

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date: February 2, 2010 Consent Regular
 Department Workshop Public Hearing

Submitted For: FIRE RESCUE

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I. EXECUTIVE BRIEF

Motion and Title:

Staff recommends motion to receive and file three (3) original standard agreements for the Fire Rescue Department:

- A) Interlocal Agreement for Swimming Lessons with the City of Delray Beach;
- B) Interlocal Agreement for Swimming Lessons with the City of Boynton Beach; and
- C) Independent Contractor Agreement for Swimming Lessons with the Young Men's Christian Association of the Palm Beaches, Inc.

Summary:

On September 27, 2005, the Board adopted Resolution Number R2005-1906 authorizing the County Administrator, or his designee (the Fire Rescue Administrator) to execute standard agreements with municipalities and independent contractors to provide swimming lessons to members of the public through the Palm Beach County Drowning Prevention Coalition's Learn to Swim Program. Pursuant to Countywide PPM CW-O-051, three (3) standard County agreements that have been executed by the County Administrator, or his designee (the Fire Rescue Administrator) are being submitted as a receive and file agenda item for the Clerk's Office to note and receive.
Countywide (PK)

Background and Policy Issues:

Countywide PPM CW-O-51 requires the initiating Department to submit the fully executed standard agreements as a Receive and File agenda item for the Clerk's Office to note and receive said item(s).

Attachments:

- 1. Interlocal Agreement for Swimming Lessons with the City of Delray Beach
- 2. Interlocal Agreement for Swimming Lessons with the City of Boynton Beach
- 3. Independent Contractor Agreement for Swimming Lessons with the Young Men's Christian Association of the Palm Beaches, Inc.

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Recommended By: Jeffrey P. Collier 12/30/09
 Deputy Chief Date

Approved By: Steve B. Gerardi 12/30/09
 Fire-Rescue Administrator Date

(a)

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

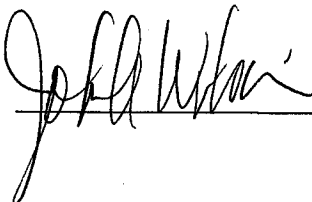
Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT *	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 1300 Dept 440 Unit 4244 Object 3401

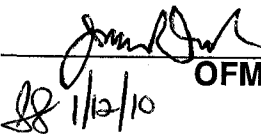
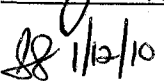
B. Recommended Sources of Funds/Summary of Fiscal Impact:

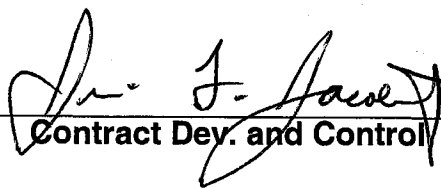
* These agreements will result in the County funding up to \$50.00 per voucher that is redeemed. However, the vouchers being issued/redeemed are limited to the available balance of funds allocated to this program and therefore, the fiscal impact is undetermined at this time.

C. Departmental Fiscal Review:  _____

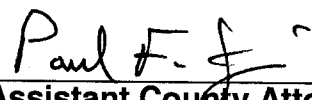
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 1-13-10 _____
 OFMB
  1/12/10 _____
 PM 1-6-10

 1/13/10 _____
 Contract Dev. and Control

B. Legal Sufficiency:

 1/19/10 _____
 Assistant County Attorney

C. Other Department Review:

 Department Director

**INTERLOCAL AGREEMENT
FOR SWIMMING LESSONS**

This Agreement is made as of the 2nd day of November, 2009, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and the City of Delray Beach, a Florida municipal corporation located in Palm Beach County, Florida.(hereinafter referred to as "MUNICIPALITY").

WHEREAS, COUNTY, through its Drowning Prevention Coalition's ("DPC") Learn to Swim Program, distributes vouchers to the public which may be redeemed for swimming lessons at designated aquatic facilities within Palm Beach County; and

WHEREAS, the parties desire to enter into this Agreement for MUNICIPALITY to provide swimming lessons as part of the DPC Learn to Swim Program, and to define the parties' responsibilities relating thereto.

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," authorizes local governments to make the most efficient use of their power by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the COUNTY and the MUNICIPALITY agree as follows:

ARTICLE 1 - SERVICES

MUNICIPALITY shall offer and provide swimming lesson classes to individuals who present vouchers issued by the DPC Learn to Swim Program. Each class to be offered and provided shall consist of a series of at least six swimming lessons and shall be identified in **Exhibit A**, attached hereto and incorporated herein. Exhibit A shall set forth the name, type, swimming level, dates, location, minimum participation requirements, if any, and MUNICIPALITY's usual and customary fee for each class. MUNICIPALITY shall not charge voucher holders for any swim class for which MUNICIPALITY's usual and customary fee is \$50.00 or less. If MUNICIPALITY's usual and customary fee for a swim class is more than \$50.00, then the maximum fee that MUNICIPALITY may charge voucher holders for said class is its usual and customary fee minus \$50.00. Said classes may be open to the public and are not restricted to voucher holders.

The swimming lesson classes shall be provided at MUNICIPALITY'S aquatic facility. MUNICIPALITY agrees to provide and maintain its facility in a safe, clean and hygienic manner and in accordance with all safety and health standards and all other applicable laws and regulations. MUNICIPALITY agrees to provide and maintain in proper working order all equipment necessary to provide and maintain the services and facility as provided herein. MUNICIPALITY represents and

warrants that its aquatic facility is in compliance, and shall continue to be in compliance, with Section 514.031, Florida Statutes, all applicable rules and requirements of the State and County Health Departments, and all other applicable laws, rules and regulations. Prior to execution of this Agreement, MUNICIPALITY must provide to COUNTY copies of the facility's current operating permit and most current inspection report, which must evidence a satisfactory inspection.

