

**AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CITY OF MIAMI
FOR WATER SAFETY EDUCATION AND INSTRUCTION SERVICES AS PART OF THE ZERO
DROWNINGS MIAMI-DADE PROGRAM**

This Agreement ("Agreement") is made and entered by and between Miami-Dade County, a political subdivision of the State of Florida ("County"), and the City of Miami, a political subdivision of the State of Florida ("City") (each a "Party" and collectively referred to as the "Parties") and states conditions and covenants for the rendering of services as part of the Zero Drownings Miami-Dade Program.

RECITALS

WHEREAS, on May 21, 2024, Resolution No. R-455-24, the Board of County Commissioners approved Miami-Dade County's participation in the Zero Drownings Miami-Dade Program (Program); and

WHEREAS, the Program is being implemented in coordination with a fiscal agent, The Miami Foundation, and with funding from The Children's Trust, and is a large scale community-wide swimming program that supports young children (with a focus on children ages four and five) with the goal of ensuring children have water competency skills to prevent drownings; and

WHEREAS, the Miami-Dade County Parks, Recreation and Open Spaces Department (PROS) is responsible for the operation and coordination of the Program, including, but not limited to, recruiting, reviewing, and approving the qualifications of municipal and private pool operators and certified swim instructors and lifeguards to secure their participation in the Program as swim providers; and

WHEREAS, the City has municipal swimming pools and wishes to participate in the Program as a swim provider; and

WHEREAS, the Parties desire to enter into this Agreement authorizing the City to provide water safety instruction and education classes for children participating in the Program, as more specifically provided for herein; and

WHEREAS, the Parties may have previously entered into an agreement for the provision of water safety instruction and education classes for children (hereinafter referred to as the "Original Agreement"), and following the full execution of this Agreement by the Parties, the Original Agreement, if applicable, shall be terminated without the necessity of further action by the Parties; the terms of this Agreement shall supersede the terms in the Original Agreement, and in the event of any conflict between the Original Agreement and this Agreement, the terms of this Agreement shall control.

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

ARTICLE 1. DEFINITIONS

- 1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.
- 1.2. **Board** means the Board of County Commissioners of Miami-Dade County, Florida.
- 1.3. **Code** means the Miami-Dade County Code of Ordinances.
- 1.4. **Contract Administrator** means the Director of the County's Parks, Recreation and Open Spaces Department, the Chief of the Office of Drowning Prevention, or such other person designated by the County's Parks, Recreation and Open Spaces Director in writing.
- 1.5. **Designated Representative** means the individual authorized by a party to act on that party's behalf.
- 1.6. **Fiscal Agent for the Program or Fiscal Agent** means the Miami Foundation.
- 1.7. **Notice to Proceed** means a written authorization to proceed with a project, phase, or task, issued by the Contract Administrator.
- 1.8. **Program Participant** means the four, five, or six year old student participating in the Program as coordinated and identified by the County.
- 1.9. **Services** means all work required of City under this Agreement, including without limitation all deliverables, consulting, training, project management, other services specified in the Scope of Services attached as Exhibit A.
- 1.10. **Small Business Enterprise** or **SBE** means an entity certified as meeting the applicable requirements of Section 2-8.1.1.1.1 of the Code of Miami-Dade County.
- 1.11. **Subcontractor** means an entity or individual providing Services for the Program through the City. The term "Subcontractor" includes all subconsultants.
- 1.12. **Office of Drowning Prevention** means the County coordinating agency for water safety instruction and awareness in Miami-Dade County.
- 1.13. **Cohort** means a child who participates in at least one in-water class (30 minutes) during the up to ten class session.
- 1.14. **Session** means a two (2) week period consisting of up to ten 30-minute swim classes. Payment will be provided per cohort per session.

ARTICLE 2. EXHIBITS

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| Exhibit A | Scope of Services |
| Exhibit B | Affidavit of Criminal Background Screening |
| Exhibit C | Minimum Insurance Coverages |
| Exhibit D | Human Trafficking Affidavit |
| Exhibit E | Foreign Countries of Concern Affidavit |

ARTICLE 3. SCOPE OF SERVICES

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

3.2. The Contract Administrator and Designated Representative may amend the class schedule, location(s), and fee schedule set forth in Exhibit A in a written document signed by both Parties, which shall be incorporated into and made a part of this Agreement.

