

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF OCALA AND MARION COUNTY SPECIAL OLYMPICS
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 SPECIAL OLYMPICS FLORIDA, INC., a not-for-profit corporation duly organized in Florida (EIN: 23-7181560) ("Special Olympics").

WHEREAS, the City of Ocala owns and operates the Jervey 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 Centers"); and

WHEREAS, Special Olympics Florida, Inc. desires to utilize the Aquatic Centers for try-outs, practices, and swim meets ("Swim Program"); and

WHEREAS, the City of Ocala desires to enter this MOU to establish the terms and conditions for the use of the Aquatic Centers by Special Olympics' Swim Program during those times which do not conflict with the use of the Aquatic Centers 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 Special Olympics Florida, Inc. agree as follows:

1. City shall grant Special Olympics access to the Aquatic Centers 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 Centers under this MOU, Special Olympics agrees to use the Aquatic Center facilities for its Swim Program in accordance with the terms and conditions contained in this MOU.
3. **COMPENSATION.** Special Olympics agrees to pay all costs and fees directly related to the conduct of permissible activities engaged in by its Swim Program, as follows:
 - A. **Hourly Rate for Aquatic Centers Use and Access:** Special Olympics agrees to pay the total of all days and hours of Aquatic Centers usage at the rates stated in Sections i. and ii.
 - i. **Facility rental** rate of **TWELVE AND 50/100 DOLLARS PER HOUR (\$12.50/Hour)** for every day that the Aquatic Centers is utilized by the Swim Program for any period. There is a minimum access period of **TWO HOURS (2 Hours)** per scheduled occurrence.
 - ii. Hourly **Lifeguard fee** of **THIRTY-FIVE AND NO/100 PER HOUR (\$35/HOUR)** for every hour that the Aquatic Centers is utilized by the Swim Program and meeting the lifeguard staffing ratio as stated in Section 7. B.
 - B. **Heated Pool Use Hourly Rate and Availability:** The stated daily rates for the Swim Program's use of the Aquatic Centers **does not include** the cost of heating the pool. Should the Swim Program use the pool heater (only at Jervey Gantt Aquatic Fun Center), Special Olympics 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 the Swim Program, nor does City guarantee that any non-functioning heaters will be repaired for use.
 - C. **Invoicing and Payment:** City shall invoice Special Olympics no more than once monthly for the Swim Program's usage of the Aquatic Centers during the preceding month. Special Olympics shall pay all invoices issued by City in full within **THIRTY (30)** calendar days of the invoice date. In the event that Special Olympics 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 **JUNE 1, 2023** and continue through and including **NOVEMBER 18, 2023** ("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.** Special Olympics acknowledges and understands that the programs and services offered at the Aquatic Centers by City and its contracted partners shall always be afforded priority to the utilization of the Aquatic Centers.
 - A. **Scheduled Usage:** The parties anticipate that Special Olympics' Swim Program will hold try-outs, practices, and swim meets approximately **ONE (1)** day per week on **SATURDAYS** between the hours of **8:00 A.M. AND 10:00 A.M.** during the Contract Term. Special Olympics 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 Special Olympics as to the availability of days or times during which the facility will be available for use by its Swim Program.
6. **AQUATIC CENTERS POLICIES AND BEST PRACTICES.** The parties agree that the Aquatic Centers policies, rules, and regulations shall apply to all Special Olympics' Swim Program 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 Centers pursuant to this MOU. Special Olympics shall be responsible for ensuring that all participants, coaches, and representatives abide by Aquatic Centers policies, rules, and regulations while on the premises during all related practices, activities, and events.
 - A. **Coronavirus (COVID-19)**
 - i. Special Olympics 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. Special Olympics agrees to provide **ONE (1)** adult coach that must always be present and on duty during the entire Swim Program's utilization of any Aquatic Centers.
 - B. The Parties agree that a minimum of **ONE (1)** certified lifeguard on deck for every **TWENTY-FIVE (25)** swimmers (1:25 lifeguard to swimmer ratio). A person cannot safely perform the duties of a lifeguard or coach (or instructor) simultaneously.
 - i. A proper lifeguard 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.
 - C. City shall be responsible for providing the Special Olympics with the required lifeguard pursuant to this Section.
8. **STORAGE OF ITEMS.** Special Olympics' Swim Program is not permitted to store any items at the Aquatic Centers 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, Special Olympics 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 Centers 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. Special Olympics 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 Special Olympics' use of the Aquatic Centers to include, without limitation, harm or personal injury to third persons. City shall indemnify, defend, and hold harmless Special Olympics 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.** Special Olympics shall be required to procure and maintain during the term of this MOU and any other periods where Special Olympics' Swim Programs 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 Special Olympics' use of the Aquatic Centers 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 Special Olympics. City does not represent that the types or amounts of insurance required herein are sufficient or adequate to protect Special Olympics' interests or liabilities but are merely minimums. The insurance required to be obtained and maintained by Special Olympics 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 Special Olympics.
 - B. **Deductibles.** Special Olympics 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.** Special Olympics 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 Special Olympics 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, Special Olympics shall be considered in default of this MOU.
12. **PUBLIC RECORDS.** Special Olympics and City shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Special Olympics 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 Special Olympics 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 Special Olympics and/or City or keep and maintain public records required by the public agency to perform the service. If the Special Olympics and/or City transfer all public records to the public agency upon completion of the contract, the Special Olympics and/or City shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Special Olympics and/or City keep and maintain public records upon completion of the contract, Special Olympics 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 SPECIAL OLYMPICS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SPECIAL OLYMPICS'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@OCALAFI.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, PUBIIC.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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