MUNICIPALITY shall perform the services set forth herein in accordance with all applicable laws, rules and regulations, and in a competent, professional, safe and responsible manner with full regard for the safety of the participants. MUNICIPALITY agrees and warrants that all swimming instructors utilized by MUNICIPALITY to provide lessons hereunder shall be certified as required by Section 514.071, Florida Statutes, and any other applicable laws, rules and regulations. MUNICIPALITY shall provide proof of such certifications to COUNTY'S representative upon request. MUNICIPALITY represents and warrants that it has in place, and shall continue to maintain, a drug-free workplace policy.

ARTICLE 2 – COMMENCEMENT AND TERM

This Agreement shall commence on October 1, 2009 and shall remain in effect until September 30, 2010.

ARTICLE 3 - PAYMENTS TO MUNICIPALITY

- A. For swimming classes provided by MUNICIPALITY in exchange for DPC Learn to Swim Program vouchers, COUNTY shall pay MUNICIPALITY its usual and customary fee per class as set forth in **Exhibit A** hereto, up to a maximum of \$50.00 per class series provided to a voucher holder. As provided in Resolution No. R-2005-1906, the total payments to all swimming lesson providers utilized in the DPC Learn to Swim Program for each fiscal year shall not exceed the amount budgeted by COUNTY for this purpose for said fiscal year.
- B. MUNICIPALITY shall invoice COUNTY monthly based on the number of swimming lesson classes provided hereunder. Invoices shall include a list of the names and contact information of students to whom lessons were actually provided, the name, dates, and times of the classes provided, and any other documentation deemed necessary by COUNTY to verify that services have been rendered in conformity with this Agreement and any applicable DPC Learn to Swim Program criteria, policies and procedures.

ARTICLE 4 - TERMINATION

The COUNTY may terminate this Agreement at any time upon written notice to the MUNICIPALITY with or without cause and without penalty, damages or recourse against COUNTY. MUNICIPALITY may terminate this Agreement upon thirty days (30) days' prior written notice to the COUNTY.

ARTICLE 5 - PERSONNEL

The MUNICIPALITY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the MUNICIPALITY or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized and permitted under state and local law to perform such services.

The MUNICIPALITY warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - SUBCONTRACTING

MUNICIPALITY may not, without written approval of COUNTY, subcontract any rights, responsibilities or obligations under this Agreement.

ARTICLE 7 - AVAILABILITY OF FUNDS

The COUNTY'S performance under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners and subject to the provisions of Palm Beach County Resolution No. R-2005-1906. The MUNICIPALITY'S performance under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by its governing body.

ARTICLE 8 - INSURANCE

Without waiving the right to sovereign immunity as provided by *s.768.28 f.s.*, MUNICIPALITY acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event MUNICIPALITY maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under *s.768.28 f.s.*, MUNICIPALITY shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

MUNICIPALITY agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes.

When requested, MUNICIPALITY shall agree to provide an affidavit or Certificate of Insurance

evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve MUNICIPALITY of its liability and obligations under this Agreement.

ARTICLE 9 - INDEMNIFICATION

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, COUNTY shall indemnify, defend and hold harmless MUNICIPALITY against any actions, claims or damages arising out of COUNTY'S negligence in connection with this Agreement, and MUNICIPALITY shall indemnify, defend and hold harmless COUNTY against any actions, claims, or damages arising out of MUNICIPALITY'S negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

ARTICLE 10 - SUCCESSORS AND ASSIGNS

Neither party shall assign, delegate or otherwise transfer its rights and obligations as set forth in this Agreement to any other entity without the prior written consent of the other party.

ARTICLE 11 - REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement.

ARTICLE 12 - CONFLICT OF INTEREST

The MUNICIPALITY represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The MUNICIPALITY further represents that no person having any such conflict of interest shall be employed for said performance of services.

The MUNICIPALITY shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the MUNICIPALITY 'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the MUNICIPALITY may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the MUNICIPALITY. The COUNTY agrees to notify the MUNICIPALITY of its opinion by certified mail within thirty (30) days of receipt of notification by the MUNICIPALITY. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the MUNICIPALITY, the COUNTY shall so state in the notification and the MUNICIPALITY shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the MUNICIPALITY under the terms of this Agreement.

ARTICLE 13 - EXCUSABLE DELAYS

MUNICIPALITY shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of MUNICIPALITY or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon MUNICIPALITY'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the MUNICIPALITY 'S failure to perform was without its or its subcontractors fault or negligence, the Agreement schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 14 - ARREARS

The MUNICIPALITY shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The MUNICIPALITY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 15 – PUBLIC RECORDS

The MUNICIPALITY shall comply with Florida's Public Records Law with regard to any documents or other records relating to this Agreement.

ARTICLE 16 - INDEPENDENT CONTRACTOR RELATIONSHIP

The MUNICIPALITY is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the MUNICIPALITY 'S sole direction, supervision, and control. The MUNICIPALITY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the MUNICIPALITY'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The MUNICIPALITY does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 17 - CONTINGENT FEES

The MUNICIPALITY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the MUNICIPALITY to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the MUNICIPALITY, any fee, commission, percentage, gift , or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 18 - ACCESS AND AUDITS

The MUNICIPALITY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the MUNICIPALITY 'S place of business.

ARTICLE 19 - NONDISCRIMINATION

The MUNICIPALITY warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 20 - AUTHORITY TO PRACTICE

The MUNICIPALITY hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 21 - SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 22- PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the MUNICIPALITY certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 23 - SURVIVABILITY

Any covenant, agreement, representation, warranty or other provision of this Agreement that is of a continuing nature or which by its language or its nature imposes an obligation that extends beyond the term of this Agreement, including but not limited to representations relating to indemnification and the disclosure or ownership of documents, shall survive the expiration or early termination of this Agreement and the consummation of the transactions contemplated hereunder.

