

## MEMORANDUM OF UNDERSTANDING

Between The CITY of Palm Bay (hereinafter "CITY") and Florida fish and wildlife (hereinafter "FWC")

The parties to this Memorandum of Understanding (MOU) agree to the following:

### **Article I      Scope and Purpose**

The purpose of this MOU is to provide the basic understanding between the CITY and FWC in regard to utilizing The Palm Bay Aquatic Center, with an address at 420 Community College Pkwy SE, Palm Bay, FL 32909 and JOSHUA BECK

(Florida Fish and Wildlife Conservation Commission Member) with an address at

I-A MAX BREWER MEMORIAL HIGHWAY, TITUSVILLE FL, 32796.

### **Article II      Specific Arrangements and Conditions**

**NOTICE.** The parties estimate that the FWC dive team would need access to the pool approximately once every six months, using up to three lanes for a duration of three hours. Additionally, FWC will train pilot rescue swimmers once a week using up to three lanes for one hour. FWC shall contact the CITY **two weeks** in advance of any training with their lane and dive well requirements to allow proper planning and staffing of the Aquatic Center.

**USE.** The Palm Bay Aquatic Center agrees to allow FWC use of the Aquatic Center Premises for training purposes, subject to all terms and conditions of this Agreement. The Palm Bay Aquatic Center is not responsible for any loss of use due to weather, maintenance, or any other circumstances that may cause the pool to become unavailable. The use of the pool is an amenity, the unavailability of which is not a violation of any terms of this Agreement.

**SEASONALITY.** The pool will generally be available for use from the months of January through December. The Pool is not guaranteed to maintain a certain temperature due to weather or any other natural causes.

**INHERENT RISK.** FWC, its employees, agents, and trainees acknowledges that the use of a pool and activities around the pool involves the potential risk of serious danger and bodily injury. FWC further acknowledges that these risks may be the result of the actions or inactions of the FWC, its employees, agents, and trainees, guests, or anyone else using or around the pool.

**ASSUMPTION OF RISK.** FWC, its employees, agents, and trainees will use the pool at their own risk and assumes all risks of bodily injury resulting from or around the Pool located on the Premises. This assumption of risk extends to all FWC related persons, guests, or anyone else on the property.

**INSPECTION AND MAINTENANCE.** FWC, its employees, agents, and trainees agrees to properly inspect and maintain the pool and to ensure there are no defects that could result in injury to a party using or around said pool. This includes, but is not limited to, properly maintaining of keeping the pool and pool area clean of debris and any potential obstructions.

**REPAIRS.** FWC, its employees, agents, and trainees are required to notify the Palm Bay Aquatic Center immediately if there is any defect or issue that requires repair. All repairs will be the responsibility of the Palm Bay Aquatic Center, except for those repairs that are the result of the negligence of the FWC, its employees, agents, and trainees. FWC, its employees, agents, and trainees will be solely responsible for the cost of any damage they or their guests caused to the pool, equipment, or the surrounding area, to the extent permitted by law.

**INDEMNIFICATION.** To the extent permitted by law, FWC, its employees, agents, and trainees agrees to indemnify and hold harmless the Palm Bay Aquatic Center from any loss, damage, liability, attorneys' fees, and costs that are the direct or indirect result of using said pool on the Premises. Nothing in this Agreement is intended to waive any rights by any governmental entity allowed under Florida Statute 768.28.

**UNSUPERVISED USE.** FWC, its employees, agents, and trainees acknowledges that the Palm Bay Aquatic Center does allow unsupervised use of the pool. A lifeguard must be present at all times.

**PETS.** Pets of any kind are not allowed in the swimming pool at any time.

**VIOLATIONS.** In the event that FWC, its employees, agents, and trainees are in default of the Agreement for any violation of this Waiver, said default may result in the suspension of pool use and/or eviction as outlined in the terms of the Agreement.

**INSURANCE.** FWC shall obtain and provide to the CITY an Insurance Certificate for coverage in the amounts they deem appropriate.

**TERM.** This Agreement shall remain in full force and effect for one (1) year. Extensions to this Agreement shall be by mutual consent of both parties. Either party may term

**GOVERNING LAW.** This agreement shall be governed by the laws of the State of Florida and any case arising from this agreement shall be heard in Brevard County, Florida.

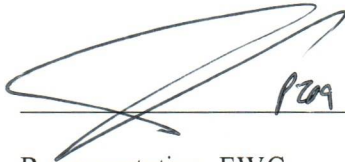
Upon the signatures below, the parties agree that the above Waiver shall be legally binding and incorporated into the above-referenced Agreement.



Richard Scott Morgan

Date

Interim City Manager, Palm Bay

  
Representative, FWC

  
Date

STATE OF FLORDIA  
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of the CITY OF PALM BAY, a Florida municipal corporation, to me known to be the person described in and who executed the foregoing and they acknowledged before me that they execute the same.

WITNESS MY HAND AND OFFICIAL SEAL IN THE County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_, Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF FLORDIA  
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of the Florida Fish and Wildlife Commission, to me known to be the person described in and who executed the foregoing and they acknowledged before me that they execute the same.

WITNESS MY HAND AND OFFICIAL SEAL IN THE County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_, Notary Public

My Commission Expires: \_\_\_\_\_