

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF OCALA AND MARION COUNTY SCHOOL BOARD FOR
THE USE OF JERVEY GANTT AQUATIC FUN CENTER**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **THE SCHOOL BOARD OF MARION COUNTY FLORIDA** ("School Board").

WHEREAS, the City of Ocala owns and operates the Jervy Gantt Aquatic Fun Center located at 2390 SW 36th Avenue, Ocala, Florida, and the Hampton Aquatic Fun Center, located at 255 NW Martin Luther King, Jr. Boulevard, Ocala, Florida, for the use and benefit of its citizens (collectively referred to herein as the "Aquatic Center"); and

WHEREAS, School Board desires to utilize the Aquatic Center for try-outs, practices, and swim meets for the swim teams of Belleview High School ("BHS Swim Team") and Lake Weir High School ("LWHS Swim Team") (collectively referred to herein as the "Swim Teams"), during the 2022-2023 school year; and

WHEREAS, the City of Ocala desires to enter into this MOU to establish the terms and conditions for the use of the Aquatic Center by School Board's Swim Teams during those times which do not conflict with the use of the Aquatic Center by the City or its contracted partners.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledge, City and School Board agree as follows:

1. City shall grant School Board's Swim Teams access to the Aquatic Center for the purposes of conducting try-outs, practices, and swim meets at those times that do not conflict with the conduct of business by City or its contracted partners.
2. In exchange for access to the Aquatic Center under this MOU, School Board agrees to use the Aquatic Center facilities for its Swim Teams in accordance with the terms and conditions contained in this MOU.
3. **COMPENSATION.** School Board agrees to pay all costs and fees directly related to the conduct of permissible activities engaged in by its Swim Teams, as follows:
 - A. **Hourly Rate for Aquatic Center Use and Access:** School Board agrees to pay the rate of **THIRTY AND NO/100 DOLLARS PER SESSION (\$30.00/Session)** for every day that the Aquatic Center is utilized by the Swim Teams for any period of time **UP TO THREE (3)**

HOURS. School Board agrees to pay the rate of **ONE HUNDRED AND NO/100 DOLLARS PER DAY (\$100.00/day)** for every day that the Aquatic Center is utilized by the Swim Team for any period of time which **EXCEEDS THREE (3) HOURS.**

- B. **Hourly Rate and Availability for Heated Pool Use:** The stated daily rates for the Swim Teams' use of the Aquatic Center does not include the cost of heating the pool. Should the Swim Teams use the pool heater (only at Jervey Gantt Aquatic Fun Center), School Board agrees to reimburse City for all costs incurred by City for the provision of such use to include the cost of gas for the pool heaters. City does not guarantee that the heaters will be available for use by Swim Team nor does City guarantee that any non-functioning heaters will be repaired for use by Swim Team.
- C. **Invoicing and Payment:** City shall invoice School Board no more than once monthly for Swim Teams' usage of the Aquatic Center during the preceding month. School Board shall pay all invoices issued by City in full within **THIRTY (30)** calendar days of the invoice date. In the event that School Board fails to render payment when due, this MOU shall terminate immediately and without further notice.

4. **EFFECTIVE DATE, TERM, AND TERMINATION.** This MOU shall become effective and commence on **JULY 15, 2022** and continue through and including **NOVEMBER 25, 2022** ("Contract Term"). Either party has the right to terminate this MOU at any time, with or without cause, upon providing **TEN (10) DAYS** written notice to the other party.

5. **SCHEDULING AND PRIORITY OF USE.** School Board acknowledges and understands that the programs and services offered at the Aquatic Center by City and its contracted partners shall always be afforded priority to the utilization of the Aquatic Center by Swim Team.

- A. **Scheduled Usage:** The parties anticipate that School Board's Swim Teams will hold try-outs, practices, and swim meets approximately **FIVE (5)** days per week between the hours of **3:00 P.M. AND 9:00 P.M.** during the Contract Term. School Board shall provide City with a monthly schedule of requested usage no later than the 15th day of the month prior to the scheduled usage. The proposed monthly schedule shall be emailed to the Recreation Division Head and the Aquatics Recreation Program Supervisor. All scheduling shall be subject to the sole discretion and approval of the Director of City's Recreation and Parks Program or designee.
- B. **No Guarantees:** City makes no guarantee to School Board as to the availability of days or times during which the facility will be available for use by its Swim Teams.

6. **AQUATIC CENTER POLICIES AND BEST PRACTICES.** The parties agree that the Aquatic Center policies, rules, and regulations shall apply to all School Board's Swim Team participants, coaches, representatives, and to the participants, coaches, and representatives of invitees competing at or attending any swim meets or other activities conducted at the Aquatic Center pursuant to this MOU. School Board shall be responsible for ensuring that all participants, coaches, and representatives abide by Aquatic Center policies, rules, and regulations while on the premises during all related practices, activities, and events.

A. **Coronavirus (COVID-19)**

- i. School Board shall be responsible to ensure participants follow all local, state, and national Coronavirus (COVID-19) social distancing guidelines provided by City of Ocala and the CDC (available at: www.cdc.gov/coronavirus).

