



## AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PEMBROKE PINES FOR SWIM CENTRAL WATER SAFETY INSTRUCTION AND EDUCATION

This agreement (“Agreement”) is between Broward County, a political subdivision of the State of Florida (“County”), and City of Pembroke Pines, a municipal corporation of the State of Florida (“Contractor”) (each a “Party” and collectively referred to as the “Parties”).

### RECITALS

A. County runs a SWIM Central program to provide swimming lessons and water safety instruction and education to residents of Broward County.

B. The Parties desire to enter into this Agreement authorizing Contractor to provide water safety instruction and education classes for children and adults, as more specifically provided for herein.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1. DEFINITIONS

- 1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.
- 1.2. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.3. **Code** means the Broward County Code of Ordinances.
- 1.4. **Contract Administrator** means the Director of County’s Parks and Recreation Division, the SWIM Central Program Manager, or such other person designated in writing by the Director of County’s Parks and Recreation Division.
- 1.5. **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.
- 1.6. **Designated Representative** means Contractor’s Aquatic Coordinator.
- 1.7. **Division Director** means the Director of County’s Parks and Recreation Division.
- 1.8. **Fiscal Year** means County’s fiscal year, October 1 through September 30.
- 1.9. **Purchasing Director** means County’s Director of Purchasing.
- 1.10. **Services** means all work required of Contractor under this Agreement, including, without limitation, all deliverables, goods, consulting, training, project management, and any services specified in the Scope of Services attached as Exhibit A.

1.11. **Service Location(s)** means those locations where Contractor provides Services, as more fully described in Exhibit A.

1.12. **Small Business Enterprise or SBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.

1.13. **Subcontractor** means an entity or individual, including subconsultants, providing Services to County through Contractor, regardless of tier.

1.14. **SWIM Central** means the County's SWIM Central program, which coordinates water safety instruction and awareness in Broward County.

## ARTICLE 2. EXHIBITS

<b>Exhibit A</b>	<b>Scope of Services</b>
<b>Exhibit B</b>	<b>Payment Schedule</b>
<b>Exhibit C</b>	<b>Minimum Insurance Coverages</b>
<b>Exhibit D</b>	<b>Declaration of Criminal Background Screening</b>
<b>Exhibit E</b>	<b>Invoice for School Days and Designated Camps/Sites</b>
<b>Exhibit F</b>	<b>Invoice for Vouchers/Coupons</b>

## ARTICLE 3. SCOPE OF SERVICES

3.1. Scope of Services. Contractor shall perform all Services, including, without limitation, the work specified in Exhibit A (the "Scope of Services"). The Scope of Services is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

3.2. Classes Offered. Contractor may provide any of the following classes (each a "Class Type") as more fully described in Exhibit A: Child Water Safety Instruction Classes during the school day; Child Water Safety Instruction Classes at designated camps; Child Water Safety Group Lessons with vouchers/coupons; Adult Water Safety Group Lessons with vouchers/coupons; and Special Needs Classes for children and adults.

3.3. The County may authorize Contractor to provide additional services under this Agreement if County obtains funding for such additional services from the Children's Services Council of Broward County or any other funding source. Any such additional services to be provided by Contractor shall be documented in the form of an amendment to this Agreement executed by Contractor and the appropriate award authority for County.

3.4. Prior to any Services being provided, Contractor shall require the class participants (or the appropriate parent/legal guardian, for participants who are minors) execute a waiver, indemnity, and release of liability in a form approved by the Office of the County Attorney.

#### ARTICLE 4. TERM AND TIME OF PERFORMANCE

- 4.1. Term. This Agreement begins on October 1, 2024 (“Effective Date”) and continues through one (1) year (“Initial Term”), unless otherwise terminated or extended as provided in this Agreement. The Initial Term, Extension Term(s), and any Additional Extension, as those terms are defined in this article, are collectively referred to as the “Term.”
- 4.2. Extensions. After the Initial Term, this Agreement shall automatically extend for four (4) additional one (1) year extension terms (each an “Extension Term”) on the same rates, terms, and conditions stated in this Agreement, unless otherwise terminated in accordance with this Agreement.
- 4.3. Fiscal Year. The continuation of this Agreement beyond the end of any County Fiscal Year is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.
- 4.4. Time of the Essence. Time is of the essence for Contractor’s performance of the duties, obligations, and responsibilities required by this Agreement.

