

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	May 7, 2019	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Department:	Fire-Rescue		

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to receive and file: fully executed standard agreements for swimming lessons for FY 2019 with:

- A) City of Boynton Beach;
- B) City of Riviera Beach; and
- C) Young Men’s Christian Association of South Palm Beach County, Inc.

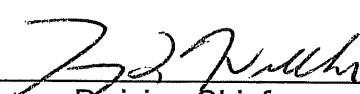
**Summary:** On September 27, 2005, the Board adopted Resolution Number R2005-1906 authorizing the County Administrator, or designee (the Fire Rescue Administrator), to execute standard agreements with municipalities and independent contractors to provide swimming lessons to members of the public through the Palm Beach County Drowning Prevention Coalition’s Learn to Swim Program. These standard agreements have been fully executed by the Fire Rescue Administrator, and are now being submitted to the Board as a receive and file agenda item in accordance with Countywide PPM CW-O-051 for the Clerk and Comptroller’s Office to receive and file. Countywide (SB)

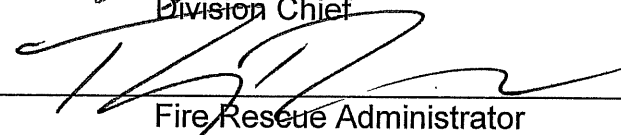
**Background and Justification:** The Palm Beach County Drowning Prevention Coalition Learn to Swim Program distributes vouchers to the public, which may be redeemed for swimming lessons at designated aquatic facilities within Palm Beach County.

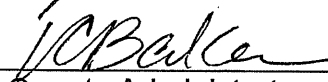
**Attachments:**

- 1) Interlocal Agreement with the City of Boynton Beach
- 2) Interlocal Agreement with the City of Riviera Beach
- 3) Independent Contractor Agreement with Young Men’s Christian Association of South Palm Beach County, Inc.

---

Recommended by:  4/16/19  
 Division Chief Date

Approved by:  4/16/19  
 Fire Rescue Administrator Date

Approved by:  4/23/19  
 County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b>*</b>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b>0</b>	_____	_____	_____	_____

Is Item Included in Proposed Budget? Yes X No \_\_\_\_\_  
 Does this item include the use of federal funds? Yes \_\_\_\_\_ No X

Budget Account No.: Fund 1300 Dept 440 Unit 4244 Rev Source 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: *[Signature]*

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

<p><u><i>[Signature]</i></u> 4/18/19                  OFMB  <i>[Handwritten initials]</i> 4/18/19</p>	<p><u><i>[Signature]</i></u> 4/22/19                  Contract Development and Control                  4/22/19 (TW)</p>
---	--

**B. Legal Sufficiency**

*[Signature]* 4/22/19  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

REVISED 9/03  
 ADM FORM 01

**(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)**

**INTERLOCAL AGREEMENT  
FOR SWIMMING LESSONS**

This Agreement is made as of the 2<sup>nd</sup> day of April, 2019, 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.

**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 April 1, 2019 and shall remain in effect until September 30, 2019.

#### **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, Automobile Liability and Professional Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 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, Business Auto Liability and Professional 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 a court of competent jurisdiction located in Palm Beach County, Florida. 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, including but not limited to any citizen or employees of the COUNTY and/or MUNICIPALITY.

#### **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 and the Palm Beach County Code of Ethics. 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, judgment, 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.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the MUNICIPALITY, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

## **ARTICLE 19 - NONDISCRIMINATION**

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the MUNICIPALITY warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

## **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  
John H. Denson Pool  
225 Northwest 12th Avenue  
Boynton Beach, FL 33425  
Attn: Crystal Quesada, Aquatics 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 Chan  
Signature  
Laura Chan  
Name (type or Print)

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

By: Reginald K. Duren  
~~Michael C. Mackey~~, Fire Rescue Administrator,  
through Verdenia C. Baker, County Administrator

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: [Signature]  
County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: [Signature]  
Palm Beach County Fire Rescue

