

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 9, 2021

Consent Regular
 Ordinance 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: a revised Standard Independent Contractor Agreement to be used by the Parks and Recreation Department when contracting with recreation instructors and sports officials.

Summary: On April 5, 1994, the Board of County Commissioners (BCC) approved Resolution 94-422, as amended by Resolutions 2002-2103, 2007-0409, 2012-0168, and 2017-0822 delegating authority to execute a standard Independent Contractor Agreement form and amendments for recreation instructors and sports officials on behalf of the County to the County Administrator and the Director and Assistant Director of Parks and Recreation. The use of independent contractors for recreation programs and sports officiating has been a standard industry practice in the field of Parks and Recreation for a number of years. Where applicable, staff will issue a request for services to secure the services of the most qualified contractor. Such qualifications include, but are not limited to experience in their area of professional expertise, certifications, and recent professional references. This Resolution amends Resolution 2017-0822, by revising the standard Independent Contractor Agreement form to update existing exhibits and clarify language regarding approval of fees charged to participants that are collected by the contractor. Countywide (AH)

Background and Justification: A resolution providing authority to execute Independent Contractor Agreements with recreation instructors and sports officials (Resolution 94-422, amended by Resolutions 2002-2103, 2007-0409, 2012-0168, and 2017-0822) was adopted by the BCC to streamline the process for contracting with recreation instructors and sports officials. The attached Resolution revises the standard Independent Contractor Agreement form to update to the existing exhibits and clarify language regarding approval of fees charged to participants that are collected by the contractor.

Attachment: Resolution amending Resolution 2017-0822

Recommended by: 
Department Director

1-13-21
Date

Approved by: 
Assistant County Administrator

1-26-2021
Date

II. FISCAL IMPACT ANALYSIS


A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	_____	No	<u>X</u>
Does this item include use of federal funds?		Yes	_____	No	<u>X</u>

Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ /Revenue Source _____ Program _____

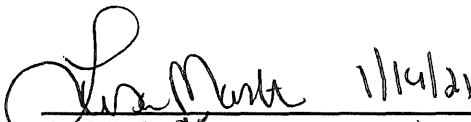
B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 1/14/21
 OFMB BR 114 BR 114

 1/22/21
 Contract Development & Control
 1-22-21 TW

B. Legal Sufficiency:

Anne Delmont 1-25-21
 Assistant County Attorney

C. Other Departmental Review:

 Department Director

This summary is not to be used as a basis for payment

RESOLUTION 2021-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 94-422, AS AMENDED BY RESOLUTION 2002-2103, RESOLUTION 2007-0409, RESOLUTION 2012-0168, and RESOLUTION 2017-0822; DELETING THE STANDARD INDEPENDENT CONTRACTOR AGREEMENT ATTACHED TO RESOLUTION 2017-0822 AND REPLACING IT WITH THE ATTACHED REVISED INDEPENDENT CONTRACTOR AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Resolution 94-422 was adopted by the Board of County Commissioners (“BCC”) on April 5, 1994, which authorized the County Administrator and the Director of the Parks and Recreation Department to execute standard Independent Contractor Agreements for the provision of part-time temporary recreation instructors; and

WHEREAS, Resolution 2002-2103 was adopted by the BCC on November 19, 2002, which authorized the County Administrator and Director of Parks and Recreation to execute standard Independent Contractor Agreements for the provision of recreation instructors and sports officials; and

WHEREAS, Resolution 2007-0409 was adopted by the BCC on March 13, 2007, which delegated authority to the Assistant Director of the Parks and Recreation Department, the authority to execute standard Independent Contractor Agreements for the provision of recreation instructors and sports officials; and

WHEREAS, Resolution 2012-0168 was adopted by the BCC on January 24, 2012, which delegated authority to County Administrator, Director and Assistant Director of the Parks and Recreation Department, the authority to execute amendments to the standard Independent Contractor Agreements for the provision of recreation instructors and sports officials; and

WHEREAS, Resolution 2017-0822 was adopted by the BCC on June 20, 2017, which delegated authority to County Administrator, Director and Assistant Director of the Parks and Recreation Department, to execute standard Independent Contractor Agreements and Amendments for the provision of recreation instructors and sports officials; and

