accommodate all participant levels.
 - ii. Empower participants with the knowledge and motivation to meet and exceed their fitness goals in a safe, fun environment.
 - e. Provider shall provide all necessary training to Aqua Fitness staff and will utilize staff that maintain an Aqua Fitness certification.
 - f. Provider shall be responsible for the safety and security of participants in the Services. Provider shall take attendance at each class.
 - g. Provider shall visually inspect the Premises before and after class, report any issues or concerns to City, and returned the premise to original state.
 - h. Provider shall be responsible for any damage to the Premises or equipment caused by its employees, volunteers or participants in its programs. Provider shall replace or repair all damaged items, at its sole expense.
 - i. Provider shall provide all needed statistical data related to program participants and program volunteers as requested by the City.
 - j. In general, Provider shall be responsible, at its sole expense, for the operation of the Services, and the City shall be responsible only for the specific obligations listed in this Contract.
 - k. Provider will conduct a comprehensive background screening on all volunteers and instructors.
6. **City Control of Premises.** The City shall at all times retain the authority to relocate Provider's activities in the Premises or to close the Premises entirely and direct Provider and all participants in the Services to vacate the Premises, if reasonably necessary for the protection and security of persons or property within the Premises, or for the protection or security of any City property.
7. **City Obligations.**
- a. The City shall designate the Premises within Buchner Park Community Pool and the Van Male Natatorium, sufficient area for Provider's conduct of the Services, and shall give Provider complete access to the Premises at all times reasonably necessary for conducting the Services.
 - b. The City will be responsible for general trash removal from, and general cleaning of, the Premises following Aqua Fitness classes.
 - c. The City will promote the Services in the Parks, Recreation and Forestry activity guides three times per year, and in the City website.
 - d. City shall be responsible for all participant registration and the collection of fees.
 - e. Provider shall invoice the City after completion of each session of the Services, at the rate of \$7.00 per pupil, per class. Invoices will be payable within 30 days after receipt. Provider acknowledges that City has an unconditional satisfaction warranty to participants, and will refund fees to any participant that is not satisfied with the Services. All fees refunded to participants will be deducted from payment to Provider.

8. **Prohibited Bases of Discrimination.** City and Provider shall not discriminate against any persons for participation in the Services on the basis of sex, race, color, creed, disability, sexual orientation, national origin or ancestry.
9. **Compliance with Laws; Permits and Licenses.** Provider shall be solely responsible for compliance with all laws applicable to the Services. Provider shall be responsible, at its sole expense, for obtaining all licenses and permits required for the Services.
10. **Indemnification.** Provider shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind, including court costs and actual attorney fees, arising out of, or connected in any way with:
 - a. Provider's conduct of the Services, including, but not limited to, damages for personal injury, death, or casualty loss to personal property.
 - b. Provider's breach of any provision of this Contract.
 - c. Provider's violations of any laws.
11. **Insurance.** Provider shall maintain insurance of the following kinds and for not less than the following limits, at Provider's sole expense, at all times during the term of this Contract. Policies shall be occurrence, and not claims-made, policies. Provider shall obtain an endorsement making the City an additional insured, and Provider's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Provider shall deliver a certificate of insurance to City showing that all requirements of this section are met.
 - a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
 - b. Umbrella, \$1,000,000.
12. **Record Keeping.** Provider shall keep all documents and records generated in its conduct of the Services for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Provider acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
13. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
14. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
15. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
16. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

City of Waukesha

By Shawn N. Reilly, Mayor

Date: _____

Attested by Gina L. Kozlik, City Clerk

Date: _____

Kelly Bullard Fitness, LLC

By Kelly Bullard

Date: _____

Schedule 1

Description of Premises

Classes may be held at one or all locations listed below.

- Buchner Pool, 223 Oakland Ave, Waukesha, WI 53186
- Van Male Natatorium, 227 N Barstow St, Waukesha WI 53188

Program Season:

- September through December
- January through May
- Mid-May through August

Sessions will vary in length from four to nine weeks.

Classes will be 45 minutes in length, times will vary based on availability and community needs.