ARTICLE 24 - NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Palm Beach County Fire-Rescue
405 Pike Road
West Palm Beach, FL 33411
Attn: Fire-Rescue Administrator

If sent to the MUNICIPALITY, notices shall be addressed to:

City of Delray Beach
Aquatics Operations
1101 NW 2nd Street
Delray Beach, FL 33444
Attn: Nina Salomon, Aquatics Operations Supervisor

ARTICLE 25 - FILING

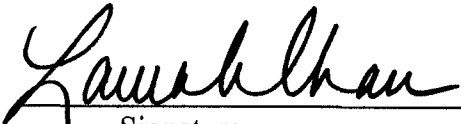
A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

ARTICLE 26 - ENTIRETY OF CONTRACTUAL AGREEMENT

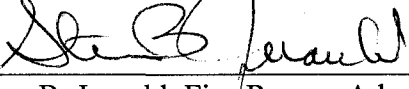
The COUNTY and the MUNICIPALITY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered unless agreed to in writing by both parties. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns and successors in interest.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY, and MUNICIPALITY has hereunto set its hand the day and year above written.

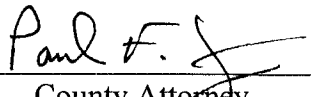
WITNESS


Signature
Laura A. Chan
Name (type or Print)

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: 
Steven B. Jerauld, Fire-Rescue Administrator,
through Robert Weisman, County Administrator


APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
County Attorney


APPROVED AS TO TERMS AND CONDITIONS

By: 
Palm Beach County Fire-Rescue

ATTEST:

By: 
City Clerk

CITY OF DELRAY BEACH, FLORIDA

By: 
Nelson S. McDuffie, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

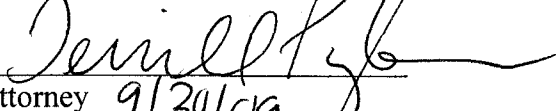
By: 
City Attorney 9/30/09

EXHIBIT "A"

Aquatics Division

1101 NW 2nd Street
Delray Beach
Florida
33444

Phone
(561) 243 - 7358

Fax
(561) 243 - 7346

E-Mail
salomon@ci.delraybeach.fl.us

On the Web
www.mydelraybeach.com



To: Drowning Prevention Coalition of Palm Beach County
From: Giovannina E. Salomon
Aquatics Operations Supervisor
Date: September 30, 2009
Details: 2009-10 Group Swim Lessons; Fees; Courses; Descriptions; Instructor / Student Ratio
Locations: Delray Beach Aquatics Division
Pompey Park Pool (PP) at 1101 NW 2nd Street Delray Beach, FL 33444
Delray Swim Club (DSC) at 2350 Jaeger Drive Delray Beach, FL 33444
Fees: \$30.00 for Delray Beach Residents
\$35.00 for Non-Delray Beach Residents
Swim lessons Instructed: Fall swim lessons held during the month of October
Session I (10/6/09 - 10/16/09) and Session II (10/20/09 - 10/30/09)
Spring swim lessons held during the month of April
Session I (4/6/10-4/16/10) and Session II (4/20/10-4/30/10)
Summer lessons held in the months of June and July
Session I (6/1/09 - 6/11/10); Session II (6/15/10 - 6/25/10);
Session III (7/6/10 - 7/16/10) and Session IV (7/20/10 - 7/30/10)

Course: **Parent & Child Aquatics 3-3:30pm PP & DSC**
Developed for children 6 months to 5 years of age, American Red Cross Parent & Child Aquatics builds swimming readiness by emphasizing fun in the water. Parents and children participate in several guided practice sessions that help children learn elementary skills, including water entry, bubble blowing, front kicking, back floating, underwater exploration and more. Once children can perform basic skills without parental assistance, they may begin Learn-to-Swim courses.
Course length / fee and Number Enrolled: Two weeks course; Tuesday - Friday for 1/2 hour instruction; \$30.00 Resident / \$35.00 for Non-Resident per student; one Instructor / ten Students.

Course: **Level I 10-10:30am / 10:30-11am; 3:30-4pm / 4-4:30pm PP & DSC (5yrs +)**
Introduction to Water Skills: helps students feel comfortable in the water and to enjoy the water safely.
Course length / fee and Number Enrolled: Two weeks course; Tuesday - Friday for 1/2 hour instruction; \$30.00 Resident / \$35.00 for Non-Resident per student; one Instructor / six Students.

Course: **Level II 10-10:30am / 10:30-11am; 3:30-4pm / 4-4:30pm PP & DSC (5yrs +)**
Fundamental Aquatic Skills: gives students success with fundamental skills
Course length / fee and Number Enrolled: Two weeks course; Tuesday - Friday for 1/2 hour instruction; \$30.00 Resident / \$35.00 for Non-Resident per student; one Instructor / six Students.

Course: **Level III 3:15-4pm PP & DSC (5 yrs +)**
Stroke Development: builds on the skills in Level 2 by providing additional guided practice.
Course length / fee and Number Enrolled: Two weeks course; Tuesday - Friday for forty-five min. instruction; \$30.00 Resident / \$35.00 for Non-Resident per student; one Instructor / ten Students.

Course: **Young Adult 3:15-4pm PP & DSC (12 yrs - 17 yrs in age)**
Improves various swim skills from Level I, II & III by providing additional guided practice.
Course length / fee and Number Enrolled: Two weeks course; Tuesday - Friday for forty-five min. instruction; \$30.00 Resident / \$35.00 for Non-Resident per student; one Instructor / ten Students.

