

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5355

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 RACHEL ENCISO, 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:

~~XXXX~~ **I will not be using Representatives or employees.**

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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:

RE

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: 1-8-13

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 1.9.13

By: [Signature]
Aaron C. Harp
City Attorney

KSA
1/8

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

ATTEST:
Date: 1-15-13

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: RACHEL ENCISO

[Signature] 12/26/2012 Rachel Enciso HotHula Instructor
Signature Date Print Name Print Title

Signature Date Print Name Print Title

401 62nd St, Newport Beach, Ca 92663
Business Mailing Address, City, State Zip Tax ID/ SSN

949.378.2822 949.349.7672
Cell Phone Business Phone Home Phone Alternate Phone

rlokelani@yahoo.com rachel.enciso@fluor.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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**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5356

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

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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]

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**

0-5357

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 Easel Does It! LLC, a California limited liability company ("Contractor") to provide the classes or programs in Art ("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.

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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;

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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;

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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: 1/8/13

By: [Signature]
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 1.10.13

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

ATTEST: F-15-B
Date: _____

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: Easel Does It! LLC

<u>[Signature]</u> Signature	<u>12/15/12</u> Date	<u>Tracy M. Gohl</u> Print Name	<u>Owner/Instructor</u> Print Title
<u>[Signature]</u> Signature	<u>12/15/12</u> Date	<u>Meredith Woodson</u> Print Name	<u>Owner/Instructor</u> Print Title

21062 Seaside Lane, Huntington Bch CA 92646
Business Mailing Address, City, State Zip

45-4359539
Tax ID/SSN

(949) 500 8798 Cell Phone (714) 225-4800 Business Phone Home Phone Alternate Phone

info@easeldoesit.net E-mail Address T-mg@yahoo.com Alternate E-mail www.easeldoesit.net Business Website

[Signature] or meredithcreates@gmail.com

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

INDEPENDENT CONTRACTOR AGREEMENT RECREATION INSTRUCTOR

C-5358
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 KIM ESMOND, a sole proprietor doing business as ("DBA") ORANGE COUNTY DANCE PRODUCTIONS ("Contractor") to provide the classes or programs in Dance ("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.

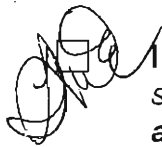
4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives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

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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
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PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3156
E-mail: recreation@newportbeachca.gov

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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.

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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.

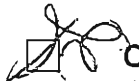
7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance 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: 1/10/13

By: [Signature]
Aaron C. Harp
City Attorney

KSA
1/10

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 1-11-13

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

ATTEST:
Date: 1-25-13

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: KIM ESMOND DBA ORANGE COUNTY DANCE PRODUCTIONS

[Signature] 12-3-12 Kim Esmond owner
Signature Date Print Name Print Title

PO Box 100571 Irvine, CA 92602
Business Mailing Address, City, State Zip Tax ID/ SSN

949-451-5383 714-385-1933 _____ _____
Cell Phone Business Phone Home Phone Alternate Phone

info@ocdanceproductions.com ocdanceproductions.com
E-mail Address Alternate E-mail Business Website

7 Safeguard Pl, Irvine, CA 92602
Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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EXHIBIT A
REPRESENTATIVE APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

REPRESENTATIVE: NAME: _____

 ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

 EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS: YES NO _____

STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____

STAFF SIGNATURE/DATE

CLEARED TO YES NO _____

STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES NO _____

STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____

STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5359
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 FROM TEE TO DREAM, LLC, a California limited liability company doing business as ("DBA") TOTAL GOLF ADVENTURE OF SOUTH ORANGE COUNTY ("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.

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

5.2 E-mail: recreation@newportbeachca.gov 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: 1/10/13

By: [Signature]
Aaron C. Harp
City Attorney

*KSA
1/8*

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 1.11.13

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

ATTEST:
Date: 1.25.13

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: FROM TEE TO DREAM, LLC DBA TOTAL GOLF ADVENTURE

[Signature] 1/7/13 Anthony Leone Director
Signature Date Print Name Print Title

Signature Date Print Name Print Title

15961 Corina Ct Hac. Hts. CA 91745
Business Mailing Address, City, State Zip Tax ID/ SSN

Cell Phone Business Phone Home Phone Alternate Phone

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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EXHIBIT A
REPRESENTATIVE APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