WHEREAS, it is necessary to amend the standard Independent Contractor Agreement attached to R-2017-0822 and replace it with the attached revised standard Independent Contractor Agreement, to include updated exhibits and clarify language regarding approval of fees charged to participants that are collected by the contractor; and

WHEREAS, the execution of the standard Independent Contractor Agreement does not constitute policy-making decisions and are ministerial functions which the Board of County Commissioners wishes to delegate.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein.
2. Resolution No. 2017-0822 is hereby amended by deleting the standard Independent Contractor Agreement attached as Attachment “A-2” to R-2017-0822 and replacing

with the attached standard Independent Contractor Agreement in the form attached hereto incorporated herein as Attachment "A-3".

3. All other terms and conditions of Resolution No. 2017-0822, shall remain in full force and effect.
4. If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.
5. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

- Commissioner Dave Kerner, Mayor
- Commissioner Robert S. Weinroth, Vice Mayor
- Commissioner Maria G. Marino
- Commissioner Gregg K. Weiss
- Commissioner Maria Sachs
- Commissioner Melissa McKinlay
- Commissioner Mack Bernard

The Mayor thereupon declared this Resolution duly passed and adopted this ____ day of _____, 2021.

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: *Anne Adelgant*
Assistant County Attorney

PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

Joseph Abruzzo, Clerk of the Circuit Court &
Comptroller
Palm Beach County

By: _____
Deputy Clerk

DIVISION					
REVENUE ACCOUNT: Click here to enter text.		VENDOR CODE: Click or tap here to enter text.		DOCUMENT NUMBER:	
EXPENSE ACCOUNT: Click here to enter text.					
MC:	PS	FSS:	CC:	CA:	DD:

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

THIS INDEPENDENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on _____ day of _____, _____, by and between the Board of County Commissioners of Palm Beach County, Florida, hereinafter referred to as "COUNTY," and Click here to enter text., an Independent Contractor, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," organizes and provides programming activities for the benefit and wellbeing of the general public; and

WHEREAS, it is the intent of the Department to organize and make available certain program(s)/classes/lesson(s) referred to as Click here to enter text., the "activity" located at XYZ FACILITY in XYZ PARK; and

WHEREAS, said activity will be conducted by CONTRACTOR and governed by the Department pursuant to the terms and conditions of this Agreement.

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

1. **Term:** This Agreement shall commence on Click here to enter text., and shall terminate on Click here to enter text., and is not subject to extension or renewal.
2. **Fees and Charges:** Fees are more particularly described in **Exhibit "A"**, which is attached hereto and incorporated herein by reference. The collection of such fees is the responsibility of the Department.
3. **Payments To Contractor:**
 - a. The total amount payable by COUNTY under this Agreement for the services to be performed hereunder is not to exceed Click here to enter text. dollars (\$Click here to enter text.).

b. **DELETE THE ENTIRE TEXT IN THE OPTION NOT BEING USED BELOW:**

➔ OPTION 1-IF THIS IS A FIXED PRICE CONTRACT:

Payments to CONTRACTOR will be \$ Click here to enter text. per Click here to enter text..

A minimum of Click here to enter text. and a maximum of Click here to enter text. paid participants must be received by the Department prior to commencement of the activity. The Department reserves the right to

cancel the activity in the event that the specified minimum number of participants have not registered and paid.

➔ **OPTION 2 -IF THIS IS A PERCENTAGE OF REVENUE BASED CONTRACT**

Payments to CONTRACTOR will be Click here to enter text. % of the total participation fees paid.

A minimum of Click here to enter text. and a maximum of Click here to enter text. paid participants must be received by the Department prior to commencement of the activity. The Department reserves the right to cancel the activity in the event that the specified minimum number of participants have not registered and paid.

The total participation fees paid expressly exclude any other fees and charges as may be assessed and collected including but not limited to charges for materials or late registration fees.]