Course: **Adult 4-4:45pm PP & DSC (18 yrs +)**
Improves various swim skills from Level I, II & III by providing additional guided practice.
Course length / fee and Number Enrolled: Two weeks course; Tuesday - Friday for forty-five min. instruction; \$30.00 Resident / \$35.00 for Non-Resident per student; one Instructor / ten Students.

Swim Lesson Dates and Times May Change Due to Complications with the Weather or Staffing.


Giovannina E. Salomon
Aquatics Operations Supervisor

**INTERLOCAL AGREEMENT
FOR SWIMMING LESSONS**

This Agreement is made as of the 10th day of November, 2009, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and the City of Boynton Beach, a Florida municipal corporation located in Palm Beach County, Florida.(hereinafter referred to as "MUNICIPALITY").

WHEREAS, COUNTY, through its Drowning Prevention Coalition's ("DPC") Learn to Swim Program, distributes vouchers to the public which may be redeemed for swimming lessons at designated aquatic facilities within Palm Beach County; and

WHEREAS, the parties desire to enter into this Agreement for MUNICIPALITY to provide swimming lessons as part of the DPC Learn to Swim Program, and to define the parties' responsibilities relating thereto.

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This Agreement shall commence on October 1, 2009 and shall remain in effect until September 30, 2010.

ARTICLE 3 - PAYMENTS TO MUNICIPALITY

- A. For swimming classes provided by MUNICIPALITY in exchange for DPC Learn to Swim Program vouchers, COUNTY shall pay MUNICIPALITY its usual and customary fee per class as set forth in **Exhibit A** hereto, up to a maximum of \$50.00 per class series provided to a voucher holder. As provided in Resolution No. R-2005-1906, the total payments to all swimming lesson providers utilized in the DPC Learn to Swim Program for each fiscal year shall not exceed the amount budgeted by COUNTY for this purpose for said fiscal year.
- B. MUNICIPALITY shall invoice COUNTY monthly based on the number of swimming lesson classes provided hereunder. Invoices shall include a list of the names and contact information of students to whom lessons were actually provided, the name, dates, and times of the classes provided, and any other documentation deemed necessary by COUNTY to verify that services have been rendered in conformity with this Agreement and any applicable DPC Learn to Swim Program criteria, policies and procedures.

ARTICLE 4 - TERMINATION

The COUNTY may terminate this Agreement at any time upon written notice to the MUNICIPALITY with or without cause and without penalty, damages or recourse against COUNTY. MUNICIPALITY may terminate this Agreement upon thirty days (30) days' prior written notice to the COUNTY.

ARTICLE 5 - PERSONNEL

The MUNICIPALITY represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the MUNICIPALITY or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized and permitted under state and local law to perform such services.

The MUNICIPALITY warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - SUBCONTRACTING

MUNICIPALITY may not, without written approval of COUNTY, subcontract any rights, responsibilities or obligations under this Agreement.

ARTICLE 7 - AVAILABILITY OF FUNDS

The COUNTY'S performance under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners and subject to the provisions of Palm Beach County Resolution No. R-2005-1906. The MUNICIPALITY'S performance under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by its governing body.

ARTICLE 8 - INSURANCE

Without waiving the right to sovereign immunity as provided by *s.768.28 f.s.*, MUNICIPALITY acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event MUNICIPALITY maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under *s.768.28 f.s.*, MUNICIPALITY shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

MUNICIPALITY agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes.

When requested, MUNICIPALITY shall agree to provide an affidavit or Certificate of Insurance

evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve MUNICIPALITY of its liability and obligations under this Agreement.

ARTICLE 9 - INDEMNIFICATION

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, COUNTY shall indemnify, defend and hold harmless MUNICIPALITY against any actions, claims or damages arising out of COUNTY'S negligence in connection with this Agreement, and MUNICIPALITY shall indemnify, defend and hold harmless COUNTY against any actions, claims, or damages arising out of MUNICIPALITY'S negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

ARTICLE 10 - SUCCESSORS AND ASSIGNS

Neither party shall assign, delegate or otherwise transfer its rights and obligations as set forth in this Agreement to any other entity without the prior written consent of the other party.

ARTICLE 11 - REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement.

ARTICLE 12 - CONFLICT OF INTEREST

The MUNICIPALITY represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The MUNICIPALITY further represents that no person having any such conflict of interest shall be employed for said performance of services.

The MUNICIPALITY shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the MUNICIPALITY 'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the MUNICIPALITY may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the MUNICIPALITY. The COUNTY agrees to notify the MUNICIPALITY of its opinion by certified mail within thirty (30) days of receipt of notification by the MUNICIPALITY. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the MUNICIPALITY, the COUNTY shall so state in the notification and the MUNICIPALITY shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the MUNICIPALITY under the terms of this Agreement.

ARTICLE 13 - EXCUSABLE DELAYS

MUNICIPALITY shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of MUNICIPALITY or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon MUNICIPALITY'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the MUNICIPALITY 'S failure to perform was without its or its subcontractors fault or negligence, the Agreement schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 14 - ARREARS

The MUNICIPALITY shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The MUNICIPALITY further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 15 – PUBLIC RECORDS

The MUNICIPALITY shall comply with Florida's Public Records Law with regard to any documents or other records relating to this Agreement.

ARTICLE 16 - INDEPENDENT CONTRACTOR RELATIONSHIP

The MUNICIPALITY is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the MUNICIPALITY 'S sole direction, supervision, and control. The MUNICIPALITY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the MUNICIPALITY'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The MUNICIPALITY does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 17 - CONTINGENT FEES

The MUNICIPALITY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the MUNICIPALITY to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the MUNICIPALITY, any fee, commission, percentage, gift , or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 18 - ACCESS AND AUDITS

The MUNICIPALITY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the MUNICIPALITY 'S place of business.

