

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 21, 2009

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment to Independent Contractor Agreement (MUNDT1177510509530300B) with Eric Mundt for USA Diving Program services at Aquacrest Pool for the period May 8, 2009, through May 7, 2010.

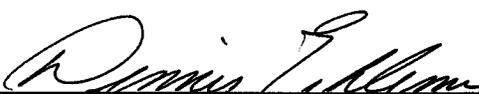
Summary: On May 1, 2009, the Parks and Recreation Department entered into an Independent Contractor Agreement with Eric Mundt to provide coaching services for the USA Diving program at Aquacrest Pool. Under the original Agreement, the fee to be paid by the County for services was incorrectly set at 70% of the paid enrollment fees. All of the competitive team coaches are paid at 80%. This First Amendment increases the fee to be paid by the County for services to 80% of the paid enrollment fees to establish consistency with other similar contracts. The total amount to be paid by the County to Eric Mundt under this contract remains unchanged at \$35,000. District 7 (AH)

Background and Justification: The Parks and Recreation Department offers a USA Diving program at Aquacrest Pool. Program fees and charges are paid by participants directly to the County, and the Independent Contractor should be paid 80% of all program fees and charges collected. All other terms of the Agreement remain the same.

A resolution providing authority to execute Independent Contractor Agreements with recreation instructors and sports officials (Resolution 94-422, amended by Resolutions 02-2103 and 07-0409) was adopted by the Board to streamline the hiring process. The Board granted the Director/Assistant Director of Parks and Recreation authority to execute Independent Contractor Agreements with recreation instructors and sports officials up to \$10,000, with contracts of \$10,000 or more requiring the County Administrator's approval. However, this resolution does not provide for any Amendments to the Independent Contractor Agreements.

This Amendment has been executed on behalf of Eric Mundt, and now needs to be approved by the Board of County Commissioners.

- Attachments:**
- 1. First Amendment to Independent Contractor Agreement
 - 2. Independent Contractor Agreement

Recommended by: 
Department Director

6/26/09
Date

Approved by: 
Assistant County Administrator

7/13/09
Date

**FIRST AMENDMENT TO INDEPENDENT CONTRACTOR AGREEMENT
BETWEEN PALM BEACH COUNTY AND ERIC MUNDT
FOR USA DIVING PROGRAM**

THIS AMENDMENT is entered into on _____, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County", and Eric Mundt, an Independent Contractor, herein referred to as "Contractor".

WITNESSETH:

WHEREAS, on May 1, 2009 County entered into an Independent Contractor Agreement (MUNDT 1177510509530300B) with Contractor, hereinafter referred to as the "Agreement" to provide funding in an amount not to exceed \$35,000 for all services and materials for the USA competitive Diving coach's services, hereinafter referred to as the "Program"; and

WHEREAS, Contractor's fee is stated as the sum of 70% of the paid enrollment fees for the Program; and

WHEREAS, Contractor's fee should be stated as 80% of the paid enrollment fees for the Program; and

WHEREAS, the Program benefits all citizens of Palm Beach County.

NOW THEREFORE, the parties hereby agree as follows:

1. Section 3b. of the Agreement is amended to read: "The CONTRACTOR's fee shall be the sum of \$ N/A or 80% of the paid enrollment fees for the class or activity. This fee shall be applied retroactively, and shall be imposed as of May 8, 2009."

2. Except as provided herein, each and every other term of the Agreement shall remain in full force and effect and the Agreement is reaffirmed as modified herein.

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IN WITNESS WHEREOF, the parties, by and through their duly authorized agents, have hereunto set their hands and seals on the date indicated above.

