

AGREEMENT

THIS IS AN AGREEMENT, made and entered into by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the state
of Florida, hereinafter referred to as "CITY",

and

MARK ROBERTS, an individual, hereinafter referred to as
"Contractor".

WHEREAS, the City desires to make recreational/instructional services available to the residents of the City and the general public; and

WHEREAS, the Contractor is an instructor of yoga; and

WHEREAS the Fort Lauderdale City Commission approved Motion Pur-6 on April 20, 2004, and thereby authorized the proper City officials to execute this Agreement,

NOW, THEREFORE, in consideration of the promises made herein, the parties agree as follows:

The foregoing recitals are true and correct and are hereby incorporated into this Concession Agreement, and

ARTICLE I SCOPE OF SERVICES

- 1.1 The Contractor shall furnish recreational/instructional services in the field of yoga at the City's Holiday Park Activity Center, 730 N. Federal Highway, Fort Lauderdale.
- 1.2 The Contractor shall conduct a term of classes in such manner, location(s), fees, and times to be mutually agreed upon by the parties and incorporated into an Addendum to this Agreement prior to execution. The City, through its Parks and Recreation Department Superintendent reserves the right to cancel or reschedule any of Contractor's classes, or relocate the class from the usual classroom to another appropriate classroom, in the case of scheduling conflicts or other emergencies, as determined by the Parks and Recreation Department.
- 1.3 The Contractor is required to abide by the City of Fort Lauderdale Recreation Division Youth Enrichment Program (Y.E.S.) fee structure, which is a 70% fee discount for youths on a free or reduced lunch program at their school. The program is only available for City of Fort Lauderdale residents.
- 1.4 The Contractor shall conduct the recreational/instructional classes in a careful and responsible manner with due regard for the safety of the participants and others.

- 1.5 The Contractor shall be solely responsible, at its own expense, for obtaining those needed supplies that are not available from the City's Parks and Recreation Department.
- 1.6 While this Agreement is for services provided to the City's Parks and Recreation Department, the City may require similar services for other City departments. The Contractor agrees to take on such work unless such work would not be considered reasonable or unless such work would become an undue burden to the Contractor.
- 1.7 The City reserves the right to delete any portion of this Agreement at any time without cause, and if such a right is exercised by the City, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned.
- 1.8 The Contractor represents that it and any persons assisting Contractor in the performance of services herein, has the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth herein and to provide and perform such services to the City's satisfaction. The Contractor shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner.
- 1.9 The Contractor shall be solely responsible for securing the services of and compensating any assistants or such other personnel as may be required to adequately and safely perform the recreational/instructional services provided for herein.
- 1.10 Prior to commencing services under this Agreement, the Contractor shall obtain a criminal background check for all of the Contractor's instructors, whether employees or independent contractors, completed at the Broward County Children's Services Department. The Contractor is responsible for any expense incurred in obtaining these completed background checks. The Contractor shall provide a copy of each background check to the City's Park and Recreation Department.
- 1.11 Contractor shall be required to do either of the following prior to commencement of services under this Agreement: (i) require all participants (parent/legal guardian for minors) to sign a waiver and release of liability form on behalf of the City which will be provided to Contractor by the City's Parks and Recreation Department or (ii) include the City in Contractor's own waiver and release of liability form following approval of Contractor's form by the City Attorney's Office.
- 1.12 The Contractor will have exclusive use of designated and appropriate sized area for classes, a minimum of 15 hours per week of classes are to be provided, each class scheduled for one and one half hours, including a minimum of six morning classes per week and four evening classes per week.
- 1.13 The Contractor is responsible for maintenance and clean up services of their designated area.
- 1.14 The Contractor may be subject to a skills evaluation by the City.

- 1.15 The Contractor, at his/her own risk, is responsible for managing and maintaining an inventory of program related goods and merchandise for sale at HPAC.

ARTICLE 2
COMPENSATION

- 2.1 The Contractor agrees to pay the City \$17,400.00, payable in 12 monthly installments of \$1,450.00, with the first installment due and payable on the first day of the first calendar month of the term of the Agreement, and the subsequent installments due and payable on each first day of each subsequent month.
- 2.2 Should this Agreement be renewed pursuant to the provisions made herein for an extension term, the Contractor shall compensate the City for each subsequent annual term at the same rate as the previous year plus an annual increase of at least five percent.
- 2.3 The Contractor and the City agree should the Contractor refund fees, or a portion thereof, to an individual for any reason whatsoever, the Contractor shall do so at its sole expense.