ARTICLE 19 - NONDISCRIMINATION

The MUNICIPALITY warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 20 - AUTHORITY TO PRACTICE

The MUNICIPALITY hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 21 - SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 22- PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the MUNICIPALITY certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 23 - SURVIVABILITY

Any covenant, agreement, representation, warranty or other provision of this Agreement that is of a continuing nature or which by its language or its nature imposes an obligation that extends beyond the term of this Agreement, including but not limited to representations relating to indemnification and the disclosure or ownership of documents, shall survive the expiration or early termination of this Agreement and the consummation of the transactions contemplated hereunder.

ARTICLE 24 - NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Palm Beach County Fire-Rescue
405 Pike Road
West Palm Beach, FL 33411-3815
Attn: Fire-Rescue Administrator

If sent to the MUNICIPALITY, notices shall be addressed to:

City of Boynton Beach
Wilson Park John Denson Pool
225 N.W. 12th Ave
Boynton Beach, FL 33435
Attn: Suzette Peccerelli, Pool Supervisor

ARTICLE 25 - FILING

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

ARTICLE 26 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the MUNICIPALITY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered unless agreed to in writing by both parties. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns and successors in interest.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY, and MUNICIPALITY has hereunto set its hand the day and year above written.

WITNESS

Laura A Chan
Signature
Laura A Chan
Name (type or Print)

**PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS**
By: *St B Jerauld*
Steven B. Jerauld, Fire-Rescue Administrator,
through Robert Weisman, County Administrator

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**
By: *Paul F. J*
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**
By: *S Deane*
Palm Beach County Fire-Rescue

ATTEST:
By: *Janet M Prainito*
City Clerk

CITY OF BOYNTON BEACH, FLORIDA
By: *Jerry Taylor*
Jerry Taylor, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**
By: *Maria Bridges*
City Attorney

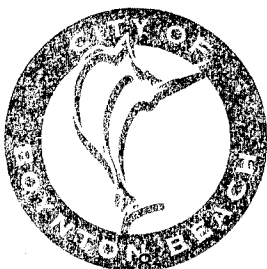


EXHIBIT "A"

The City of Boynton Beach



225 NW 12th Ave.
Boynton Beach, Florida 33435
John Denson Pool: (561) 742-6645
FAX: (561) 369-2418

***LEARN TO SWIM PROGRAM**

City of Boynton Beach John H. Denson Pool
225 NW 12th Avenue Boynton Beach Florida, 33435
Exhibit A

Parent and Tot, Level A and B

Adult guardians will join their beginner children ages 5 & under, in an introductory class to Level I. Children will learn basic water safety skills and the fundamentals of swimming

Ratio: 1 instructor for every 10 Children

Level I, Introduction to Water Skills:

Children will learn basic water safety and swimming skills at a beginner level in order to progress to the intermediate Level II.

Ratio: 1 instructor for every 6 Children

Level II, Fundamental Aquatic Skills:

Children will learn basic water safety and swimming skills at an intermediate level in order to progress to the advanced Level III.

Ratio: 1 instructor for every 6 Children

Level III, Stroke Development: Children will practice stroke refinement at an advanced level in order to advance to a skilled semi-competitive level. Swimmer must be able to swim at least 10 yards.

Ratio: 1 instructor for every 10 Children

Level IV, Stroke Refinement: Children will practice stroke refinement at an advanced level in order to advance to a skilled competitive level. Swimmer must be able to swim at least 25 yards.

Ratio: 1 instructor for every 10 Children

Therapeutic Swim Lessons:

Youth, ages 3 and over, will receive swim lessons based on their special needs.

Ratio: 1 instructor for every 3 Children

Cost: All Learn to Swim classes are \$30 for residents and \$38 for non-residents per child, per session.

* All classes subject to change due to inclement weather or staffing issues.

The City of Boynton Beach



225 NW 12th Ave.
Boynton Beach, Florida 33435
John Denson Pool: (561) 742-6645
FAX: (561) 369-2418

Fall 2009 Week Day Sessions

When: Tuesday – Friday

Session I: 9/29/2009 – 10/09/2009
Session II: 10/13/2009 – 10/23/2009
Session III: 10/27/2009 – 11/6/2009
Session IV: 11/10/2009 – 11/20/2009

Times: Per Level

<u>Level I</u>	<u>Level II</u>	<u>Level III</u>
2:30 – 3:00 PM	2:30 – 3:00 PM	4:00 – 4:30 PM
3:00 – 3:30 PM	3:00 – 3:30 PM	
5:00 – 5:30 PM	5:00 – 5:30 PM	
5:30 – 6:00 PM	5:30 – 6:00 PM	
6:00 – 6:30 PM	6:00 – 6:30 PM	

Parent and Tot
11:00 – 11:30 AM
4:00 – 4:30 PM

Fall 2009 Saturday Sessions

When: Saturday

Session I: 8/29/2009 – 9/19/2009
Session II: 9/26/2009 – 10/17/2009
Session III: 10/24/2009 – 11/14/2009

Times: Per Level

<u>Level I</u>	<u>Level II</u>	<u>Level III</u>
11:00 – 12:00 AM	11:00 – 12:00 AM	11:00 – 12:00 AM

Fall 2009 Therapeutic Sessions

When: Tuesdays and Thursdays

Session I: 9/29/2009 – 10/22/2009
Session II: 10/27/2009 – 11/19/2009
Session III: 11/24/2009 – 12/17/2009