#### ARTICLE 5. COMPENSATION

- 5.1. Maximum Amounts. The maximum not-to-exceed amount of compensation to be paid by County to Contractor for Services provided under this Agreement shall be One Hundred Thousand Dollars (\$100,000) each Fiscal Year, and is subject to the availability and annual appropriation of funding for SWIM Central in the Board’s sole discretion.

Payment shall be made only for Services actually performed and completed pursuant to this Agreement as set forth in Exhibit B (Payment Schedule), which amount shall be accepted by Contractor as full compensation for all such Services. Contractor acknowledges that the amounts set forth in this Agreement are the maximum amounts payable and constitute a limitation upon County’s obligation to compensate Contractor for Services. These maximum amounts, however, do not constitute a limitation of any sort upon Contractor’s obligation to perform all Services.

5.2. Method of Billing and Payment.

5.2.1. For each Class Type, Contractor may submit invoices no more often than once monthly, but only after the Services invoiced have been completed. Invoices are due within fifteen (15) days after the end of the month covered by the invoice, except that the final invoice must be received no later than sixty (60) days after the expiration or earlier termination of this Agreement. The invoices for each Class Type may be paid by County separately or together, in County’s sole discretion.

5.2.2. Contractor shall utilize the invoice form that corresponds to the Reimbursement Rate designated for that Class Type in Exhibit B. For Class Types that are reimbursed per participant, Contractor shall utilize the invoice form attached as Exhibit E (Invoice for School Days and Designated Camps/Sites). For Class Types that are reimbursed per

voucher/coupon, Contractor shall utilize the invoice form attached as Exhibit F (Invoice for Vouchers/Coupons). The Contract Administrator may modify Exhibits E and F, in their sole discretion, upon written notice to Contractor.

5.2.3. Contractor will ensure all documents required by this Section 5.2 are completed and signed by an authorized representative of Contractor. County's obligation to make payment to Contractor is contingent upon County's verification of the supporting documentation provided with the invoice.

5.2.4. Contractor must submit the following supporting documentation with any Invoice for School Days and Designated Camps/Sites (Exhibit E): attendance sheets, water safety skill sheets, registration forms for each participant, and session evaluations grouped by class.

5.2.5. Contractor must submit the following supporting documentation with any Invoice for Vouchers/Coupons (Exhibit F): the original voucher/coupon for each participant; and a copy of the class registration form for each participant, which shall include the total amount paid for the class.

5.2.6. County shall pay Contractor within thirty (30) days after receipt of Contractor's proper invoice in accordance with the "Broward County Prompt Payment Ordinance," Section 1-51.6 of the Code. To be deemed proper, all invoices must: (a) comply with all applicable requirements, whether set forth in this Agreement or the Code; and (b) be submitted on the then-current County form and pursuant to instructions prescribed by the Contract Administrator. Payments shall be sent to Contractor's address provided in the "Notices" section of this Agreement, unless otherwise requested by Contractor in writing and approved by the Contract Administrator in writing. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

5.2.7. Contractor must pay Subcontractors and suppliers within fifteen (15) days after receipt of payment from County for such subcontracted work or supplies. If Contractor withholds an amount as retainage from Subcontractors or suppliers, Contractor shall release such retainage and pay same within fifteen (15) days after receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this Agreement, unless Contractor demonstrates to Contract Administrator's satisfaction that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, Contractor promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. Contractor shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.3. Reimbursable Expenses. Contractor shall not be reimbursed for any expenses it incurs unless expressly provided for in this Agreement. Reimbursement of any travel costs or travel-related expenses permitted under this Agreement shall be limited to those permitted under

Section 112.061, Florida Statutes, except to the extent that Exhibit B expressly provides otherwise. County shall not be liable for any expenses that exceed those allowed by Section 112.061 or that were not approved in writing in advance by the Contract Administrator.

5.4. **Payment Disputes.** The Parties will attempt in good faith to resolve any payment dispute arising out of or relating to this Agreement through negotiations between the Division Director and Contractor's representative with authority to settle the relevant payment dispute. If the Division Director and Contractor's representative cannot agree on a resolution, 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 Contractor under this Agreement shall continue during the dispute resolution process unless otherwise directed in writing by County.

#### **ARTICLE 6. REPRESENTATIONS AND WARRANTIES**

6.1. **Representation of Authority.** Contractor represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Contractor has with any third party or violates Applicable Law. Contractor further represents and warrants that execution of this Agreement is within Contractor's legal powers, and each individual executing this Agreement on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.