ATTEST:

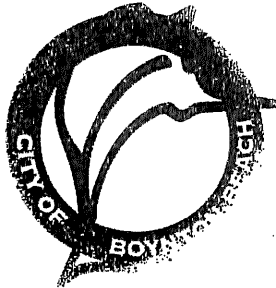
By: Judith A. Pyle  
City Clerk

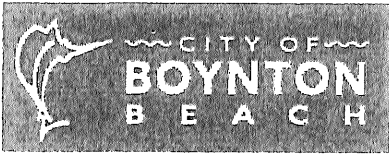
CITY OF BOYNTON BEACH, FLORIDA

By: Lori LaVerriere  
Lori LaVerriere, City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: [Signature]  
City Attorney





**John H. Denson Pool**

225 NW 12<sup>TH</sup> Ave  
Boynton Beach, FL 33435  
561-742-6645

**FEES**

Group Swim Lessons.....\$40R, \$50NR per session (8, ½ hr. lessons in the water)

**GROUP LESSONS: SESSION 1 DATES**

Tuesday - Friday..... 4/2 - 4/12  
Saturday..... 4/6 - 5/25

**GROUP LESSONS: SESSION 2 DATES**

Tuesday/Thursday..... 4/30 - 5/23  
Wednesday/Friday..... 5/1 - 5/24

**GROUP LESSONS: SESSION 3 DATES**

Tuesday/Thursday..... 6/4 - 6/27  
Wednesday/Friday..... 6/5 - 6/28  
Saturday..... 6/8 - 7/27

**GROUP LESSONS: SESSION 4 DATES**

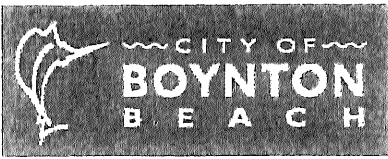
Tuesday/Thursday..... 7/9 - 8/1  
Wednesday/Friday..... 7/10 - 8/2

**GROUP LESSONS: SESSION 5 DATES**

Tuesday/Thursday..... 8/20 - 9/12  
Wednesday/Friday..... 8/21 - 9/13  
Saturday..... 8/10 - 9/28

**GROUP LESSON INFORMATION**

Children MUST be potty trained with the exception of Sea Otters & Pups. Classes not meeting the minimum enrollment of four participants will be cancelled. No refunds or make up classes will be offered if classes are cancelled due to inclement weather. A free water skills assessment is available upon request.



**GROUP LESSON LEVELS**

**SEA OTTERS & PUPS (Parent & Tot) Ages 6 months-3 years**

Did you know sea otters learn to swim with their mom? Children will learn swimming readiness skills to orient them to the water with the help of a parent. Swim diaper and swim cover required, both available for purchase at the pool. 1:10 ratio.

Weekdays	Saturdays	214105
4:00 - 4:30P	10:00 - 10:30A	

**SEAHORSE 1 (Preschool 1) Ages 4-5 years**

Did you know seahorses attach to floating objects as a way to travel long distances? Children will become familiarized with the aquatic environment and learn safe practices. 1:6 ratio.

Weekdays	Saturdays	214104
4:35 - 5:05P	10:00 - 10:30A	

**SEAHORSE 2 (Preschool 2) Ages 4-5 years**

Did you know seahorses prefer to swim in pairs with their tails linked together? This class builds and improves on skills learned in level 1. Children must demonstrate level 1 exit skills to participate. 1:6 ratio.

Weekdays	Saturdays	214104
4:35 - 5:05P	10:35 - 11:05A	

**SEA TURTLE (Level 1) Ages 6+**

Did you know green sea turtles can stay under water for as long as five hours? This class is for those who have never had lessons, cannot swim, or are not comfortable in the water. Children will learn basic water safety and swimming skills at a beginner level. 1:6 ratio.