3.3. City acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly set forth in this Agreement.

3.4. Prior to any Services being provided under this Agreement, City shall require the Program Participants (parent/legal guardian for minors) to have executed approved waiver(s), indemnity, and release of liability forms in the Zero Drownings Miami-Dade Management Information System. Any student whose parent/legal guardian has not completed the necessary waiver(s), indemnity, and/or release of liability may not participate in the Program and no payment will be approved.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. This Agreement begins on the date it is fully executed by the Parties (“Effective Date and continues through September 30, 2025 (“Initial Term”), unless earlier terminated or extended as provided for in this Agreement. Subject to agreement by the Parties and available funding for the Program, this Agreement will be in place during the Effective Term of this Agreement and may be renewed twice, each for a one-year period, through September 2027. Certain provisions of this Agreement, as specified herein, shall survive the expiration of this Agreement.

The Parties expressly acknowledge and agree that this Agreement is dependent on funding being provided by The Children’s Trust and other funders and in the event that such funds on which

the Agreement is dependent do not materialize or are reduced or withdrawn, the Agreement may be terminated, and the Parties have no further liability to each other.

4.2. Time of the Essence. Time is of the essence for City's performance of the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. COMPENSATION

5.1. Maximum Amounts.

The County will not issue payment directly to the City under this Agreement. All requests for reimbursement, in an amount as set forth in Exhibit A, must be submitted by the City to both the Office of Drowning Prevention for review, attention: James O'Connor, and the Fiscal Agent for the Program, attention: Tiffany Wilson-Worley, The Miami Foundation, 40 NW Third Street, Suite 305 Miami, Florida 33128. The Miami Foundation payment is subject to review by the Office of Drowning Prevention prior to finalizing payment. The City shall be reimbursed for Services performed and completed pursuant to this Agreement as set forth in Exhibit A, Scope of Services, Method of Billing and Payment.

5.2. The Parties will attempt in good faith to resolve any dispute for payment arising out of or in relation to this Agreement through negotiations between the Chief, Office of Drowning Prevention and City's representative with authority to settle the relevant payment dispute. In the event the Chief, Office of Drowning Prevention, and City's representative cannot agree, the matter shall be forwarded to the County Administrator for review, and the decision of the County Administrator shall be final and binding on the Parties. Performance by City under this Agreement shall continue during any dispute resolution regarding payment owed to City by County.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

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

6.2. Contingency Fee. City represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for City, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.3. Truth-In-Negotiation Representation. City's compensation under this Agreement is based upon its representations to County, and City certifies that the wage rates, factual unit costs, and other information supplied to substantiate City's compensation, including without limitation those made by City during the negotiation of this Agreement, are accurate, complete, and current

as of the date City executes this Agreement. City's compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for City's compensation in this Agreement.

6.4. Public Entity Crime Act. City represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. City further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether City has been placed on the convicted vendor list.

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

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

6.7. Human Trafficking. By entering into, amending, or renewing this contract, the City is obligated to comply with the provisions of section 787.06, Florida Statutes, "Human Trafficking," as amended, which is deemed as being incorporated by reference in this contract. This compliance includes the City providing an affidavit (Attachment D) that it does not use coercion for labor or services. This contract may be void if Seller submits a false affidavit or if Seller violates section 787.06, Florida Statutes, during the term of this contract, even if the Seller was not in violation at the time it submitted its affidavit.

6.8. Contracting with Entities of Foreign Countries of Concern Prohibited. By submitting a bid, quote, or other response, or otherwise entering into, a contract for these services, the City affirms that it is not in violation of section 287.138, Florida Statutes, titled "Contracting with Entities of Foreign Countries of Concern Prohibited." This affirmation by the City shall be in the form attached to this contract as Attachment E.

6.9. Warranty of Performance. City represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that

each person and entity that will provide Services is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. City represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such services.

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

ARTICLE 7. INDEMNIFICATION

City shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by City, or any intentional, reckless, or negligent act or omission of City, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, City shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due City under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 8. INSURANCE

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

8.2. City shall ensure that "Miami-Dade County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this Article.

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

8.4. City shall ensure that all insurance coverages required by this Article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required by City has been completed, as determined by Contract Administrator. City or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

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

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

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

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

8.9. City shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of City under this Article. City shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured

under the Subcontractors' applicable insurance policies. City shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this Article are satisfied.