REPRESENTATIVE: NAME: _____

 ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

 EMAIL: _____

SIGNATURE OF CONTRACTOR: _____ **DATE** _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS: YES No _____

STAFF SIGNATURE/DATE

BACKGROUND: YES No _____

STAFF SIGNATURE/DATE

CLEARED TO YES No _____

STAFF SIGNATURE

DATE RECEIVED

PHOTO TAKEN: YES No _____

STAFF SIGNATURE/DATE

CONTRACTOR YES No _____

STAFF SIGNATURE/DATE

APPROVED BY: _____

LAURA DETWEILER, DIRECTOR
RECREATION & SENIOR SERVICES DEPARTMENT

DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5360

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 JAYME BARGER, a sole proprietor doing business as ("DBA") PAINT, PASTE AND POUR ("Contractor") to provide the classes or programs in Art ("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 \$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.

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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: 4/10/13

By: [Signature]
Aaron C. Harp
City Attorney

**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: 1.11.13

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

ATTEST:

Date: 1.25.13

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: JAYME BARGER DBA PAINT, PASTE AND POUR

[Signature] 1/2/13 Jayme R. Barger Contractor
Signature Date Print Name Print Title

28491 Rancho Grande, Laguna Niguel, CA. 92677
Business Mailing Address, City, State Zip Tax ID/ SSN

949-887-4269 949-887-4269 949-831-7189
Cell Phone Business Phone Home Phone Alternate Phone

paint.paste.pour@gmail.com JaymeBarger@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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EXHIBIT A
REPRESENTATIVE APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: Jayme Barger

REPRESENTATIVE: NAME: Rachel Westfall

 ADDRESS: 31 Bentwood Lane

CITY, STATE ZIP: Aliso Viejo CA 92656

DATE OF BIRTH: 11-6-1973 PHONE# 949-362-8041

EMAIL: rachelwestfall@msn.com

SIGNATURE OF CONTRACTOR: Jayme R. Barger DATE 1/2/13

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS: YES NO _____ STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____ STAFF SIGNATURE/DATE
CLEARED

CLEARED TO YES NO _____ STAFF SIGNATURE
WORK

_____ DATE RECEIVED

PHOTO TAKEN: YES NO _____ STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____ STAFF SIGNATURE/DATE
NOTIFIED BY EMAIL

APPROVED BY: _____

Laura Detweiler, Director
Recreation & Senior Services Department

_____ DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5361

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 DAN GLENN, a sole proprietor ("Contractor") to provide the classes or programs in SURF ("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 the Contractor an amount equal to **SEVENTY (70%) 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.

(P) 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: 1/10/13

By: [Signature]
Aaron C. Harp
City Attorney

KSA
1/10

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 1.11.13

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

ATTEST: 1.25.13
Date: 1.25.13

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: DAN GLENN

[Signature] 1-7-13 Dan Glenn owner
Signature Date Print Name Print Title

Signature Date Print Name Print Title

1418 Santanella Terrace CDM CA 92625
Business Mailing Address, City, State Zip Tax ID/ SSN

(949) 500-7118 _____ _____ _____
Cell Phone Business Phone Home Phone Alternate Phone

dglenn@nmsd.us _____
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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EXHIBIT A
REPRESENTATIVE APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

REPRESENTATIVE: NAME: _____

 ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF REPRESENTATIVE: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS: YES NO _____ STAFF SIGNATURE/DATE

BACKGROUND: YES NO _____ STAFF SIGNATURE/DATE
CLEARED

CLEARED TO YES NO _____ STAFF SIGNATURE
WORK

_____ DATE RECEIVED

PHOTO TAKEN: YES NO _____ STAFF SIGNATURE/DATE

CONTRACTOR YES NO _____ STAFF SIGNATURE/DATE
NOTIFIED BY EMAIL

APPROVED BY: _____

Laura Detweiler, Director
Recreation & Senior Services Department

_____ DATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5362
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 RYAN BRENNAN, a sole proprietor ("Contractor") to provide the classes or programs in YOUTH BMX ("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 (70%) 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.

AS 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 day and year first written above.