6.2. **Solicitation Representations.** Contractor represents and warrants that all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Agreement, unless otherwise expressly disclosed in writing by Contractor.

6.3. **Contingency Fee.** Contractor represents and warrants that it has not employed or retained any person or entity, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4. **Truth-In-Negotiation Representation.** Contractor's compensation under this Agreement is based upon its representations to County, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including without limitation those made by Contractor during the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. Contractor's compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for Contractor's compensation in this Agreement.

6.5. Public Entity Crime Act. Contractor 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 statute. Contractor 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 Contractor has been placed on the convicted vendor list.

6.6. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Contractor represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Contractor represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Contractor represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

6.7. Claims Against Contractor. Contractor represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

6.8. Verification of Employment Eligibility. Contractor represents that Contractor and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Contractor violates this section, County may immediately terminate this Agreement for cause and Contractor shall be liable for all costs incurred by County due to the termination.

6.9. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that each person and entity that will provide Services 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. Contractor represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such Services.

6.10. Prohibited Telecommunications. Contractor represents and certifies that Contractor and all Subcontractors do not use, and for the Term will not provide or use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or

essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

6.11. Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, Contractor represents and certifies that Contractor will comply with Section 26-125(d) of the Code for the duration of the Term.

6.12. Entities of Foreign Concern. By execution of this Agreement, the undersigned authorized representative of Contractor hereby attests under penalty of perjury as follows: Contractor is not owned by the government of a foreign country of concern, is not organized under the laws of nor has its principal place of business in a foreign country of concern, and the government of a foreign country of concern does not have a controlling interest in Contractor; and the undersigned authorized representative of Contractor declares that they have read the foregoing statement and that the facts stated in it are true. Terms used in this section that are not otherwise defined in this Agreement shall have the meanings ascribed to such terms in Section 287.138, Florida Statutes.

6.13. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the "Broward County Domestic Partnership Act," Section 16½-157 of the Code ("Act"), Contractor certifies and represents that it shall at all times comply with the provisions of the Act. The contract language referenced in the Act is deemed incorporated in this Agreement as though fully set forth in this section.

6.14. Breach of Representations. Contractor acknowledges that County is materially relying on the representations, warranties, and certifications of Contractor stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Contractor; (c) set off from any amounts due Contractor the full amount of any damage incurred; and (d) debarment of Contractor.

## **ARTICLE 7. SOVEREIGN IMMUNITY; INDEMNIFICATION**

7.1. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County (or Contractor, if Contractor is a Florida municipality, state agency, or political subdivision as defined in Section 768.28, Florida Statutes), nor shall anything included herein be construed as consent by either Party to be sued by third parties in any matter arising out of this Agreement.

7.2. Indemnification. Contractor shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, 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, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach

of this Agreement by Contractor, or any intentional, reckless, or negligent act or omission of Contractor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Contractor shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Contractor under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

### **ARTICLE 8. LIABILITY PROTECTION; INSURANCE**

8.1. Public Entities. If Contractor is a municipality, state agency, or political subdivision subject to Section 768.28, Florida Statutes, then in lieu of complying with the insurance requirements set forth in Sections 8.2 through 8.12 in this article, Contractor shall furnish the Contract Administrator prior to final execution of this Agreement, annually, and upon County's request with written verification of liability protection in accordance with state law. If Contractor is not a municipality, state agency, or political subdivision subject to Section 768.28, Florida Statutes, Contractor shall comply with the requirements of Section 8.2 through 8.12.

8.2. Throughout the Term, Contractor shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Contractor shall maintain insurance coverage against claims relating to any act or omission by Contractor, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.3. Contractor shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this article.

8.4. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, as may be requested by County, Contractor shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Contractor shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.5. Contractor shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required of Contractor has been completed, as determined by Contract Administrator. Contractor or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and



shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

8.6. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

8.7. If Contractor maintains broader coverage or higher limits than the insurance requirements stated in Exhibit C, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Contractor.

8.8. Contractor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Contractor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor shall obtain same in endorsements to the required policies.

8.9. Unless prohibited by the applicable policy, Contractor waives any right to subrogation that any of Contractor's insurers may acquire against County, and shall obtain same in an endorsement of Contractor's insurance policies.

