

**AGREEMENT**

**Between**

**BROWARD COUNTY**

**and**

**CITY OF HOLLYWOOD, FLORIDA**

---

**for**

**WATER SAFETY INSTRUCTION/EDUCATION**

**AGREEMENT**

**Between**

**BROWARD COUNTY**

**and**

CITY OF HOLLYWOOD, FLORIDA

---

**for**

**WATER SAFETY INSTRUCTION/EDUCATION**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

**AND**

CITY OF HOLLYWOOD, a municipal corporation of the State of Florida, hereinafter referred to as "CONTRACTOR."

WHEREAS, COUNTY desires to make water safety instruction available to children in Broward County ages six (6) months to fourteen (14) years; and

WHEREAS, COUNTY desires to make water safety education classes available to adults residing in Broward County; and

WHEREAS, COUNTY desires to make water safety instructor certification classes available to the general public; and

WHEREAS, CONTRACTOR is willing to provide water safety instruction, adult water safety education, and water safety instructor certification classes as set forth herein this Agreement; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

## ARTICLE I

### SCOPE OF SERVICES

- 1.1 CONTRACTOR shall furnish the water safety instruction to children in Broward County ages six (6) months to fourteen (14) years at the following location(s): APOLLO, ATTUCKS, SOUTH BROWARD. Services to be provided by CONTRACTOR are more specifically described in Exhibit "A" attached hereto and made a part hereof.
- 1.2 CONTRACTOR shall furnish water safety adult education classes to persons residing in Broward County at the following location(s): APOLLO, ATTUCKS, SOUTH BROWARD. Services to be provided by CONTRACTOR are more specifically described in Exhibit "A" attached hereto and made a part hereof.
- 1.3 CONTRACTOR shall furnish water safety instructor certification classes at the following location(s): APOLLO, ATTUCKS, SOUTH BROWARD. Services to be provided by CONTRACTOR are more specifically described in Exhibit "A" attached hereto and made a part hereof.
- 1.4 CONTRACTOR shall conduct a term of classes for the services described in Sections 1.1 - 1.3 above in such location(s) and times to be mutually agreed upon by the parties.
- 1.5 CONTRACTOR shall conduct all classes in a careful and responsible manner with due regard for the safety of the participants and others.
- 1.6 CONTRACTOR represents that it, or any persons assisting CONTRACTOR in the performance of services herein, has the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth herein and to provide and perform such services to COUNTY's satisfaction. CONTRACTOR shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner.
- 1.7 CONTRACTOR shall be solely responsible for securing the services of and compensating any other persons or other personnel as may be required to adequately and safely perform the services provided for herein.
- 1.8 CONTRACTOR shall be required to do either of the following prior to commencement of water safety instruction services under this Agreement: (i)

require all participants (parent/legal guardian for minors) to sign a waiver and release of liability form on behalf of COUNTY which will be provided to CONTRACTOR by COUNTY's Contract Administrator or (ii) include COUNTY in CONTRACTOR's own waiver and release of liability form following approval of CONTRACTOR's form by the County Attorney's Office.

- 1.9 COUNTY and CONTRACTOR acknowledge and agree any procurement of services referenced herein during the term of this Agreement shall be within COUNTY's Director of the Parks and Recreation Division's procurement authority of Thirty Thousand Dollars (\$30,000.00). Any change or modification to the maximum amount of compensation to be paid to CONTRACTOR under this Agreement which exceeds the Parks and Recreation Division's procurement authority noted above shall be presented to the Board for approval in the form of an amendment to this Agreement.

## ARTICLE 2

### COMPENSATION

- 2.1 CONTRACTOR shall register all students for the water safety instruction classes provided herein on the form provided by COUNTY. COUNTY agrees to reimburse CONTRACTOR, on a monthly basis, Three Dollars and Twenty Cents (\$3.20) per child per lesson. CONTRACTOR's monthly attendance sheet shall be submitted to COUNTY and COUNTY shall create the invoice required for payment for such services.
- 2.2 COUNTY and CONTRACTOR shall mutually agree to the fees to be charged for the adult education and the water safety instruction certification classes prior to the commencement of these services by CONTRACTOR. COUNTY agrees to reimburse CONTRACTOR, on a monthly basis, the agreed upon fees for the provision of adult education and water safety instruction classes following submission by CONTRACTOR of a proper invoice.
- 2.3 COUNTY agrees to pay CONTRACTOR within thirty (30) calendar days of receipt of the invoice for said services. Payment shall be made to CONTRACTOR in accordance with COUNTY's Prompt Payment Ordinance, (Sec. 1-51.6, Broward County Code of Ordinances) as may be amended from time to time, and at the address specified in Article 9, "NOTICES" section of this Agreement.
- 2.4 The maximum amount of compensation to be paid by COUNTY to CONTRACTOR for services rendered under this Agreement shall be \$30,000.00.