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

CITY OF NEWPORT BEACH,
A Municipal Corporation

By: [Signature]
Aaron C. Harp
City Attorney

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

ATTEST:
By: [Signature]
Leilani Brown, City Clerk



CONTRACTOR: **RYAN BRENNAN**

By: [Signature] 1. 8. 12
Signature Date

Print Name and Title: Ryan Brennan Owner

By: _____
Signature Date

Print Name and Title: _____

Tax ID or SSN: _____

250 E. 17th st Cost. Mesa CA 92627
Address City State Zip

949. 735. 7487

Cell Phone Business Phone Home Phone

Ryan@GBmxbike show.com www.teamsoil.com

Email Address Web Site Address

Home Address (if different from above) City State Zip

Home Address (if different from above) City State Zip

Attachments: Exhibit A: Representatives and/or Employees of Contractor

INSTRUCTIONS FOR INDEPENDENT CONTRACTORS

Prior to submitting your completed contract package to the City, please ensure the following documents are completed and/or enclosed:

1. Three copies of the signed contract (a completed original contract will be mailed back for your records after processing)
2. Initial the appropriate statement on Page 3 and Complete Exhibit A as appropriate.
3. Copy of valid City of Newport Beach Business License; and
4. Initial the appropriate statement on Page 7 and enclosed Evidence of Insurance (refer to Section 6 of the Contract).

General Liability Insurance Certificate with Additional Insured Endorsement if not using SCMAF Insurance Plan; Workers Compensation Coverage; Automobile Insurance Coverage



**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5363

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 Challenger Sports Corporation, a Kansas corporation ("Contractor") to provide the classes or programs in Youth 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.

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 day and year first written above.

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

CITY OF NEWPORT BEACH,
A Municipal Corporation

By: [Signature]
Aaron C Harp
City Attorney

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

ATTEST:
By: [Signature]
Leilani Brown, City Clerk



CONTRACTOR: **CHALLENGER SPORTS**

By: [Signature] 1/9/13
Signature Date

Print Name and Title: Ronald Matsch, CEO

By: [Signature] 1/9/13
Signature Date

Print Name and Title: Peter Arch, Secretary

Tax ID or SSN: _____

8263 Flint St., Lenexa, KS 66214
Address City State Zip

760-586-1209 / 913-599-4884
Cell Phone Business Phone Home Phone

nhowitt@challengersports.com | www.challengersports.com
Email Address Web Site Address

Home Address (if different from above) City State Zip

Home Address (if different from above) City State Zip

Attachments: Exhibit A: Representatives and/or Employees of Contractor

EXHIBIT A
REPRESENTATIVE APPROVAL FORM

PLEASE PRINT LEGIBLY

CONTRACTOR NAME: _____

REPRESENTATIVE: NAME: _____

ADDRESS: _____

CITY, STATE ZIP: _____

DATE OF BIRTH: _____ PHONE# _____

EMAIL: _____

SIGNATURE OF REPRESENTATIVE: _____ DATE _____

CITY USE ONLY

CONTRACT #: _____

FINGERPRINTS: 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



Secretary of State Administration Elections **Business Programs** Political Reform Archives Registries

Business Entities (BE)

Online Services

- E-File Statements of Information for Corporations
- Business Search
- Processing Times
- Disclosure Search

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information (annual/biennial reports)

Filing Tips

Information Requests (certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

- Business Resources
- Tax Information
- Starting A Business
- International Business Relations Program

Customer Alerts

- Business Identity Theft
- Misleading Business Solicitations

Business Entity Detail

Data is updated weekly and is current as of Friday, January 11, 2013. It is not a complete or certified record of the entity.

Entity Name:	CHALLENGER SPORTS CORPORATION
Entity Number:	C2108987
Date Filed:	05/14/1998
Status:	ACTIVE
Jurisdiction:	KANSAS
Entity Address:	8263 FLINT STREET
Entity City, State, Zip:	LENEXA KS 66214
Agent for Service of Process:	NATIONAL REGISTERED AGENTS, INC.
Agent Address:	2875 MICHELLE DR STE 100
Agent City, State, Zip:	IRVINE CA 92606

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

[Modify Search](#) [New Search](#) [Printer Friendly](#) [Back to Search Results](#)

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~~2751119~~

2751129

STATE OF KANSAS

OFFICE OF
SECRETARY OF STATE
RON THORNBURGH



CHALLENGER SPORTS

To all to whom these presents shall come, Greetings:

I, RON THORNBURGH, Secretary of State of the State of Kansas,
do hereby certify that the attached is a true and correct
copy of an original on file and of record in this office.

