

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-4803

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and ERICA BENVENISTE-SAUBER, a sole proprietor ("Contractor") to provide the classes or programs in Cooking ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty (60%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation & Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:

- Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.
- Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney KSA 11/24

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11-30-12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:
Date: 12-10-12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: ERICA BENVENISTE-SAUBER

[Signature] 10/14 Erica Benveniste Sauber
Signature Date Print Name Print Title

4215 Hilaria Way Newport Beach CA 92663
Business Mailing Address, City, State/Zip Tax ID/SSN

N/A 010 975 5637
Cell Phone Business Phone Home Phone Alternate Phone

ericabenv@yahoo.com N/A twofishCulinary.com
E-mail Address Alternate E-mail Business Website

N/A
Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO YES NO _____
WORK STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____
NOTIFIED BY EMAIL STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-4800
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2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

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4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation and Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:

Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.

Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

KSA
11/26

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:
Date: 12-10-12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: ED RATLEDGE

[Signature] 11.15.12 Ed Ratledge _____
Signature Date Print Name Print Title

Signature Date Print Name Print Title

503 Delaware Ave Huntington Beach CA 92649 _____
Business Mailing Address, City, State Zip Tax ID/SSN

714 3971038 _____ _____ _____
Cell Phone Business Phone Home Phone Alternate Phone

[Signature]@gmail.com _____ www.VolleyOL.com
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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5625-1

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and SOPHI ALBERT, a sole proprietor doing business as ("DBA") **PIANO VOICE LESSONS & BEYOND** ("Contractor") to provide the classes or programs in Music ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty (60%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:



I will not be using Representatives or employees.



I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;
and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

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4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation & Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:

Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.

Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/27/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11-30-12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:
Date: 12-10-12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: SOPHI ALBERT DBA PIANO VOICE LESSONS & BEYOND

[Signature] 11/7/12 Sophi Albert Piano/Music Teacher
Signature Date Print Name Print Title

6 Mironi Laguna Niguel, CA 92677
Business Mailing Address, City, State Zip Tax ID/SSN

(949) 429-5702 (949) 429-5702
Cell Phone Business Phone Home Phone Alternate Phone

sweetmusic8816@yahoo.com www.southcalmusic.com
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ **PHONE#** _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ **DATE** _____

CITYUSE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND CLEARED: YES NO _____
STAFF SIGNATURE/DATE

CLEARED TO WORK: YES NO _____
STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL: YES NO _____
STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

04969

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and Thomas Marshall, a sole proprietor ("Contractor") to provide the classes or programs in Tai Kwan Do ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty (60%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:



I will not be using Representatives or employees.



I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;
and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation and Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

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The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:

- Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.
- Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11/26/12

Date: 11.30.12

By: [Signature]
Aaron C. Harp
City Attorney

128A
11/26

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:
Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: Thomas Marshall

[Signature] 11-5-12 Thomas Marshall Owner
Signature Date Print Name Print Title

[Signature] Master
Signature Date Print Name Print Title

333 E 17th St Costa Mesa CA 92627
Business Mailing Address, City, State Zip Tax ID/SSN

949-631-8001
Cell Phone Business Phone Home Phone Alternate Phone

Marshall@TKD@aol.com
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ **PHONE#** _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ **DATE** _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND CLEARED: YES NO _____
STAFF SIGNATURE/DATE

CLEARED TO WORK: YES NO _____
STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL: YES NO _____
STAFF SIGNATURE/DATE

APPROVED BY: _____

Laura Detweiler, Director
Recreation & Senior Services Department

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

h685-1

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and WILLIAM ADAMS, a sole proprietor ("Contractor") to provide the classes or programs in MATH ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **seventy-five (75%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.



I will be using Representatives. Any completed and approved Form shall be incorporated herein by reference. **Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.**

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;
and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

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8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

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16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

KSA
11/26

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:

Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk

CONTRACTOR: WILLIAM ADAMS

[Signature] 11/13/12 WILLIAM J ADAMS INSTRUCTOR
Signature Date Print Name Print Title

Signature Date Print Name Print Title

8238 E WHITE FIR LN ANAHEIM, CA, 92808
Business Mailing Address, City, State Zip Tax ID/ SSN

714-267-7830 714-291-0772
Cell Phone Business Phone Home Phone Alternate Phone

HEYBILLA@SBCGLOBAL.NET HEYBILLA@AOL.COM
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ **PHONE#** _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ **DATE** _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: CLEARED YES NO _____
STAFF SIGNATURE/DATE

CLEARED TO WORK YES NO _____
STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL YES NO _____
STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

C-4635

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and RICK BRADLEY, a sole proprietor ("Contractor") to provide the classes or programs in JUDO ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty-five (65%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation & Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:

Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.



Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/27/12

By: [Signature]

Aaron C. Harp
City Attorney

KSA
11/27

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11/30/12

By: [Signature]

Laura Detweiler
Recreation & Senior Services Director

ATTEST:

Date: 12.10.12

By: [Signature]

Leilani I. Brown
City Clerk



CONTRACTOR: RICK BRADLEY

[Signature]

Signature

11-26-12

Date

RICKARD BRADLEY

Print Name

INSTRUCTOR

Print Title

23276 SKY DR. LAKE FOREST CA 92630

Business Mailing Address, City, State Zip

Tax ID/ SSN

(949) 466-1011

Cell Phone

(714) 501-2811

Business Phone

(949) 855-0857

Home Phone

Alternate Phone

RBS07@cox.net

E-mail Address

RICK.BRADLEY@DR.OC.GOV.COM

Alternate E-mail

Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____ STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____ STAFF SIGNATURE/DATE

CLEARED TO WORK: YES NO _____ STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____ STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL: YES NO _____ STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR RECREATION & SENIOR SERVICES DEPARTMENT

DATE

LY 247

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and GEORGINA ABRAVANEL, a sole proprietor doing business as ("DBA") BODY BUSINESS PERSONAL FITNESS ("Contractor") to provide the classes or programs in Fitness ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty-five (65%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis).

due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class; and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:
Date: 12-10-12

By: [Signature]
Leifani I. Brown
City Clerk



CONTRACTOR: GEORGINA ABRAVANEL DBA BODY BUSINESS PERSONAL FITNESS

[Signature] 11/5/12 Georgina Abravanel OWNER
Signature Date Print Name Print Title

9 Brillantes, Irvine, CA 92620
Business Mailing Address, City, State Zip

Tax ID/SSN

949-813-3262 5AM15
Cell Phone Business Phone

—
Home Phone

949-813-3121
Alternate Phone

gina@ocbodybusiness.com
E-mail Address

david@ocbodybusiness.com
Alternate E-mail

ocbodybusiness.com
Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO YES NO _____
WORK STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____
NOTIFIED BY EMAIL STAFF SIGNATURE/DATE

APPROVED BY: _____
LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and BARBARA JULIAN, a sole proprietor doing business as ("DBA") BEGINNER BLOCKS ("Contractor") to provide the classes or programs in EDUCATION ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty (60%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation & Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:

Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.

Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11-30-12

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:
Date: 12-10-12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: BARBARA JULIAN DBA BEGINNER BLOCKS

[Signature] 11/13/12 Barbara Julian Owner
Signature Date Print Name Print Title

2520 Cliff Drive, NB, CA, 92663
Business Mailing Address, City, State/Zip Fax ID/ SSN

(949) 293-3668 same - _____
Cell Phone Business Phone Home Phone Alternate Phone

Barbarajuliano@gmail.com _____
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO YES NO _____
WORK STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____
NOTIFIED BY EMAIL STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

C-4305

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and LESLIE TAYLOR, a sole proprietor ("Contractor") to provide the classes or programs in FITNESS ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty-five (65%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

I will be using Representatives. Any completed and approved Form shall be incorporated herein by reference. **Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.**

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation and Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:



Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.



Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11-30-12

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

KAP 11/29

ATTEST:

Date: 12-10-12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: LESLIE TAYLOR

[Signature] 10, 20, 2012 LESLIE L. TAYLOR YOGA INSTRUCTOR
Signature Date Print Name Print Title

Signature Date Print Name Print Title

19327 Shady Harbor Cir Newport Beach CA 92648
Business Mailing Address, City, State Zip Tax ID/ SSN

714 423 8615 714 969 1058 _____ 714 960 1672
Cell Phone Business Phone Home Phone Alternate Phone

leslietaylor.com dynamicllt@yahoo.com www.dynamicworkshops.com
E-mail Address *by mail .com* Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

12/2/13
This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and SKYHAWKS SPORTS ACADEMY., a Washington corporation ("Contractor") to provide the classes or programs in SPORTS ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty-five (65%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

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4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:
Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: SKYHAWKS SPORTS ACADEMY.