### ARTICLE 3

#### TERM OF AGREEMENT

The term of this Agreement shall be for one (1) year from October 1, 1999, through September 30, 2000. This Agreement shall be automatically renewed for additional one (1) year terms under the same terms and conditions contained herein unless either party elects not to renew this Agreement by providing the other party with sixty (60) days written notice as provided for in Article 9, "NOTICES" section of this Agreement. Continuation of this Agreement beyond the end of any fiscal year of COUNTY shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes.

### ARTICLE 4

#### TERMINATION OF AGREEMENT

- 4.1 The performance of services under this Agreement may be terminated immediately by either party when such party determines that it is in the best interest of the public health, safety and welfare. Such notice may be made verbally to the other party pursuant to Article 9, "NOTICES" section of this Agreement, and shall be promptly followed by written notice in accordance said Article. COUNTY shall be liable only for payment for work performed by CONTRACTOR prior to the effective date of such termination. The effective date of any termination under this Section shall be the date of receipt of notice from the terminating party.
- 4.2 Either party may terminate this Agreement for convenience by giving the other party sixty (60) days written notice as provided for in Article 9 herein. The effective date of any termination under this Section shall be the date of receipt of written notice from the terminating party.

### ARTICLE 5

#### INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR shall be by employees, agents or approved subcontractors of CONTRACTOR and subject to supervision by CONTRACTOR. In providing such services, neither CONTRACTOR nor its employees, agents or approved subcontractors shall act as officers, employees, or agents of COUNTY. This Agreement shall not constitute or make the parties a partnership or joint venture. Personnel policy, tax

responsibilities, social security, health insurance, employee benefits, travel, per diem policy, purchasing policies and any other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR.

## ARTICLE 6

### LIABILITY

CONTRACTOR is a state agency or subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

## ARTICLE 7

### INSURANCE

CONTRACTOR is a state agency or subdivision as defined by Section 768.28, Florida Statutes, and CONTRACTOR shall furnish COUNTY's Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

## ARTICLE 8

### NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

- 8.1 CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CONTRACTOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONTRACTOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising,

layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

- 8.2 CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.
- 8.3 CONTRACTOR shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

## ARTICLE 9

### NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

#### FOR COUNTY:

Bob Harbin, Director  
Broward County Parks and Recreation Division  
950 Northwest 38th Street  
Oakland Park, Florida 33309

#### FOR CONTRACTOR:

DAVID FLAHERTY, DIRECTOR  
CITY OF HOLLYWOOD PARKS, RECREATION & CULTURAL ARTS  
1940 HARRISON STREET, SUITE 101  
HOLLYWOOD, FL 33020

## ARTICLE 10

### FINANCIAL STATEMENTS/MANAGEMENT LETTERS

- 10.1 CONTRACTOR shall provide two (2) copies of CONTRACTOR's audited financial statements consisting of Balance Sheets, Statement of Operations, Statement of Changes in Fund Balances, Statement of Cash Flows, any management letter(s) thereby generated as it relates to funding provided under this Agreement, and CONTRACTOR's response to any management letter(s). The audit of the financial statements shall be performed by an independent certified public accounting firm in accordance with Generally Accepted Auditing Standards and Government Auditing Standards issued by the Comptroller of the United States.
- 10.2 CONTRACTOR shall provide to COUNTY's Contract Administrator three (3) copies of a special report prepared by an independent certified public accountant, or by CONTRACTOR's internal auditor or Finance Director if no internal auditor exists, on the following elements. The special report shall show all revenues, by source, and all expenditures as set forth in the Scope of Services for the program being funded by this Agreement. The report shall specifically disclose any funds received which were not expended in accordance with this Agreement or with any regulations incorporated by reference therein. It shall identify the total of noncompliant expenditures as due back to COUNTY.
- 10.3 If the special report is prepared by an independent certified public accountant, it shall be in accordance with generally accepted auditing standards. If the special report is prepared by an internal auditor, it shall be a review and contain a report on the reports required by this Agreement from the financial records of CONTRACTOR in accordance with the normal internal audit procedures of CONTRACTOR. The special report is to be filed with CONTRACTOR's governing body.
- 10.4 CONTRACTOR shall submit two (2) copies of the financial statements described in Section 10.1 above, one (1) copy of the accompanying management letter, if any, and three (3) copies of the special report described in Section 10.2 above to COUNTY's Contract Administrator within one hundred twenty (120) days after the close of CONTRACTOR's fiscal years in which CONTRACTOR receives funds under this Agreement.