Weekdays	Saturdays	214101
5:10 - 5:40P	10:35 - 11:05A	

**SAILFISH (Level 2) Ages 6+**

Did you know sailfish can swim at speeds of up to 68mph? This class is for those who have had lessons, can swim a minimum of 5 yards, and float on their back. Children will develop swimming techniques and must successfully demonstrate Level II exit skills to move to the next level. 1:6 ratio.

Weekdays	Saturdays	214102
5:10 - 5:40P	11:10 - 11:40A	

Days and times of lessons are subject to change due to weather and staffing

**INTERLOCAL AGREEMENT  
FOR SWIMMING LESSONS**

This Agreement is made as of the 4<sup>th</sup> day of April, 2019, 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 Riviera 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 April 1, 2019 and shall remain in effect until September 30, 2019.

#### **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, Automobile Liability and Professional Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 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, Business Auto Liability and Professional 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 a court of competent jurisdiction located in Palm Beach County, Florida. 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, including but not limited to any citizen or employees of the COUNTY and/or MUNICIPALITY.

#### **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 and the Palm Beach County Code of Ethics. 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, judgment, 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.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the MUNICIPALITY, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**ARTICLE 19 - NONDISCRIMINATION**

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the MUNICIPALITY warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

**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 Riviera Beach Parks and Recreation Department  
1621 West Blue Heron Boulevard  
Riviera Beach, FL 33404  
Attn: Richard Blankenship, Director

**ARTICLE 25 - FILING**

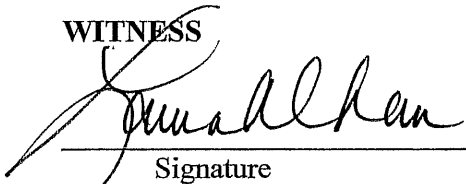
A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

**ARTICLE 26 - ENTIRETY OF CONTRACTUAL AGREEMENT**

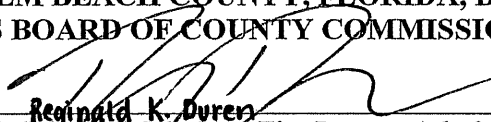
The COUNTY and the MUNICIPALITY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded 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. Chau  
\_\_\_\_\_  
Name (type or Print)

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

By:   
\_\_\_\_\_  
~~Michael C. Mackey~~, Fire Rescue Administrator,  
through Verdenia C. Baker, County Administrator

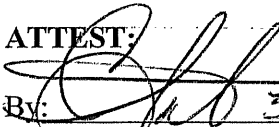
APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:   
\_\_\_\_\_  
County Attorney

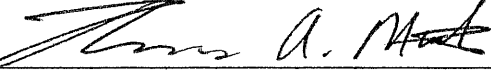
APPROVED AS TO TERMS  
AND CONDITIONS

By:   
\_\_\_\_\_  
Palm Beach County Fire Rescue

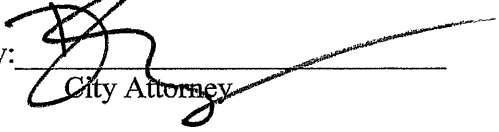
ATTEST:

  
By: 3/15/19  
\_\_\_\_\_  
City Clerk

CITY OF RIVIERA BEACH, FLORIDA

By:   
\_\_\_\_\_  
Thomas A. Masters, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
\_\_\_\_\_  
City Attorney



# LEARN TO SWIM

Barracuda Bay Aquatic Complex, 1621 W. Blue Heron Blvd, Riviera Beach, FL 33404

**Fees:**

\$30.00 Residents / \$40.00 Non-Residents per session. Each session is six, ½ hr. lessons.  
**Private lessons:** \$50.00 Residents / \$60.00 Non-Residents per session

## Skill Levels

### Parent and Child Aquatics (Ages 6 months -3 yrs. old)

**Level 1** – Introduces basic skills to parents and children, including safety topics.

**Level 2** – Builds on the skills introduced in Level 1, with participants improving these skills and learning more advanced skills.

### Preschool Aquatics NEW! (Ages 4yrs. – 5yrs. old)

**Level I**

Helps participants feel comfortable in the water and to enjoy the water safely.