8.10. Contractor shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Contractor under this article. Contractor shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies. Contractor shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

8.11. If Contractor or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Contractor. If requested by County, Contractor shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this article.

8.12. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in

Exhibit C; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Contractor must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

## ARTICLE 9. TERMINATION

9.1. Termination for Cause. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may be terminated for cause by County for reasons including, but not limited to: Contractor’s (a) failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, (b) suspension or debarment by a state or federal governmental entity or by a local governmental entity with a population in excess of one million people, or (c) repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices.

Unless otherwise stated in this Agreement, if this Agreement was approved by Board action, termination for cause by County must be by action of the Board or the County Administrator; in any other instance, termination for cause may be by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 9.2 effective thirty (30) days after such notice was provided and Contractor shall be eligible for the compensation provided in Section 9.2 as its sole remedy.

9.2. Termination for Convenience; Other Termination. This Agreement may also be terminated for convenience by the Board with at least thirty (30) days advance written notice to Contractor. Contractor acknowledges that it has received good, valuable, and sufficient consideration for County’s right to terminate this Agreement for convenience including in the form of County’s obligation to provide advance written notice to Contractor of such termination in accordance with this section. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If this Agreement is terminated by County pursuant to this section, Contractor shall be paid for any Services properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable, and County shall have no further obligation to pay Contractor for Services under this Agreement.

9.3. Notice of termination shall be provided in accordance with the “Notices” section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4. In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of costs incurred by County due to Contractor's failure to comply with any term(s) of this Agreement.

#### **ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

10.1. Contractor and Subcontractors shall not 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. Contractor shall include the foregoing or similar language in its contracts with all Subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2. By January 1 of each year, Contractor must submit, and cause each Subcontractor to submit, an Ownership Disclosure Form (or such other form or information designated by County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

10.3. Although no CBE goal has been set for this Agreement under County's CBE Program as established by Broward County Business Opportunity Act of 2012, County encourages Contractor to give full consideration to the use of CBE firms to perform the Services.

#### **ARTICLE 11. CRIMINAL BACKGROUND SCREENING**

11.1. Contractor shall perform criminal background screening on its officers, employees, agents, Subcontractors, and volunteers who will be performing Services.

11.2. Contractor shall not employ nor permit any person to provide any Services who: (i) is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement Sexual Offenders and Predators Search Website or the United States Department of Justice Dru Sjodin National Sex Offender Public Website; or (ii) has been convicted of or is pending adjudication of any of the following charges: sexual misconduct; adult abuse, neglect, or exploitation of aged persons or disabled adults or failure to report such abuse; criminal offenses that constitute domestic violence, whether committed in Florida or another jurisdiction; murder; manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child; vehicular homicide; killing an unborn child by injury to the mother; assault, battery, and culpable negligence, if the offense was a felony; assault of a minor; battery of a minor; kidnapping; false imprisonment; luring or enticing a child; taking, enticing, or removing a child beyond state limits with criminal intent pending a custody proceeding; carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to a designated person; exhibiting firearms or weapons within 1,000 feet of a school; possessing an electric weapon or device, destructive device, or other weapon on school property; sexual battery; prohibited acts of persons in familial or custodial authority;

unlawful sexual activity with a minor; prostitution; lewd and lascivious behavior; lewdness or indecent exposure; arson; burglary; felony voyeurism; felony theft or robbery; felony fraudulent sale of controlled substances; abuse, aggravated abuse, or neglect of an elderly person or disabled adult; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult; felony exploitation of disabled adults or elderly persons; incest; child abuse, aggravated child abuse, or neglect of a child; contributing to the delinquency or dependency of a child; negligent treatment of children; sexual performance by a child; resisting arrest with violence; depriving a law enforcement, correctional, or correctional probation officer's means of protection or communication; aiding in an escape; aiding in the escape of juvenile inmates in a correctional institution; any offense related to obscene literature; encouraging or recruiting another to join a criminal gang; felony sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver, of a controlled substance to a minor; inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm; harboring, concealing, or aiding an escaped prisoner; introduction of contraband into a correctional facility; sexual misconduct in juvenile justice programs; contraband introduced into detention facilities; a crime under Section 944.35, Florida Statutes; or any attempt, solicitation, or conspiracy to commit any of the crimes included in this section. Each of the foregoing crimes are referred to as a "disqualifying offense."

