



AGREEMENT BETWEEN BROWARD COUNTY AND SECOND PARTY FOR WATER SAFETY EDUCATION AND INSTRUCTION SERVICES

This is an Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and [enter legal name and d/b/a as applicable, and insert a municipal corporation of the State of Florida, Florida corporation, or a Florida not-for-profit corporation, as applicable] ("Second Party"). County and Second Party are collectively referred to as the "Parties."

Recitals:

WHEREAS, pursuant to Section 13.91(h), Broward County Administrative Code, the Parks and Recreation Division Director is authorized to contract on behalf of the Broward County Board of County Commissioners for water safety instruction and education services with for-profit and not-for-profit organizations, and governmental entities utilizing standard form agreements, up to the mandatory bid amount set forth in the Broward County Procurement Code; and

WHEREAS, on January 12th, 2016, Agenda Item No. 7, the Board of County Commissioners approved the form of this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement authorizing Second Party to provide water safety instruction and education classes for children and adults, as more specifically provided for herein; and

WHEREAS, the Parties may have previously entered into an agreement for the provision of water safety instruction and education classes for children and adults (hereinafter referred to as the "Original Agreement"), and following the full execution of this Agreement by the Parties, the Original Agreement, if applicable, shall be terminated without the necessity of further action by the Parties; the terms of this Agreement shall supersede the terms in the Original Agreement, and in the event of any conflict between the Original Agreement and this Agreement, the terms of this Agreement shall control; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 **Board.** The Board of County Commissioners of Broward County, Florida.

1.2 **Contract Administrator.** The Director of County's Parks and Recreation Division or the Manager for SWIM Central.

- 1.3 **County Administrator**. The administrative head of County appointed by the Board.
- 1.4 **County Attorney**. The chief legal counsel for County appointed by the Board.
- 1.5 **Designated Representative**. The _____ for Second Party.
- 1.6 **Division Director**. The Broward County Parks and Recreation Division Director.
- 1.7 **Notice To Proceed**. A written authorization to proceed with the Services, issued by the Contract Administrator.
- 1.8 **Purchasing Director**. The Purchasing Division Director with award authority set forth in the Broward County Procurement Code.
- 1.9 **Services**. All services provided by Second Party under this Agreement and specified in Exhibit A, including without limitation all additional services authorized under the terms of this Agreement, and consistent with the scope and theme of this Agreement.
- 1.10 **Subcontractor**. A firm, partnership, corporation, independent contractor (including 1099 individuals), or combination thereof providing Services to County through Second Party for all or any portion of the advertised work. The term Subcontractor shall include all "Subcontractors."
- 1.11 **SWIM Central**. The coordinating agency of Broward County for water safety instruction and awareness in Broward County.

ARTICLE 2. SCOPE OF SERVICES

- 2.1 Second Party shall provide the Services identified in this Agreement including without limitation Exhibit A, at the locations provided in Exhibit A. The Scope of Services stated in this Agreement is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the Services described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.
- 2.2 The Contract Administrator and Designated Representative may amend the class schedule, location(s), and fee schedule set forth in Exhibit A in a written document signed by both Parties, which shall be incorporated into and made a part of this Agreement.
- 2.3 The County may authorize Second Party to provide additional Services under this Agreement if County obtains funding for additional Services from the Children's Services Council of Broward County, or any other funding source. Any additional Services to be provided by Second Party shall be in the form of an amendment to this Agreement executed by Second Party and the appropriate award authority for County.

2.4 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly set forth in this Agreement or, to the extent applicable, the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code).

2.5 Prior to any Services being provided under this Agreement, Second Party shall require the participants (parent/legal guardian for minors) execute a waiver, indemnity, and release of liability in a form approved by the Office of the County Attorney.

ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1 The term of this Agreement shall begin on the date it is fully executed by the Parties ("Effective Date") and shall continue for a term of one (1) year. This Agreement shall automatically renew for nine (9) one (1) year renewal terms, unless terminated by either party as provided for herein. The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

3.2 Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 4. COMPENSATION

4.1 The maximum amount of compensation to be paid by County to Second Party annually for Services provided under this Agreement shall be a not-to-exceed amount consistent with the Division Director's award authority set forth in Section 13.91(h), Broward County Administrative Code, currently established at the mandatory bid amount of Fifty Thousand Dollars (\$50,000), and is subject to the availability of funding for SWIM Central, in County's sole discretion. Any change to the maximum amount of compensation to be paid by County to Second Party under this Agreement which exceeds the Division Director's procurement authority set forth in Section 13.91(h), Broward County Administrative Code, shall be in the form of an amendment to this Agreement executed by the Purchasing Director or the Board, as appropriate, and Second Party.