**Level II**

Builds on the skills learned in Level 1 and gives participants success with fundamental skills such as floating and basic locomotion.

### Learn-to-Swim (Ages 6yrs.-15yrs. old)

**Level I: Introduction to Water Skills**

Helps participants feel comfortable in the water.

**Level II: Fundamental Aquatic Skills**

Gives participants success with fundamental skills.

### When: Mondays, Wednesdays and Fridays

Session 1: April 1 – 12, 2019

Session 2: April 15 – 26, 2019

Session 3: April 29 – May 10, 2019

Session 4: May 13 – 24, 2019

Session 5: June 3 – 14, 2019

Session 6: June 17 – June 28, 2019

Session 7: July 1 – July 12, 2019

Session 8: July 15 – July 26, 2019

Session 9: July 29 – August 9, 2019

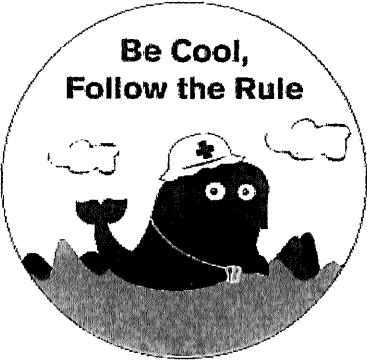
Session 10: August 12 – August 23, 2019

Session 11: August 26 – September 6, 2019

Session 12: September 9 – 20, 2019

**Times:**

<b>Parent/Child:</b>	Level 1 & 2:	5:15pm – 5:45pm
<b>Pre-school:</b>	Level 1:	5:15pm – 5:45pm
	Level 2:	5:15pm – 5:45pm
<b>Learn-to-Swim:</b>	Level 1:	6:00pm – 6:30pm
	Level 2:	6:00pm – 6:30pm
<b>Private Lessons:</b>		6:45pm – 7:15pm



**\*New Fees Effective April 2018**

The City of Riviera Beach is partnering with the Palm Beach County Drowning Coalition to provide swim lessons for qualified applicants FREE of charge. For more information, contact the Drowning Prevention Coalition at 561-616-7068.

- **Private Swim Lessons are offered by request**
- **First Come / First Serve (Space is limited)**
- **All dates and times are subject to change due to inclement weather or staffing**

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR SWIMMING LESSONS**

This Agreement is made as of the 8<sup>th</sup> day of April, 2019, 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 Young Men's Christian Association of South Palm Beach County, Inc., an entity authorized to do business in the State of Florida and whose Federal I.D. Number is 59-1416281 (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 April 1, 2019 and shall remain in effect until September 30, 2019.

#### **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**

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. CONTRACTOR shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. 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.

**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.

**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.

**Professional Liability** CONTRACTOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONTRACTOR'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, CONTRACTOR shall purchase a SERP with a minimum reporting period not less than 3 years. CONTRACTOR shall provide this coverage on a primary basis.

**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.

**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.

**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.

**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 a court of competent jurisdiction located in Palm Beach County, Florida. 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, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

#### **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 and the Palm Beach County Code of Ethics. 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.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

#### **ARTICLE 21 - NONDISCRIMINATION**

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONTRACTOR warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

**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.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if CONTRACTOR: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., CONTRACTOR shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. CONTRACTOR is specifically required to:

1. Keep and maintain public records required by the COUNTY to perform the service.
2. Upon request from the COUNTY's Custodian of Public Records, provide the COUNTY 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 or as otherwise provided by law. CONTRACTOR further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
3. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's term and following completion of this Agreement if CONTRACTOR does not transfer the records to the COUNTY.

4. Upon completion of this Agreement, CONTRACTOR shall transfer, at no cost, to the COUNTY, all public records in possession of CONTRACTOR unless notified by COUNTY's representative/liaison, on behalf of the COUNTY's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If CONTRACTOR transfers all public records to the COUNTY upon completion of this Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically by CONTRACTOR must be provided to the COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of the COUNTY, at no cost to the COUNTY.

