

Memo

Carmichael



RECREATION AND
PARK DISTRICT

To: Advisory Board of Directors

From: Alaina Lofthus, Recreation Services Manager
Mike Blondino, District Administrator

Date: February 20, 2020

Subject: Swim Lessons MOU between CRPD, CPF, and DART Sacramento

Introduction/Background:

The pool at Carmichael Park was originally built in 1955. At that time, it was the only pool in town so thousands of children and adults cooled off while participating in recreational swim, lessons, water aerobics classes, synchronized swimming, and even scuba lessons. Over the years, governmental codes changed. The high-diving board was removed due to the shallow 10ft depth of the pool and the baby pool was removed when it could no longer be kept clean enough to meet modern health standards. By 2002, it was clear the pool's infrastructure and buildings were no longer able to meet current codes and major problems developed with the pool itself failing and leaking. In 2004, the decision was made to close the pool permanently as the cost to bring the facility up to code was prohibitive. In February 2013, the pool was demolished and turned into multi-purpose field/turf area supporting both active and passive uses.

In 2008, the Friends of Carmichael Aquatic Center, a committee dedicated to raising funds for a new swim center, was formed. This evolved to become the Carmichael Recreation and Park District Foundation in 2009. Now, the Carmichael Parks Foundation (CPF) focuses on providing youth scholarships and park improvement projects. The desire to give the youth of this community an opportunity to learn how to swim and water safety education is still an important aspect for CPF and is viewed by their members as a return to their initial mission.

DART Sacramento was formed in 2013 with the merge of two historic swim teams. The Arden Hills Swimming and the Davis Aquadarts formed Davis Arden Racing Team (DART). That acronym evolved in 2016 to what is now DART Swimming Sacramento. DART is dedicated to helping swimmers become well-rounded individuals who grow physically, emotionally, in sportsmanship and in confidence through the sport of swimming. Their group swim lesson progression is designed to allow swimmers to advance athletically and emotionally at a pace which is developmentally appropriate. Since 2016, DART estimates they have served approximately 150 children per year. These children range between the ages of 3 – 17 with some 18 – 20-year-olds competing on the USA Swimming Team. DART Swimming Sacramento is led by Brian Nabeta, Head Coach/CEO and Andriana Contreras, DART Lesson Director/Assistant USA Swim Coach.

Discussion:

Staff worked collaboratively with CPF and DART to outline the terms of their partnerships in the Memorandum of Understanding (Attachment A). The following is a summary of the division of responsibilities between the three parties:

CRPD – Provide staff assistance for scholarship application, verification, and approval as well as communicates approved scholarships to DART. CRPD also would promote the swim lesson program through its established advertisement platforms.

DART – Provide certified instructors and lifeguards for the swim lessons as well as secures the aquatic facility including completing necessary permits and fees. DART also strives to ensure the highest level of safety as well as a quality program for children to learn swimming techniques and water safety skills. The MOU additionally details out the class offerings. DART is committed to providing six two-week sessions with eight 30-minute lessons per session for \$75 per session. The children to instructor ratio would be 4:1 providing a good opportunity for children to learn while being in a small, controlled, and safe situation. A certified lifeguard will also always be on the pool deck while lessons are occurring to ensure safety needs are met. DART will work with CRPD and CPF to provide regular reports, anecdotes, and pictures that can used for promotional purposes. Additionally, DART will invoice CRPD at the end of each session for the scholarship fee balances.

CPF – Reimburse CRPD for sessions invoiced amount provided to CRPD by DART including a 15% fee to go towards CRPD staff time. CPF will also assist DART in arranging promotional appearances and educational sessions on water safety and swim lessons at area schools.

The MOU has been reviewed by County Counsel and County Risk Management and all recommended edits were made and agreed to by CPF and DART.