4.2 County will pay Second Party for Services actually performed and completed pursuant to this Agreement, as set forth in Exhibit A, Scope of Services, which amount shall be accepted by Second Party as full compensation for all such work. Second Party acknowledges that the amounts set forth herein are the maximum amounts payable and constitute a limitation upon County's obligation to compensate Second Party for providing Services under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Second Party's obligation to provide the Services required under this Agreement. Unless otherwise

expressly stated in this Agreement, Second Party shall not be reimbursed for any expenses it incurs under this Agreement.

4.3 METHOD OF BILLING AND PAYMENT

4.3.1 For the Services provided relating to Child or Adult Water Safety Vouchers/Coupons for Group Lessons, as described in Exhibit A, Second Party may submit invoices for payment by County utilizing the form provided in Exhibit D, Invoice, attached hereto, no more often than on a monthly basis at the end of the month, but only after the Services for which the invoices are submitted have been completed. Any invoice by Second Party shall be provided in the amount and manner set forth in Exhibit A for the applicable Services. The final invoice shall be received by County no later than sixty (60) days after expiration or earlier termination of this Agreement in order for Second Party to receive payment.

4.3.2 For the Services provided relating to Child Water Safety Instruction Classes, and Special Needs Classes for Children and Adults, as described in Exhibit A, Second Party may submit invoices for payment by County utilizing the form provided in Exhibit E, Invoice, attached hereto, no more often than on a monthly basis at the end of the month, but only after the Services for which the invoices are submitted have been completed. Any invoice by Second Party shall be provided in the amount and manner set forth in Exhibit A for the applicable Services. The final invoice shall be received by County no later than sixty (60) days after expiration or earlier termination of this Agreement in order for Second Party to receive payment.

4.3.3 County shall pay Second Party, pursuant to Subsection 4.3.1, within thirty (30) calendar days of receipt of Second Party's proper invoice submitted as required by the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the proper form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement.

4.3.4 In the event Second Party utilizes a Subcontractor to provide any Services under this Agreement, Second Party shall pay its Subcontractor within fifteen (15) days following receipt of payment from County for such subcontracted work. Failure to pay its Subcontractor in accordance with this subsection shall be a material breach of this Agreement, unless Second Party demonstrates that such failure to pay results from a bona fide dispute with the Subcontractor.

4.4 Payment shall be made to Second Party at the address designated for Notices under Section 10.8.

4.5 The Parties will attempt in good faith to resolve any dispute for payment arising out of or in relation to this Agreement through negotiations between the Division Director and a Second Party representative with authority to settle the relevant payment dispute. In the event the Division Director and Second Party representative cannot agree, the matter shall be forwarded to the County Administrator for review, and the decision of the County Administrator shall be final and binding on the Parties. Performance by Second Party under this Agreement shall continue during any dispute resolution regarding payment owed Second Party by County.

ARTICLE 5. LIABILITY/INDEMNIFICATION

FOR GOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Second Party is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

FOR NONGOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

Second Party shall at all times hereafter indemnify, hold harmless and defend County and all of County's current and former officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of Second Party, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, Second Party shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Second Party under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 6. INSURANCE

FOR GOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

Second Party is an entity subject to Section 768.28, Florida Statutes, and Second Party shall furnish the Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

FOR NONGOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

6.1 Second Party shall maintain, at its sole expense and at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit C, Insurance, in accordance with the terms and conditions stated in this Article.

6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name Broward County as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is "Broward County." This official title shall be used in all insurance documentation.

6.3 Within fifteen (15) days of notification of award, Second Party shall provide to County proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. Second Party shall provide a certified copy of any policies required by the Article upon request by County. Coverage is not to cease and is to remain in force until County determines all performance required of Second Party is completed. County shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to County upon expiration.