[Signature] 10.17.12 CHRIS STILES PRESIDENT
Signature Date Print Name Print Title

[Signature] 11.13.12 DAVE BERTO VP
Signature Date Print Name Print Title

6311 E. Mt. Spokane Park Dr. Mead, WA. 99021 91-1549581
Business Mailing Address, City, State Zip Tax ID/SSN

509-879-8401 800-804-3509 _____ _____
Cell Phone Business Phone Home Phone Alternate Phone

dstiles@skyhawks.com m.jordan@skyhawks.com www.skyhawks.com
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO WORK: YES NO _____
STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL: YES NO _____
STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

0-4669

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and CATHY BADUM, a sole proprietor doing business as "DBA" **CS Dance Factory** ("Contractor") to provide the classes or programs in Fitness ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty-five (65%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 For classes held at the OASIS Senior Center before 5:00pm the City shall pay the Contractor an amount equal to **seventy (70%) percent**; for classes held after 5:00pm the City shall pay the Contractor an amount equal to **sixty-five (65%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.3 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.4 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant

unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the Newport Navigator and/or the OASIS News (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.



I will be using Representatives. Any completed and approved Form shall be incorporated herein by reference. **Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.**

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved

cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

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4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

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4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OAS/S News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or

replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation & Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:



Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.

- Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

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All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable

steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

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13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

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16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

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[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:

Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: CS DANCE FACTORY

[Signature] 11/19/12 Cathy Badum Owner
Signature Date Print Name Print Title

P.O. Box 15303, Newport Beach, CA 92659-5303 90-0652795
Business Mailing Address, City, State Zip Tax ID/SSN

949-375-2277 _____ _____ 449-230-5934 (for customer support)
Cell Phone Business Phone Home Phone Alternate Phone

info@CSdanceFactory.com Cathy@CSdanceFactory.com www.CSDanceFactory.com
E-mail Address Alternate E-mail Business Website

1800 Westcliff Dr #14, Newport Beach, CA 92660
Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO YES NO _____
WORK STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____
NOTIFIED BY EMAIL STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

Cy74D
This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and RECREATIONAL MANAGEMENT SERVICES, INC., a California corporation ("Contractor") to provide the classes or programs in TENNIS ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to:

- **Sixty-five (65%) percent** for regular tennis classes
- **Eighty (80%) percent** when private tennis lessons

of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by

the City and published in advance in the Newport Navigator and/or the OASIS News (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each

Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

MM I will be using Representatives. Any completed and approved Form shall be incorporated herein by reference. **Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.**

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator* and/or *OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting,

replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation & Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

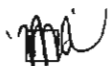
7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:



Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.

- Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

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APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:
Date: 12-10-12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: RECREATIONAL MANAGEMENT SERVICES, INC.

Donald C. Alger 11-10-12 DONALD C. ALGER President
Signature Date Print Name Print Title

Melinda A. Alger 11-10-12 MELINDA A. ALGER V. President/Secretary
Signature Date Print Name Print Title

11037 Warner Av. 227 F.V. Ca. 92708
Business Mailing Address, City, State Zip Tax ID/SSN

714 342-9058 Business Phone Home Phone 714 839-5950
Cell Phone Alternate Phone

rm5-inc@live.com Alternate E-mail RM.SINC NEWPORT BEACH.COM
E-mail Address Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO YES NO _____
WORK STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____
NOTIFIED BY EMAIL STAFF SIGNATURE/DATE

APPROVED BY: _____
LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-4703

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and OCEAN ADVENTURE PROGRAMS, INC., a California corporation ("Contractor") to provide the classes or programs in SURFING AND SCIENCE ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2013 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to:

- **sixty-five** (65%) percent (for classes held at any City facility or school beginning fall season 2012)
- **seventy-five** (75%) percent for surf classes
- **eighty-five** (85%) percent for classes held at Harbor Day School of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the Newport Navigator and/or the OASIS News (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any

services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.



I will be using Representatives. Any completed and approved Form shall be incorporated herein by reference. **Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.**

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the

Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator and/or OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference.

not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:



Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.

Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

11. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the

legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:
Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: OCEAN ADVENTURE PROGRAMS, INC.

[Signature] NOV 15 2012 ERIK NELSEN PRESIDENT
Signature Date Print Name Print Title

[Signature] 11/1/12 TJefford B. Nelsen V Pres.
Signature Date Print Name Print Title

447 LOCUST STREET, LAGUNA BEACH, CA 92651 95-3609973
Business Mailing Address, City, State Zip Tax ID/SSN

949.290.7033 949.290.4042 949.464.0077 949.494.1253
Cell Phone Business Phone Home Phone Alternate Phone
nellie9000@yahoo frog9000@yahoo.com eriknensensurf.com
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO WORK: YES NO _____
STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL: YES NO _____
STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

0-5052

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and Trudy Naman, a sole proprietor ("Contractor") to provide the classes or programs in Computers ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

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and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.9.2 When cancelling a Class, Contractor shall contact all participants as soon as possible.