Recommendation:

Staff recommends that the Carmichael Recreation and Park District Advisory Board of Directors approve the Memorandum of Understanding (MOU) between Carmichael Recreation and Park District, Carmichael Parks Foundation, and DART Swimming Sacramento effective February 21, 2020, as presented; to authorize the District Administrator to sign the MOU.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CARMICHAEL RECREATION AND PARK DISTRICT, CARMICHAEL RECREATION AND
PARK DISTRICT FOUNDATION (DBA CARMICHAEL PARKS FOUNDATION), AND DART
SWIMMING SACRAMENTO**

The Carmichael Recreation and Park District, hereinafter referred to as CRPD, the Carmichael Recreation and Park District Foundation (DBA Carmichael Parks Foundation), hereinafter referred to as CPF, and the DART Swimming Sacramento, hereinafter referred to as DART, enter into this Memorandum of Understanding (MOU) for the express purpose of implementing swim lessons.

WHEREAS, CRPD understands the importance of providing its community members an opportunity to learn how to swim for safety and recreational purposes but lacks the facilities, staff expertise, and funds to provide this service; and

WHEREAS, CPF desires youth to have affordable access to swim lessons for safety and recreation purposes and is willing to provide youth scholarships for such programs; and

WHEREAS, DART has experience in teaching swim lessons and has demonstrated the business skills, subject knowledge, and experience necessary to supervise staff (including but not limited to certified water safety instructors and lifeguards) and manage all operational requirements such as payroll and benefits management; accounts payable and receivable; cash management; and independent operator insurance.

NOW, THEREFORE, the Parties hereto agree as follows:

I. TERM

A. The term of this MOU shall commence February 21, 2020 through August 7, 2020.

II. TERMINATION

A. DART may terminate the MOU or cancel the swim lesson program hereto by thirty (30) days written notice to CRPD. In the event DART terminates or cancels without the advance notice to CRPD, DART is responsible for any financial loss incurred by CRPD pursuant to this MOU.

B. CRPD may terminate the MOU or cancel a program hereto by thirty (30) days written notice to DART.

III. DESCRIPTION OF SERVICES

A. CRPD will:

1. Provide staff assistance with the youth scholarship application, qualification verification, and communicate approved swim lesson(s) scholarship recipients' names, email, phone number, and scholarship amount to DART on an as needed basis.

2. Provide CPF a list of approved swim lesson scholarship recipients on an as needed basis.
3. Promote the swim lessons through CRPD's website, social media, community center bulletin board, district publication, and at special events.

B. DART will:

1. Ensure the highest level of safety and security is maintained in the pool, pool deck, and in the ancillary aquatic facilities.
2. Provide Certified Water Safety Instructors who are also certified in CPR and first aid to teach swim lessons to children.
3. Provide a Certified Lifeguard, which includes First Aid, CPR and AED training, on the pool deck during the lesson program days and times.
4. Strive to provide innovative quality swim lessons implemented through DART designed curriculum to youth participants during agreed upon days and times as described below to increase water safety awareness and recreational swim abilities.
 - a. Three program levels: Starfish and Seahorse (8 and under), Otter and Seal (9 and older), and Shark (Advanced 8 and older).
 - b. Eight total number of lessons per camp.
 - c. \$75 per camper for eight lessons.
 - d. 30 minutes per lesson.
 - e. 4:1 maximum camper to teacher ratio.
 - f. The minimum number of campers per class is two.
 - g. Camp Sessions Availability (subject to changes approved by the Recreation Services Manager or designee):

| Session Dates | # of Camper Slots Available | Times Offered |
|--|------------------------------------|---------------------------------|
| May 18 th – May 29 th | 16 | 6:05pm/6:40pm |
| June 1 st – June 11 th | 48 | 4:55pm/5:30pm/ 6:05pm/6:40pm |
| June 15 th – June 25 th | 48 | 4:55pm/5:30pm/ 6:05pm/6:40pm |
| June 29 th – July 9 th | 48 | 4:55pm/5:30pm/ 6:05pm/6:40pm |
| July 13 th – July 23 rd | 48 | 4:55pm/5:30pm/ 6:05pm/6:40pm |
| July 27 th – August 6 th | 36 | 4:55pm/5:30pm/ 6:05pm |