6.4 If Second Party uses a Subcontractor, Second Party shall ensure that each Subcontractor names "Broward County" as an additional insured under the Subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 7. TERMINATION

7.1 Termination for Cause. This Agreement may be terminated by County for cause if Second Party is in breach of this Agreement and has not corrected the breach within ten (10) days after receipt of written notice from the Contract Administrator identifying the breach. This Agreement may be terminated for cause by County for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or

incorrect bills or invoices, failure to suitably perform the Services, or failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. This Agreement may be terminated immediately by County for failure of Second Party to comply with the criminal background screening requirements set forth in Article 8.

7.2 Termination for Convenience. This Agreement may also be terminated for convenience by either party. Termination for convenience by either party shall be effective on the termination date stated in written notice provided by the terminating party, which termination date shall be not less than sixty (60) days after the date of such written notice. In the event this Agreement is terminated for convenience, Second Party shall be paid for any Services properly performed under the Agreement through the termination date specified in the written notice of termination. County shall not be responsible for any claims by Second Party for loss of business or profit resulting from any termination for convenience under this Agreement.

7.3 Termination for Public Health, Safety, or Welfare. This Agreement may also be terminated by the County Administrator or the Second Party upon such notice as deemed appropriate under the circumstances in the event that termination is necessary to protect the public health, safety, or welfare.

7.4 Notice of termination shall be provided in accordance with the "Notices" Section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "Notices" Section of this Agreement.

7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party up to the effective date of such termination shall be withheld by County until all documents are provided to County pursuant to Section 10.1 of Article 10.

ARTICLE 8. CRIMINAL BACKGROUND SCREENING

8.1 Second Party shall conduct criminal background screening as provided in this Article on its employees and any Subcontractor who will be providing any Services under this Agreement prior to the performance of the Services.

8.2 Services provided by a Subcontractor.

8.2.1 In the event Second Party utilizes a Subcontractor to perform any Services under this Agreement, and the Subcontractor is a County approved SWIM Central vendor, Second Party shall not be required to perform criminal background screening under this Agreement on any Subcontractor's employees who have been background screened pursuant to the requirements set forth in the Subcontractor's agreement with County, and deemed eligible to provide Services.

8.2.2 In the event Second Party utilizes a Subcontractor to perform any Services under this Agreement who is not an approved SWIM Central Vendor, Second Party shall comply with the criminal background screening requirements set forth in this Article.

FOR GOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

8.3 Second Party's criminal background screening shall, at a minimum, include screening to prohibit any person who is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement, Sexual Offenders and Predators Website or the United States Department of Justice, National Sex Offender Public Website from providing any Services for Second Party at the Park. Second Party shall not be required to provide County with the monthly Affidavit described in Section 8.5 for any of its employees providing Services under this Agreement. Instead, prior to commencement of any Services by Second Party's employees, Second Party shall provide County with a notarized letter, which shall be attached hereto and incorporated herein as Exhibit B-1, describing its employee background screening policy and the frequency of rescreening. In the event Second Party utilizes a Subcontractor, all Subcontractor's employee providing Services under this Agreement who are subject to the criminal background screening requirements set forth in Subsection 8.2.2 shall be rescreened annually based on the date of initial screening.

FOR NONGOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

8.3 Second Party's criminal background screening shall, at a minimum, include screening to prohibit any person who is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement, Sexual Offenders and Predators Website or the United States Department of Justice, National Sex Offender Public Website from providing any Services for Second Party at the Park. Second Party's employees and any Subcontractor's employees subject to the criminal background screening under this Agreement shall be rescreened annually based on the date of initial screening.

8.4 Second Party shall maintain copies of the results of the criminal background screening required under this Article for the Agreement Term and promptly forward copies of same to County, upon its request.

8.5 Second Party shall furnish to the Contract Administrator, on a monthly basis, an Affidavit, in the form attached hereto as Exhibit B, affirming that the individuals listed in the Affidavit have been background screened as required in Section 8.3 relative to sexual predator and sexual offender checks and have been deemed eligible by Second Party to provide Services under this Agreement. Second Party's monthly Affidavit shall update information from the previous Affidavit by including the names of persons who have previously been deemed eligible as provided for above, and, when applicable, specifically deleting persons no longer providing Services under this Agreement or identifying new persons providing Services for Second Party under this Agreement who have been background screened as required in Section 8.3 and

deemed eligible to provide the Services. The Contract Administrator may, in his or her discretion, permit Second Party to furnish the monthly Affidavit in an electronic format.