11.3. Contractor shall maintain copies of the results of all criminal background screenings required by this article throughout the Term and promptly forward copies of same to County upon request from the Contract Administrator.

11.4. Contractor shall be required to furnish to the Contract Administrator, on a monthly basis and simultaneously with any invoice for payment, a Declaration of Criminal Background Screening, in the form attached as Exhibit D, listing the required information. Contractor's first monthly declaration shall include all individuals performing Services and the screening results. Thereafter, except for the annual rescreening referenced below, the monthly declaration need only identify persons newly providing Services or no longer providing Services since the previous monthly declaration. The Contract Administrator may, in their discretion, permit Contractor to furnish the monthly declaration in an electronic format. Contractor's officers, employees, agents, Subcontractors, and volunteers subject to the criminal background screening under this article must be rescreened at least annually (based on the date of each person's initial screening) and the results of same included in the applicable monthly declaration.

11.5. If Contractor obtains, or is provided, supplemental criminal background information, including police reports and arrest information, showing that a person previously deemed eligible by Contractor to provide Services has been arrested on or convicted of a disqualifying offense, Contractor shall take immediate action to review the matter; however, during such review time and until a determination of eligibility is made by Contractor based on the requirements of this article, Contractor shall immediately cease allowing the person to perform Services. Additionally, Contractor shall require any person background screened pursuant to this article to notify Contractor within twenty-four (24) hours after any arrest related to a disqualifying offense that has occurred after the person was deemed eligible to perform Services.

11.6. Contractor shall, by written contract, require its Subcontractors who perform Services to be subject to the requirements and obligations of this article.

11.7. The County Administrator may terminate this Agreement immediately for cause, and without an opportunity to cure, by written notice provided to Contractor, for any violation related to Contractor's failure to comply with this article. Contractor will not be subject to immediate termination if the County Administrator determines, in their sole discretion, that a violation of this article was outside the reasonable control of Contractor, and that Contractor has demonstrated subsequent compliance with the requirements of this article.

## **ARTICLE 12. MISCELLANEOUS**

12.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Contractor to manage and supervise the performance of this Agreement. Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement or, to the extent applicable, in the Broward County Procurement Code. Unless expressly stated otherwise in this Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also approve in writing minor modifications to the Scope of Services that do not increase the total cost to County or waive any rights of County.

12.2. Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, data, or other work created by Contractor in connection with performing Services, whether finished or unfinished ("Documents and Work"), shall be owned by County, and Contractor hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of County and shall be delivered by Contractor to the Contract Administrator within seven (7) days after expiration or termination. Any compensation due to Contractor may be withheld until all Documents and Work are received as provided in this Agreement. Contractor shall ensure that the requirements of this section are included in all Contractor's agreements with Subcontractor(s).

12.3. Public Records. Notwithstanding any other provision in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Contractor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Contractor shall:

12.3.1. Keep and maintain public records required by County to perform the Services;

12.3.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

12.3.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

12.3.4. Upon expiration or termination of this Agreement, transfer to County, at no cost, all public records in possession of Contractor or keep and maintain public records required by County to perform the Services. If Contractor transfers the records to County, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contractor keeps and maintains the public records, Contractor shall meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

If Contractor receives a request for public records regarding this Agreement or the Services, Contractor must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Contractor must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Contractor contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Contractor asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Contractor must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Contractor must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Contractor as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Contractor, or the claimed exemption is waived. Any failure by Contractor to strictly comply with the requirements of this section shall constitute Contractor’s waiver of County’s obligation to treat the records as Restricted Material. Contractor must indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC**

**RECORDS AT (954) 357-8100, PARKSDIRECTOR@BROWARD.ORG, 950 NW 38<sup>th</sup> STREET, OAKLAND PARK, FLORIDA 33309.**

12.4. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Contractor and all Subcontractors that are related to this Agreement. Contractor and all Subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts 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, Contractor and all Subcontractors shall make same available in written form at no cost to County. Contractor shall provide County with reasonable access to Contractor's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Contractor and all Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and Contractor expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Contractor hereby grants County the right to conduct such audit or review at Contractor's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Contractor shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

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 reveals overpricing or overcharges to County of any nature by Contractor in excess of five percent (5%) of the total contract billings reviewed by County, Contractor shall make adjustments for the overcharges and pay liquidated damages pursuant to Section 5.5. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Contractor.