STATE OF KANSAS } ss
COUNTY OF JOHNSON }
FILED FOR RECORD

12.00

1997 OCT 10 P 3: 32.2

SARA F. ULLMANN
REGISTER OF DEEDS

IN TESTIMONY WHEREOF:

I hereto set my hand and cause to
be affixed my official seal. Done
at the City of Topeka, this day,
October 1, 1997



RON THORNBURGH
SECRETARY OF STATE

2 pages are attached to this certification.

Secretary of State/Corporations Division Form
RO

Change of Registered Office or Agent

We, Ronald G. Matsch, ~~President or Vice President~~ and Peter Arch
~~Secretary or Assistant Secretary~~ of CHALLENGER SPORTS CORP.

a corporation organized and existing under and by virtue of the laws of the
state of Kansas, do hereby certify that at a
meeting of the board of directors of said corporation the following resolution
was duly adopted:

Do not write in this space.

Be it resolved that the Registered Office in the state of Kansas of said
corporation be changed to:

<u>11000 King</u>	<u>Overland Park</u>	<u>Johnson</u>	<u>Kansas</u>	<u>66210</u>
Street and Number	Town or City	County	State	Zip Code

Be it further resolved that the Resident Agent of said corporation in the state of Kansas be changed to:

Stephen D. McGiffert

Individual or Kansas Corporation

The President and Secretary are hereby authorized to file and record the same in the manner as required
by law.

Ronald G. Matsch

President or Vice President
Ronald G. Matsch, President

Peter Arch

Secretary or Assistant Secretary
Peter Arch, Secretary

State of KANSAS
County of JOHNSON } ss.

Before me, a Notary Public, came Ronald G. Matsch President, ~~Vice President~~
and Peter Arch Secretary, ~~Assistant Secretary~~ of the above-named corporation, who
are known to me to be the persons who executed the foregoing certificate in their official capacities and duly
acknowledged the execution of the same this _____ day of January,
19xx 2000



Brandon J. English

Notary Public

(Seal)

My commission or appointment expires 2/25, 19 2003.

Please submit this form in duplicate, with \$20 filing fee, to:
Secretary of State, 2nd Floor, State Capitol, 300 S.W. 10th Ave.,
Topeka, KS 66612-1594, (913) 296-4564

ARTICLES OF INCORPORATION

OF

Challenger Sports Corp.

ARTICLE I

Name

The name of this corporation is Challenger Sports Corp.

ARTICLE II

Registered Office And Resident Agent

The registered office of the corporation in the state of Kansas, County of Johnson, is at 11000 King, Suite 200, Overland Park, KS 66210. The resident agent at that address is Thomas K. Jones.

ARTICLE III

Nature Of Business

The nature of the business or purposes to be conducted or promoted are:

- (a) To own and operate youth soccer camps.
- (b) To engage in any lawful conduct or activity for which corporations may be organized under the Kansas Corporation Code.

ARTICLE IV

Capital Stock

This corporation is authorized to issue Forty-Five Million (45,000,000) shares of stock of which Twenty-Five Million (25,000,000) shares are Common Stock having a par value of One Dollar (\$1.00) per share, with full voting rights; Ten Million (10,000,000) shares are Class A Preferred Stock having a par value of One Dollar (\$1.00) per share, with privileges and benefits to be set by the Board of Directors; and Ten Million (10,000,000) shares are Class B Preferred Stock having a par value of One Dollar (\$1.00) per share, with privileges and benefits to be set by the Board of Directors.

ARTICLE V
Incorporator

The name and mailing address of the incorporator is as follows:

James R. Jorgensen
101 First Street, #586
Los Altos, CA 94022

ARTICLE VI
Initial Directors

The powers of the incorporator are to terminate upon the filing of these Articles of Incorporation, and the name and mailing address of each person who is to serve as director until the first annual meeting of stockholders or until a successor is elected and qualified are as follows:

James R. Jorgensen
101 First Street, #586
Los Altos, CA 94022

Ronald G. Matsch
3000 W. 120th Terrace
Leawood, KS 66209

ARTICLE VII
Indemnification of Directors

Any individual serving as a member of the Board of Directors of the Corporation shall have no liability to the Corporation or any of its shareholders for monetary damages for breach of fiduciary duty as a director; provided, however, that such elimination of liability of such individual shall not apply (a) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) for any liability arising under the provisions of K.S.A. 17-6424 and any amendments thereto, or (d) for any transaction from which such director derived an improper personal benefit.