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

8.11. If any of the policies required under this Article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, City must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

ARTICLE 9. TERMINATION

9.1. Termination for Cause. This Agreement may be terminated by County for cause if City is in breach of this Agreement and has not corrected the breach within ten (10) days after receipt of written notice from the Contract Administrator identifying the breach. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

9.1.1. City's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement or Work Authorization;

9.1.2. Repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices to the Fiscal Agent for the Program; and/or

9.1.3 Any breach of City's representations as set forth in Article 6

Such termination for cause shall be made by the Director of the County's Parks, Recreation and Open Spaces Department. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 9.2 effective thirty (30) days after such notice was provided and City shall be eligible for the compensation provided in Section 9.2 as its sole remedy.

9.2. Termination for Convenience; Other Termination. This Agreement may also be terminated for convenience by either party. Termination for convenience by either party shall be effective on the termination date stated in written notice provided by the terminating party, which termination date shall be not less than sixty (60) days after the date of such written notice. If this Agreement is terminated by County pursuant to this section, City shall be paid for any Services properly performed under the Agreement through the termination date specified in the written notice of termination, subject to any right of County to direct the Fiscal Agent for the Program to retain any sums otherwise due and payable. Neither the County nor the Fiscal Agent

for the Program shall be responsible for any claims by City for loss of business or profit resulting from any termination for convenience.

9.3. Notice of termination shall be provided in accordance with Article 12.9, "Notices", of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4. In the event this Agreement is terminated for any reason, any amounts due City up to the effective date of such termination shall be withheld by the Fiscal Agent for the Program, per the directive of the County until all documents are provided to County pursuant to Article 5.

ARTICLE 10. CRIMINAL BACKGROUND SCREENING

10.1. City shall conduct a Level 2 criminal background screening as provided in this Article on its employees and any Subcontractor who will be providing any Services under this Agreement prior to the performance of the Services. Only those with satisfactory results and no findings will be eligible to provide services under this Agreement.

10.2. Services provided by a Subcontractor.

10.2.1. In the event City utilizes a Subcontractor to perform any Services under this Agreement, and the Subcontractor is a County-approved Office of Drowning Prevention vendor, City shall not be required to perform criminal background screening under this Agreement on any Subcontractor's employees who have been background screened pursuant to the requirements set forth in the Subcontractor's agreement with County, and deemed eligible to provide Services.

10.2.2. In the event City utilizes a Subcontractor to perform any Services under this Agreement who is not an approved Office of Drowning Prevention vendor, City shall comply with the criminal background screening requirements set forth in this Article.

10.3. City's criminal background screening shall, at a minimum, include screening to prohibit any person who is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement, Sexual Offenders and Predators website or the United States Department of Justice, National Sex Offender public website from providing any Services for City at the site. City's employees and any Subcontractor's employees subject to the criminal background screening under this Agreement shall be rescreened annually based on the date of initial screening.

10.4. City shall maintain copies of the results of the criminal background screening required under this Article for the entire Term and promptly forward copies of same to County, upon its request.

10.5. City shall furnish to the Contract Administrator and The Miami Foundation, an Affidavit, in the form attached hereto as Exhibit B, affirming that the individuals listed in the Affidavit have been background screened as required in this Article relative to sexual predator and sexual

offender checks and have been deemed eligible by City to provide Services under this Agreement. City's monthly Affidavit shall update information from the previous Affidavit by including the names of persons who have previously been deemed eligible as provided for above, and, when applicable, specifically deleting persons no longer providing Services under this Agreement or identifying new persons providing Services for City under this Agreement who have been background screened as required by this Article and deemed eligible to provide the Services. The Contract Administrator may, in his or her discretion, permit City to furnish the monthly Affidavit in an electronic format.

10.6. In the event City obtains, or is provided, supplemental criminal background information, including police reports and arrest information, which potentially disqualifies a person previously deemed eligible by City to provide Services under this Agreement, City shall take immediate action to review the matter and provide its findings to County within 24 hours of City's receipt of such information; however, during such review time and until a determination of eligibility is made by City based on the requirements of this Article, City shall immediately cease allowing the person to provide any Services. Additionally, City shall be required to inform all persons who have been background screened, pursuant to this Article and who are providing any Services under this Agreement, to notify City within twenty-four (24) hours of any arrest related to violence or sexual misconduct which has occurred after the person was deemed eligible to provide Services.