8.6 In the event Second Party obtains, or is provided, supplemental criminal background information, including police reports and arrest information, which potentially disqualifies a person previously deemed eligible by Second Party to provide Services under this Agreement, Second Party shall take immediate action to review the matter; however, during such review time and until a determination of eligibility is made by Second Party based on the requirements of this Article, Second Party shall immediately cease allowing the person to provide any Services. Additionally, Second Party shall be required to inform all persons who have been background screened, pursuant to this Article and who are providing any Services under this Agreement, to notify Second Party within twenty-four (24) hours of any arrest related to violence or sexual misconduct which has occurred after the person was deemed eligible to provide Services.

8.7 Second Party shall, by written contract, require any Subcontractor providing Services under this Agreement to agree to the requirements and obligations under this Article.

8.8 County may terminate this Agreement immediately for cause, with notice provided to Second Party in accordance with the "Notices" Section of this Agreement, for a violation related to Second Party's failure to comply with the required background screening on its employees or any Subcontractor who will be providing Services under this Agreement. Second Party will not be subject to immediate termination in the event County determines a violation of this Article was outside the reasonable control of Second Party, and Second Party has demonstrated to County compliance with the requirements of this Article.

ARTICLE 9. EEO AND CBE COMPLIANCE

9.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Second Party shall comply with all applicable requirements of County's CBE Program as established by Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement.

Second Party shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26.

Failure by Second Party to carry out any of the requirements of this Section shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement, Broward County Code of Ordinances, Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

9.2 By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from Second Party all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities.

ARTICLE 10. MISCELLANEOUS

10.1 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of County, and, if a copyright is claimed, Second Party grants to County a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of County and shall be delivered by Second Party to the Contract Administrator within seven (7) days of termination of this Agreement. Any compensation due to Second Party shall be withheld until all documents are received as provided herein. Second Party shall ensure that the requirements of this Section are included in all agreements with its Subcontractors.

10.2 Public Records. County is a public agency subject to Chapter 119, Florida Statutes. To the extent Second Party is a contractor acting on behalf of County pursuant to Section 119.0701, Florida Statutes, Second Party shall:

10.2.1 Keep and maintain public records that ordinarily and necessarily would be required to be kept and maintained by County were County performing the services under this Agreement;

10.2.2 Provide the public with access to such public records on the same terms and conditions that County would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

10.2.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

10.2.4 Meet all requirements for retaining public records and transfer to County, at no cost, all public records in possession of Second Party upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to County in a format that is compatible with the information technology systems of County. The failure of Second Party to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement and County shall enforce the default in accordance with

the provisions set forth in Section 7.1. Second Party shall ensure that the requirements of this Section are included in all agreements with its Subcontractors.

10.3 Audit Rights, and Retention of Records. County shall have the right to audit the books, records, and accounts of Second Party and its Subcontractors that are related to this Agreement. Second Party and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement and performance thereunder. All books, records, and accounts of Second Party and its Subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its Subcontractor, as applicable, shall make same available at no cost to County in written form.

Second Party and its Subcontractors shall preserve and make available, at reasonable times within Broward County for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. County audits and inspections pursuant to this Section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at Second Party's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this Section discloses overpricing or overcharges to County of any nature by the Second Party in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Second Party in addition to making adjustments for the overcharges. Any adjustments and/or payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of County's findings to Second Party.

Second Party shall ensure that the requirements of this Section are included in all agreements with its Subcontractor(s).

10.4 Truth-In-Negotiation Representation. Second Party's compensation under this Agreement is based upon representations supplied to County by Second Party, and Second Party certifies that the information supplied, including without limitation in the negotiation of this Agreement, is accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent such representation is untrue.

10.5 Public Entity Crime Act. Second Party represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Second Party further represents that there has been no determination that it

committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to Second Party under this Agreement.

10.6 Independent Contractor. Second Party is an independent contractor under this Agreement. In providing Services under this Agreement, neither Second Party nor its agents shall act as officers, employees, or agents of County. Second Party shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

10.7 Third Party Beneficiaries. Neither Second Party nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

10.8 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change to the other party.