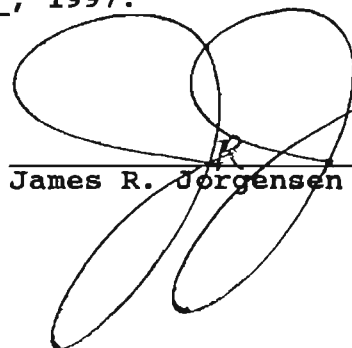
ARTICLE VIII
Bylaws

The power to adopt, repeal and amend the bylaws of this corporation shall reside in the Board of Directors of this corporation.

ARTICLE IX
No Cumulative Voting

At all elections of directors of this Corporation and for the purposes of all other matters upon which stockholders are entitled to vote, each stockholder shall be entitled to as many votes as shall equal the number of shares of stock held by that stockholder. No cumulative voting shall be permitted.

IN TESTIMONY WHEREOF, I have hereunto set my name this 20th day of September, 1997.

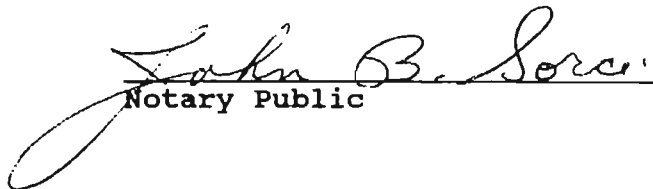


James R. Jorgensen

Calif
santa clara)
STATE OF ~~KANSAS~~)
COUNTY OF Santa Clara) SS:

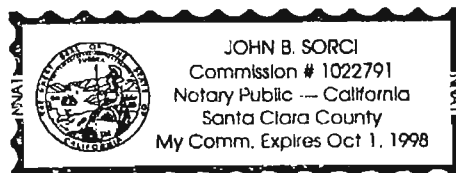
Personally appeared before me, a Notary Public, in and for said County and said State, the above named, who is personally known to me to be the same person who executed the foregoing instrument in writing, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20 day of Sept, 1997.



Notary Public

My Appointment Expires:
1 Oct 98



2790434

STATE OF KANSAS 2790433

OFFICE OF
SECRETARY OF STATE
RON THORNBURGH



To all to whom these presents shall come, Greetings:

I, RON THORNBURGH, Secretary of State of the State of Kansas,
do hereby certify that the attached is a true and correct
copy of an original on file and of record in this office.

STATE OF KANSAS }
COUNTY OF JOHNSON } SS
FILED FOR RECORD

1000 1998 FEB 10 P 3:48.8

SARA F. ULLMANN
REGISTER OF DEEDS

IN TESTIMONY WHEREOF:

I hereto set my hand and cause to
be affixed my official seal. Done
at the City of Topeka, this day,
February 3, 1998



Ron Thornburgh

RON THORNBURGH
SECRETARY OF STATE

2 pages are attached to this certification.

BOOK 5456 PAGE 963

BOOK 5456 PAGE 965

10.00

CHALLENGER SPORTS CORP.

**CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION
PRIOR TO RECEIPT OF PAYMENT FOR STOCK**

The undersigned, being all of the directors named in the Articles of Incorporation as filed with the Secretary of State of Kansas on October 1, 1997 hereby certify that at a special meeting of the directors held January 6, 1998, at 9:00 o'clock a.m., pursuant to a waiver of notice signed by all directors in accordance with K.S.A. 17-6519, the following amendment was duly adopted pursuant to the provisions of K.S.A. 17-6601:

BE IT RESOLVED that Article IV of the Articles of Incorporation of this corporation be amended by deleting the present Article IV in its entirety and substituting the following Article IV in lieu thereof:

**ARTICLE IV
Capital Stock**

This corporation is authorized to issue Forty-Five Million (45,000,000) shares of stock of which Twenty-Five Million (25,000,000) shares are Common Stock having a par value of Ten Cents (\$.10) per share, with full voting rights; Ten Million (10,000,000) shares are Class A Preferred Stock having a par value of Ten Cents (\$.10) per share, with privileges and benefits to be set by the Board of Directors; and Ten Million (10,000,000) shares are Class B Preferred Stock having a par value of Ten Cents (\$.10) per share, with privileges and benefits to be set by the Board of Directors.

We further certify that as of the date of the adoption of the above amendment, the corporation had not received any payment for any of its stock.

IN WITNESS WHEREOF, we have subscribed our names this 2nd day of January, 1998.