4.10 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.11 *Contractor Informational Meeting.* Contractor or Contractor's authorized Representative or employee shall attend the Annual "Contractor Informational Meeting" that will be held in the Fall.

4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

4.14.6 Ensure that any music or sound system is kept at levels that will not interfere with other classes or create a public disturbance/nuisance;

4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

4.15 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up to \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. TRANSPORTING OF MINOR PARTICIPANTS

9.1 Unless the Program specifically involves travel or transportation of minors to an offsite location, Contractor, or Contractor's Representatives, shall not transport any minor participant by vehicle or otherwise.

9.2 If, after the conclusion of any Class session, a minor participant has not been picked up, Contractor shall make every effort to contact the minor participant's parent, legal guardian, or other authorized individual to whom the minor may be released. If no contact can be made with any of the above individuals, Contractor shall contact the City Recreation Supervisor or Recreation Manager at the Recreation & Senior Services Office at (949) 644-3151 (Monday through Friday, 8 a.m. to 5 p.m.), or the Park Patrol Division at (949) 795-2381 (Monday through Friday, 5 p.m. to 9 p.m. and Saturday and Sunday, 9 a.m. to 5 p.m.). During all other hours, Contractor shall contact the Watch Commander at the Newport Beach Police Department for assistance at (949) 644-3730.

10. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

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Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

12. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

13. INDEMNIFICATION

13.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

13.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

14. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Classes or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

15. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

11/26

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:
Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: Trudy Naman

[Signature]
Signature

10/31/12
Date

Trudy J. Naman
Print Name

Dr. / CEO
Print Title

Signature

Date

Print Name

Print Title

P.O. Box 13235 NB Ca. 92658
Business Mailing Address, City, State Zip

45-5400758
Tax ID/ SSN

9.698.2365
Cell Phone

Same
Business Phone

Home Phone

Alternate Phone

Naman@ix.netcom.com
E-mail Address

Alternate E-mail

trunaman.com
Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ **PHONE#** _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ **DATE** _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND CLEARED: YES NO _____
STAFF SIGNATURE/DATE

CLEARED TO WORK: YES NO _____
STAFF SIGNATURE
DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL: YES NO _____
STAFF SIGNATURE/DATE

APPROVED BY: _____
LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Supplies/Equipment.* Contractor shall be responsible for providing all supplies, equipment, personnel, materials, and any additional publicity desired for the class, at Contractor's sole expense. Contractor shall also be responsible for repairing and maintaining all equipment and supplies in good working condition.

4.6 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.7 *Class Size.* Contractor shall determine the minimum and maximum number of participants required for each Class to ensure the quality and safety of the Class participants. Contractor or Contractor's authorized representative is required to attend the first Class meeting of all Class offerings advertised in the *Newport Navigator and/or OASIS News* unless Contractor cancels the Class three (3) business days prior to the start date, with the prior written approval of City. In the event of such approved cancellation, Contractor shall be responsible for informing all registered participants. In the event that the minimum number of participants is not met by the first Class meeting, the Class shall be cancelled and the Contractor shall not be compensated for attending the first meeting or for any cancelled Class. Contractor shall not be obligated to provide any additional services in regards to the cancelled Class. If the minimum number of participants is met or exceeded, the Class shall be held as scheduled (even if any of the

initial participants subsequently drop the Class), subject to Section 14 of this Agreement. If the demand is such that an additional Class could be offered, it shall be taken under consideration and negotiated between City and Contractor. If class(es) are cancelled for two (2) consecutive quarters due to lack of enrollment, the class will not be scheduled again until City determines that public demand has increased.

4.8 *Use of Non-City Facilities for Classes.* If Contractor desires to conduct the Class at his/her place of business, or some other non City-owned site or facility, Contractor must:

4.8.1 Notify City at least twenty-four (24) hours in advance;

4.8.2 Provide sufficient parking for all participants;

4.8.3 Post signs at the site to direct participants to the location of class;

and

4.8.4 Allow access to City staff to the location when requested.

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Class cancellation.

4.9.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

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4.12 *Camp Participant Emergency Waiver Form Requirements.* All Contractors who offer camps shall require all participants to complete and return to Contractor, or his/her designee, on or before the first day of camp, a City issued "Emergency Contact Information Form".