- c. The COUNTY, through the Department, will process payment to CONTRACTOR after services have been rendered, on a monthly basis following receipt of CONTRACTOR's invoice and activity attendance reports. CONTRACTOR must submit all required documents at the end of each activity to COUNTY in order facilitate a timely payment.
 - d. COUNTY will not include any refunded amounts associated with CONTRACTOR's activity in its payments to CONTRACTOR.
 - e. Though CONTRACTOR's invoice will be considered the basis for payment, the actual amount paid will be determined by the COUNTY. In the event of a discrepancy between the amount paid and the amount invoiced, the decision of the COUNTY is final. CONTRACTOR may request to review any supporting documentation utilized to determine the amount paid.
 - f. In order to do business with Palm Beach County, CONTRACTORS are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If CONTRACTOR intends to use subcontractors, CONTRACTOR must also ensure that all subcontractors are registered as contractors in VSS. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the CONTRACTOR and all of its subcontractors are registered in VSS.
4. **Activity:** CONTRACTOR's Scope of Service is included as **Exhibit "B"** to this Agreement. Any and all other applicable Exhibits hereto are attached and incorporated herein.

If additional provisions or requirements such as specialty certifications, licenses and/or memberships are applicable to the activity provided for herein, such provisions and/or requirements may be attached hereto as an Exhibit.

5. **Independent Contractor Relationship:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR's relationship and the relationship of its employees to the COUNTY

shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, Agreement or representation.

6. **Taxes:** It is acknowledged and agreed that the service to be provided by CONTRACTOR is a professional service and that the COUNTY is neither paying Social Security benefits nor withholding taxes from CONTRACTOR's compensation for said service. CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as now exist or may hereafter come into being as such taxes may be applicable to the payments made by COUNTY to CONTRACTOR in exchange for the services to be performed hereunder.

Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's Tax Exempt Status. As such, CONTRACTOR is not exempt from the payment of sales taxes to suppliers for any materials as may be used in the performance of CONTRACTOR's obligations under this Agreement.

7. **Termination:** The COUNTY may terminate this Agreement at any time upon written notice to the CONTRACTOR and CONTRACTOR may terminate this Agreement by providing thirty (30) business days advance written notice to the COUNTY. Such notice to be delivered to the Department's authorized representative.

8. **Subcontracting:** CONTRACTOR may not, without the advance written consent of the Department, 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 and the facility;
2. assure that no person other than CONTRACTOR or a qualified employee of CONTRACTOR is engaged in the provision of the services required to be performed hereunder;
3. provide and maintain, in proper working order and condition, all equipment and materials necessary to conduct the services to be performed hereunder;
4. inspect the activity area prior to beginning each activity to assure safety standards. In the event of a safety concern, CONTRACTOR is to report such concern immediately to the authorized Department representative and postpone the activity until the Department's representative determines that the concern has been addressed;
5. inspect the activity area following each activity to assure that the area remains in good condition and order;
6. utilize instructional methods and procedures conducive with the Department's purpose, intent, and objective in providing the recreational activity;
7. provide the Department's authorized representative five (5) business days advance notice of all schedule conflicts/changes;

8. immediately notify the Department's authorized representative of any unanticipated absences such as personal/family illnesses; and
 9. adhere to applicable Department policies and procedures and all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation.
 10. assure that all participants have paid the activity fee;
 11. take attendance during each class and reconcile attendees to activity roster.
- b. COUNTY agrees to:
1. maintain the activity area and associated facilities in a safe and clean condition;
 2. conduct registration, collect participation fees, and process refunds;
 3. provide activity rosters to the CONTRACTOR; and
 4. publicize, promote, and advertise the activity when feasible.

10. **Postponement or Cancellation of Activity:** In the event emergency conditions arise which may affect public safety, the activity may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the activity and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the activity start time. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the activity.

In the event COUNTY cancels the activity due to any public safety concern or CONTRACTOR elects to cancel the activity rather than accept a delayed start time, the term of this agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled activity date and time. Such term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled activity date and time and detailing the circumstances leading to the term extension.

In the event COUNTY and CONTRACTOR are unable to agree upon a rescheduled activity date and time as specified above, this Agreement will terminate without further action or payment.

