

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	May 3, 2022	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Department:	Fire-Rescue		

I. EXECUTIVE BRIEF

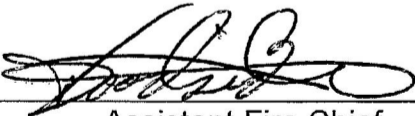

Motion and Title: **Staff recommends motion to adopt:** a resolution authorizing the County Administrator, or designee, which in this case shall be the Fire Rescue Administrator, to execute standard agreements with municipalities and other independent contractors to provide swimming lessons to members of the public through the Palm Beach County Drowning Prevention Coalition's Learn to Swim Program; providing an effective date; providing for repeal of Resolution 2021-0075.

SUMMARY: The Palm Beach County Drowning Prevention Coalition ("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. This Resolution delegates authority to the County Administrator or designee to enter into standardized agreements with municipalities and other independent contractors to provide swimming lessons for a term not to exceed three years. Each swim class must consist of at least three hours of lessons, and providers are reimbursed their usual and customary fee per swim class up to \$60.00. **Countywide (RM)**

Background and Justification: Resolution 2021-0075 authorized the County Administrator or designee to execute standard agreements with swimming lesson providers to implement the DPC Learn to Swim voucher program. This resolution and updated standardized agreements will make the necessary changes for updates and improvements to the DPC Learn to Swim voucher program.

Attachments:

1. Resolution, with standardized "Municipal Agreement for Swimming Lessons" and "Independent Contractor Agreement for Swimming Lessons" attached as Exhibits 1 and 2

Recommended by:		4-5-2022
	Assistant Fire Chief	Date
Approved by:		4-5-2022
	Fire Rescue Administrator	Date
Approved by:		4/19/2022
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs	95,000	95,000	95,000	95,000	95,000
External Revenues	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Program Income (County)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)
In-Kind Match (County)					
NET FISCAL IMPACT	0	0	0	0	0
# ADDITIONAL FTE POSITIONS (Cumulative)					

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 Object/Rev Source 3401

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

* The sources of funds are the Children's Services Council (\$50,000) and the Board of County Commissioners General Fund (\$45,000)

C. Departmental Fiscal Review: *mykhym*

III. REVIEW COMMENTS

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

ASD 4/11/22

OFMB 9A 4-7-22

LM
4/11

Dr. S. Jacob (4/14/22)
Contract Development and Control
4-14-22 *rw*

B. Legal Sufficiency

 4/19
Assistant County Attorney

C. Other Department Review:

Department Director

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

RESOLUTION NO. R 2022-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE STANDARD AGREEMENTS WITH MUNICIPALITIES AND OTHER INDEPENDENT CONTRACTORS TO PROVIDE SWIMMING LESSONS TO MEMBERS OF THE PUBLIC THROUGH THE PALM BEACH COUNTY DROWNING PREVENTION COALITION'S LEARN TO SWIM PROGRAM; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR REPEAL OF RESOLUTION 2021-0075

WHEREAS, the County's Fire Rescue Department manages and houses the Drowning Prevention Coalition (DPC"); and

WHEREAS, the 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, including some County facilities, some municipal facilities, and some independent contractor facilities; and

WHEREAS, the County desires to enter into agreements with municipal and independent contractor swimming lesson providers relating to their participation in the DPC Learn to Swim Program; and

WHEREAS, allowing any of the swimming lesson vouchers to be used at any of the designated provider facility enhances the flexibility deemed necessary to encourage the public to take advantage of this important program; and

WHEREAS, the number of swimming lesson providers may change from year to year, and the number of swimming lessons conducted by each provider may fluctuate from year to year depending on how many of the distributed vouchers are redeemed at a particular provider facility in a fiscal year; and

WHEREAS, the Board hereby reaffirms its determination that the securing of swimming lesson providers to participate in the DPC Learn to Swim Program may be implemented more effectively and expeditiously by delegating to the County Administrator, or designee, the authority to execute standard agreements with said providers relating to their participation in this program; and