CONTRACT# REC/230449

IN WITNESS HEREOF, the parties have executed this Memorandum of Understanding on 5/9/2023.

ATTEST:

DocuSigned by:
Angel B. Jacobs
F82769461C4E4E5...
Angel B. Jacobs
City Clerk

Approved as to form and legality:

DocuSigned by:
William E. Sexton
B07DCFC4E86E429...
William E. Sexton, Esq.
City Attorney

CITY OF OCALA

DocuSigned by:
Preston Pooser
6212F7C230AE419...
Preston Pooser
Recreation and Parks Director
(Pursuant to City Council Resolution 98-101)

SPECIAL OLYMPICS FLORIDA, INC.

DocuSigned by:
Berit Amlie
BC053FAD0911416...
Berit Amlie
Chief Administrative Officer

Steve Wittek, Sr. Manager
Sports Training & Competition – Area 3

Certificate Of Completion

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Signer Events

Preston Pooser

ppooser@ocalafl.org

Director, Recreation and Parks

City of Ocala

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Berit Amlie

contracts@sofl.org

Chief Administrative Officer

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William E. Sexton

wsexton@ocalafl.org

City Attorney

City of Ocala

Security Level: Email, Account Authentication
(None)

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William E. Sexton

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Angel B. Jacobs

ajacobs@ocalafl.org

April 19

City of Ocala

Security Level: Email, Account Authentication
(None)

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Angel B. Jacobs

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Certified Delivered	Security Checked	5/15/2023 5:01:36 PM
Signing Complete	Security Checked	5/15/2023 5:01:51 PM
Completed	Security Checked	5/15/2023 5:01:51 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Ocala - Procurement & Contracting (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Ocala - Procurement & Contracting:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: contracts@ocalafl.org

To advise City of Ocala - Procurement & Contracting of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at contracts@ocalafl.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Ocala - Procurement & Contracting

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to contracts@ocalafl.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Ocala - Procurement & Contracting

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to contracts@ocalafl.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Ocala - Procurement & Contracting as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Ocala - Procurement & Contracting during the course of your relationship with City of Ocala - Procurement & Contracting.