For County:

Broward County Parks and Recreation Division
SWIM Central
Attn: Jay Sanford
950 N.W. 38th Street
Oakland Park, Florida 33309
Email address: jsanford@broward.org

For Second Party:

Second Party

Email address: _____

10.9 Assignment and Performance. Except for subcontracting approved in writing by County at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Second Party without the prior written consent of County. If Second Party violates this provision, County shall have the right to immediately terminate this Agreement. Second Party represents that each person and entity that will provide Services under this

Agreement is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Second Party agrees that all Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such Services.

10.10 Conflicts. Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Second Party is permitted pursuant to this Agreement to utilize Subcontractors to perform any services required by this Agreement, Second Party shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

10.11 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

10.12 Compliance with Laws. Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

10.13 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

10.14 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

10.15 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

10.16 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 10 of this Agreement, the provisions contained in Articles 1 through 10 shall prevail and be given effect.

10.17 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

10.18 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority or otherwise authorized to execute same on their behalf.

10.19 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

FOR GOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

10.20 Financial Statements and Management Letters. Second Party shall provide a copy of Second Party's audited financial statements and any applicable management letter(s) as well as Second Party's response to any management letter(s). The audit of the financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles for the fiscal year County funds are received and for each subsequent fiscal year until such time as all of County funds are expended.

Second Party shall provide to the Contract Administrator copies of a special report showing all revenues, by source, and all expenditures as set forth in the Scope of Services for the program being funded by this Agreement. The report shall specifically disclose any funds received which were not expended in accordance with this Agreement or with any regulations incorporated by reference therein. It shall identify the total of noncompliant expenditures as due back to County. If the special report is prepared by an independent certified public accountant, it shall be in accordance with generally accepted auditing standards. If the special report is prepared by an internal auditor, it shall be as nearly in accordance with generally accepted auditing standards as the status of the internal auditor permits, realizing that the internal auditor may not issue the opinions required therein. The special report is to be filed with Second Party's governing body.

Second Party shall submit the documents required by this Section to the Contract Administrator within one hundred twenty (120) days after the close of Second Party's fiscal years in which Second Party receives funds under this Agreement, unless otherwise approved by the Contract Administrator in writing.

FOR NONGOVERNMENTAL ENTITIES [DELETE IF NOT APPLICABLE]

10.20 Financial Statements and Management Letters. Second Party shall provide to the Contract Administrator annual financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles for the fiscal year County funds are received and for each subsequent fiscal year until such time as all of County funds are expended and any management letter(s) thereby generated. Said annual financial statement shall account for all monies received from County via explicit, discrete disclosures and/or accompanying notes to the financial statements.

Said financial statements for this Agreement shall be submitted to the Contract Administrator within one hundred twenty (120) days after the close of each of Second Party's fiscal years in which Second Party accounts for funds under this Agreement. Late submission of the financial statements or absence of discrete disclosure shall entitle County to recover any payment made under this Agreement.

Second Party shall provide the Contract Administrator any and all management letters arising from audited financial statements within ninety (90) days of the date of said management

letter. Second Party shall provide to the Contract Administrator the schedule of correction developed in response to said management letter(s) within thirty (30) days of its development. Second Party shall provide to the Contract Administrator any compliance audits required by law within ninety (90) days after the close of each of Second Party's fiscal years in which Second Party accounts for funds under this Agreement.

Second Party acknowledges submission of required documents to any other Broward County office, agency, or division does not constitute compliance with the requirement to submit that material to the Contract Administrator for this Agreement.

10.21 Payable Interest

10.21.1 Payment of Interest. County shall not be liable to pay any interest to Second Party for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

10.21.2 Rate of Interest. If, for whatever reason, the preceding subsection is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

10.22 Force Majeure. If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

10.23 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

10.24 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

10.25 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

10.26 Use of County Logo. Second Party shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through the Parks and Recreation Division Director, authorized to execute same by Board action on the ____ day of _____, 20__, and Section 13.91(h), Broward County Administrative Code, and Second Party, signing by and through its _____, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through
its Parks and Recreation Division Director

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
____ day of _____, 20__

Insurance requirements approved by
Broward County Risk Management Division:

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: _____

Name: _____

Title: _____

By: _____ (Date)
Patrice M. Eichen
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND [INSERT LEGAL NAME] FOR WATER SAFETY
EDUCATION AND INSTRUCTION SERVICES