Times: 11:00 – 11:30 AM

The City of Boynton Beach



225 NW 12th Ave.
Boynton Beach, Florida 33435
John Denson Pool: (561) 742-6645
FAX: (561) 369-2418

Spring 2010 Week Day Sessions

When: Tuesday – Friday

Session I: 2/2/2010 – 2/12/2010
Session II: 2/16/2010 – 2/26/2010
Session III: 3/2/2010 – 3/12/2010
Session IV: 3/16/2010 – 3/26/2010
Session V: 4/13/2010 – 4/23/2010
Session VI: 4/27/2010 – 5/7/2010
Session VII: 5/11/2010 – 5/21/2010

Times: Per Level

<u>Level I</u>	<u>Level II</u>	<u>Level III</u>	<u>Level IV</u>
2:30 – 3:00 PM	2:30 – 3:00 PM	4:00 – 4:30 PM	4:00 – 4:30 PM
3:00 – 3:30 PM	3:00 – 3:30 PM		
5:00 – 5:30 PM	5:00 – 5:30 PM		
5:30 – 6:00 PM	5:30 – 6:00 PM		
6:00 – 6:30 PM	6:00 – 6:30 PM		

Parent and Tot

11:00 – 11:30 AM
4:00 – 4:30 PM

Spring 2010 Saturday Sessions

When: Saturday

Session I: 2/6/2010 – 2/27/2010
Session II: 3/6/2010 – 3/27/2010
Session III: 4/10/2010 – 5/1/2010

Times: Per Level

<u>Level I</u>	<u>Level II</u>	<u>Level III</u>
11:00 – 12:00 AM	11:00 – 12:00 AM	11:00 – 12:00 AM

Spring 2010 Therapeutic Sessions

When: Tuesday - Friday

Session I: 3/2/2010 – 3/12/2010
Session II: 3/16/2010 – 3/26/2010
Session III: 4/13/2010 – 4/23/2010
Session IV: 4/27/2010 – 5/7/2010

Times: 11:00 – 11:30 AM

The City of Boynton Beach



225 NW 12th Ave.
Boynton Beach, Florida 33435
John Denson Pool: (561) 742-6645
FAX: (561) 369-2418

Summer 2010 Week Day Sessions

When: Tuesday – Friday

Session I: 6/8/2010 – 6/18/2010
Session II: 6/22/2010 – 7/2/2010
Session III: 7/6/2010 – 7/16/2010
Session IV: 7/20/2010 – 7/30/2010
Session V: 8/3/2010 – 8/13/2010

Times: Per Level

<u>Level I</u>	<u>Level II</u>	<u>Level III</u>	<u>Level IV</u>
9:00 – 9:30 AM	9:00 – 9:30 AM	11:30 – 12:00 PM	11:30 – 12:00 PM
9:30 – 10:00 AM	9:30 – 10:00 AM		
10:00 – 10:30 AM	10:00 – 10:30 AM		
10:30 – 11:00 AM			

Parent and Tot
11:30 – 12:00 PM

Summer 2010 Saturday Sessions

When: Saturday

Session I: 6/5/2010 – 6/26/2010
Session II: 7/10/2010 – 7/31/2010
Session III: 8/7/2010 – 8/28/2010

Times: Per Level

<u>Level I</u>	<u>Level II</u>	<u>Level III</u>
11:00 – 12:00 AM	11:00 – 12:00 AM	11:00 – 12:00 AM

Summer 2010 Therapeutic Sessions

When: Tuesday - Friday

Session I: 6/22/2010 – 7/2/2010
Session II: 7/6/2010 – 7/16/2010
Session III: 7/20/2010 – 7/30/2010

Times: 11:00 – 11:30 AM

**INDEPENDENT CONTRACTOR AGREEMENT
FOR SWIMMING LESSONS**

This Agreement is made as of the 14th day of December, 2009, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and The Young Men's Christian Association of the Palm Beaches, Inc., an entity authorized to do business in the State of Florida and whose Federal I.D. Number is 59-0624470 (hereinafter referred to as "CONTRACTOR").

WHEREAS, COUNTY, through its Drowning Prevention Coalition's ("DPC") Learn to Swim Program, distributes vouchers to the public which may be redeemed for swimming lessons at designated aquatic facilities within Palm Beach County; and

WHEREAS, the parties desire to enter into this Agreement for CONTRACTOR to provide swimming lessons as part of the DPC Learn to Swim Program, and to define the parties' responsibilities relating thereto.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

CONTRACTOR shall offer and provide swimming lesson classes to individuals who present vouchers issued by the DPC Learn to Swim Program. Each class to be offered and provided shall consist of a series of at least six swimming lessons and shall be as identified in **Exhibit A**, attached hereto and incorporated herein. Exhibit A shall set forth the name, type, swimming level, dates, location, minimum participation requirements, if any, and CONTRACTOR'S usual and customary fee for each class. CONTRACTOR shall not charge voucher holders for any swim class for which CONTRACTOR'S usual and customary fee is \$50.00 or less. If CONTRACTOR'S usual and customary fee for a swim class is more than \$50.00, then the maximum fee that CONTRACTOR may charge voucher holders for said class is its usual and customary fee, minus \$50.00. Said classes may be open to the public and are not restricted to voucher holders.

The swimming lesson classes shall be provided at CONTRACTOR'S aquatic facility. CONTRACTOR agrees to provide and maintain its facility in a safe, clean and hygienic manner and in accordance with all safety and health standards and all other applicable laws and regulations. CONTRACTOR agrees to provide and maintain in proper working order all equipment necessary to provide and maintain the services and facility as provided herein. CONTRACTOR represents and warrants that its aquatic facility is in compliance, and shall continue to be in compliance, with Section 514.031, Florida Statutes, all applicable rules and requirements of the State and County Health Departments, and all other applicable laws, rules and regulations. Prior to execution of this Agreement, CONTRACTOR must provide to COUNTY copies of the facility's current operating permit and most current inspection report, which must evidence a satisfactory inspection.