## ARTICLE 11

### MISCELLANEOUS

- 11.1 Amendment. No modification, amendment, or alteration of the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- 11.2 Assignment. CONTRACTOR shall not transfer, assign or subcontract the performance of services called for in this Agreement without the prior written consent of COUNTY.
- 11.3 Compliance with Laws. CONTRACTOR shall, without additional expense to COUNTY, be responsible for obtaining any necessary licenses and for complying with any and all applicable federal, state, county and municipal laws, codes and regulations in connection with the performance of the services specified herein.
- 11.4 Third Party Beneficiaries. Neither CONTRACTOR nor COUNTY intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 11.5 Audit Right and Retention of Records. COUNTY shall have the right to audit the books, records, and accounts of CONTRACTOR related to this Agreement. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by COUNTY, all records and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. 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.

- 11.6 Contingency Fee. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the Board of County Commissioners shall have the right to terminate this Agreement without liability at its discretion, or to deduct from this Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 11.7 Waiver of Breach and Materiality. Failure by COUNTY 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 of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. COUNTY and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
- 11.8 Severance. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CONTRACTOR elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 11.9 Joint Preparation. The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 11.10 Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation

from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

- 11.11 Applicable Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.
- 11.12 Contract Administrators. The Contract Administrators for this Agreement are the Parks and Recreation Division Director or designee for COUNTY, and CONTRACTOR's City Manager or designee for CONTRACTOR. In the implementation of the terms and conditions of this Agreement, as contrasted with matter of policy, all parties may rely upon instructions or determinations made by the respective Contract Administrators. For purposes of this Agreement, the term "COUNTY" used herein, as it relates to renewal or termination of this Agreement, shall mean action taken by the Director of COUNTY's Parks and Recreation Division.
- 11.13 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 11 of this Agreement shall prevail and be given effect.
- 11.14 Multiple Originals. This Agreement may be executed in two (2) copies, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through the Director of its Parks and Recreation Division, authorized to execute same by the Board of County Commissioners on the 21 day of March, 2000, and \_\_\_\_\_, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through the Director,  
PARKS AND RECREATION DIVISION

Kim Swank

pd

By

[Signature]

Director

[Signature]

21 day of

March

2000

Insurance Requirements  
approved by County's  
Risk Management Division

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
EDWARD A. DION, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By [Signature]

By

[Signature]

PATRICE M. EICHEN

Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF HOLLYWOOD FOR  
WATER SAFETY INSTRUCTION

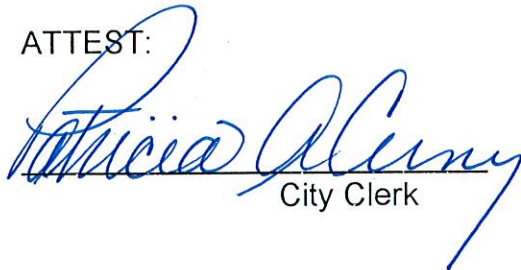
CONTRACTOR

WITNESSES:

\_\_\_\_\_

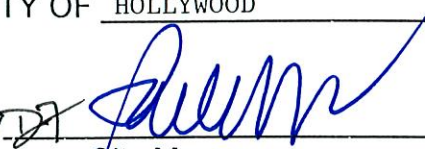
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ATTEST:

  
City Clerk

(CORPORATE SEAL)

CITY OF HOLLYWOOD

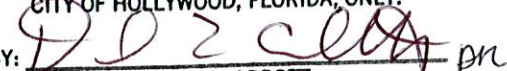
By   
City Manager

8 day of MARCH 2000

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF HOLLYWOOD, FLORIDA, ONLY.