Second Party

[Insert Legal Name]

WITNESSES:

By _____
[Authorized Signature]

Signature

Signature

[Print Name and Title of Authorized Signator]

____ day of _____, 20____

(SEAL)

**FOR GOVERNMENTAL ENTITIES [DELETE IF
NOT APPLICABLE]**

Approved as to form by

Second Party's Legal Counsel

Exhibit A - Scope of Services

- A. **Services.** Any Services (classes) referenced in this Exhibit to be provided by Second Party under the terms of the Agreement shall be mutually agreed upon by the Contract Administrator and Second Party prior to commencement of the Services. The Services shall be provided by Second Party at the locations specifically authorized under Section B.:
1. **Child Water Safety Instruction Classes (during the school day).** For schools that require transportation utilizing Broward County School Board buses, classes will be conducted between the hours of 10 a.m. and 1 p.m. Classes will be conducted over a two (2) week period designated by the Contract Administrator, unless another alternative schedule is mutually agreed upon by Second Party and the Contract Administrator.
 - a. Payment for the Child Water Safety Instruction Classes conducted during the school day, as provided in Section D., will be made by County to Second Party on a reimbursement basis in accordance with the terms of the Agreement, following submittal by Second Party of an invoice to SWIM Central utilizing the form provided in Exhibit D, Invoice, of the Agreement, and all required supporting documentation for payment including, but not limited to, the following:
 1. Attendance sheets, Water Safety Skill sheets, Registration forms for each participant, and session evaluations grouped by class. Second Party is required to ensure all documents are completed and signed by an authorized representation of Second Party prior to submitting to SWIM Central, and shall be provided no later than ten (10) days following the last day of instruction for the applicable session. County's obligation to make payment to Second Party is contingent upon County's verification of the supporting documentation provided with the invoice.
 2. The Children's Services Council of Broward County requires County obtain the program information described above for each child, and enter the information into SWIM Central's database in order to identify the population served.
 2. **Child Water Safety Instruction Classes (approved camps).** Classes will be held during times that Broward County schools are not in session. The camps shall be responsible for arranging transportation of the children to and from the pool as transportation is not provided by SWIM Central. The class schedule shall be mutually agreed upon by the camps and Second Party, with dates and times provided to SWIM Central.
 - a. Payment for the Child Water Safety Instruction Classes for approved camps, as provided in Section D., will be made by County to Second Party as provided in Subsection A(1)(a) above.

3. **Child Water Safety Vouchers/Coupons for Group Lessons (6 to 10 lessons).** Classes will be held at times when the pool(s) is open for instruction or other use. The Children's Services Council of Broward County has established a voucher/coupon program for swim instruction, and provided County with vouchers/coupons to be distributed by SWIM Central directly to the child's parent. Each voucher/coupon must be furnished to Second Party by the child's parent at the time of registration. Second Party shall be required, at a minimum, to use an income based sliding fee scale for any family whose child is referred for classes by the Broward Sheriff's Office, Child Protection Investigators, the Children's Services Council of Broward County's Family Support services providers, and the Water Smart Babies Prescription Program. Second Party shall provide the Contract Administrator with a copy of the sliding fee scale utilized by Second Party and any documentation supporting the sliding fee scale. Any changes made to the sliding fee scale by Second Party during the term of the Agreement shall be provided to the Contract Administrator within ten (10) days of such change.
- a. Payment for Child Water Safety Vouchers/Coupons for Group Lessons, as provided in Section D., will be made by County to Second Party on a reimbursement basis in accordance with the terms of the Agreement, following submittal by Second Party of an invoice to SWIM Central utilizing the form provided in Exhibit E, Invoice, of the Agreement, and all required supporting documentation for payment including, but not limited to, the following:
1. The original voucher/coupon for each child; and
 2. A copy of the class registration form for each child, which shall include the total amount paid for the class.

Second Party shall submit an invoice at the end of the month when the classes were conducted. County's obligation to make payment to Second Party is contingent upon County's verification of the supporting documentation provided with the invoice. Payment by County to Second Party for Services described in this subsection will be separate from any payments made by County for school day and approved camp program classes.