Contractor shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

12.5. Independent Contractor. Contractor is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, neither Contractor nor its agents shall act as officers, employees, or agents of County. Contractor shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

12.6. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

12.7. Third-Party Beneficiaries. Neither Contractor nor County intends to primarily or directly 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.

12.8. Notices. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County Parks and Recreation Division

Attention: Director

950 NW 38<sup>th</sup> Street, Oakland Park, Florida 33309

Email address: [parksdirector@broward.org](mailto:parksdirector@broward.org) with a copy to [parkscontracts@broward.org](mailto:parkscontracts@broward.org)

FOR CONTRACTOR:

City of Pembroke Pines

Charles F. Dodge, City Manager

601 City Center Way, 4<sup>th</sup> Floor

Pembroke Pines, FL 33025

Telephone: (954) 450-1040

With a copy to:

Samuel S. Goren, City Attorney

Goren, Cherof, Doody & Ezrol, P.A.

3099 East Commercial Boulevard, Suite 200

Fort Lauderdale, FL 33307

Telephone: (954) 771-4500

Fax: (954) 771-4923



And a copy to:  
City of Pembroke Pines  
Greg Groselle, Aquatic Coordinator  
Email address: [ggroselle@ppines.com](mailto:ggroselle@ppines.com)

12.9. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Contractor without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

12.10. Conflicts. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Contractor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Contractor is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Contractor is permitted pursuant to this Agreement to utilize Subcontractors, Contractor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

12.11. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. 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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

12.12. Compliance with Laws. Contractor and the Services must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

12.13. Severability. If 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.

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

12.15. Interpretation. The titles and 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 any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” 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 subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

12.16. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

12.17. 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 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

12.18. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Contractor.

12.19. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and

contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

12.20. HIPAA Compliance. County has access to protected health information (“PHI”) that is subject to the requirements of 45 C.F.R. Parts 160, 162, and 164 and related regulations. If Contractor is considered by County to be a covered entity or business associate or is required to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) or the Health Information Technology for Economic and Clinical Health Act (“HITECH”), Contractor shall fully protect individually identifiable health information as required by HIPAA or HITECH and, if requested by County, shall execute a Business Associate Agreement in the form set forth at [www.broward.org/Purchasing/Pages/StandardTerms.aspx](http://www.broward.org/Purchasing/Pages/StandardTerms.aspx). The County Administrator is authorized to execute a Business Associate Agreement on behalf of County. Where required, Contractor shall handle and secure such PHI in compliance with HIPAA, HITECH, and related regulations and, if required by HIPAA, HITECH, or other Applicable Law, include in its “Notice of Privacy Practices” notice of Contractor’s and County’s uses of client’s PHI. The requirement to comply with this provision, HIPAA, and HITECH shall survive the expiration or earlier termination of this Agreement. Contractor shall ensure that the requirements of this section are included in all agreements with Subcontractors.

12.21. Payable Interest.

12.21.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and Contractor waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

12.21.2. Rate of Interest. If the preceding subsection is inapplicable or 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, one quarter of one percent (0.25%) simple interest (uncompounded).

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

12.23. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

12.24. Use of County Name or Logo. Contractor shall not use County’s name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

12.25. Drug-Free Workplace. If required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Contractor certifies that it has and will maintain a drug-free workplace program throughout the Term.

12.26. Polystyrene Food Service Articles. Contractor shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

12.27. Anti-Human Trafficking. By execution of this Agreement by the undersigned authorized representative of Contractor, Contractor hereby attests under penalty of perjury that Contractor does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes; under penalties of perjury, the undersigned authorized representative of Contractor declares that they have read the foregoing statement and that the facts stated in it are true.

12.28 Public Records.

12.28.1 The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. The County shall comply with Florida's Public Records Law. Specifically, the County shall:

12.28.1.1 Keep and maintain public records required by the Contractor to perform the service;

12.28.1.2 Upon request from the Contractor's custodian of public records, provide the Contractor with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

12.28.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, County shall destroy all copies of such confidential and exempt records remaining in its possession after the County transfers the records in its possession to the Contractor; and

12.28.1.4 Upon completion of the Agreement, County shall transfer to the Contractor, at no cost to the Contractor, all public records in County's possession. All records stored electronically by the County must be provided to the Contractor, upon request from the Contractor's custodian of public records, in a format that is compatible with the information technology systems of the Contractor.

