

(This document to be used for Instruction Services Agreements - remove before finalizing document)

**AGREEMENT FOR (INSERT TYPE OF PROFESSIONAL SERVICES) SERVICES  
(NAME OF CONTRACTOR)**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF CARLSBAD, a municipal corporation, ("City"), and \_\_\_\_\_, a \_\_\_\_\_, ("Contractor").

**RECITALS**

- A. City requires the professional services of a \_\_\_\_\_ that is experienced in \_\_\_\_\_.
- B. Contractor has the necessary experience in providing professional services and advice related to \_\_\_\_\_.
- C. Contractor has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, City and Contractor agree as follows:

**1. SCOPE OF WORK**

City retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A", which is incorporated by this reference in accordance with this Agreement's terms and conditions.

The City expects the result of Contractor's services to be the enjoyment and increased knowledge, skill, and/or ability of course participants. Contractor has sole control over the manner and means of accomplishing this result; however, the City may monitor Contractor's course(s) to confirm that this result is being achieved and that Contractor is complying with the terms of this Agreement.

**2. STANDARD OF PERFORMANCE**

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the Metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

**3. TERM**

The term of this Agreement will be effective for a period of \_\_\_\_\_ years from the date first above written. The City Manager may amend the Agreement to extend it for \_\_\_\_\_ additional \_\_\_\_\_ year periods or parts thereof. Extensions will be based upon a satisfactory review of Contractor's performance, City needs, and appropriation of funds by the City Council. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

**4. TIME IS OF THE ESSENCE**

Time is of the essence for each and every provision of this Agreement.

**5. COMPENSATION**

City will collect the fee listed in the recreation registration software located at <http://secure.rec1.com/CA/carlsbad-ca/catalog>, plus a transaction fee that covers bank charges, software maintenance and administrative costs, and non-resident fee, if applicable, from each participant who registers for Contractor's course(s). As payment for Contractor's service(s), Contractor will receive an amount equal to \_\_\_\_\_percent (\_\_\_%) of the fees collected for each course, excluding transaction fees, non-resident fees and/or any fees that are refunded. Contractor will be required to set class fees within the current market range, excluding any fees set by City Council. The City reserves the right to deny a contract or class if fees do not fall within this range.

To be paid for a course, Contractor must submit an email or written request to initiate payment to the City for all courses/camps. The request to initiate payment must be submitted after the end of the course. The request to initiate payment must be accompanied by the course/camp activity numbers. Contractor must submit written or e-mail approval for total final amount owed on *Instructor Payment Due Report*. Failure to list the activity numbers or approve final amount owed may result in a denial or delay in payment. In most cases, the City will pay the invoice or request for payment within ten to fifteen business days after its receipt and verification.

Contractor understands that filing a false claim for payment may subject Contractor to civil penalties under California Government Code sections 12650, et seq., and Carlsbad Municipal Code section 3.32.025.

**6. STATUS OF CONTRACTOR**

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of City. Contractor will be under control of City only as to the result to be accomplished but will consult with City as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of City for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. City will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the City's election, City may deduct the indemnification amount from any balance owing to Contractor.

**7. SUBCONTRACTING**

Contractor will not subcontract any portion of the Services without prior written approval of City. If Contractor subcontracts any of the Services, Contractor will be fully responsible to City for the acts and omissions of Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and City. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of

a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

**8. INSTRUCTOR AND ASSISTANT(S)**

Contractor shall designate the Instructor in Exhibit "A" attached hereto. Contractor may utilize, at Contractor's own expense, the assistant(s) listed in Exhibit "A" to help perform the services required by this Agreement. Contractor may not utilize anyone who is not listed in Exhibit "A" without obtaining the prior approval of the Parks and Recreation Director, Recreation Area Manager or designee and, if applicable, providing the City's Parks & Recreation Department with the criminal history background check with Live Scan fingerprint and TB test information discussed in paragraph 11 and the certifications discussed in paragraph 12 below. Assistants must be at least 16 years of age and have a valid work permit. Assistant may not teach in place of the Contractor without prior approval of the Recreation Supervisor or Area Manager. Assistants teaching in place of the Contractor must be at least 18 years of age. Contractor is solely responsible for supervising the work of the assistant(s) to ensure compliance with this Agreement.

**9. RATIO**

Contractor is responsible for maintaining the adult to child ratios approval by the Parks and Recreation Director, Recreation Area Manager or designee and based on the following guidelines:

- 9.1 Classes/Camps
  - 9.1.1. 1 Instructor for 8 students (Ages 4 and below) at most
  - 9.1.2. 1 Instructor for 24 students (Grades K - 3) at most
  - 9.1.3. 1 Instructor for 32 students (Grades 4 - 6) at most
  - 9.1.4. 1 Instructor for 36 students (Grades 7 - 12) at most

**10. RULES AND SAFETY**

Contractor will be required to comply with the Carlsbad Parks & Recreation Department's Safety Rules and may be required to participate in a Contractor Instructional Services Agreement renewal meeting each year. (See Instructional Services Guidelines & Procedures Manual). Contractor should have all participants in classes or camps be signed in and out by an authorized adult if the participant is a minor.