James R. Jorgensen

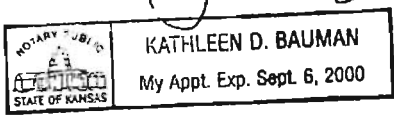


Ronald G. Matsch

STATE OF KS)
COUNTY OF Johnson) ss:

Personally appeared before me, a Notary Public in and for the County and State aforesaid, the above named who are personally known to me to be the same persons who executed the foregoing instrument in writing and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29th day of January, 1998.



Kathleen Bauman
Notary Public

My appointment expires:
9/6/00

Certificate of Correction

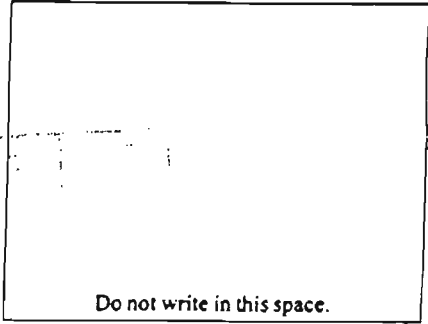
CC

Name of corporation: Challenger Sports Corp.

We, Ron Matsch, ~~President or Vice President~~
and Peter Arch,

Secretary or Assistant Secretary of the above named corporation

hereby certify to the Secretary of State the following correction to
Certificate of Amendment to Articles of
Incorporation Prior to Receipt of Payment
the for Stock :
(name of incorrect document)



PLEASE SEE ATTACHED.

We certify that this correction is made in accordance with K.S.A. 17-6003(f).

IN TESTIMONY WHEREOF, We have hereunto subscribed our names this 16th day of
December, 1999

Ron Matsch
President ~~or Vice President~~

Attest: Peter Arch
Secretary ~~or Assistant Secretary~~

(over)

Challenger Sports Corp.

CORRECTED
CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION
PRIOR TO RECEIPT OF PAYMENT FOR STOCK

The undersigned, being all of the directors named in the Articles of Incorporation as filed with the Secretary of State of Kansas on the 1st day of October, 1997, hereby certify that a special meeting of directors was held on the 19th day of November, 1999, at 9:00 a.m., pursuant to a waiver of notice signed by all directors in accordance with K.S.A. 17-6519, at which the following amendment was duly adopted pursuant to the provisions of K.S.A. 17-6601:

BE IT RESOLVED that the previous Certificate of Amendment to the Articles of Incorporation which was executed on the 29th day of January, 1998 memorializing a resolution of the board of directors at a special meeting held on January 6, 1998 overlooked the resolution of the board of directors which was actually adopted by the same at the first meeting of the board on October 1, 1997 and misstated the proper amendment to the Articles. As such, Article IV of the Articles of Incorporation, as amended by the Certificate of Amendment to Articles of Incorporation prior to receipt of payment for stock dated January 29, 1998, is hereby amended by deleting the present Article IV as amended in its entirety and substituting the following Article IV in lieu thereof:

ARTICLE IV
Capital Stock

This corporation is authorized to issue Forty-Five Million (45,000,000) shares of stock of which Twenty-Five Million (25,000,000) shares are Common Stock having a par value of \$0.10 per share, with full voting rights; Ten Million (10,000,000) shares are Class A Preferred Stock having a par value of \$0.50 per share, with privileges and benefits to be set by the Board of Directors; and Ten Million (10,000,000) shares are Class B Preferred Stock having a par value of \$0.001 per share, with privileges and benefits to be set by the Board of Directors.

We further certify that as of the date of the adoption of the above amendment, October 1, 1997, the corporation had not received any payment for any of its stock.

IN WITNESS WHEREOF, we have subscribed our names this 19th day of November, 1999.

CHALLENGER SPORTS CORP.

CERTIFICATE OF AMENDMENT TO
ARTICLES OF INCORPORATION

We, Ronald G. Matsch, President, and Peter Arch, Secretary, of CHALLENGER SPORTS CORP., a corporation organized and existing under the laws of the State of Kansas, do hereby certify by Statement of Unanimous Consent dated October 30, 2000, the Shareholders entitled to vote and the Board of Directors adopted the following resolution:

BE IT RESOLVED that Article IV of the Articles of Incorporation of this corporation be amended by deleting the present Article IV in its entirety and substituting the following Article IV in lieu thereof:

ARTICLE IV
Capital Stock

This corporation is authorized to issue Forty-Five Million (45,000,000) shares of stock of which Twenty-Five Million (25,000,000) shares are Common Stock having a par value of \$0.10 per share, with full voting rights; Ten Million (10,000,000) shares are Class A Preferred Stock having no par value, with privileges and benefits to be set by the Board of Directors; and Ten Million (10,000,000) shares of Class B Preferred Stock having a par value of \$0.001 per share, with privileges and benefits to be set by the Board of Directors.