ATTEST:
SHARON R. BOCK, Clerk & Comptroller

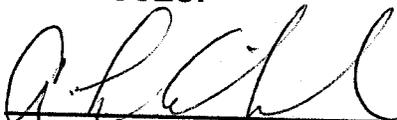
PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

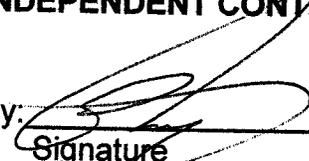
By: _____
John F. Koons, Chairman

WITNESSES:

INDEPENDENT CONTRACTOR





By: 
Signature

Eric Mundt, Diving Coach
Name and Title

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
County Attorney

By: 
Dennis L. Eshleman, Director
Parks and Recreation Department

AQUATICS					
ACCOUNT: 0001-580- 5303- 3422	VENDOR CODE:		CONTRACT		
MC: <i>gm</i>	PS: <i>ds</i>	FSS: <i>J</i>	CC: <i>J</i>	CA: <i>GM</i>	DD: <i>DHL</i>

**INDEPENDENT CONTRACTOR AGREEMENT FOR
PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is made as of the 1st day of May, 2009, by and between the Board of County Commissioners of Palm Beach County, Florida, hereinafter referred to as the "COUNTY" and Eric Mundt, an Independent Contractor, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the COUNTY desires to make available (a) (an) USA Diving Competitive Team, and desires to contract with CONTRACTOR to provide a specific service for that program; and

WHEREAS, the COUNTY and CONTRACTOR desire to clarify and define their responsibilities with regard to providing said program.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the COUNTY and CONTRACTOR hereby agree as follows:

1. **Term:** The class, activity or service will begin on May 8, 2009 and will meet thereafter with the termination date of this agreement being May 7, 2010.
2. **Fees:** Palm Beach County Parks and Recreation Department, on behalf of COUNTY, shall collect all fees and charges from participants. The fee(s) charged by the COUNTY for this class or activity (is) (are): \$60.00/\$85.00/\$120.00/\$145.00 Revenue Account No. 0001-580-5303-4724-02 *06 JE*
3. **Payments To Contractor:**
 - a. The total amount to be paid by the COUNTY under this Contract for all services and materials shall not exceed a total contract amount of Thirty Five Thousand Dollars (\$35,000). The CONTRACTOR shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONTRACTOR will bill the COUNTY on a bi-weekly basis per the attached schedule of payments, or as otherwise provided in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.
 - b. The CONTRACTOR's fee shall be the sum of \$ N/A or 70 % of the paid enrollment fees for the class or activity.
4. **Specific Details:**
 - a. Type of service/instructor: USA Diving Competitive Dive Team
 - b. Name of class or activity: Springboard Diving
 - c. Day(s)/Date(s) Scheduled: Tuesdays - Fridays (variable)
 - d. Time Scheduled: 3:00-3:45pm lessons /3:45-5:15pm
 - e. Location: Aqua Crest Pool
 - f. A minimum of 6 and a maximum of 50 paid enrollments must be received by the COUNTY prior to commencement of the class or activity. COUNTY reserves the right to cancel each class or activity which does not have the specified minimum number of participants registered.