**11. TB TEST AND BACKGROUND CHECK**

Prior to performing any work under this Agreement, Contractor and Contractor's assistant(s) must provide proof of a negative TB test taken within the last four years. If a course is open to minors, Contractor and Contractor's assistant(s) must complete a criminal history background check. The criminal history background check requires Contractor and Contractor's Assistant(s) to have Live Scan fingerprints processed by the City. Should Contractor or Contractor assistant(s) criminal history background check reveal the existence of prior convictions, the City may immediately terminate this Agreement and/or disqualify Contractor or Contractor's assistant(s) from performing future instructional services for the City.

**12. CERTIFICATIONS**

If applicable, Contractor and Contractor's Assistant(s) must provide the City with the following certifications, which must remain valid throughout the duration of this contract: **[INSERT LIST OF CERTIFICATIONS]**. If any certification(s) will expire during the term of this Agreement, Contractor and Contractor's Assistant(s) must provide updated proof of valid certificate(s) prior to the expiration date.

**13. MANDATED REPORTER(S)**

If a course is open to minors, making Contractor and Contractor's assistant(s) "mandated reporters" within the meaning of California Penal Code section 11165.7(a), Contractor and Contractor's assistant(s) will comply with the mandatory reporting requirements contained in California Penal Code section 11166, which is attached as Exhibit "B" to this Agreement.

#### **14. OTHER CONTRACTORS**

The City reserves the right to employ other Contractors in connection with the Services.

#### **15. INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the City and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney's fees arising out of the performance of the work described herein caused by any negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The parties expressly agree that any payment, attorney's fee, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

#### **16. INSURANCE**

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:-VII"; **OR** with a surplus line insurer on the State of California's List of Approved Surplus Line Insurers (LASLI) with a rating in the latest Best's Key Rating Guide of at least "A:X"; **OR** an alien non-admitted insurer listed by the National Association of Insurance Commissioners (NAIC) latest quarterly listings report.

##### **16.1 Coverage and Limits.**

Contractor will maintain the types of coverage and minimum limits indicated below, unless the Risk Manager or City Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. City, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense. The full limits available to the named insured shall also be available and applicable to the City as an additional insured.

16.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

16.1.2 Athletic Participant/Participant Legal Liability and Sexual Abuse and Molestation coverage (if there are athletic participants). \$1,000,000 combined single-limit per accident for bodily injury and property damage.

16.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

16.2 Additional Provisions. Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

16.2.1 The City, its officials, employees and volunteers will be named as an additional insured on Commercial General Liability which shall provide primary coverage to the City.

16.2.2 Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

16.2.3 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent by certified mail pursuant to the Notice provisions of this Agreement.

16.3 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to City.

16.4 Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then City will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

16.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

**17. BUSINESS LICENSE**

Contractor will obtain and maintain a City of Carlsbad Business License for the term of the Agreement, as may be amended from time-to-time.

**18. COPYRIGHTS**

Contractor agrees that all copyrights that arise from the services will be vested in City and Contractor relinquishes all claims to the copyrights in favor of City.

**19. NOTICES**

Notices between the Contractor and the City may be made by either personal delivery, email or by first-class mail. Mailed notices must be sent to the addresses listed in the introductory paragraph, unless changed in writing in accordance with this paragraph. Personally delivered notices will be considered communicated on the day they are actually received. Emailed or mailed notices will be considered communicated on the day they are actually received or five days after their mailing, whichever occurs first.

The name of the persons who are authorized to give written notice or to receive written notice on behalf of City and on behalf of Contractor under this Agreement.

For City

For Contractor

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Department \_\_\_\_\_  
                   City of Carlsbad  
 Address \_\_\_\_\_  
                   \_\_\_\_\_  
 Phone No. \_\_\_\_\_

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Address \_\_\_\_\_  
                   \_\_\_\_\_  
 Phone No. \_\_\_\_\_  
 Email \_\_\_\_\_

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

**20. COURSE ROSTER**

Prior to the first class date, Contractor will pull rosters from the City’s CivicRec registration software, at <http://secure.rec1.com/CA/carlsbad-ca/catalog>. Contractor will verify the information contained on the roster against actual attendance on the first class date and report any discrepancies to the City by the end of the next business day. Contractor will not allow a person to participate in a course unless the person appears on the course roster and has signed an electronic annual liability waiver form.

**21. COURSE ADVERTISEMENT**

The City will advertise the Contractor’s course(s) in the upcoming electronic Community Services Guide(s) and in any other manner the City determines is appropriate. Contractor may also advertise Contractor’s course(s) in any manner Contractor determines is appropriate, subject to the prior approval of the City. Marketing materials must be submitted to the City for approval at least 14 days prior to distribution. (Instructional Services Guidelines & Procedures Manual). Contractor must obtain photo releases from any enrollee prior to any marketing or promotion with use of photos of enrollees.