We further certify that the amendment was duly adopted in accordance with the provisions of K.S.A. 17-6602, as amended.

IN WITNESS WHEREOF, we have subscribed our names this 30th day of October, 2000.



Ronald G. Matsch, President

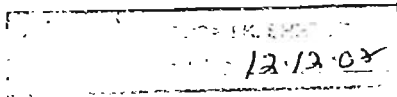


Peter Arch, Secretary

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Personally appeared before me, a Notary Public in and for the County and State aforesaid, the above named who are personally known to me to be the same persons who executed the foregoing instrument in writing and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of December, 2000.



Susan K Shriver
Notary Public

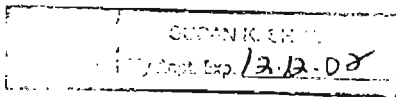
My appointment expires:

12.12.02

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Personally appeared before me, a Notary Public in and for the County and State aforesaid, the above named who are personally known to me to be the same person who executed the foregoing instrument in writing and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of December, 2000.



Susan K Shriver
Notary Public

My appointment expires:

12.12.02

I hereby certify this to be a true and correct copy of the original on file.
Certified on this date Dec 28, 2000
Don Generalbrug, Secretary of State



State of Missouri
Matt Blunt, Secretary of State

Corporations Division
P.O. Box 778, Jefferson City, MO 65102

James C. Kirkpatrick State Information Center
600 W. Main Street, Rm 322, Jefferson City, MO 65101

Statement of Change of Registered Agent and/or
Registered Office
By a Foreign or Domestic For Profit or Nonprofit Corporation

Instructions

- 1. This form is to be used by either a for profit or nonprofit corporation to change either or both the name of its registered agent and/or the address of its existing registered agent.
2. There is a \$10.00 fee for filing this statement. It must be filed in DUPLICATE.
3. P.O. Box may only be used in conjunction with a physical street address.
4. Agent and address must be in the State of Missouri.
5. The corporation may not act as its own agent.

Charter No. F00455852

(1) The name of the corporation is: Challenger Sports Corporation

(2) The address, including street and number, of its present registered office (before change) is:
120 South Central Avenue Clayton, Missouri 63105
Address City/State/Zip

(3) The address, including street and number, of its registered office is hereby changed to:
3145 Broadway, Kansas City, Missouri 64111-2405
Address (P.O. Box may only be used in conjunction with a physical street address) City/State/Zip

(4) The name of its present registered agent (before change) is: C T Corporation System

(5) The name of the new registered agent is: D & A Agency Services, Inc.

Authorized signature of new registered agent must appear below:

[Handwritten Signature]
(May attach separate originally executed written consent to this form in lieu of this signature)

(6) The address of its registered office and the address of the office of its registered agent, as changed, will be identical.

(7) The change was authorized by resolution duly adopted by the board of directors.

In affirmation of the facts stated above,

[Handwritten Signature]
(Authorized signature of officer or, if applicable, chairman of the board)

Ronald G. Matsch
(Printed Name)

President
(Title)

FILED (month/day/year)

Corp. #59 (11/00)

FEB 4 2002

Matt Blunt
SECRETARY OF STATE

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

C-5364

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 RIC JENNINGS, a sole proprietor ("Contractor") to provide the classes or programs in VOLLEYBALL ("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 (70%) 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.

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 \$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: 1/14/13

Date: 1.16.13

By: [Signature]
Aaron G. Harp
City Attorney

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

1/14

ATTEST:
Date: 1-25-13

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: RIC JENNINGS

Signature [Signature] Date 1/9/13 Print Name Ric Jennings Print Title owner

Signature _____ Date _____ Print Name _____ Print Title _____

PO Box 2481, Newport Beach, CA 92659
Business Mailing Address, City, State Zip Tax ID/ SSN _____

714-906-9441
Cell Phone Business Phone Home Phone Alternate Phone
Ricsvolleyball@earthlink.net Alternate E-mail Ricsvolleyball.com Business Website

434 Estica St, Costa Mesa, CA 92627
Home Address (if different from business mailing address)

[END OF SIGNATURES]

Attachments: Exhibit A—Representative Approval Form

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