11. **Cancellation, Rescheduling and Substitution of Activity:** In the event CONTRACTOR fails to perform or otherwise cancels the activity for any reason, including illness, at any time, the term of this agreement may be extended upon the same terms and conditions provided that within five (5) days following such cancellation, COUNTY and CONTRACTOR agree upon a rescheduled activity date and time. Such term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled activity date and time and detailing the circumstances leading to the term extension.

12. **Department Representative:** The Department's authorized representative for this Agreement is:

Name: [Click here to enter text.](#) Phone Number: [Click here to enter text.](#)

13. **Insurance Requirements:** It is the responsibility of CONTRACTOR to provide proof of the required insurance coverages specified in **Exhibit "C"** to this Agreement.

Such proof of insurance must be provided to the Department's authorized representative prior to the execution of this Agreement.

14. **Indemnification:** CONTRACTOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of CONTRACTOR.

15. **Notices:** All notices required in this Agreement are to be hand delivered or sent by certified mail, return receipt requested.

If sent to COUNTY, such notices are to be addressed:

Palm Beach County Parks and Recreation Department
Attn: [Click here to enter text.](#)
2700 6th Avenue South
Lake Worth, Florida 33461

If sent to CONTRACTOR, such notices are to be addressed:

[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

16. **Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

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

19. **Arrears:** 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. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this

Agreement.

20. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and Contractors 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).
21. **Criminal History Records Check:** The CONTRACTOR, CONTRACTOR's employees, subcontractors of the CONTRACTOR and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The CONTRACTOR is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONTRACTOR acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the CONTRACTOR(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONTRACTOR shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the CONTRACTOR or its subcontractor(s) terminates an employee who has been issued a badge, the CONTRACTOR must notify the COUNTY within two (2) hours. At the time of termination, the CONTRACTOR shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONTRACTOR if the CONTRACTOR 1) does not comply with the requirements of County Code Section 2-371 – 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONTRACTOR employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

22. **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.
23. **Access and Audits:** If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least five (5) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its

officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

24. **Entirety of Contractual Agreement:** COUNTY and 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.
25. **Nondiscrimination:** The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONTRACTOR warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic information. Failure to meet this requirement shall be considered default of the Contract.
26. **Regulation; Licensing Requirements:** CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.
27. **Public Records:** Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Contractor: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Contractor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Contractor is specifically required to:
- a. Keep and maintain public records required by the County to perform services as provided under this Contract.
 - b. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Contractor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
 - c. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Contractor does not transfer the records to the public agency.
 - d. Upon completion of the Contract the Contractor shall transfer, at no cost to the County, all public records in possession of the Contractor unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of

the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically by the Contractor must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

- e. Failure of the Contractor to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Contractor acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

28. **Counterparts:** This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. CONTRACTOR shall execute by manual means only, unless the COUNTY provides otherwise.

29. **E-verify – Employment Eligibility:** CONTRACTOR warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, CONTRACTOR shall: (1) register with and use the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the CONTRACTOR's subcontractors performing the duties and obligations of this Contract are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

COUNTY shall terminate this Contract if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If COUNTY has a good faith belief that CONTRACTOR's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify CONTRACTOR to terminate its contract with the subcontractor and CONTRACTOR shall immediately terminate its contract with the subcontractor.

If COUNTY terminates this Contract pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Contract was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK) |

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: _____
Signature Date
Director / Assistant Director
Palm Beach County Parks and Recreation Department

If Agreement Value Exceeds \$10,000.00:

County Administrator

Signature Date

WITNESS

Signature Date

Print

CONTRACTOR - [Click or tap here to enter text.]

By: _____
Signature Date

Print

Title

**APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

County Attorney

Signature Date

**APPROVED AS TO
TERMS & CONDITIONS:**

Division Director

Signature Date

EXHIBIT "A"
FEES AND CHARGES

IN THIS SECTION YOU NEED TO:

- 1. Itemize how you derived the not to exceed amount in the "payments to contractor," section 3a.**
 - a. OPTION 1: PAYMENT IS FIXED**
 - i. Itemize the fees and charges that you will be paying the CONTRACTOR.**
 - ii. Show how you came up with your calculations to pay the contractor.**
 - b. OPTION 2: PAYMENT IS A % BASED OF REVENUE**
 - i. Itemize the fees and charges that you will be paying the CONTRACTOR.**
 - ii. Itemize the fees that you will be charging for the program.**
 - iii. Show how you came up with your calculations to pay the contractor.**
- 2. Estimate the revenue that will be collected for this contract only.**

The estimated revenue that will be earned for this program for this contract is \$00,000.