10.7. City shall, by written contract, require any Subcontractor providing Services under this Agreement to agree to the requirements and obligations under this Article.

10.8. County may terminate this Agreement immediately for cause, with notice provided to City in accordance with Article 12.9, "Notices", of this Agreement, for a violation related to City's failure to comply with the required background screening on its employees or any Subcontractor who will be providing Services under this Agreement. City will not be subject to immediate termination in the event County determines a violation of this Article was outside the reasonable control of City, and City has demonstrated to County compliance with the requirements of this Article.

ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

11.1. No Party may discriminate based on race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. City shall comply with all applicable County equal opportunity policies and requirements, including but not limited to the requirements of Chapter 11A of the County's Code of Ordinances. City shall include the foregoing or similar language in its contracts with all Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

11.2. Failure by City to carry out any of the requirements of this Article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or

exercise any other remedy provided under this Agreement or Applicable Law, all such remedies being cumulative.

ARTICLE 12. MISCELLANEOUS

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

12.2. Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, data, or other work created in connection with this Agreement are and shall remain the property of County, and, if a copyright is claimed, City grants to County a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by City in connection with performing Services, whether finished or unfinished ("Documents and Work"), shall be owned by County, and City hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of County and shall be delivered by City to the Contract Administrator within seven (7) days after expiration or termination. Any compensation due to City may be withheld until all Documents and Work are received as provided in this Agreement. City shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

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

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

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

12.3.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the

duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

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

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

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

IF CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CITY’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE MIAMI-DADE COUNTY PARKS, RECREATION AND OPEN SPACES DEPARTMENT, ATTN: MR. DAVID LIVINGSTONE, (305) 755-7824, dcl@miamidade.gov, 275 NW 2ND STREET, 5TH FLOOR, ROOM 555, MIAMI, FL 33128-1719.

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

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

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section reveals overpricing or overcharges to County of any nature by City in excess of five percent (5%) of the total contract billings reviewed by County, in addition to making adjustments for the overcharges, City shall pay the reasonable cost of County's audit. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to City.

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

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

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

to County's regulatory authority as a governmental body separate and apart from this Agreement and shall not be attributable in any manner to County as a Party to this Agreement.

12.7. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement.

12.8. Third-Party Beneficiaries. Neither City nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

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

FOR COUNTY:

Director

Miami-Dade County Parks, Recreation and Open Spaces Department

275 N.W. 2nd Avenue

Miami, Florida 33128

FOR CITY:

[Redacted]
[Redacted]
[Redacted]

Email address: [Redacted]

12.10. Assignment and Performance. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by City without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence. City represents that each person and entity that will provide Services under this Agreement is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is

sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. City agrees that all Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such Services

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

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

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

12.14. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

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

12.16. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as

“herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or Article of this Agreement, such reference is to the section or Article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or Article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

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

12.18. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Miami-Dade County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

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

12.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

12.21. Financial Statements and Management Letters. City shall provide to the Contract Administrator annual financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles for the fiscal year County funds are received and for each subsequent fiscal year until such time as all of County funds are expended and any management letter(s) thereby generated. Said annual financial statement shall account for all monies received from County via explicit, discrete disclosures and/or accompanying notes to the financial statements.

Said financial statements for this Agreement shall be submitted to the Contract Administrator within one hundred twenty (120) days after the close of each of City's fiscal years in which City

accounts for funds under this Agreement. Late submission of the financial statements or absence of discrete disclosure shall entitle County to recover any payment made under this Agreement.

City shall provide the Contract Administrator any and all management letters arising from audited financial statements within ninety (90) days of the date of said management letter. City shall provide to the Contract Administrator the schedule of correction developed in response to said management letter(s) within thirty (30) days of its development. City shall provide to the Contract Administrator any compliance audits required by law within ninety (90) days after the close of each of City's fiscal years in which City accounts for funds under this Agreement.

City acknowledges submission of required documents to any other Miami-Dade County office, agency, or division does not constitute compliance with the requirement to submit that material to the Contract Administrator for this Agreement.

12.22. Payable Interest

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

12.22.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

12.23. Force Majeure. If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the Party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the Party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

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

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

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

12.27. Marketing and publicity. City agrees to adhere to marketing and publicity policies or requests made by the County and/or the Program partners to promote the Zero Drownings Miami-Dade Program.

