

**INTERLOCAL AGREEMENT
BETWEEN THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA,
AND THE CITY OF NORTH PORT, FLORIDA,
REGARDING SWIM LESSONS AT THE NORTH PORT AQUATIC CENTER**

THIS INTERLOCAL AGREEMENT FOR SWIM LESSONS AT THE NORTH PORT AQUATIC CENTER (the "Agreement") is made and entered into by and between the School Board of Sarasota County, Florida, a body corporate under the laws of the State of Florida (the "School Board") and the City of North Port, Florida, a municipal corporation of the State of Florida (the "City") (together "the Parties").

WITNESSETH:

WHEREAS, the School Board and the City acknowledge the advantages and the importance of providing adequate facilities and amenities that serve a public purpose in promoting affordable athletic programs for the community; and

WHEREAS, the physical education standards of the School Board include water safety in its curriculum; and

WHEREAS, the School Board desires to provide access to the Safe Water Instruction Matters ("SWIM") program at the North Port Aquatic Center ("NPAC"); and

WHEREAS, the goal of the program is to increase personal confidence, safety, and respect for water in an effort to reduce the number of annual drowning in the state; and

WHEREAS, the SWIM program is funded via a grant from the Monda Family through the Gulf Coast Community Foundation to provide swim lessons to registered students of the School Board ("Students"); and

WHEREAS, the School Board and the City are mutually interested in making the SWIM program at the NPAC available to Students pursuant to the provisions of this Agreement; and

WHEREAS, the School Board and the City have the authority pursuant to the provisions of general law, including Florida Statutes Section 163.01, to enter into this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants specified herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the School Board and the City mutually covenant and agree as follows:

1. RECITALS: The above recitals are true and correct and by this reference, are incorporated herein.

2. TERM AND TERMINATION:

A. Effective Date and Term. This Agreement shall commence on ____ January 18th ____, 2022, and shall continue until terminated.

B. Termination by the School Board. The School Board may terminate this Agreement with or without cause, by providing the City with advance written notice of termination at least ninety (90) days before the date of termination.

- C. Termination by the City. The City Manager may terminate this Agreement with or without cause, or whenever the City Manager determines that termination is in the City's best interest, by providing the School Board with advance written notice of termination at least ninety (90) days before the date of termination

3. CITY RESPONSIBILITIES:

- A. The City will provide the following during all scheduled water safety and swim instruction under the SWIM program ("swim lessons") performed under the terms of this Agreement:
 - 1) Water Safety Instructors and Lifeguards (collectively, "Instructors") will provide swim lessons to registered second grade students of the School Board ("Students"). The Instructors must perform each swim lesson in a professional and expert manner. Each Instructor must have and maintain during the term of this Agreement the licensing, certification, experience, education, and/or training necessary to perform and provide the swim lessons.
 - 2) Lifeguard coverage as required by the approved Department of Health Emergency Action Plan for the NPAC.
- B. An Instructor will make a reasonable attempt to complete a skills evaluation on each Student at the Student's first swim lesson, and again at the Student's last swim lesson, as staffing allows.
- C. The City is not responsible for providing any supplies, materials, or equipment for swim lessons. The School Board must ensure that all supplies, materials, equipment, and items it provides to Students are removed from the NPAC following each day of swim lessons.

4. USE AND SCHEDULING:

- A. Use. Swim lessons will be provided in the NPAC Competition Pool Monday through Friday during the regular school year. The terms of this Agreement do not include School Board use of the lazy river, slides, or kids play pool.
- B. Scheduling.
 - 1) For the fall term and spring term, annually, the School Board must provide the City with a list of proposed dates and times for swim lessons at least 30 days before the date the first lesson is proposed to be scheduled for the term. The City will approve or deny the proposed dates and times and notify the School Board of its decision within 15 days of receiving the School Board's proposal.
 - 2) Student use of the Competition Pool is limited to the swim lessons scheduled under this Agreement. Any Student use of the NPAC outside of scheduled swim lessons will require payment of the general admission rate as charged to the public.