Additional charges, if any, assessed to the participants of the activity are limited to: [Click here to enter text.](#)

EXHIBIT "B"
SCOPE OF SERVICE

ENTER YOUR SCOPE OF SERVICE FOR THE CONTRACTOR HERE. YOUR SCOPE DOES NOT NEED TO FOLLOW THE BELOW TEMPLATE; HOWEVER, PLEASE BE AS DETAILED AS POSSIBLE.

Contractor Name: Click or tap here to enter text.

Location: Click or tap here to enter text.

Program Title: Click or tap here to enter text.

Program Description: Click or tap here to enter text.

Program Objectives: Click or tap here to enter text.

Learning Outcomes: Click or tap here to enter text.

Participant Ages: Click or tap here to enter text.

Program Length: Click or tap here to enter text.

Dates for Program:

Dates: Click or tap here to enter text.

Days: Click or tap here to enter text.

Start/End Time: Click or tap here to enter text.

Total number of session/class/activity/game (circle one): Click or tap here to enter text.

Minimum number of participants: Click or tap here to enter text.

Maximum number of participants: Click or tap here to enter text.

Lab Fee or Supplies Fee: Click or tap here to enter text.

Supplies: Contractor provides necessary supplies

Are participants being transported as part of the Scope of Service? Yes No

According to Florida Statute Chapter 440, are you required to maintain Workers' Compensation and Employer Liability coverage? Yes No

EXHIBIT "C"

(1 of 2)

INDEPENDENT CONTRACTOR AGREEMENT***Insurance Requirements***

CONTRACTOR will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Agreement. CONTRACTOR agrees to provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages.

Palm Beach County Parks & Recreation Department Representative to mark as applicable:

- No Insurance Required:** Based on scope of services, CONTRACTOR shall not be required to provide insurance.
- Commercial General Liability:** CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
- Participant Liability:** CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.
- Auto Liability:** CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONTRACTOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.
- Workers' Compensation Insurance & Employer's Liability:** CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.
- Professional Liability:** CONTRACTOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONTRACTOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims – made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, CONTRACTOR shall purchase a SERP with a minimum reporting period not less than three (3) years.

EXHIBIT "C"
(2 of 2)

Additional Insured Clause: Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."

Waiver of Subrogation: CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

Certificates of Insurance: Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:

Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: _____
2700 Sixth Avenue South
Lake Worth, Florida 33461

Umbrella or Excess Liability: If necessary, CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Right to Revise or Reject: COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

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

THIS INDEPENDENT CONTRACTOR AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on _____ day of _____, _____, by and between the Board of County Commissioners of Palm Beach County, Florida, hereinafter referred to as "COUNTY," and Click here to enter text., an Independent Contractor, hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," organizes and provides programming activities for the benefit and wellbeing of the general public; and

WHEREAS, the COUNTY desires to make available certain recreational programs, services, classes, and/or activities to its residents by entering into agreements with independent contractors for the provision of such recreational programs, services, classes, and/or activities; and

WHEREAS, the COUNTY and CONTRACTOR desire to clarify and define their responsibilities with regard to providing such services; and

WHEREAS, the recreational programs, services, classes, and/or activities will be conducted by CONTRACTOR and governed by the Department pursuant to the terms and conditions of this Agreement.

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

1. SCOPE OF SERVICES

CONTRACTOR shall furnish the instructional services described on Exhibit "A", which is attached hereto and made a part thereof ("Services"). It is acknowledged and agreed that CONTRACTOR has chosen to provide the Services on the dates and times chosen by CONTRACTOR, and that Exhibit "A" contains the dates, times and locations at which such services shall be provided.

CONTRACTOR affirms that he/she has the knowledge and skills, either by training, experience, education or a combination thereof to adequately and competently perform the Services. CONTRACTOR shall conduct these Services in a careful and responsible manner with due regard for the safety of participants and others that may be affected by the Services or the participants. The materials, tools and equipment for the activity shall be supplied by CONTRACTOR in accordance with Exhibit "A".