CONTRACTOR shall perform the services set forth herein in accordance with all applicable laws, rules and regulations, and in a competent, professional, safe and responsible manner with full regard for the safety of the participants. CONTRACTOR agrees and warrants that all swimming instructors utilized by CONTRACTOR to provide lessons hereunder shall be certified as required by Section 514.071, Florida Statutes, and any other applicable laws, rules and regulations. CONTRACTOR shall provide proof of such certifications to COUNTY'S representative upon request. CONTRACTOR represents and warrants that it has in place, and shall continue to maintain, a drug-free workplace policy.

ARTICLE 2 – COMMENCEMENT AND TERM

This Agreement shall commence on October 1, 2009 and shall remain in effect until September 30, 2010.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. For swimming classes provided by CONTRACTOR in exchange for DPC Learn to Swim Program vouchers, COUNTY shall pay CONTRACTOR its usual and customary fee per class as set forth in **Exhibit A** hereto, up to a maximum of \$50.00 per class series provided to a voucher holder. As provided in Resolution No. R-2005-1906, the total payments to all swimming lesson providers utilized in the DPC Learn to Swim Program for each fiscal year shall not exceed the amount budgeted by COUNTY for this purpose for said fiscal year.
- B. CONTRACTOR shall invoice COUNTY monthly based on the number of swimming lesson classes provided hereunder. Invoices shall include a list of the names and contact information of students to whom lessons were actually provided, the name, dates, and times of the classes provided, and any other documentation deemed necessary by COUNTY to verify that services have been rendered in conformity with this Agreement and any applicable DPC Learn to Swim Program criteria, policies and procedures.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside contractors. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

The COUNTY may terminate this Agreement at any time upon written notice to the CONTRACTOR with or without cause and without penalty, damages or recourse against COUNTY. CONTRACTOR may terminate this Agreement upon thirty days (30) days' prior written notice to the COUNTY.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized and permitted under state and local law to perform such services.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 7 - SUBCONTRACTING

CONTRACTOR may not, without written approval of COUNTY, subcontract any rights, responsibilities or obligations under this Agreement.

ARTICLE 8 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY'S performance under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners and subject to the provisions of Palm Beach County Resolution No. R-2005-1906.

ARTICLE 10 - INSURANCE

- A. CONTRACTOR shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.
- B. **Commercial General Liability** CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONTRACTOR shall provide this coverage on a primary basis.
- C. **Worker's Compensation Insurance & Employers Liability** CONTRACTOR shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONTRACTOR shall provide this coverage on a primary basis.
- D. **Additional Insured** CONTRACTOR shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." CONTRACTOR shall provide the Additional Insured endorsements coverage on a primary basis.
- E. **Waiver of Subrogation** CONTRACTOR hereby waives any and all rights of Subrogation against COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.
- F. **Certificate(s) of Insurance** Prior to execution of this Agreement, CONTRACTOR shall deliver to the COUNTY a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.

- G. **Right to Review** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 11 - INDEMNIFICATION

CONTRACTOR shall protect, defend, reimburse, indemnify and hold harmless COUNTY, its agents, employees and elected officers from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of CONTRACTOR, including but not limited to claims of negligent maintenance, negligent instruction or negligent supervision.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

Neither party shall assign, delegate or otherwise transfer its rights and obligations as set forth in this Agreement to any other entity without the prior written consent of the other party.

ARTICLE 13 - REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement.

ARTICLE 14 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The CONTRACTOR further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONTRACTOR shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgement or

quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Agreement.

ARTICLE 15 - EXCUSABLE DELAYS

CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon CONTRACTOR'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without its or its subcontractors fault or negligence, the Agreement schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 - ARREARS

The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Agreement.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written

consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Agreement for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 19 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 20 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 21 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 22 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 23 - SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24- PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 25 – PUBLIC RECORDS

CONTRACTOR shall comply with Florida's Public Records Law with regard to any documents or other records relating to this Agreement.

ARTICLE 26 - SURVIVABILITY

Any covenant, agreement, representation, warranty or other provision of this Agreement that is of a continuing nature or which by its language or its nature imposes an obligation that extends beyond the term of this Agreement, including but not limited to representations relating to indemnification and the disclosure or ownership of documents, shall survive the expiration or early termination of this Agreement and the consummation of the transactions contemplated hereunder.

ARTICLE 27 - NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Palm Beach County Fire-Rescue
405 Pike Road
West Palm Beach, FL 33411

Attn: Fire-Rescue Administrator

If sent to the CONTRACTOR, notices shall be addressed to:

YMCA of the Palm Beaches – Edwin Brown Branch
2085 South Congress Ave.
West Palm Beach, FL 33406

Attn: Kim Luchina, Associate Branch Director

ARTICLE 28 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered unless agreed to in writing by both parties. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns and successors in interest.

The remainder of this page left blank intentionally

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY, and CONTRACTOR has hereunto set its hand the day and year above written.

WITNESS:

Laura A. Chan
Signature
Laura A. Chan
Name (type or print)

**PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS:**

By: *Steven B. Jerauld*
Steven B. Jerauld, Fire-Rescue Administrator,
through Robert Weisman, County Administrator

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: *Paul F. J.*
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: *R. K. Glenwood*
Palm Beach County Fire-Rescue

WITNESS:

Robyn Lamp
Signature
ROBYN LAMP
Name (type or print)

CONTRACTOR:

The Young Men's Christian Association of the Palm Beaches, Inc.