WHEREAS, the execution of these standard agreements, as set forth herein, is a non-policy-making ministerial function which the Board wishes to delegate.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The County Administrator, or designee, is hereby authorized to execute, on behalf of the Board, standard agreements with municipal and other independent contractor swimming lesson providers for the purpose of securing swimming lessons for members of the public through the DPC Learn to Swim Program, provided the following conditions are met:
 - a. Such agreements are substantially in accordance with the terms and conditions of the standard agreement attached hereto as **Exhibit 1** for municipal or other government providers, or the standard agreement attached hereto as **Exhibit 2** for non-government independent contractor providers;
 - b. Such agreements have a term that does not exceed three (3) years and expires on September 30th of a given year;
 - c. Such agreements have been approved as to form and legal sufficiency by the County Attorney or her designee;
 - d. A maximum number of DPC Learn to Swim Program vouchers is established for each fiscal year and said number does not exceed the total amount budgeted for this purpose for said fiscal year divided by 60; and
 - e. Should the total amount budgeted for all the DPC swimming lesson vouchers exceed \$200,000 in any fiscal year, then all such agreements for that fiscal year shall be presented to the Board for consideration and approval.
2. This Resolution shall take effect immediately.
3. Resolution 2021-0075 is hereby repealed.

The foregoing Resolution was offered by Commissioner _____,
who moved its adoption. The motion was seconded by Commissioner
_____, and upon being put to a vote, the motion passed as follows:

Commissioner Robert S. Weinroth, Mayor
Commissioner Gregg K. Weiss, Vice Mayor
Commissioner Maria G. Marino
Commissioner Dave Kerner
Commissioner Maria Sachs
Commissioner Melissa McKinlay
Commissioner Mack Bernard

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of
_____, 20_____

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

Joseph Abruzzo, Clerk of the Circuit Court & Comptroller

By _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

EXHIBIT 1
MUNICIPAL AGREEMENT
FOR SWIMMING LESSONS

MUNICIPAL AGREEMENT FOR SWIMMING LESSONS

THIS AGREEMENT FOR SWIMMING LESSONS (the "Agreement") is made and entered into on _____, 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 _____, a Florida municipal corporation located in Palm Beach County, Florida (hereinafter referred to as "MUNICIPALITY").

WHEREAS, COUNTY's Fire Rescue Department manages and houses the Drowning Prevention Coalition ("DPC"); and

WHEREAS, COUNTY, by and through its 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.

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 students named on DPC Learn to Swim Program vouchers presented to MUNICIPALITY. Each swim class shall consist of a series of water safety swimming lessons that total at least three hours. Voucher holders shall not be charged for any swim class for which MUNICIPALITY'S usual and customary fee is \$60.00 or less. If MUNICIPALITY'S usual and customary fee for a swim class is more than \$60.00, then voucher holders shall not be charged more than MUNICIPALITY's usual and customary fee for said class minus \$60.00. Said classes may be open to the public and are not restricted to voucher holders. Swim classes shall be provided consistent with any parameters noted on vouchers, for example age, dates or swimming lesson level, or otherwise set out by the DPC Learn to Swim Program.

The swim classes must be provided at an aquatic facility that meets the criteria as described herein. MUNICIPALITY agrees to provide swim instructions at an aquatic facility that is safe, clean and hygienic, and maintained 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 as provided herein. MUNICIPALITY represents and warrants that the aquatic facility is in compliance, and shall continue to be in compliance, with Sections 514.031 and 514.0315, 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, and by the annual anniversary date of this Agreement for each year covered under this Agreement, MUNICIPALITY must complete the following requirements: (1) provide to COUNTY the name and address of the facility MUNICIPALITY will use for swimming instructions; (2) provide to COUNTY copies of the facility's current operating permit and most current inspection report, which must evidence a satisfactory inspection; (3) submit to a facility inspection from the DPC Manager or designee; (4) receive approval from the DPC Manager to use the facility. MUNICIPALITY must

complete the aforementioned requirements prior to changing aquatic facilities at any time during the term of this Agreement.

MUNICIPALITY, including but not limited to all swimming instructors, 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 shall operate in compliance with the highest professional standards and all applicable laws, rules and regulations, including a current CPR certification. 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 _____, and shall remain in effect until September 30, _____.

ARTICLE 3 - PAYMENTS TO MUNICIPALITY

- A. For swim classes provided by MUNICIPALITY in exchange for DPC Learn to Swim Program vouchers, COUNTY shall pay MUNICIPALITY its usual and customary fee per swim class up to a maximum of \$60.00 per swim class series. As provided in Resolution No. R- _____, 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 DPC Learn to Swim Program vouchers redeemed. Invoices must include the following information for each voucher redeemed: Voucher number; student's name and contact name, address and phone number; type, level, and age range of swim class, and days and times of lessons; beginning and end dates of lessons; number of classes attended; level achieved; dollar amount invoiced to County; dollar amount charged to student; MUNICIPALITY's usual and customary fee for the class; and any other documentation deemed necessary by COUNTY.
- C. In order to do business with Palm Beach County, vendors are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If MUNICIPALITY intends to use a subcontractor, MUNICIPALITY must also ensure that all subcontractors are registered as contractors in VSS. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that MUNICIPALITY and all of its subcontractors are registered in VSS.