received
4/29/09 *JE*

5. **Independent Contractor Status:** It is specifically understood that the CONTRACTOR is an independent contractor and not an employee of the COUNTY. The COUNTY and CONTRACTOR agree that this Agreement is not a contract of employment and that no relationship of Employer/Employee or Principal/Agent is or shall be created hereby nor shall hereafter exist by reason of the performance of the services herein specified.
6. **Taxes:** It is acknowledged and agreed by the COUNTY and CONTRACTOR that the service herein provided by the CONTRACTOR is a professional service and that the COUNTY is neither paying Social Security benefits nor withholding taxes from the CONTRACTOR's compensation for said service. The CONTRACTOR assumes all liability and responsibility for payment of his/her own FICA and Social Security benefits with respect to this Agreement.
7. **Termination:** The COUNTY may terminate this Agreement at any time upon written notice to the CONTRACTOR and the CONTRACTOR may terminate this Agreement upon written notice mailed to the COUNTY at least thirty (30) working days prior to the CONTRACTOR's departure date.
8. **Subcontracting:** The CONTRACTOR may not, without written approval of the COUNTY, subcontract or assign any rights, responsibilities or obligations under this Agreement.
9. **Performance:**
 - a. CONTRACTOR agrees to:
 1. Perform the services set forth herein in accordance with all applicable association/governing body rules and regulations, and in a competent, professional, safe, and responsible manner with full regard for the safety of the participants as well as the facility.
 2. No person other than the CONTRACTOR or a qualified employee of the CONTRACTOR shall be engaged to provide the services provided for in this Agreement.
 3. Provide written activity plans for each class or activity for which the CONTRACTOR is responsible.
 4. Provide and maintain, in proper working order, all necessary equipment specified to conduct the services provided for in this agreement.
 5. Inspect the activity site prior to beginning each class or activity in accordance with safety standards as explained in the CONTRACTOR's orientation program. Should a safety condition exist at a facility, CONTRACTOR should report said condition immediately to the County Representative and postpone said class or activity until the condition is addressed.
 6. Inspect the activity site after the class or activity is concluded to assure that the facility is left in the condition in which it was found.
 7. Utilize his or her own methods and procedures toward a result which shall be in accordance with the purposes, intent and objectives of the COUNTY in providing such recreational class or activity.
 8. Provide the County Representative with 10 days notice of all schedule conflicts/changes.
 9. CONTRACTOR shall immediately notify the County Representative of any unanticipated absences such as personal/family illnesses.
 - b. COUNTY agrees to:
 1. Maintain the facilities in proper working order.
 2. Conduct registration, collect participation fees and process class transfers or refunds for any and all programs and registrants.
 3. Provide class/activity rosters to the CONTRACTOR for distribution.

4. Publicize the class or activity through the Leisure Times and public service announcements.

10. **Exhibits:** If any additional provisions are applicable to the class or activity as provided for herein, CONTRACTOR and COUNTY may attach applicable Exhibit(s). If any additional requirements such as specialty certifications, licenses and/or memberships applicable to the class or activity are required CONTRACTOR and COUNTY may attach applicable Exhibit(s). The CONTRACTOR's proposal should also be included as an Exhibit to this Agreement. All Exhibits shall be incorporated into and made a part hereof.

11. **County Representative:** The County Representative for this CONTRACT is:

Michelle Lawrence, Facility Manager PH: 561-278-7104

12. **Indemnification:** The CONTRACTOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, servants, employees and elected officers harmless from and against any and all claims, liability, losses, expense, cost, damages and/or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, which may arise from any and all acts or omissions of the CONTRACTOR during the performance of the CONTRACTOR's service under this Agreement.

13. **Notices:** All notices required in this Agreement shall be hand delivered or sent by certified mail, return receipt requested, if sent to the COUNTY shall be mailed to:

Director of Aquatics Division
Palm Beach County Parks and Recreation Department
2700 Sixth Avenue South
Lake Worth, FL 33461

and if sent to the CONTRACTOR shall be mailed to:

CONTRACTOR'S Name: Eric Mundt

CONTRACTOR'S Address: 12262 Pleasant Green Way
Boynton Beach FL, 33437

CONTRACTOR'S Phone No. 561-503-3059

14. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, or shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONTRACTOR.

15. **Availability of Funds:** The COUNTY's performance and obligation to pay under this Agreement for subsequent fiscal year's is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

16. **Arrears:** The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

17. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

18. **Criminal History Records Check:** The CONTRACTOR shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if CONTRACTOR'S employees or subcontractors are required under this Agreement to enter a "critical facility" as identified in Resolution R-2003-1274. The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history records check, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

19. **Severability:** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
20. **Entirety of Contractual Agreement:** The COUNTY and the CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands and seals in the date first above written.