2. TERM AND TERMINATION

This Agreement shall be effective on the date of execution and shall terminate on Click here to enter text., and is not subject to extension or renewal. The COUNTY may terminate this Agreement at any time upon written notice to the CONTRACTOR and CONTRACTOR may terminate this Agreement by providing thirty (30) business days advance written notice to the COUNTY. Such notice to be delivered to the Department's authorized representative. The COUNTY shall be liable only for payment for Services performed prior to the effective date of such termination.

3. COMPENSATION

The total amount payable by COUNTY under this Agreement for the services to be performed hereunder is not to exceed Click here to enter text. dollars.

CONTRACTOR shall be paid on a monthly basis after Services have been rendered in accordance with Exhibit "A" attached hereto. COUNTY will not include any refunded amounts associated with CONTRACTOR'S Services in its payments to CONTRACTOR.

In order to do business with Palm Beach County, CONTRACTOR is required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If CONTRACTOR intends to use subcontractors, CONTRACTOR must also ensure that all subcontractors are registered as contractors in VSS. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. COUNTY will not finalize a contract award until the COUNTY has verified that the CONTRACTOR and all of its subcontractors are registered in VSS.

4. **FEES**

CONTRACTOR shall not charge any fees to the participants other than those in accordance with Exhibit "A" attached hereto. Should CONTRACTOR wish to charge any additional fees to the participants such fees must be approved by the County in advance. CONTRACTOR shall notify the COUNTY of the amount of the additional fees in writing, and if approved by the County such additional fees may be collected by CONTRACTOR. If CONTRACTOR or COUNTY terminates this Agreement prior to the scheduled completion of the Services, the purchased supplies or a pro-rata percentage of the fees collected by CONTRACTOR shall be returned to the participants who had paid such fees.

CONTRACTOR shall not engage in any activity that may result in additional cost to the COUNTY. Any acts or omissions by the CONTRACTOR while performing under this Agreement that create a real or perceived benefit to the COUNTY but have not been accounted for within the COUNTY'S cash management system in accordance with the associated Services shall not entitle the CONTRACTOR to any additional payment. Any and all liability, financial and otherwise, for such acts or omissions shall be at the sole risk of the CONTRACTOR.

5. **REGISTRATION**

The COUNTY, through the Department, shall register all participants for the Services provided by CONTRACTOR and shall collect and record all fees received. In the event of a discrepancy with the amount paid, the decision of the COUNTY is final. CONTRACTOR may request to review any supporting documentation utilized to determine the amount paid.

6. **INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, Agreement or representation.

7. **TAXES**

It is acknowledged and agreed that the service to be provided by CONTRACTOR is a professional service and that the COUNTY is neither paying Social Security benefits nor withholding taxes from CONTRACTOR'S compensation for said service. CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as now exist or may hereafter come into being as such taxes may be applicable to the payments made by COUNTY to CONTRACTOR in exchange for the services to be performed hereunder.

Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's Tax Exempt Status. As such, CONTRACTOR is not exempt from the payment of sales taxes to suppliers for any materials as may be used in the performance of CONTRACTOR'S obligations under this Agreement.

8. **SUBCONTRACTING**

CONTRACTOR may not, without the advance written consent of the Department, 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 and the facility;
2. assure that no person other than CONTRACTOR or a qualified employee of CONTRACTOR is engaged in the provision of the Services required to be performed hereunder;
3. provide and maintain, in proper working order and condition, all equipment and materials necessary to conduct the Services to be performed hereunder;
4. inspect the area prior to beginning Services to assure safety standards. In the event of a safety concern, CONTRACTOR is to report such concern immediately to the authorized Department representative and postpone the activity until the Department's representative determines that the concern has been addressed;
5. inspect the area following Services rendered to assure that the area remains in good condition and order;
6. utilize instructional methods and procedures conducive with the Department's purpose, intent, and objective in providing the recreational activity;
7. provide the Department's authorized representative five (5) business days advance notice of all schedule conflicts/changes;
8. immediately notify the Department's authorized representative of any unanticipated absences such as personal/family illnesses; and
9. adhere to applicable Department policies and procedures and all federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation.