5. SCHOOL BOARD RESPONSIBILITIES:

- A. The School Board must ensure that Student swim lessons do not preclude or interfere with use of the NPAC by the general public, and must ensure that all Student and School Board property and items are kept neat and tidy at all times.
 - B. The School Board must ensure that proper and responsible supervision of Students is provided at all times. The City is only responsible for Students participating in swim lessons. The School Board retains control and responsibility for Students while the Student is not in the Competition Pool, and must provide proper supervision to all Students and School Board employees while on NPCA property.
6. PAYMENT:
- A. Payment for swim lessons is due within 45 days of date of invoice.
 - B. The School Board shall pay a fee provided under this Agreement up to the maximum of the amount provided to the School Board via grant from the Monda Family through the Gulf Coast Community Foundation for this purpose. An invoice will be sent to the School Board at the completion of the program. There will be no rainchecks or refunds for weather related cancellations. During weather related cancellations, Instructors will report to the school property and provide dry drowning prevention curriculum.
7. INSURANCE: The City acknowledges that the School Board is self-insured.
8. **INDEMNIFICATION: THE SCHOOL BOARD AND CITY AGREE TO INDEMNIFY AND SAVE HARMLESS THE OTHER PARTY, ITS AGENTS, OFFICIALS, AND EMPLOYEES AGAINST ALL INJURIES, DEATHS, LOSSES, DAMAGE CLAIM, SUITS, LIABILITIES, JUDGMENTS, COSTS, ATTORNEY FEES, AND EXPENSES WHICH MAY ACCRUE AGAINST THE OTHER PARTY AS A CONSEQUENCE OF THE INTENTIONAL OR NEGLIGENT ACTS OF THE INDEMNIFYING PARTY'S EMPLOYEES, AGENTS, OR LICENSEES ARISING OUT OF THE PERFORMANCE OF EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT UP TO THE MAXIMUM LIMITS PROVIDED BY SECTION 768.28, FLORIDA STATUTES. NOTHING CONTAINED IN THIS SECTION SHALL CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR OF THE LIMITATIONS ON LIABILITY PROVIDED TO EITHER PARTY UNDER THE FLORIDA CONSTITUTION OR GENERAL LAW. IN THE EVENT OF ANY THREATENED OR IMPENDING ACTION THAT MAY GIVE RISE TO A CLAIM UNDER THE TERMS OF THIS SECTION, THE PARTY SEEKING INDEMNIFICATION FOR SUCH CLAIM MUST PROMPTLY GIVE NOTICE TO THE OTHER PARTY IN WRITING BY CERTIFIED MAIL. THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY SETTLEMENT AGREEMENT ENTERED INTO BY ONE PARTY WITHOUT THE CONSENT OF THE INDEMNIFYING PARTY. THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**
9. DISPUTE RESOLUTION: In the event of a dispute between the School Board and the City under this Agreement, the School Board Superintendent and the City Manager or their respective designee(s) shall review the dispute and negotiate a mutually acceptable resolution. Any dispute not resolved by the designee(s) shall be referred to the School Board Superintendent and the City Manager to come to a mutually acceptable resolution. In the event the School Board Superintendent and the City Manager are unable to agree, the matter shall be referred to their respective Commissions, who must hold a joint meeting to resolve the matter. If the matter is not resolved at the joint meeting of the Commissions, the parties may avail themselves of any other available legal rights or remedies available. This process shall substitute for the dispute resolution process set forth in Chapter 164 of the Florida Statutes.

10. ASSIGNMENT: This Agreement cannot be assigned without the prior written consent of the City. Any attempted assignment of this Agreement without written consent shall be void.
11. NOTICE: Except as specified elsewhere in this Agreement, all notices provided for in the Agreement must be in writing and transmitted by FedEx, UPS, or by certified mail, return receipt requested to the following. A party may update its notice information by providing written notice to the other party.

For the City of North Port, Florida:
City of North Port, Florida
Attn: City Manager
4970 City Hall Boulevard
North Port, Florida 34286
citymanager@cityofnorthport.com

with a copy to:
City of North Port, Florida
Attn: City Attorney
4970 City Hall Boulevard
North Port, Florida 34286
northportcityattorney@cityofnorthport.com

Contact for Scheduling:
Aquatic Supervisor
6205 W. Price Boulevard
North Port, Florida 34291
psturgess@cityofnorthport.com

For the School Board:
Sarasota County School Board
Attn: Superintendent
1960 Landings Boulevard
Sarasota, Florida 34231
schoolboardmembers@sarasotacountyschools.net

