

**INDEPENDENT CONTRACTOR AGREEMENT
SENIOR SERVICES INSTRUCTOR**

C-5381

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of January, 2013 by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and Berteil Mahoney, a sole proprietor ("Contractor") to provide the classes or programs in Writing ("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 **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 For classes held at the OASIS Senior Center that begin at 5:00pm or later the City shall pay the Contractor an amount equal to **65 percent** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

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

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

3. DUTIES OF CITY

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

applicable). Such material fees shall be collected by Contractor at the first Class meeting.

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

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

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

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

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

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

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

4. CONTRACTOR DUTIES

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

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

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation

and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:

I will not be using Representatives or employees.

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

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

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

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

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

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

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

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

4.8.2 Provide sufficient parking for all participants;

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

and

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

4.9 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the class, and confirm all cancellations and/or make-up classes, in writing, with OASIS Senior Center's administrative office staff. 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 *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".

4.12 *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.

4.13 *Other Requirements.* Contractors shall:

4.13.1 Cooperate fully with all reasonable requests from City staff;

4.13.2 Maintain the highest degree of participant safety possible;

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

4.13.4 *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;

4.13.5 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;

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

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

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

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

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

4.13.11 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.

4.13.12 *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: OASIS Senior Center Administrative Office, Recreation Supervisor
City of Newport Beach
801 Narcissus Ave.
Corona del Mar, CA 92625
Phone: 949-718-1822
E-mail: mbyers@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.* **(Required for senior fitness programs only)** 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: **N/A**

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. 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.

10. 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.

11. 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.

12. INDEMNIFICATION

12.1 *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.

12.2 *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.

13. 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.

14. 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.*).

15. STANDARD PROVISIONS

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 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.

15.7 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.

15.8 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.

15.9 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.

15.10 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.

15.11 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: 2/7/13
By: [Signature]
Aaron C. Harp
City Attorney

Date: 2.11.13
By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:
Date: 2.11.13

By: [Signature]
Leilani I. Brown
City Clerk



CONTRACTOR: BERTEIL MAHONEY

[Signature] 11-4-12 Berteil Mahoney Instructor
Signature Date Print Name Print Title

Signature Date Print Name Print Title

9 Ocean Ridge; Laguna Niguel, CA 92677
Business Mailing Address, City, State Zip Tax ID/ SSN

(949) 584-1581 (949) 496-7289
Cell Phone Business Phone Home Phone Alternate Phone

berteil@sbcglogal.net _____
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

document1

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