4. **Adult Water Safety Vouchers/Coupons for Group Lessons (6 to 10 lessons).** Classes shall be conducted only for basic water safety instruction for adults, ages 18 years of age and older who are learning to swim or learning to overcome their fear of the water. Stroke development, fitness swimming, or water aerobics classes are excluded.
- a. Payment for Adult Water Safety Vouchers Group Lessons, as provided in Section D., will be made by County to Second Party on a reimbursement basis in accordance with the terms of this Agreement, following submittal by Second Party of an invoice to SWIM Central utilizing the form provided in Exhibit E, Invoice, of the Agreement, and all required supported documentation for payment including, but not limited to, the following:

1. The original voucher/coupon for each adult; and
2. A copy of the classes' registration form for each adult.

Second Party shall submit an invoice at the end of the month when classes were conducted. County's obligation to make payment to Second Party is contingent upon County's verification of the supporting documentation provided with the invoice. Payment by County to Second Party for any Services described in this subsection will be separate from any payments made by County for school day and approved camp program classes.

5. **Special Needs Classes for Children and Adults at Designated Sites.** Classes will be conducted at the following Broward County School Board designated schools: Wingate Oaks, The Quest Center, and Bright Horizons. Due to the profound disabilities of the children and adults, traditional ratios for instruction are not practical and will be determined by Second Party or its Subcontractor providing the Services, based on the impairment of the children or adults. Classes will be scheduled in the same manner as the school day program.

- a. Payment for Special Needs Classes for children and adults, as provided in Section D., will be made by County to Second Party as provided in Subsection A(1)(a) above.

Second Party shall submit an invoice at the end of the month when classes were conducted. County's obligation to make payment to Second Party is contingent upon County's verification of the supporting documentation provided with the invoice. Payment by County to Second Party for Services described in this subsection may be combined with payments for school day program classes, or may be separate.

- B. **Services to be Provided and Location of Services.** Second Party shall provide the Services listed below at the following location(s): *[Second Party shall list its pool location(s), including an address, zip code, and phone number, and describe which Services identified in Section A shall be provided at the specific location(s).]*

[Services and locations to be inserted]

- C. Second Party shall provide the Services under the Agreement using instructors licensed or certified by any of the following State of Florida ("SOF") approved water safety training agencies, or other SOF approved water safety training agencies authorized by the Children's Services Council of Broward County: American Red Cross, YMCA, Ellis & Associates, Inc., Starfish Aquatics Institute, Baby Otter Swim School, Inc., Infant Swimming Research Inc., or SwimAmerica.
- D. Second Party shall provide a minimum of 25-30 minutes of water safety education and instruction for each class.
- E. Second Party shall comply with the instructor to child ratio required by Second Party's license or certification obtained from the SOF approved water safety training agency;

however, in no event shall Second Party's instructor to child ratios exceed one (1) instructor to ten (10) children. Second Party may use instructor aides to maximize effectiveness of instruction based on class size with the prior approval of the Contract Administrator; however, use of instructor aides shall not be included in Second Party's instructor to child ratio requirement.

- F. Second Party shall, at a minimum, provide one (1) lifeguard on the pool deck when classes are conducted. Lifeguards shall not be counted in Second Party's instructor to child ratio requirement.
- G. Second Party shall maintain compliance with the requirements for public swimming pools and bathing places set forth in Chapter 514, Florida Statutes, and Rule 64E-9, Florida Administrative Code, administered by the State of Florida, Department of Health.
- H. **Communication and Reports.** Second Party shall notify SWIM Central in advance, when possible, of any instance where a scheduled class is not conducted as a result of mechanical issues with the pool or pool heater, inclement weather forcing closure of the pool/facility, unsafe conditions preventing schools from attending a class, lack of appropriate staffing to conduct a class, or any other foreseeable or unforeseen circumstance.

In the event a participant is injured at the pool/facility while attending a class, Second Party shall notify SWIM Central, as soon as possible, but no later than one (1) business day, and shall provide a copy of the pool/facility's incident report to SWIM Central for its records.

SWIM Central may hold meetings annually to discuss any changes to the SWIM Central program. Second Party shall be required to have a Second Party representative attend these meetings, and if there is no Second Party representative available, Second Party shall be required to contact SWIM Central to obtain the information through alternative means.