BY:  *DLA*  
DANIEL L. ABBOTT  
CITY ATTORNEY

PME:smc  
swim.a01  
2/21/00  
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## EXHIBIT "A"

### Insert a specific scope of services

#### I. Scope of Services

The PROVIDER agrees to provide water safety lessons Swimming JR-820.950-80, to children ("Clients") age's 6 months through 14 years, which will include water safety practices. The lessons will be given at parks, municipal pools, and private agency pools. The Swim Central Water Safety Education Program is a collaborative effort between the Broward County Parks and Recreation Division, the lead agency and the following: YMCA of South Broward County, Broward County Boys and Girls Club, Broward Chapter of the American Red Cross, Family Central, YMCA of Broward County, City Lauderdale Lakes, International Swimming Hall of Fame, City of Lauderdale Hill, City of Miramar, City of Sunrise, City of Oakland Park, City of Deerfield Beach, City of Pompano Beach, City of Coral Springs, City of Hollywood, Town of Davie, Swim America, City of Dania, City of Fort Lauderdale, City of Hallandale, City of Pembroke Pines, City of Plantation, City of North Lauderdale, Cooper City, City of Coconut Creek, City of Margate, Broward County School System, and the City of Tamarac. The Program will provide a minimum of eight (8) and maximum of ten (10) each of water safety lessons to 8,600 children. In addition, in collaboration with the Broward County School Board who will provide transportation, Broward County Elementary school aged children ("Clients") will receive up to twenty (20) water safety lessons by Provider. The family of every child participating in the program will receive swim safety information sessions. There will be a minimum of 2,500 adults ("Clients") participating in these sessions, which will be facilitated by a certified American Red Cross instructor. These sessions will provide Basic CPR, Basic Water Safety and Basic First Aid. Each family will receive the "Till Help Arrives" booklet and the Swim Central Water Safety Brochure.

Collaborations providing water safety instruction will employ instructors authorized in one of the five state approved programs, Red Cross, YMCA, Ellis, Swim America, and NASCO. They will be trained and certified by instructor trainers in their respective programs.

Collaborators will use the instructor/student ratio according to their program curriculums. Many will be using instructor aides to maximize class size. Children age 36 months and under will be accompanied in the pool by a parent/guardian. The children will receive a minimum of 35-45 minutes of water safety instruction per class.

# EXHIBIT E ATTACHMENT

## OUTCOMES

Agency Name: Broward County Parks & Recreation Division, Program Name: Swim Central Program  
 Division: CSAD Main Contract Number: 00-PR-1 Division Contract Number: 00-PR-1

Program Type	Activities	Outcomes	*Type	Indicators	Data Source	Data Collection Method
Water Safety	<p>1. Certified swim instructors will provide a series of a maximum of ten (10) lessons to children ages 6 months to 14 years. Lessons will each last a minimum of 35-45 minutes.</p> <p>Broward County School Board will receive a maximum of twenty (20) lessons.</p>	<p>1. Children have increased their chances of survival in and near the water.</p>	IN	<p>1a. 80% of the children under age 3, completing less than 6 classes will learn to kick in the water and blow bubbles.</p> <p>1b. 80% of the children under age 3, completing 6 to 10 classes will learn to hold on to the side of the pool wall and have the ability to use a personal flotation device (PFD).</p> <p>1c. 80% of the children 3 years and older, completing less than 6 lessons, will learn to put their face in the water, and use rhythmic-breathing <u>breath control</u>.</p> <p>1d. 80% of the children 3 years and older, completing 6 to 10 classes, will learn to float on their back and return to the side of the pool.</p>	<p>Program Participant and instructor</p> <p>Program Participant and instructor</p> <p>Program Participant and instructor</p> <p>Program Participant and instructor</p>	<p>1a,b. Skills check list will be updated for children under age 3 after each class and retained in client files.</p> <p>1c,d. Skills check list will be updated for children 3 years and older after each class and retained in client files.</p>

Program Type	Activities	Outcomes	Type	Indicators	Data Source	Data Collection Method
Water Safety	2. Certified instructors will facilitate the family education sessions (1-2 hours) of information about CPR, First Aid and Water Safety.	2. Parents and guardians will have improved their knowledge of CPR, First Aid and Water Safety.	IN	2. 90% of parents and guardians who participate in the family education sessions will have additional knowledge of CPR, First Aid and Water Safety.	Parents and Guardians	2. YMCA/Red Cross pre and post test will be completed by parents and guardians.
Water Safety	3. Follow-up will be conducted on all program participants for 3 years after completing the program.	3. Children participating in the program have not drowned.	LT	3. 99% of the children who participate in the swim program will not have drowned 3 years after program completion.	Program Participant and Medical Examiner's reports.	3. YMCA staff will verify drowning cases with the Medical Examiner's Office in order to determine if any program participants have drowned.
Water Safety	Program will certify adults in water safety instruction.	Adults will receive water safety instructor certifications.	IN	90% of the adults taking the course will receive water safety instructor certifications.	Adult Participants	Pre and Post tests will be administered by Swim Central and the Red Cross.

\*Type: Initial (I)  
Intermediate (IN)  
Long-term (LT)

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