PALM BEACH COUNTY WITNESS

Nancy E. Beale
SIGNATURE
NANCY E. Beale
NAME (TYPE OR PRINT)

PALM BEACH COUNTY

[Signature]
DEPARTMENT DIRECTOR/ASSISTANT DIRECTOR
[Signature]
COUNTY ADMINISTRATOR (If contract value exceeds \$10,000.)

CONTRACTOR WITNESS

[Signature]
SIGNATURE
Jennifer Anglin
NAME (TYPE OR PRINT)

INDEPENDENT CONTRACTOR

[Signature]
SIGNATURE
Eric J. Mordt
NAME & TITLE (TYPE OR PRINT)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY.

Anne Wilgus
COUNTY ATTORNEY

SCOPE OF SERVICES

The basic requirements for the Head Coach (CONTRACTOR) are as follows:

The CONTRACTOR shall provide these services during the term of this contract in compliance with all terms of the agreement. If any conflict arises, this Scope of Services will supersede.

A. Scope of Work

The CONTRACTOR has the responsibility of training divers in preparation for competitive programs. CONTRACTOR must organize and supervise the competitive diving program as well as instruct and train participants in competitive diving. CONTRACTOR is responsible for the preparation of daily training schedules; administration of training schedules, registering team and individuals with US Diving; and technical instruction of competitive diving. Participants will be supervised during a variety of exercises, diving drills, dry land exercises and instructional sessions. CONTRACTOR will supervise divers at practices and meets; will oversee the entry of divers in sanctioned US Diving competition and represent the team as a delegate to the Florida Gold Coast Association of United States Diving.

As Palm Beach County Parks and Recreation Department desires to serve all constituents of the public by providing programming for all ages and skills levels.

Perform the services set forth herein in a competent, professional, safe and responsible manner with full regard for the safety of the participants as well as for the facility.

Immediately upon arrival at the facility, inspect the site prior to beginning any activity (if applicable and staff or another coach has not arrived prior). Prior to divers entering the water perform a water test with facilities test kit for chemical levels in the water, if chemical levels are not reading between 1.5-3.0 for chlorine and 7.2-7.6 for pH, divers should not enter the pool. Should any other safety condition exist at the facility, the CONTRACTOR will report said condition to the facility manager immediately upon the manager's arrival at the facility. If the condition creates a risk to the participants or spectators, the activity will be postponed until corrective action has been completed.

CONTRACTOR will be required to make judgments regarding safe weather and water conditions, and will be expected to cancel or postpone practice sessions when conditions are unsafe.

CONTRACTOR shall follow established CRITICAL INCIDENT PROCEDURES/ EMERGENCY ACTION PLANS should a serious injury or incident occur at the facility.

CONTRACTOR will work within the aquatic chain-of-command: Facility Manager, Aquatics Program Coordinator, Aquatics Supervisor and Aquatics Director.

CONTRACTOR will ensure that all participants be instructed in the pool rules and safety

procedures to ensure that risk of injury or accidents is minimized. During facility operational hours, program participants will obey all pool rules. CONTRACTOR and all personnel on site will be certified in American Red Cross Safety Training for Coaches; First Aid/CPR (equivalent or higher training) and must have a first aid kit available at all times.

CONTRACTOR will provide a service capable of responding to public questions, program information and membership details.

CONTRACTOR will provide the facility manager with 14 days notice of all anticipated conflicts, schedule changes, and or absences. The CONTRACTOR shall immediately notify the facility manager of any unanticipated absences.

CONTRACTOR will work with and maintain open dialogue with the facility manager, liaison and/or parent organization (if applicable) regarding program needs, program changes, additions or removals, or problems with the facility or equipment, by attending scheduled meetings and in general daily interaction.

CONTRACTOR will provide copies of newsletters, calendars and handbooks to the facility manager and obtain approval from the facility manager for all activities other than permitted practice times.

Adhere to all applicable COUNTY policies and procedures.

CONTRACTOR and CONTRACTOR'S staff shall display effective and respectful behavior in all public contacts while performing contracted services.