**22. ATTENDANCE**

Prior to the first class date of each course, the Contractor will go online to the registration website and print a class attendance sheet. Contractor may be asked to mark each day’s attendance on the class attendance sheet and submit the completed attendance sheet to the City at the end of the course. Contractors are responsible for contacting participants who have not attended the first class and notify the Instructional Class Division. Sheets may be dropped in the facility mailbox prior to leaving for the evening on the last class of the course.

**23. USE OF CITY FACILITIES**

The City will allow Contractor to use the City facility(ies) identified in the Carlsbad Community Services Guide on the day(s) and at the time(s) indicated. The rules for use of the facility(ies) are contained in Exhibit “C.” Contractor is responsible for ensuring the Instructor, Instructor’s assistant(s), and the participants in Instructor’s course(s) are informed of and comply with these rules. Contractor must abide by the start and end times of each class/camp stated in Exhibit “A”. Failure to abide by the start and end time listed in Exhibit “A” for any class/camp may result in termination of contract.

If any injury, lost child, or property damage occurs during a class or camp, Contractor must promptly report the injury, lost child, or property damage to the facility attendant on duty (after

any necessary first aid or emergency services are rendered). The Instructional Services Guidelines & Procedures Manual provide specific instructions on how to handle emergencies. The Contractor will also report as a witness on the injury/incident report. If there is no facility attendant on duty, Contractor must report the injury, lost child, incident, or property damage to the Parks & Recreation Director, a Recreation Area Manager or designee immediately.

**24. CANCELING COURSE(S)**

The City, after first notifying Contractor, may cancel a course if the City does not receive registration forms and fees from the minimum number of participants specified in Exhibit "A" at least two days prior to the first class date for a course. Contractor will not be compensated for any course canceled due to low enrollment.

**25. CANCELING OR RESCHEDULING CLASS DATE(S)**

Contractor may not cancel or reschedule a class date without the prior written approval of the City's Parks & Recreation Director, Recreation Area Manager or designee. Contractors are solely responsible for informing enrollees of any cancelations or rescheduling of classes.

**26. CONFLICT OF INTEREST**

If requested, Contractor shall file a Conflict of Interest Statement with the City Clerk in accordance with the requirements of the City of Carlsbad Conflict of Interest Code. The Contractor shall report investments or interests in all four categories.

**27. GENERAL COMPLIANCE WITH LAWS**

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants whose services are required by this Agreement.

**28. DISCRIMINATION AND HARASSMENT PROHIBITED**

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

**29. DISPUTE RESOLUTION**

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or City will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the City Manager. The City Manager will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such cases, the action of the City Manager will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law.

**30. TERMINATION**

In the event of the Contractor's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Contractor by certified mail of the termination. If City decides to abandon or indefinitely postpone the services contemplated by this Agreement, City may terminate this Agreement upon written notice to Contractor. Upon notification of termination, City will make a determination of fact based upon the service delivered and of the percentage of service that Contractor has performed. Based upon that finding City will determine the final payment of the Agreement.

Either party upon tendering thirty (30) days written notice to the other party may terminate this Agreement. In this event and upon request of City, Contractor will assemble the work product and put it in order for proper filing and closing and deliver it to City. Contractor will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

**31. COVENANTS AGAINST CONTINGENT FEES**

Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

**32. CLAIMS AND LAWSUITS**

By signing this Agreement, Contractor agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

**33. JURISDICTION AND VENUE**

Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

**34. SUCCESSORS AND ASSIGNS**

It is mutually understood and agreed that this Agreement will be binding upon City and Contractor



and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Contractor without the prior consent of City, which shall not be unreasonably withheld.

**35. ENTIRE AGREEMENT**

This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

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**36. AUTHORITY**

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

CONTRACTOR

CITY OF CARLSBAD, a municipal corporation of the State of California

By:

By:

\_\_\_\_\_  
(sign here)

\_\_\_\_\_  
Chief Operations Officer, Deputy City Manager or Department Director as authorized by the City Manager

\_\_\_\_\_  
(print name/title)

ATTEST:

By:

\_\_\_\_\_  
(sign here)

\_\_\_\_\_  
BARBARA ENGLESON  
City Clerk

\_\_\_\_\_  
(print name/title)

If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**Group A**  
Chairman,  
President, **or**  
Vice-President

**Group B**  
Secretary,  
Assistant Secretary,  
CFO **or** Assistant Treasurer

**Otherwise**, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

CELIA A. BREWER, City Attorney

BY: \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT "A"**

**SCOPE OF SERVICES**

Itemized List of what Contractor will do for City and at what price.

BE SURE TO ADD A SPACE FOR THE NAME OF THE INSTRUCTOR WHO IS RESPONSIBLE FOR TEACHING THE CLASS/CAMP SESSION. THIS IS IMPORTANT BECAUSE YOU MAY HAVE A SITUATION WHERE A CORPORATION IS THE CONTRACTOR AND A NATURAL PERSON IS ACTUALLY THE INSTRUCTOR.