10. assure that all participants have paid the activity fee; and
11. take attendance during each class and reconcile attendees to activity roster.

b. COUNTY agrees to:

1. maintain the area and associated facilities in a safe and clean condition;
2. conduct registration, collect participation fees, and process refunds for program registrants;
3. provide activity rosters to the CONTRACTOR; and
4. provide compensation to CONTRACTOR pursuant to the terms of this Agreement; and
5. publicize, promote, and advertise the activity when feasible.

10. POSTPONEMENT OR CANCELLATION OF ACTIVITY

In the event emergency conditions arise which may affect public safety, the activity may be postponed or cancelled. Such emergency conditions include, but are not limited to, acts of God or issuance of an executive order indicating a state of general emergency. COUNTY, in its sole discretion, will determine the necessity to postpone or cancel the activity and will endeavor to provide CONTRACTOR at least four (4) hours notice of such postponement or cancellation prior to the activity start time. Provided, however, COUNTY's notice of such postponement or cancellation may be given at anytime including during the activity.

In the event COUNTY cancels the activity due to any public safety concern or CONTRACTOR elects to cancel the activity rather than accept a delayed start time, the term of this agreement will be extended upon the same terms and conditions provided that within five (5) days following such occurrence, COUNTY and CONTRACTOR agree upon a rescheduled activity date and time. Such term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled activity date and time and detailing the circumstances leading to the term extension.

In the event COUNTY and CONTRACTOR are unable to agree upon a rescheduled activity date and time as specified above, this Agreement will terminate without further action or payment.

11. CANCELLATION, RESCHEDULING AND SUBSTITUTION OF ACTIVITY

In the event CONTRACTOR fails to perform or otherwise cancels the activity for any reason, including illness, at any time, the term of this agreement may be extended upon the same terms and conditions provided that within five (5) days following such cancellation, COUNTY and CONTRACTOR agree upon a rescheduled activity date and time. Such term extension will be effective upon COUNTY's delivery to CONTRACTOR of a written notice specifying the agreed upon rescheduled activity date and time and detailing the circumstances leading to the term extension.

12. DEPARTMENT REPRESENTATIVE

The Department's authorized representative for this Agreement is:

Name: [Click here to enter text.](#) Phone Number: [Click here to enter text.](#)

13. INSURANCE REQUIREMENTS

It is the responsibility of CONTRACTOR to provide proof of the required insurance coverages specified in **Exhibit "B"** to this Agreement. Such proof of insurance must be provided to the Department's authorized representative prior to the execution of this Agreement.

14. **INDEMNIFICATION**

CONTRACTOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of CONTRACTOR.

15. **NOTICES**

All notices required in this Agreement are to be hand delivered or sent by certified mail, return receipt requested.

If sent to COUNTY, such notices are to be addressed:

Palm Beach County Parks and Recreation Department
Attn: [Click here to enter text.](#)
2700 6th Avenue South
Lake Worth, Florida 33461

If sent to CONTRACTOR, such notices are to be addressed:

[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

16. **REMEDIES**

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17. **NO THIRD PARTY BENEFICIARIES**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

18. **AVAILABILITY OF FUNDS**

COUNTY's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

19. **ARREARS**

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. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

20. **PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and Contractors 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).

21. CRIMINAL HISTORY RECORDS CHECK

The CONTRACTOR, CONTRACTOR'S employees, subcontractors of the CONTRACTOR and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and R2015-0572, as amended. The CONTRACTOR is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONTRACTOR acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. COUNTY staff representing the COUNTY department will contact the CONTRACTOR(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONTRACTOR shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If the CONTRACTOR or its subcontractor(s) terminates an employee who has been issued a badge, the CONTRACTOR must notify the COUNTY within two (2) hours. At the time of termination, the CONTRACTOR shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONTRACTOR if the CONTRACTOR 1) does not comply with the requirements of County Code Section 2-371 – 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONTRACTOR employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

22. 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.