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 instructional services required hereunder shall be performed by the MUNICIPALITY or under by MUNICIPALITY personnel 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 at the highest professional standards in the field.

ARTICLE 6 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The MUNICIPALITY is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, MUNICIPALITY shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

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-_____. 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 Section 768.28, Florida Statutes, 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.

MUNICIPALITY agrees to maintain or to be self-insured for Workers' 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, including the acts or omissions of swimming instructors. 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

The COUNTY and the MUNICIPALITY each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither party shall assign, sublet, convey, 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 five (5) 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.

As a condition of entering into this Agreement, the MUNICIPALITY represents and warrants that it will comply with the COUNTY's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the MUNICIPALITY shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the MUNICIPALITY retaliate against any person for reporting instances of such discrimination. The MUNICIPALITY shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY's relevant marketplace

in Palm Beach County. The MUNICIPALITY understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in COUNTY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. MUNICIPALITY shall include this language in its subcontracts.

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 Section 287.132-133, Florida Statutes, 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 Section 287.133(3)(a), Florida Statutes.

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

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.

ARTICLE 27 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature on this Agreement by MUNICIPALITY 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 MUNICIPALITY'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 28 - 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 MUNICIPALITY. MUNICIPALITY is not authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

MUNICIPALITY 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 29 - REGULATIONS; LICENSING REQUIREMENTS

The MUNICIPALITY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. MUNICIPALITY is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 30 - COUNTERPARTS

This Agreement, including any exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY

may execute the Agreement through electronic or manual means. MUNICIPALITY shall execute by manual means only, unless the COUNTY provides otherwise.

ARTICLE 31 - E-VERIFY - EMPLOYMENT ELIGIBILITY

MUNICIPALITY warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. MUNICIPALITY has registered with and uses, and shall continue to use, the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers. MUNICIPALITY shall verify that all of its subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

MUNICIPALITY shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. MUNICIPALITY shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that MUNICIPALITY has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If COUNTY has a good faith belief that MUNICIPALITY's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify MUNICIPALITY to terminate its contract with the subcontractor and MUNICIPALITY shall immediately terminate its contract with the subcontractor.

If COUNTY terminates this Agreement pursuant to the above, MUNICIPALITY shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, MUNICIPALITY shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

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

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

Signature

By: _____
Patrick Kennedy, Fire Rescue Administrator,
through Verdenia C. Baker, County Administrator

Name (type or Print)

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

By: _____
Palm Beach County Fire Rescue

ATTEST:

CITY OF _____, FLORIDA

By: _____
City Clerk

By: _____

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
City Attorney

EXHIBIT :
INDEPENDENT CONTRACTOR AGREEMENT
FOR SWIMMING LESSONS

**INDEPENDENT CONTRACTOR AGREEMENT
FOR SWIMMING LESSONS**

THIS INDEPENDENT CONTRACTOR AGREEMENT FOR SWIMMING LESSONS (the "Agreement") is made and entered into on _____, 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 _____, an entity authorized to do business in the State of Florida and whose Federal I.D. Number is _____ (hereinafter referred to as "CONTRACTOR").

WHEREAS, COUNTY's Fire Rescue Department manages and houses the Drowning Prevention Coalition ("DPC"); and

WHEREAS, COUNTY, by and through its 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 students named on DPC Learn to Swim Program vouchers presented to CONTRACTOR. Each swim class shall consist of a series of water safety swimming lessons that total at least three hours. Voucher holders shall not be charged for any swim class for which CONTRACTOR'S usual and customary fee is \$60.00 or less. If CONTRACTOR'S usual and customary fee for a swim class is more than \$60.00, then voucher holders shall not be charged more than CONTRACTOR's usual and customary fee for said class minus \$60.00. Said classes may be open to the public and are not restricted to voucher holders. Swim classes shall be provided consistent with any parameters noted on vouchers, for example age, dates or swimming lesson level, or otherwise set out by the DPC Learn to Swim Program.