CONTRACTOR will provide the facility manager a computer disk with registered US Diving members containing the following information: first name; last name; age; sex; skill group they are assigned and what monthly fees are to be assessed that diver. All changes to this information must be made monthly via computer disk and provided to the facility manager on the first of each month.

CONTRACTOR will provide facility manager with daily attendance figures for each month on the first of each month.

CONTRACTOR will secure necessary meet officials, and volunteers for the set up, running, take down and clean up for all meets.

CONTRACTOR will recognize and abide by the terms of the Agreement between the COUNTY and the School Board of Palm Beach County for the Mutual Use of Recreation Facilities. (R-2008-2241)

B. Use of Premises

The facility, when permitted by the COUNTY for the CONTRACTOR for the US Diving competitive program shall not be permitted by the Contractor, for use to any other organization or group during their permitted time.

CONTRACTOR must submit written requests for space to the facility manager on an annual basis. CONTRACTOR and facility manager will meet on a bi-annual basis to assess annual request.

Said requests shall be reviewed by the facility manager and request for said usage shall not be unreasonably withheld. At a minimum, submit to the facility manager quarterly, proposed pool needs and activity schedules. The facility manager will review said schedule and after considering the needs of the general public and other program offerings at the facility make reasonable changes thereto, or agree to the schedule as proposed.

Ensure proper use and care of all equipment by CONTRACTOR, CONTRACTOR'S staff, and program participants.

Ensure that the facility is utilized properly and as scheduled, left clean and that opening and closing procedures are followed. It is the CONTRACTOR'S responsibility to maintain clean and orderly storage areas that have been allocated for the competitive diving program. The CONTRACTOR shall open the facility each morning for the US Diving competitive diving program when utilizing the facility prior to the facility opening to the general public. The CONTRACTOR shall also close and secure the facility each evening if the program conclusion is after operational hours.

The Parks and Recreation Department will provide a work area (if necessary) for the Head Coach to utilize during program hours.

CONTRACTOR will inform the facility manager immediately of any equipment malfunction or failure.

The Parks and Recreation Department may authorize the closing of the pool during necessary repair work or in the event of severe weather. In these instances the pool will remain closed until the COUNTY authorizes its reopening.

C. Personnel

The CONTRACTOR will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein shall be performed by the CONTRACTOR, or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY'S representative before said change or substitution can become effective.

CONTRACTOR shall indoctrinate and train all staff in the philosophies and public relations concerns of the COUNTY. CONTRACTOR'S staff and pool staff will be crossed trained to be knowledgeable of each others programs. CONTRACTOR shall cooperate with facility management and staff, contributing to the harmony and productivity of the unit.

D. Program Fees & Charges

The Palm Beach County Parks and Recreation Department, on behalf of the COUNTY, shall collect all program fees and charges from participants. All program fee and charges payments will be

made payable to: **Board of County Commissioners.** The COUNTY will provide the CONTRACTOR with weekly reports updating participants' payment status. CONTRACTOR shall assist COUNTY with the collection of fees.

Any and all monthly program rate change must be approved in writing in advance by the Director of the Parks and Recreation Department.

E. Payments To Contractor

Payment shall be made to the CONTRACTOR by the COUNTY when invoiced but no more than once every two weeks per the approved payment proposal. Payments will be made only for the current month of services; there will be no advanced payment of services.

**HEAD COACH USA DIVING
SCOPE OF SERVICES**

ATTACHMENT A

AQUATIC CHAIN OF COMMAND

Aqua Crest Facility Manager – Michelle Lawrence
Office: 561-278-7174
Home/Cell: 561-376-3130

Aquatic Program Coordinator – Jennifer Anglin
Office: (561) 966-6632

Aquatics Supervisor – Laurie Schobelock
Office: (561) 966-6629

Aquatics Division
Director- Dave Lill
Office: (561) 966-6630