12.28.2 The failure of County to comply with the provisions set forth in this Article

shall constitute a Default and Breach of this Agreement for which, the Contractor may terminate the Agreement in accordance with the terms herein.

**IF THE COUNTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COUNTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
601 CITY CENTER WAY, 4th FLOOR  
PEMBROKE PINES, FL 33025  
(954) 450-1050  
[drogers@ppines.com](mailto:drogers@ppines.com)**

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

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, by and through its Board of County Commissioners, signing by and through its Director of Parks and Recreation Division, authorized to execute same pursuant to Section 13.91(h) of the Broward County Administrative Code; and Contractor, signing by and through its duly authorized representative.

County

Broward County, by and through its  
Director of Parks and Recreation Division

By \_\_\_\_\_  
Director of Parks and Recreation Division

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
115 South Andrews Avenue, Suite 423  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600

By \_\_\_\_\_  
Amanda Tolbert (Date)  
Assistant County Attorney

AMT  
SWIM central Educator Agreement  
7/30/2024  
#1111299v3

**AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF PEMBROKE PINES FOR SWIM  
CENTRAL WATER SAFETY INSTRUCTION AND EDUCATION**

CONTRACTOR

**City of Pembroke Pines**

By: \_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Print Name and Title

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**APPROVED AS TO LEGAL FORM**

**OFFICE OF THE CITY ATTORNEY**

DATED: 11-13-24

**Exhibit A**  
**Scope of Services**

Contractor shall provide the following Services:

**1. Services Summary**

A. Contractor shall provide Services at the following Service Location: Pembroke Lakes Pool, Pembroke Pines Charter Pool and Town Gate Park.

B. The Contract Administrator may modify the Service Location(s), including adding or removing sites, upon prior written notice to Contractor. However, the inclusion of any additional Service Locations shall not modify the maximum compensation amount set forth in Section 5.1 of this Agreement.

C. All payments to Contractor for Services will be made by County to Contractor on a reimbursement basis at the rates provided in Exhibit B, Payment Schedule, subject to the invoice requirements set forth in this Agreement.

D. Contractor shall conduct all classes in a careful and responsible manner with due regard for the safety of the participants and others.

E. Contractor shall be solely responsible for securing the services of, and compensating, its employees or other persons as may be required to adequately and safely perform the Services.

F. Contractor shall provide the Services 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.

G. Contractor shall provide a minimum of 25 minutes of water safety education and instruction in the water for each class.

H. Contractor shall comply with the instructor to child ratio required by Contractor's license or certification obtained from the SOF-approved water safety training agency; however, in no event shall Contractor's instructor to child ratios exceed one (1) instructor to ten (10) children. Contractor 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 counted in Contractor's instructor to child ratio requirement.



I. Contractor shall provide at least one (1) lifeguard on the pool deck when classes are conducted. Lifeguards shall not be counted in Contractor's instructor to child ratio requirement.

J. Contractor shall maintain compliance with the requirements for public swimming pools and bathing places set forth in Applicable Law, including without limitation Chapter 514, Florida Statutes, and Rule 64E-9, Florida Administrative Code, administered by the State of Florida, Department of Health.

## 2. Services Description

A. **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 the Contractor and the Contract Administrator, in writing.

B. **Child Water Safety Instruction Classes (designated camps).** Classes at camps designated by the Children's Services Council of Broward County will be held during times that Broward County schools are not in session. The designated camps shall be responsible for arranging transportation of the children to and from the pool; transportation is not provided by County. The class schedule shall be mutually agreed upon by the applicable camp and Contractor, subject to County approval of the agreed upon dates and times.

C. **Child Water Safety Vouchers/Coupons for Group Lessons (6 to 10 lessons).** Classes shall be registered in sessions, with each session consisting of six (6) to ten (10) classes. Classes will be held at times when the pool(s) are open for instruction or other use. Vouchers/coupons will be provided by County directly to the child's parent, no more often than once per Fiscal Year. No more than one voucher/coupon may be collected by Contractor per participant per session, which may or may not cover the entire cost of the session offered by Contractor. For any session for which the cost of the session exceeds the voucher/coupon reimbursement rate in Exhibit B, and 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, or the Water Smart Babies Prescription Program, Contractor shall be required to use an income-based sliding fee scale to determine the session fee for participants. Contractor shall provide the Contract Administrator with a copy of the sliding fee scale utilized by Contractor and any documentation supporting the sliding fee scale. Any changes made to the sliding fee scale by Contractor during the Term shall be provided to the Contract Administrator within ten (10) days after such change.