The swim classes must be provided at an aquatic facility that meets the criteria as described herein. CONTRACTOR agrees to provide swim instructions at an aquatic facility that is safe, clean and hygienic, and maintained 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 as provided herein. CONTRACTOR represents and warrants that the aquatic facility is in compliance, and shall continue to be in compliance, with Sections 514.031 and 514.0315, 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, and by the annual anniversary date of this Agreement for each year covered under this Agreement, CONTRACTOR must complete the following requirements: (1) provide to COUNTY the name and address of the facility CONTRACTOR will use for swimming instructions; (2) provide to COUNTY copies of the

facility's current operating permit and most current inspection report, which must evidence a satisfactory inspection; (3) submit to a facility inspection from the DPC Manager/Fire Marshall or designee; (4) receive approval from the DPC Manager/Fire Marshall to use the facility. CONTRACTOR must complete the aforementioned requirements prior to changing aquatic facilities at any time during the term of this Agreement.

CONTRACTOR, including but not limited to all swimming instructors, 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 shall operate in compliance with the highest professional standards and all applicable laws, rules and regulations, including a current CPR certification. 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 _____, and shall remain in effect until September 30, _____.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. For swim classes provided by CONTRACTOR in exchange for DPC Learn to Swim Program vouchers, COUNTY shall pay CONTRACTOR its usual and customary fee per swim class up to a maximum of \$60.00 per swim class series. As provided in Resolution No. R- _____, 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 DPC Learn to Swim Program vouchers redeemed. Invoices must include the following information for each voucher redeemed: Voucher number; student's name and contact name, address and phone number; type, level, and age range of swim class, and days and times of lessons; beginning and end dates of lessons; number of classes attended; level achieved; dollar amount invoiced to County; dollar amount charged to student; CONTRACTOR's usual and customary fee for the class; and any other documentation deemed necessary by COUNTY.
- C. In order to do business with Palm Beach County, vendors are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If CONTRACTOR intends to use a subcontractor, CONTRACTOR must also ensure that all subcontractors are registered as contractors in VSS. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the CONTRACTOR and all of its subcontractors are registered in VSS.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature on 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 provide the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the instructional services required hereunder shall be performed by the CONTRACTOR or under by CONTRACTOR personnel 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

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The CONTRACTOR is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

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-_____.

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 coverage 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 coverage. 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. Where applicable, coverage and endorsements shall be provided on a primary and non-contributory basis.

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.

Workers' Compensation Insurance & Employers Liability CONTRACTOR shall maintain Workers' Compensation & Employers Liability in accordance with Florida Statute Chapter 440.

Additional Insured CONTRACTOR shall endorse the COUNTY as an Additional Insured with a CG 2126 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."

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 of 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, unless otherwise directed, 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.

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, coverage, 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, its agents, officers, employees, volunteers, invitees and subcontractors, including but not limited to claims of negligent maintenance, negligent instruction or negligent supervision.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither party shall assign, sublet, convey, 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.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

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 five (5) 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.

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it will comply with the COUNTY's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONTRACTOR retaliate against any person for reporting instances of such discrimination. The CONTRACTOR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY's relevant marketplace in Palm Beach County. The CONTRACTOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in COUNTY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR shall include this language in its subcontracts.

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

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 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:

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

ARTICLE 29 – SCRUTINIZED COMPANIES

- A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if CONTRACTOR is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the COUNTY.
- III. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR

certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

ARTICLE 30 - REGULATIONS; LICENSING REQUIREMENTS

The CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 31 - COUNTERPARTS

This Agreement, including any exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. CONTRACTOR shall execute by manual means only, unless the COUNTY provides otherwise.

ARTICLE 32 - E-VERIFY - EMPLOYMENT ELIGIBILITY

CONTRACTOR warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. CONTRACTOR has registered with and uses, and shall continue to use, the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers. CONTRACTOR shall verify that all of its subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

COUNTY shall terminate this Agreement if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If COUNTY has a good faith belief that CONTRACTOR's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify CONTRACTOR to terminate its contract with the subcontractor and CONTRACTOR shall immediately terminate its contract with the subcontractor

If COUNTY terminates this Agreement pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

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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

Signature

Name (type or Print)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

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

By: _____
Patrick Kennedy, Fire Rescue Administrator,
through Verdenia C. Baker, County Administrator

APPROVED AS TO TERMS
AND CONDITIONS

By _____
Palm Beach County Fire Rescue

WITNESS

Signature

Name (type or print)

WITNESS

Signature

Name (type or print)

CONTRACTOR

By: _____
Signature

Name (type or print)

Title (type or print)