Failure of CONTRACTOR to comply with the requirements of this subsection shall be a material breach of this Agreement. The COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. CONTRACTOR acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBCGOV.ORG](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.**

#### **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:

DeVos-Blum Family YMCA of Boynton Beach  
9600 South Military Trail  
Boynton Beach, FL 33436  
Attn: Liz Schmidt, Director of Water Safety

**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.

*Remainder of page intentionally left blank*



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: Reginald K. Duren  
Michael C. Mackey, Fire-Rescue Administrator,  
through Verdenia C. Baker, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Bruce  
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: B. J. ...  
Palm Beach County Fire Rescue

WITNESS

Nicole Leno  
Signature  
Nicole Leno  
Name (type or print)

YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH PALM BEACH COUNTY, INC.

By: Jason Hagensick  
President

WITNESS

Bryan Hunt  
Signature  
Bryan Hunt  
Name (type or print)

**Peter Blum Family YMCA**  
**6631 Palmetto Circle South**  
**Boca Raton, FL 33433**

**Stage A: Water Discovery**

Parents accompany children in this stage, which introduces infants and toddlers to the aquatic environment through exploration and encourages them to enjoy themselves while learning about the water. The goals of this stage include the following: Encouraging parents to set developmentally appropriate expectations for infants and toddlers enrolled in swim lessons, Introducing and emphasizing basic water safety to parents and providing a positive family aquatic experience, building relationships among and between parents and children by providing opportunities for fun and interaction in the water

Ratio: 1 instructor for every 10 Children

**Stage I. Water Acclimation:**

Students develop comfort with underwater exploration and learn to safely exit in the event of falling into a body of water in stage 1. This stage lays the foundation that allows for a student's future progress in swimming.

Ratio: 1 instructor for every 6 Children

**Stage II. Water Movement:**

In this stage, students focus on body position and control, directional change, and forward movement in the water while also continuing to practice how to safely exit in the event of falling into a body of water.

Ratio: 1 instructor for every 6 Children

**Adaptive Swim Lessons:**

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

Ratio: 1 instructor per Child

**Cost:** All Learn to Swim classes are \$65 for members and \$150 for non-members per child, per session.

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

**2019 Sessions**

**When: Monday, Wednesday**

April: 4/1/2019 – 4/28/2019  
May: 5/1/2019 – 5/29/2019  
June: 6/3/2019 – 6/26/2019  
July: 7/1/2019 – 7/31/2019  
August: 8/5/2019 – 8/28/2019  
September: 9/9/2019 – 9/30/2019

**Sunday:**

Session I: 5/5/2019 – 6/23/2019  
Session II: 6/30/2019 – 8/18/2019

**Water Discovery:**

9:00 – 9:30 AM

**Tuesday, Thursday**

April: 4/2/2019 – 4/30/2019  
May: 5/2/2019 – 5/30/2019  
June: 6/4/2019 – 6/27/2019  
July: 7/2/2019 – 8/1/2019  
August: 8/6/2019 – 8/29/2019  
September: 9/10/2019 – 9/26/2019

**Saturday**

Session I: 5/4/2019 – 6/22/2019  
Session II: 6/29/2019 – 8/17/2019

**Times weekday:**

<u>Per Level</u>	
<u>Stage I</u>	<u>Stage II</u>
3:30 – 4:00 PM	4:05 – 4:50 PM
4:55 – 5:25 PM	5:30 – 6:15 PM
6:20 – 6:50PM	

Water Discovery: 5:25 – 5:55 PM

**Times Saturday:**

<u>Per Level</u>	
<u>Stage I</u>	<u>Stage II</u>
9:00 – 9:30 AM	9:35 – 10:05 AM
10:25 – 10:55 PM	11:00 – 11:45 AM
11:45am-12:15pm	

Water Discovery: 9:00 – 9:30 AM  
10:25 – 10:55 AM and 11:00am