5. Provide swim lesson registration through DART'S registration website.
6. Provide goggles for campers to use during swim lessons.
7. Provide exceptional customer service and demonstrate a commitment to excellence for participants of various ages and skill levels.
8. Complete all necessary swimming pool site specific agreements, including but not limited to, facility requirements, insurance, and fees.
9. Comply with the American Disabilities Act and not discriminate against any individuals with special needs. ADA guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, local and state government services and telecommunications.
10. Notify CRPD of any necessary class cancellations and possible make-up days and times.
11. Provide summary reports after each two-week lesson to CRPD and CPF including participation numbers, skill level accomplishments, capacity percentages, pictures, and anecdotes that can be used for promotional purposes.
12. Ensure all campers who have received a reduced rate are on the approved youth scholarship list provided by CRPD.
13. Provide CRPD an invoice after each session listing the youth scholarship participants' names, fee balances (scholarship amounts), and total amount due for payment. Invoices may be emailed to the Recreation Services Manager (Alaina@carmichaelpark.com) or mailed to the CRPD District Office (5750 Grant Avenue, Carmichael CA 95628)
14. Provide promotional appearances and educational sessions on water safety and swim lessons at area schools and CRPD events when available and agreed upon prior to the date of appearance.

C. CPF will:

1. Reimburse CRPD for the sessions invoiced amount provided to CRPD by DART including a 15% CRPD fee to go towards CRPD staff time.
2. Assist DART in arranging promotional appearances and educational sessions on water safety and swim lessons at area schools.

IV. ASSIGNMENT

- A. This agreement is for DART programs only and cannot be assigned to another individual or entity.

V. INDEPENDENT AGENCIES

- A. It is understood and agreed that DART (including DART's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. DART's assigned personnel shall not be entitled to any benefits payable to employees of CRPD as an independent contractor, DART hereby indemnifies and holds CRPD harmless from any and all claims that may be

made against CRPD based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

- B. It is further understood and agreed by the parties hereto that DART in the performance of its obligation hereunder is subject to the control or direction of CRPD as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by DART for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by DART, such person shall be entirely and exclusively under the direction, supervision, and control of DART. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by DART, and the CRPD shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of CRPD, neither DART nor DART's assigned personnel shall have a) any entitlement as a CRPD employee; or b) except as otherwise provided by this Agreement, the right to act on behalf of CRPD in any capacity whatsoever as agent, nor to bind CRPD to any obligation whatsoever. DART shall not be covered by worker's compensation; nor shall DART be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the CRPD to employees of the CRPD.
- E. Notwithstanding DART's status as an independent contractor, CRPD shall withhold from payments made to DART such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding CRPD's liability under said laws and does not abrogate DART's status as an independent contractor as described in this contract. Further, DART is not included in any group covered by CRPD's present agreement with the federal Social Security Administration.
- F. The services DART administers and performs pursuant to this MOU are intended to have the result of improving water safety and swim abilities to area youth in a fun, safe, healthful and encouraging manner through this program. Any vending by DART is done independently from CRPD, and DART assumes responsibility for all related permits, health regulations, taxation, and auditing related to vending. All vending or self-promotion done by DART, relating to this swim lessons programs, must be pre-approved by CRPD using DART and CRPD agreed upon criteria.

VI. INDEMNIFICATION

To the fullest extent permitted by law, DART shall indemnify, defend, and hold harmless CRPD and CPF, their governing Boards, officers, directors, officials,

employees, and authorized volunteers and agents, (each an “Indemnified Party,” and collectively “Indemnified Parties”) from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively “Claims”) including cost of defense, settlement, arbitration, and reasonable attorneys' fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions of DART, its officers, employees, or agents, or the acts or omissions of anyone else directly or indirectly acting on behalf of DART, or for which the DART is legally liable under law regardless of whether caused in part by an Indemnified Party.