Contact for Scheduling:
Brian Hersh
Program Director, Any Given Child
Sarasota County Schools
1960 Landings Boulevard
Sarasota, Florida 34231
941-927-9000 ext. 31182
brian.hersh@sarasotacountyschools.net

12. FORCE MAJEURE:

- A. If either Party is unable to perform, or is delayed in the performance of any obligation under this Agreement, by reason of any event of Force Majeure as defined below, such inability or delay is excused during any time which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the Party to correct the adverse effect of such event of Force Majeure.
- B. An event of "Force Majeure" means the following events or circumstances to the extent that they delay a Party from performing any obligation under this Agreement:
- 1) Strikes and work stoppages unless caused by a negligent act or omission of either Party;
 - 2) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, explosions, landslides, earthquakes, epidemics, pandemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather;

- 3) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockages, insurrection, riots, civil disturbances, or national or international calamities; and
 - 4) Suspension, termination, or interruption of utilities necessary to the performance of the obligation.
- C. In order to be entitled to the benefit of this section, the Party claiming an event of Force Majeure must give prompt notice to the other Party specifying in detail the event of Force Majeure and must diligently proceed to correct the adverse effect of any Force Majeure. The terms of this section shall survive the termination of this Agreement.
- D. Weather Related Closures.
- 1) Whenever lightning is detected within ten (10) miles of the NPAC, all portions of the NPAC shall close and remain closed until 30-minutes pass without a lightning strike within ten (10) miles of the NPAC.
 - 2) No refund will be issued for the loss of scheduled swim lesson(s) due to a non-force majeure weather-related closure of the NPAC. To reschedule such use time, the School Board must provide a written request to the City within 48-hours of the non-force majeure weather-related closure. The parties will cooperate to reschedule the impacted swim lesson(s), if scheduling and capacity allows, to occur within thirty (30) days of the weather-related closure. No refund or credit will be issued if the parties are unable to reschedule use time within thirty (30) days of the weather-related closure.

13. INDEPENDENT CONTRACTOR/NO AGENCY:

- A. The relationship between the City and School Board is that of an independent contractor. Nothing contained herein will be deemed or construed as creating the relationship of employer-employee, principal-agent, partnership, or joint venture between the parties. It is understood and agreed that no provision contained herein, or any acts of the parties, will be deemed to create any relationship between them other than that as detailed herein. The City retains sole and absolute discretion and judgment in the manner and means of carrying out the swim lessons, within the established rules and regulations of the City and the Gulf Coast Community Foundation.
- B. The City is not entitled to any fee, salary, or benefit other than the compensation described in Section 6 of this Agreement. The City must provide, at its sole expense, all supplies and materials needed for the swim lessons that are not otherwise provided by the School Board.

14. NON-DISCRIMINATION: Neither Party discriminates on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. The Parties must not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family, or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

15. GOVERNING LAW AND VENUE: The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venue for any legal or judicial proceedings

in connection with the enforcement or interpretation of this Agreement is the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida.

16. SEVERABILITY: In the event any court shall hold any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any breach of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach by the other Party.
17. BINDING EFFECT: By the signatures affixed hereto, the Parties intend to be bound by the terms and conditions hereof. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. It may be signed in counterparts.
18. HEADINGS: The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.
19. AUTHORITY TO EXECUTE AGREEMENT: The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
20. COMPLETE AGREEMENT: This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the Parties, whether oral or written, with respect to the subject matter.
21. AMENDMENT: No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both Parties and incorporated into this Agreement. Either party may request that an amendment be made to this Agreement by notifying the other party no less than sixty (60) days prior to the date such amendment would become effective. The City Manager or designee may agree to amendments that do not reduce or increase the fees paid by the School Board.

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Approved by the School Board of Sarasota County, Florida on the ____ day of _____ 2022.

SCHOOL BOARD OF SARASOTA COUNTY,
FLORIDA

By: _____
Jane Goodwin, Chair

Approved for Legal Content
July 22, 2021 by
Shumaker, Loop & Kendrick, LLP
Attorneys for The School Board
of Sarasota County, Florida
Signed: MAC

Approved by the City of North Port City Commission on the ____ day of _____ 2022.

CITY OF NORTH PORT, FLORIDA

By: _____
Gisele "Jill" E. Luke
Mayor

ATTEST

Heather Taylor, CMC
City Clerk

APPROVED AS TO FORM AND CORRECTNESS

Amber L. Slayton
City Attorney