- I. **Fee Schedule/Payment for Services.** Rates for reimbursement of the Services specified below shall be effective for the term of the Agreement, including any renewal term(s).

Services	Reimbursement Rate
Child Water Safety Instruction Classes during the school day	\$3.20/participant/day
Child Water Safety Instruction Classes held for designated Summer Camps	\$3.20/participant/day
Child Water Safety Vouchers/Coupons for Group Lessons (6 to 10 lessons) for classes after school and on weekends	\$40 voucher/coupon per child registered, per fiscal year
Adult Water Safety Vouchers/Coupons for Groups Lessons (6 to 10 lessons) for classes after school and on weekends	\$50 voucher/coupon per adult, per fiscal year
Special Needs Classes for children and adults at designated sites	\$5.50/participant/day
MAXIMUM AMOUNT NOT-TO-EXCEED UNDER THE AGREEMENT	\$50,000/Year

Exhibit B - Affidavit
[Criminal Background Screening]

AGREEMENT TITLE: _____

NAME OF ENTITY COMPLETING AFFIDAVIT: _____

DATE: _____

FOR GOVERNMENTAL ENTITIES [DELETE REFERENCES TO "SECOND PARTY'S EMPLOYEES"]

By signing this Affidavit, I am swearing or affirming that, Second Party's employees and any Subcontractor providing any Services for Second Party under the Agreement has been background screened in accordance with the background screening requirements set forth in the Agreement, and has been deemed eligible by Second Party to provide the Services described in the Agreement. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to the Contract Administrator per the requirements of the Agreement.

The name of Second Party's employees and each Subcontractor providing Services for Second Party under the Agreement is listed below under categories 1 and 2 below. Each individual shall be identified by name, birth date, and date deemed eligible, and shall fall into one (1) of the following categories:

1. Previously screened and deemed eligible.

[Insert list of individuals]

2. New individuals screened and deemed eligible.

[Insert list of individuals]

3. Individuals no longer providing any Services for Second Party under the Agreement.

[Insert list of individuals]

Signature of Affiant

Sworn to and subscribed before me this ____ day of _____, 20__.

My commission expires:

Notary Public, State of Florida

My signature, as Notary Public, verifies the Affiant's identification has been validated by

_____.

Exhibit B-1 Notarized Letter
[Criminal Background Screening for Second Party's Employees]

GOVERNMENTAL ENTITIES [DELETE EXHIBIT B-1 IF NOT APPLICABLE]

The following coverage is deemed the minimum insurance required for this project. The selected firm must be prepared to provide proof of insurance commensurate with or in excess of this requirement. Any deviation is subject to the approval of Risk Management.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES
BROWARD COUNTY IS LISTED AS AN ADDITIONAL INSURED ON THE GENERAL LIABILITY POLICY AND THE BUSINESS AUTOMOBILE LIABILITY POLICY.

CERTIFICATE HOLDER:

Risk Management Division

VALID FOR ONE YEAR FROM THE DATE OF SIGNATURE

INVOICE

INVOICE #[100]
DATE: [PICK THE DATE]

**Broward County
SWIM Central
950 NW 38th St.
Oakland Park, FL 33309
954-357-7946**

FOR:

SWIM CENTRAL WATER SAFETY PROGRAM

DESCRIPTION	QUANTITY	RATE (PER CHILD PER DAY)	AMOUNT
WATER SAFETY EDUCATION CLASSES [MM/01/YYYY TO MM/DD/YYYY]		\$ 3.20	
*Can be broken down by session on the Invoice if Second Party elects; however, the Invoice total must reflect the amount for the entire month			
TOTAL			

Make all checks payable to [Company Name]

Exhibit E - Invoice
[Vouchers/Coupons]

INVOICE

[Company Name]

[Company Slogan]

[Street Address]

Phone [Phone Number]

Fax [Fax Number]

INVOICE #[100]
DATE: [PICK THE DATE]

TO:

Broward County
SWIM Central
950 NW 38th St.
Oakland Park, FL 33309
954-357-7946

FOR:

SWIM CENTRAL VOUCHER/COUPON PROGRAM

VOUCHERS/COUPONS # *INVOICE MUST REFLECT A LIST OF ALL COUPONS ACCEPTED FOR THE MONTH	RATE [PER CHILD PER CLASS]	AMOUNT
	\$ 40.00	