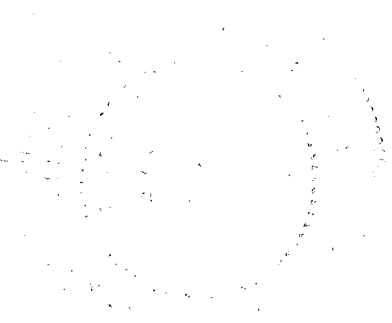
Typed Company Name
Russell T. Martin
Signature and Title
Russell T. Martin, President/CEO

Typed Name and Title

WITNESS:

Kim Luchina
Signature
Kim Luchina
Name (type or print)

(corp. seal)



YMCA of the Palm Beaches Swim Lessons

2085 South Congress Avenue
West Palm Beach, FL 33406
561.968.9622

All swim lessons will be \$50.00. Swim Lessons sessions are 1 month in length and are held twice a week or on Saturdays. Swim Lesson schedules change monthly depending on enrollment. Swim Lesson classes are subject to change due to weather and staffing issues.

Swim Lesson Levels and Descriptions

PARENT / TOT AND PRE-SCHOOL LEVELS

(For children 6 months – 5 years of age)

Each skill level builds upon the preceding level, covering all strokes, diving fundamentals and safety skills:

SHRIMP – PERCH (6 mos. – 36 mos.)

Parent and child work together to provide the child with a positive first experience in the water. Fundamental skills will be introduced through songs, games and activities. This level will prepare the child for group lessons without a parent or guardian.

PIKE

At this level, children attend classes without their parents in the water. It helps build confidence, develop safe behavior and water adjustment. It focuses on teaching basic paddle stroke, kicking skills, pool safety and increasing comfortability putting face in the water while blowing bubbles.

EEL

A little more advanced than PIKE, this level is for children who can put their face in the water with more ease. They are taught to flutter kick, surface dive, and float while continuing stroke development. Children are able to swim the width of the pool at the end of this level.

RAY

Children review previous skills while improving stroke development, build endurance swimming on their front and back, learn to tread water and perform more progressive diving skills. Children are able to swim across the pool on their front and back at the end of this level.

STARFISH

Children continue to develop endurance, refine stroke mechanics, improve their floating skills, and review aquatic and boating safety. They are also introduced to underwater swimming skills. By the end of this level, children are able to swim the length of the pool on their fronts and backs

PROGRESSIVE LEVELS

(For children 6 – 11 years of age)

Each skill level builds upon the preceding level, covering all strokes, diving fundamentals and safety skills:

POLLIWOG

This level is the school – aged child's first experience in a structured swim lesson class. In this class, the child gets acquainted with the pool, floatation devices, floating and getting their heads wet. By the end of this level, they should know the front paddle stroke, back and side strokes and some synchronized swimming. Wetball movements are also introduced, which leads up to water polo strategies.

GUPPY Children continue to practice and build upon basic skills without aid of floatation devices. They are introduced to front and back crawl, sidestroke, breaststroke and elementary backstroke. More synchronized swimming and wetball skills are taught. Diving skills are being taught as well.

MINNOW

Children further refine the lead strokes they have learned previously. They continue to learn synchronized swimming with more advanced features, wetball strategies, boating safety and enhanced diving skills.

FISH

Students learn to perform all strokes with the appropriate flip-turns. The butterfly stroke is introduced along with the use of masks and fins. Diving skills are refined and stroke mechanics are focused on a bit more here.

FLYING FISH

Students continue to improve their strokes with starts and turns. They are introduced to the snorkel, while improving on diving variations. Opportunities are provided for further work on synchronized swimming and water polo basics. Aquatic safety skills introduced are rescue breathing, reach-and-throw methods, and advanced boating safety techniques.

SHARK

The students continue to build endurance with stroke development, starts and turns. This level prepares children who are interested in joining the YMCA SWIM TEAM. They are introduced to inverted breaststroke, the trudge stroke and overarm sidestroke. JR Lifeguard skills are also taught for those interested in furthering their aquatic knowledge.

ADULT LESSONS

Adult lessons build endurance with stroke development, starts and turns. Each participant's technique is developed depending on prior knowledge and skill level.

SAFE START INFANT SURVIVAL LESSONS

Safe Start Infant Survival Lessons are taught in two consecutive sessions of three weeks each. Lessons meet Monday – Friday. The lessons are taught using the Harvey Barnett Technique from ISR. Participants need to pay a \$50.00 nonrefundable medical deposit and \$130.00 per session. Students must take both sessions.

When: Mondays & Wednesdays

Tuesdays & Thursdays

Saturdays

- Session 1: Oct 5 – Oct 29
- Session 2: Oct 29 – Nov 25
- Session 3 : Dec 1 – Dec 29
- Session 4: Jan 9 – Jan 28

Time: Monday & Wednesday

Polliwog: 4:00 - 4:30
Pike: 4:30 - 5:00
Guppy: 5:00 - 5:30

Tuesday & Thursday

Eel: 4:30 - 5:00
Pike: 5:00 – 5:30
Minnow: 5:30 – 6:00

Saturday

Pike & Polliwog 9:30 – 10:15
Pike & Ray 10:15 – 11:00
Eel & Polliwog 11:00 – 11:45
Starfish & Guppy 11:45 – 12:30
Parent/Tot & Adult 12:30 – 1:15

Location: YMCA of the Palm Beaches
2085 South Congress Avenue
West Palm Beach, Florida 33406

Fees: Monday/Wednesday & Tuesday/Thursday classes

-\$30.00 members
-\$70.00 non-members

Saturday classes

-\$15.00 members
-\$35.00 non-members

Registration: Call (561) 968-9622