D. **Adult Water Safety Vouchers/Coupons for Group Lessons (6 to 10 lessons).** Classes shall be registered in sessions, with each session consisting of six (6) to ten (10)

classes. 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. Vouchers/coupons will be provided by County directly to participants no more often than once per Fiscal Year. No more than one voucher/coupon may be collected by Contractor per participant per session, which may or may not cover the entire cost of the session offered by Contractor.

E. **Special Needs Classes for Children and Adults.** Due to the profound disabilities of the children and adults attending these classes, pre-set ratios for standard instruction are not applicable and the required ratios of instructors to participants will instead be determined by Contractor based on the impairments of the children or adults at issue. Classes will be scheduled in the same manner as the school day program.

### **3. Communication and Reports**

Contractor shall notify the Contract Administrator, 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 equipment, 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, Contractor shall notify the Contract Administrator as soon as possible, but no later than one (1) business day after the incident, and shall provide a copy of the pool/facility's incident report to County.

County may hold meetings annually to discuss any changes to the SWIM Central program. Contractor shall be required to have a representative attend these meetings unless excused by County.

**Exhibit B  
Payment Schedule**

The rates specified below shall be in effect for the entire Term, unless otherwise expressly stated below. Any goods or services required under this Agreement for which no specific fee or cost is expressly stated in this Payment Schedule shall be deemed to be included, at no extra cost, within the costs and fees expressly provided for in this Exhibit B.

**Table A: Class Fees**

<b>Services/Class Types</b>	<b>Reimbursement Rate</b>	<b>Invoice Form</b>
Child Water Safety Instruction Classes during the school day	\$4.25 per participant, per day	Exhibit E
Child Water Safety Instruction Classes at designated camps	\$4.25 per participant, per day	Exhibit E
Child Water Safety Vouchers/Coupons for Group Lessons (6 to 10 lessons per session)	\$55 voucher/coupon per child registered, per Fiscal Year	Exhibit F
Adult Water Safety Vouchers/Coupons for Groups Lessons (6 to 10 lessons per session)	\$60 voucher/coupon per adult, per Fiscal Year	Exhibit F
Special Needs Classes for children and adults	\$4.25 per participant, per day	Exhibit E
<b>MAXIMUM NOT-TO-EXCEED AMOUNT:</b>	<b>\$100,000.00 per Fiscal Year</b>	

The Contract Administrator may approve, in advance and in writing, changes to each Reimbursement Rate set forth in this Exhibit B so long as the total amount paid to Contractor by County does not exceed the Maximum Not-To-Exceed Amount set forth in Section 5.1.

**Exhibit C**  
**Minimum Insurance Requirements**

Contractor is a public entity that is self-insured in accordance with Florida law. Pursuant to Section 8.1 of this Agreement, Grantee shall provide self-insurance, as outlined in the self-insurance letter attached hereto, in lieu of any other insurance required by Article 8 of this Agreement.

**Exhibit D**  
**Declaration of Criminal Background Screening**

AGREEMENT TITLE: \_\_\_\_\_

CONTRACTOR'S NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

By signing this form, I am swearing or affirming that all individuals providing Services to County under the Agreement have been background screened in accordance with the background screening requirements set forth in the Agreement and been deemed eligible by Contractor to provide such services as described in the Agreement. The information contained in this declaration is up to date as of the date this declaration is furnished to the Contract Administrator per the requirements of the Agreement.

All individuals providing Services under the Agreement are 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. Initially screened and deemed eligible

[Insert list of individuals and include the Park(s) where such individuals will be providing Services] *[Applicable only to first monthly declaration. Thereafter, only categories 2 and 3 must be completed.]*

2. New individuals screened and deemed eligible.

[Insert list of individuals and include the Service Location(s) where such individuals will be providing Services]

3. Individuals no longer providing Services under the Agreement.

[Insert list of individuals]

In accordance with Section 92.525, Florida Statutes, under penalties of perjury, I declare that I have read the foregoing Declaration of Criminal Background Screening and that the facts stated in it are true.

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Date



**Exhibit F**  
**Invoice for Vouchers/Coupons**

**INVOICE**

**[Company Name]**

[Street Address]

Phone [Phone Number]

Fax [Fax Number]

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

**TO:**

Broward County  
SWIM Central  
950 NW 38<sup>th</sup> 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