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

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement:
MIAMI-DADE COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through
the Parks, Recreation and Open Spaces Department Director, authorized to execute same by the
Code of Miami-Dade County, and City signing by and through its _____, duly
authorized to execute same.

COUNTY

MIAMI-DADE COUNTY, by and through
its Director, Parks, Recreation and Open Spaces Department

By: _____
Director of Parks, Recreation and Open Spaces Department

____ day of _____, 2024

Approved as to form and legal sufficiency by

Miami-Dade County Attorney

By _____
(Date)
Assistant County Attorney

ATTEST: Juan Fernandez-Barquin,
Clerk of the Court and Comptroller

By: _____
(Deputy Clerk Signature)

Print Name: _____

Date: _____

CITY



By: _____
Authorized Signer

Print Name and Title

_____ day of _____, 2024

Exhibit A
Scope of Services

- A. **Services.** Any Services (classes) referenced in this exhibit to be provided by City under the terms of the Agreement shall be mutually agreed upon by Contract Administrator and City prior to commencement of the Services. The Services shall be provided by City at the locations specifically authorized under Section B.
1. **Child Water Safety Instruction Classes (during the school day).** For CAHSD Head Start Preschool Centers, The Children’s Trust Thrive by 5 Preschool Centers, and M-DCPS Kindergarten Classes. Swim classes will be conducted in a Session over a two (2) week period designated by the Contract Administrator, unless another alternative schedule is mutually agreed upon by City and the Contract Administrator.
- a. Payment for the Child Water Safety Instruction Classes conducted during the school day, as provided in Section D, will be made by the Fiscal Agent for the Program to City on a reimbursement basis in accordance with the terms of the Agreement, following submittal by City of an invoice to the Fiscal Agent for the Program, and as approved by the Office of Drowning Prevention, utilizing the form provided by The Miami Foundation, and all required supporting documentation for payment including, but not limited to, the following:
1. Attendance sheets, and Water Safety Skill sheets for each Program Participant, and session evaluations grouped by class. City is required to ensure all documents are completed by an authorized representative of the City prior to submitting to the Office of Drowning Prevention and shall be provided no later than ten (10) days following the last day of instruction for the applicable Session. Fiscal Agent’s obligation to make payment to City is contingent upon County’s verification of the supporting documentation provided with the invoice.
- b. The Children’s Trust and The Miami Foundation requires the County to obtain the program information described above for each Program Participant and to enter the information into the Office of Drowning Prevention database to identify the population served. This information must be accessible to both organizations and is reliant upon the accuracy of information submitted by City.
- B. **Services to be Provided and Location of Services.** City shall provide Services to eligible Program Participants identified and coordinated by the Office of Drowning Prevention during specified periods of time and may assign pool locations based on availability and conditions.
- C. City shall provide the Services under the Agreement using American Red Cross Water Safety Instructors licensed or certified set forth in Chapter 514, Florida Statutes, and Rule

64E-9, Florida Administrative Code, administered by the State of Florida, Department of Health.

- D. City shall provide a minimum of 30 minutes of water safety education and instruction for each class.
- E. City's instructor to child ratios may not exceed one (1) instructor to six (6) children. City may use instructor aides to maximize effectiveness of instruction based on class size with the prior approval of the Contract Administrator; however, use of instructor aides shall not be included in City's instructor to child ratio requirement. Inclusion of children with disabilities may require a lower child to staff ratio.
- F. City shall, at a minimum, provide one (1) lifeguard on the pool deck when classes are conducted. Lifeguards shall not be counted in City's instructor to child ratio requirement and shall meet all requirements set forth in Chapter 514, Florida Statutes, and Rule 64E-9, Florida Administrative Code, administered by the State of Florida, Department of Health.
- G. City shall maintain compliance with the requirements for public swimming pools and bathing places set forth in Chapter 514, Florida Statutes, and Rule 64E-9, Florida Administrative Code, administered by the State of Florida, Department of Health.
- H. **Communication and Reports.** City shall notify the Office of Drowning Prevention in advance, when possible, of any instance where a scheduled class is not conducted as a result of mechanical issues with the pool or pool heater, inclement weather forcing closure of the pool/facility, unsafe conditions preventing schools from attending a class, lack of appropriate staffing to conduct a class, or any other foreseeable or unforeseen circumstance.