4.13 *Sign-Out Sheets.* All Camp Contractors with participants ages 10 years and younger, must have a legal guardian sign out each Class participant after each Class. Sign out sheets along with Attendance sheets are available to the Contractor online through their instructor login.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Racquel Valdez, Recreation Supervisor
Recreation and Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern

4.14 *Other Requirements.* Contractors shall:

4.14.1 Cooperate fully with all reasonable requests from City staff;

4.14.2 Maintain the highest degree of participant safety possible;

4.14.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Class participation;

4.14.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.14.5 Clear all participants from the designated Class area at the end of Class time unless participants continue to use public City facilities for personal use without conflict with other scheduled activities and in accordance with posted hours and availability limitations;

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4.14.7 Close and secure the room or building at the end of each Class;

4.14.8 Turn off any lights, heat, air conditioning, or other utilities when Class is finished;

4.14.9 Complete and return the quarterly "Contract Class Schedule" requested by the City if Contractor wishes to be a part of the marketing materials;

4.14.10 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.14.11 Pay a \$20 lost key/replacement fee when Contractor requests replacement key; and

4.14.12 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News* and the current Contractor Handbook which is incorporated herein by this reference. Contractor's signature on this Agreement signifies acknowledgement of receipt of the Contractor Handbook.

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California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:



Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.



Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will

pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.

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16. STANDARD PROVISIONS

16.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

16.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

16.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

16.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

16.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

16.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

16.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

16.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

16.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

16.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:

Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: Gyrodimentsions, Inc. DBA Kiddie Techie

[Signature] 10/30/12 Kelly Ren Director
Signature Date Print Name Print Title

[Signature] 11/17/12 Kevin Wong President
Signature Date Print Name Print Title

4850 Barranca Pkwy, #203, Irvine, CA 92604 86-1048559
Business Mailing Address, City, State/Zip Tax ID/SSN

626.802.8286 949.679.8989 714.389.2818 _____
Cell Phone Business Phone Home Phone Alternate Phone

kren@zoomacademy.org _____ www.zoomacademy.org
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ **PHONE#** _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ **DATE** _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: CLEARED YES NO _____
STAFF SIGNATURE/DATE

CLEARED TO WORK YES NO _____
STAFF SIGNATURE
DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR NOTIFIED BY EMAIL YES NO _____
STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE _____

74217

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and Culinary Cooking Kids, LLC, a California limited liability company ("Contractor") to provide the classes or programs in Cooking ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty (60%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor. Contractors shall only collect material fees that are pre-approved by the City and published in advance in the *Newport Navigator* and/or the *OASIS News* (if applicable). Such material fees shall be collected by Contractor at the first Class meeting.

3.2 *Publicity.* City shall provide publicity for the Class in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Class and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Class without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Classes and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Classes for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops the Class before the second Class meeting;

3.4.2 The participant drops a one (1) day or more workshop five (5) business days before the workshop begins; or

3.4.3 The Class is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and Culinary Cooking Kids, LLC, a California limited liability company ("Contractor") to provide the classes or programs in Cooking ("Class" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2015 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Class meeting. City shall pay the Contractor an amount equal to **sixty (60%) percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

2.3 (When applicable) Contractors providing Classes or Programs at Mariners Elementary School and/or Newport Elementary School ("Schools") shall submit to the City written notice of actual costs incurred in the performance of services under this Agreement to conduct the Class or Program at the Schools. Subject to the City's written acceptance of Contractor's actual costs, City shall reimburse the Contractor one hundred percent (100%) of the actual costs incurred within twenty one (21) business days after the last Class or Program meeting.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/26/12

By: [Signature]
Aaron C. Harp
City Attorney

KSA
11/24

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11.30.12

By: [Signature]
Laura Detweiler
Recreation & Senior Services Director

ATTEST:
Date: 12.10.12

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: Culinary Cooking Kids, LLC

[Signature] 10-8-12 Amber Stearns CEO
Signature Date Print Name Print Title

[Signature] 10-8-12 Bonnie Bachelor CFO
Signature Date Print Name Print Title

23851 Inverness, LN, CA 92677 27-2119919
Business Mailing Address, City, State Zip Tax ID/SSN

(714) 514-5100 (949) 292-4720 (949) 870-7171
Cell Phone Business Phone Home Phone Alternate Phone

culinarykids@live.com amber@stearns.com culinarykids.biz
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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REPRESENTATIVE/SUBCONTRACTOR APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS PAID FOR: YES NO _____
STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____
CLEARED STAFF SIGNATURE/DATE

CLEARED TO YES NO _____
WORK STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____
STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____
NOTIFIED BY EMAIL STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