7. **SUPERVISION AND SAFETY.**

- A. School Board agrees to provide **ONE (1)** adult coach that must always be present and on duty during the entire Swim Team's utilization of any Aquatic Centers.
- B. School Board agrees to provide (at their expense) a minimum of **ONE (1)** certified lifeguard on deck for every **TWENTY (25)** swimmers (1:25 lifeguard to swimmer ratio). A person cannot safely perform the duties of a lifeguard or coach (or instructor) simultaneously.
- C. A properly certified person is one who has received training as a first responder in water rescue and has a current certification in both adult and child CPR/first Aide/AED equivalent to that provided through nationally recognized lifeguard training programs such as American Red Cross or Ellis & Associates.
- D. At no time shall City be responsible for providing School Board with either a coach or lifeguard pursuant to this Section.

8. **STORAGE OF ITEMS.** School Board's Swim Teams are not permitted to store any items at the Aquatic Center unless approved in advance by the Director of the City's Recreation and Parks Program or designee. Should approval for the storage of items be granted, School Board understands and agrees that said storage shall be at the owner's own risk. City assumes no responsibility whatsoever for any items stored at the Aquatic Center whether approved to be stored there or not.

9. **INDEMNITY.** Each party shall be liable for its own acts and negligence arising out of the activities contemplated by this Agreement. School Board shall indemnify, defend, and hold

harmless the City and its elected officials, employees and volunteers against any actions, damages, claims, losses, costs, and expenses (including attorneys' fees) which may be asserted against City arising out of School Board's use of the Aquatic Center to include, without limitation, harm or personal injury to third persons. City shall indemnify, defend, and hold harmless School Board against any actions, damages, claims, losses, costs, and expenses (including attorneys' fees) arising out of the sole negligence of City or of the City's officers, agents, or employees in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. Parties agree to notify the other in writing within **TEN (10)** days of receipt of any notice of any action against each pertaining to this matter. Such notice must be issued by certified mail, return receipt requested or by overnight courier. The notification shall be deemed to have been provided on the date such notice is postmarked regardless of whether the party receives said notification.

10. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in this MOU is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under §768.28, Florida Statutes. This section will survive the termination of all performance or obligations under this Agreement and will be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
11. **INSURANCE REQUIREMENTS.** School Board shall be required to procure and maintain during the term of this MOU and any other periods where School Board's Swim Teams are utilizing the premises, at its own expense, a policy or policies of general liability insurance and food liability insurance providing coverage for claims for damages for bodily injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from School Board's use of the Aquatic Center facility. The general liability policy is required to have policy limits of not less than One Million Dollars (\$1,000,000) for injury to one person arising out of a single incident, Two Million Dollars (\$2,000,000) for injuries to more than one person arising out of a single incident, and One Hundred Thousand Dollars (\$100,000) for property damage.
 - A. These insurance requirements do not relieve or limit the liability of School Board. City does not represent that the types or amounts of insurance required herein are sufficient or adequate to protect School Board's interests or liabilities but are merely minimums. The

insurance required to be obtained and maintained by School Board herein shall be considered primary, and any insurance or self-insurance of City shall be considered excess, as may be applicable, to claims against City which may arise. No insurance is provided by the City under this MOU to cover School Board.

- B. **Deductibles**. School Board shall be responsible for the payment of any deductibles/self-insured retentions required under this MOU and shall disclose the amount of any deductibles/self-insured retentions to City. City reserves the right to disapprove of any said deductible amounts.
- C. **Certificates of Insurance**. School Board shall provide a Certificate of Insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best Company rating of at least A, showing the "City of Ocala" as an Additional Insured. The certificate holder on the Certificate of Insurance should be: City of Ocala, Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, Florida 34471, E-Mail: vendors@ocalafl.org. Renewal certificates must also be forwarded to the Contracting Department prior to the policy expiration. Special Olympics of Florida must provide **TEN (10)** days written notice to the City in the event of cancellation. (*Non-rated insurers must be pre-approved by the City Risk Manager).
- D. **Failure to Maintain Coverage**. In the event School Board fails to disclose applicable deductibles/self-insured retentions or fails to obtain or maintain in full force and effect any insurance coverage required under this MOU, School Board shall be considered to be in default of this MOU.

12. **PUBLIC RECORDS**. School Board and City shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, School Board and City shall:

- A. Keep and maintain public records required by the public agency to perform the service.
- B. Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
- C. 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

the contract term and following completion of the contract if the School Board does not transfer the records to the public agency.

- D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the School Board and/or City or keep and maintain public records required by the public agency to perform the service. If the School Board and/or City transfer all public records to the public agency upon completion of the contract, the School Board and/or City shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If School Board and/or City keep and maintain public records upon completion of the contract, School Board and/or City shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF SCHOOL BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SCHOOL BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-MAIL: CLERK@OCALAFL.ORG; CITY HALL, 110 SE WATULA AVENUE, OCALA, FL 34471.

IF CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: KEVIN CHRISTIAN, APR, CPRC, AT (352) 671-7555, PUBLIC.RELATIONS@MARION.K12.FL.US OR IN PERSON AT 420-A SE ALVAREZ AVENUE, OCALA, FLORIDA 34471.

13. **ENTIRE AGREEMENT.** This MOU, including exhibits, (if any) constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied,

among the Parties, except to the extent reference is made thereto in this MOU. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this MOU. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

14. **AMENDMENT.** No amendment to this MOU shall be effective except those agreed to in writing and signed by both parties to this MOU.

IN WITNESS HEREOF, the parties have executed this Memorandum of Understanding on _____.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

Ire Bethea, Sr.
City Council President

Approved as to form and legality:

**THE SCHOOL BOARD OF MARION
COUNTY, FLORIDA**

Robert W. Batsel, Jr.
City Attorney

Eric Cummings, Board Chair

Diane V. Gullett, Ed.D.
Superintendent