23. ACCESS AND AUDITS

If applicable, should any portion of the payments made to CONTRACTOR include CONTRACTOR'S charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, CONTRACTOR will maintain adequate records to justify all such charges, expenses, and costs for at least five (5) years after the expiration or termination of this Agreement. The COUNTY shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at CONTRACTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power

to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

24. ENTIRETY OF CONTRACTUAL AGREEMENT

COUNTY and 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.

25. NONDISCRIMINATION

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONTRACTOR warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

26. REGULATION; LICENSING REQUIREMENTS

CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.

27. PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Contractor: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Contractor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Contractor is specifically required to:

- b. Keep and maintain public records required by the County to perform services as provided under this Contract.
- c. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Contractor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- d. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Contractor does not transfer the records to the public agency.
- e. Upon completion of the Contract the Contractor shall transfer, at no cost to the County, all public records in

possession of the Contractor unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically by the Contractor must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

- f. Failure of the Contractor to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Contractor acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

28. COUNTERPARTS

This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The COUNTY may execute the Agreement through electronic or manual means. CONTRACTOR shall execute by manual means only, unless the COUNTY provides otherwise.

29. E-VERIFY – EMPLOYMENT ELIGIBILITY

CONTRACTOR warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, CONTRACTOR shall: (1) register with and use the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the CONTRACTOR's subcontractors performing the duties and obligations of this Contract are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

COUNTY shall terminate this Contract if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If COUNTY has a good faith belief that CONTRACTOR'S subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify CONTRACTOR to terminate its contract with the subcontractor and CONTRACTOR shall immediately terminate its contract with the subcontractor.

If COUNTY terminates this Contract pursuant to the above, CONTRACTOR shall be barred from being awarded a future contract by COUNTY for a period of one (1) year from the date on which this Contract was terminated. In the event of such contract termination, CONTRACTOR shall also be liable for any additional costs incurred by COUNTY as a result of the termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

By: _____
Signature Date
Director / Assistant Director
Palm Beach County Parks and Recreation Department

If Agreement Value Exceeds \$10,000.00:

County Administrator

Signature Date

WITNESS

Signature Date

Print

CONTRACTOR - [Click or tap here to enter text.]

By: _____
Signature Date

Print

Title

**APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

County Attorney

Signature Date

**APPROVED AS TO
TERMS & CONDITIONS:**

Division Director

Signature Date

EXHIBIT "A"

CONTRACTOR'S Name: _____

CONTRACTOR'S Address for Notices: _____

Description of Services: _____

Location/Facility: _____

Term (start/end dates): _____

Days of the Week/Time of Activity/Class: _____

If applicable, minimum registration will be _____ participants and maximum registration will be _____ participants.

Compensation:

_____ percent of the total registration fees **or**
a flat fee of \$ _____ per hour **or**
a flat fee of \$ _____ per _____.

Materials, Tools and Equipment:

Supplied by COUNTY: _____

Supplied by CONTRACTOR: _____

COUNTY Representative: _____

COUNTY Representative Phone: _____

EXHIBIT "B"
(1 of 2)
INDEPENDENT CONTRACTOR AGREEMENT
Insurance Requirements

CONTRACTOR will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Agreement. CONTRACTOR agrees to provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages.

Palm Beach County Parks & Recreation Department Representative to mark as applicable:

- No Insurance Required:** Based on scope of services, CONTRACTOR shall not be required to provide insurance.

- Commercial General Liability:** CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

- Participant Liability:** CONTRACTOR shall maintain Participant Liability at a limit of liability not less than **\$25,000** Each Occurrence.

- Auto Liability:** CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONTRACTOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

- Workers' Compensation Insurance & Employer's Liability:** CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.

- Professional Liability:** CONTRACTOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONTRACTOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims – made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, CONTRACTOR shall purchase a SERP with a minimum reporting period not less than three (3) years.

EXHIBIT "B"

(2 of 2)

Additional Insured Clause: Except as to Workers' Compensation and Employer's Liability the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."

Waiver of Subrogation: CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

Certificates of Insurance: Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:

Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: _____
2700 Sixth Avenue South
Lake Worth, Florida 33461

Umbrella or Excess Liability: If necessary, CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Right to Revise or Reject: COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.