In the event a participant is injured at the pool/facility while attending a class, City shall notify the Office of Drowning Prevention, as soon as possible, but no later than one (1) business day and shall provide a copy of the pool/facility's incident report to the Office of Drowning Prevention for its records.

The Office of Drowning Prevention may hold meetings annually to discuss any changes to the Zero Drownings Miami-Dade program. City shall be required to have a representative of the City attend these meetings, and if there is no representative available, the City shall be required to contact the Office of Drowning Prevention to obtain the information through alternative means.

- I. **Incident Reporting:** An incident is defined as any actual or alleged event or situation that creates a significant risk of substantial or serious harm to the physical or mental health, safety or well-being of a child participating in the program. Reportable incidents include, but are not limited to, allegations of abuse, neglect or exploitation of a child; injury of a participant; missing child or abandoned child; loss of property use for the program; or

destruction of property used in the program. Incident definitions can be found on the sample incident report form located on The Children's Trust website. The City and its employees are mandated to immediately report knowledge or reasonable suspicion of abuse, neglect or abandonment of a child, aged person or disabled adult to the Florida Abuse Hotline on the statewide toll-free telephone number (800.962.2873), as required by chapters 39 and 415, Florida Statutes.

The City shall notify the County of any incident of which it become aware, as defined within three (3) calendar days after The City is informed of such incident. The notification must be in writing and include a copy of the incident report. The report must contain the following:

1. Name of reporter (person giving the notice)
2. Phone number where reporter can be contacted
3. Date, time and location of incident, provider involved
4. Complete description of incident and injuries, if any Police report and actions taken shall be submitted to the County within fifteen (15) calendar days of the incident. The City shall provide written notification to the County, within seven (7) calendar days of any legal action related to the incident.

J. **Children with Disabilities and Their Families.** The City shall comply with all relevant provisions of the Americans with Disabilities Act and other state, federal or local laws that mandate the accessibility of programs, services and benefits for persons with disabilities. The County also requires the City to implement reasonable programmatic accommodations to include children with disabilities and their families, whenever possible.

K. **Fee Schedule/Payment for Services.** Rates for reimbursement of the Services specified below shall be effective for the term of the Agreement, including any renewal term(s).

| Services | Reimbursement Rate |
|--|-----------------------------------|
| Child Water Safety Instruction Classes during the school day | \$40/Per Cohort (30 min class) |
| Special Needs Classes for children during the school day | \$60/per Cohort (30 min class) |
| MAXIMUM AMOUNT NOT-TO-EXCEED UNDER THE AGREEMENT | \$100,000/Year |

Exhibit B
Affidavit under Penalty of Perjury for Level 2 Background Screenings

Affidavit under Penalty of Perjury Affirming Compliance with Background Screening for Provider Personnel, Volunteers, and Subcontracted Personnel, as applicable.

In accordance with sections 943.0542, 984.01, 39.001 and Chapters 435, and 402, Florida Statutes, and pursuant to the requirements of Paragraph R. Background Screening of this Contract, the undersigned affiant makes the following statement under oath and under penalty of perjury, which is a first-degree misdemeanor, punishable by a definite term of imprisonment not to exceed one year and/or a fine not to exceed \$1,000, pursuant to sections 837.012 and 77.082, Florida

All full-time, part-time, contracted staff and volunteers, along with the staff and volunteers provided to the program by a subcontractor have been checked against The Dru Sjodin National Sex Offender Public Website <http://www.nsopw.gov/eng>. (Check must have taken place within 30 calendar days prior to the signing of this document.)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Before me, the undersigned authority, personally appeared (CEO/Executive Director) Authorized Provider

Representative of the City of Miami, who being by me first duly sworn, deposes and say:

I swear and affirm that the above-named contracted Provider is compliant with the requirements for personnel background screening detailed in this Agreement and section 943.0542, 984.01, Chapter 435, 402, 39.001, and 1012.465, Florida Statutes, as applicable, for all personnel having direct contact with children.

(Signature of CEO/Executive Director/HR Director

Date

Sworn to and subscribed before me at Miami-Dade County, Florida this ____ day of _____, 20____
by _____

____ Who is personally known to me

____ Who produced identification: _____

Type of identification

Signature of Notary Public

State of Florida at Large

Print, type or stamp name of notary public

My Commission Expires:

Exhibit C
Minimum Insurance Requirements

[USE FORM PROVIDED BY RISK, NOT CITY]