This indemnity shall not be limited by the types and amounts of insurance or self-insurance maintained by the DART or the DART’s Subcontractors.

Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity shall survive the expiration or termination of the MOU.

VII. INSURANCE

Without limiting DART’s indemnification, DART shall maintain in force at all times during the term of this MOU and any extensions or modifications thereto, insurance as specified in Exhibit A. It is the responsibility of DART to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit A. It is understood and agreed that CRPD and CPF shall not pay any sum to DART under this MOU unless and until CRPD and CPF is satisfied that all insurance required by this MOU is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this MOU may be grounds for material breach of contract.

VIII. NONDISCRIMINATION

A. DART agrees and assures CRPD that DART and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and Ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of CRPD, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. DART shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of CRPD employees and agents, and recipients of services are free from such discrimination and harassment.

- B. DART represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. DART agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.
- D. DART shall include this nondiscrimination provision in all subcontracts related to this Agreement.

IX. AMENDMENTS

- A. This MOU sets forth all of the promises, conditions and understandings between CRPD and DART relating to swim lessons. There are no promises, conditions and understandings, either oral or written, between CRPD and DART other than those set forth in this MOU. No subsequent modification or agreement with respect to the terms of this MOU shall be effective, unless such subsequent modification or agreement is in writing executed by both CRPD and DART. No oral representation, whenever made, by any official or employee of CRPD shall be effective to modify the provisions of this MOU. This MOU shall be binding upon the parties hereto, their successors and assigns.

X. WRITTEN COMMUNICATION AND NOTICE

- A. All notices from either party to the other under this MOU shall be in writing and sent by nationally recognized overnight delivery service or by United States certified or registered mail, postage prepaid with receipt obtained, addressed to the other party at the address provided below, or such other address as the party to receive the notification may subsequently designate by written notice to the other:

CRPD and CPF:

Carmichael Recreation and Park District
 5750 Grant Avenue
 Carmichael, CA 95608
 (916) 485-5322

DART:

DART of Sacramento
 PO Box 601034
 Sacramento, CA 95860

XI. SIGNATURE AUTHORITY

- A. Each of the persons signing below represents and warrants that he/she has the authority to legally bind the party on whose behalf he/she signs.

XII. PARAGRAPH HEADINGS

- A. The paragraph headings contained herein are for convenience and reference only and are not intended to define or limit the scope of this MOU.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties have executed this MOU as of the date first above written.

CRPD/CPF/DART:

CARMICHAEL RECREATION AND PARK DISTRICT, a Recreation and Park District formed pursuant to the California Public Resources Code (section 5780, et seq.)

By: _____
Mike Blondino, District Administrator
Carmichael Recreation and Park District

“CRPD”

CARMICHAEL RECREATION AND PARK DISTRICT FOUNDATION (DBA CARMICHAEL PARKS FOUNDATION)

By: _____
Sharon Ruffner, President
Carmichael Recreation and Park District Foundation (DBA Carmichael Parks Foundation)

“CPF”

DART SWIMMING SACRAMENTO

By: _____
Brian Nabeta, CEO/Head Coach
DART Swimming Sacramento

“DART”

**EXHIBIT A to MOU
between the Carmichael Recreation and Parks District**

**hereinafter referred to as "CRPD," and Carmichael Parks Foundation hereinafter
referred to as "CPF," and DART Swimming Sacramento hereinafter referred to
as DART**

INSURANCE REQUIREMENTS FOR DART

Without limiting DART's indemnification, DART shall procure and maintain for the duration of the MOU, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the MOU by the DART, its agents, representatives or employees. CRPD and CPF shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the CRPD and CPF Risk Manager, insurance provisions in these requirements do not provide adequate protection for CRPD, CPF and for members of the public, CRPD and CPF may require DART to obtain insurance sufficient in coverage, form and amount to provide adequate protection. CRPD and CPF's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

I. VERIFICATION OF COVERAGE

DART shall provide CRPD and CPF with certificates evidencing coverage required below. **Copies of required endorsements must be attached to certificates.** The CRPD and CPF Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of the CRPD, CPF, and the general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by the CRPD and CPF before performance commences. The CRPD and CPF reserve the right to require that DART provide complete copies of any policy of insurance offered in compliance with these specifications.

II. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. GENERAL LIABILITY: Insurance Services Office’s Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by the CRPD and CPF Risk Manager.
- B. AUTOMOBILE LIABILITY: Insurance Services Office’s Commercial Automobile Liability coverage form CA 0001.
 - 1. Commercial Automobile Liability: auto coverage symbol “1” (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
 - 2. Personal Lines automobile insurance shall apply if vehicles are individually owned.
- C. WORKERS’ COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
- D. UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers’ Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

III. MINIMUM LIMITS OF INSURANCE

DART shall maintain limits no less than:

- A. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

| | |
|-----------------------------|-------------|
| General Aggregate: | \$2,000,000 |
| Products Comp/Op Aggregate: | \$2,000,000 |
| Personal & Adv. Injury: | \$1,000,000 |
| Each Occurrence: | \$2,000,000 |

Sexual Molestation and Abuse \$100,000/\$300,000
(Per Person or Occurrence/Annual Aggregate)

B. AUTOMOBILE LIABILITY:

1. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
2. Personal Lines Automobile Liability for Individually owned vehicles, \$100,000 per person, \$300,000 each accident, \$50,000 property damage.

C. WORKERS' COMPENSATION: Statutory.

D. EMPLOYER'S LIABILITY: \$1,000,000 per accident for bodily injury or disease.

IV. **DEDUCTIBLES AND SELF-INSURED RETENTION**

Any deductibles or self-insured retention that apply to any insurance required by this MOU must be declared and approved by CRPD and CPF.

V. **OTHER INSURANCE PROVISIONS**

The insurance policies required in this MOU are to contain, or be endorsed to contain, as applicable, the following provision:

A. All Policies:

1. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII. The CRPD and CPF Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the CRPD, CPF, and the general public are adequately protected.
2. MAINTENANCE OF INSURANCE COVERAGE: The DART shall maintain all insurance coverages and limits in place at all times and provide the CRPD and CPF with evidence of each policy's renewal ten (10) days after its anniversary date.

DART is required by this MOU to immediately notify CRPD and CPF if they receive a communication from their insurance carrier or agent that

any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. DART shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the MOU.

VI. COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY

- A. **ADDITIONAL INSURED STATUS:** CRPD and CPF, their governing Boards, officers, directors, officials, employees, and authorized volunteers and agents (each and “Additional Insured Party,” and collectively “Additional Insured Parties”), are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of the DART; products and completed operations of the DART; premises owned, occupied or used by the DART; or automobiles owned, leased, hired or borrowed by the DART. The coverage shall contain no endorsed limitations on the scope of protection afforded to the Additional Insured Parties.
- B. **PRIMARY INSURANCE:** For any claims related to this MOU, the DART's insurance coverage shall be primary insurance as respects the insurance or self-insurance maintained by the Additional Insured Parties. Any insurance or self-insurance maintained by the Additional Insured Parties shall be excess of the DART's insurance and shall not contribute with it.
- C. **SEVERABILITY OF INTEREST:** The DART's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. **SUBCONTRACTORS:** DART shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by DART's subcontractor.

VII. WORKERS' COMPENSATION

Workers' Compensation Waiver of Subrogation: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the Additional Insured Parties, which might arise by reason of payment under such policy in connection with performance under this MOU by the DART. Should DART be self-insured for workers' compensation, DART hereby agrees to waive its right of subrogation against the Additional Insured Parties.

VIII. NOTIFICATION OF CLAIM

If any claim for damages is filed with DART or if any lawsuit is instituted against DART, that arise out of or are in any way connected with DART's performance under this MOU and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect the Additional Insured Parties, DART shall give prompt and timely notice thereof to the Additional Insured Parties. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.