ARTICLE 3
TERM OF AGREEMENT

- 3.1 The term of this Agreement shall be from April 1, 2004 to March 31, 2005. This term may be extended by the City for four additional terms of one year each. Each extension shall be made by a written document executed with the same formality and of equal dignity herewith.
- 3.2 In the event that services are scheduled to end due to the expiration of this Agreement or an extension term, the Contractor shall continue the service upon the request of the Purchasing Manager for no more than ninety days beyond the expiration date. The Contractor shall compensate the City at the rate in effect at the time this temporary extension clause is invoked by the City.

ARTICLE 4
TERMINATION OF AGREEMENT

- 4.1 The performance of work or services under this Agreement may be terminated immediately by the City upon written notice, as provided for in Article 9 herein, when the City determines that it is in the best interest of the public or for convenience. The effective date of any termination under this Agreement shall be the date of receipt of written notice from the City. Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination deemed necessary to protect the public health, safety, or welfare may be by verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 4.2 The Contractor may terminate this Agreement for convenience by giving the City thirty days written notice as provided for in Article 9 herein.

- 4.3 The term "the City" in this Article as it relates only to termination of this Agreement shall mean the Director of the City's Parks and Recreation Department or his/her designee.

ARTICLE 5
INDEPENDENT CONTRACTOR

The Contractor is an independent contractor under this Agreement. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by Contractor. In providing such services, neither the Contractor nor his or her agents shall act as officers, employees, or agents of the City. This Agreement shall not constitute or make the parties a partnership or joint venture. Personnel policy, tax responsibilities, social security, health insurance, employee benefits, travel, per diem policy, purchasing policies and any other similar administrative procedures applicable to services rendered under this Agreement shall be those of the Contractor.

ARTICLE 6
INDEMNIFICATION

The Contractor shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend the City, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of the Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Parks and Recreation Department and the City Attorney, any sums due the Contractor under this Agreement may be retained by the City until all of the City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by the City.

ARTICLE 7
INSURANCE

- 7.1 The Contractor shall provide and maintain in force for the term of this Agreement, comprehensive general liability insurance in the minimum amount of \$1,00,000.00 for each occurrence. Such policy shall include bodily injury and property damage liability and shall name the **City of Fort Lauderdale** as additional insured. Further, such policy shall provide thirty days prior written notice to the City of any material change or cancellation.
- 7.2 The Contractor shall provide and maintain in force for the term of this Agreement, Workers Compensation in compliance with Chapter 440, Florida Statutes, and any applicable federal laws.
- 7.3 If the Contractor operations under this Agreement include the use of a motor vehicle, the Contractor shall provide a policy of automobile bodily injury insurance in the minimum amount

of \$250,000.00 for each person and \$500,000.00 for each occurrence and property damage liability insurance in the minimum amount of \$100,000.00.

- 7.4 The Contractor shall provide the City's Purchasing Division with original Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article prior to beginning performance of work under this Agreement. The City of Fort Lauderdale shall be named as an additional insured on the General Liability policy only. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. The City's Risk Manager must approve the original Certificates prior to the Contractor commencing any work hereunder.

The Certificates sent for review should be addressed as follows:

City of Fort Lauderdale
Procurement and Materials Management
100 North Andrews Ave., Room 619
Fort Lauderdale, FL 33301

- 7.5 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of the Contractor is completed. All policies must be endorsed to provide the City with at least thirty days notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty days prior to the date of their expiration.

ARTICLE 8
NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND
AMERICANS WITH DISABILITIES ACT

- 8.1 The Contractor shall not unlawfully discriminate against any person in its operations and activities relating to its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by the City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.
- 8.2 The Contractor's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

ARTICLE 9
NOTICES

Whenever any party desires to give notice unto any other party, it must be given by written notice sent by registered U.S. mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving notice:

City:
City Manager
City of Fort Lauderdale
P. O. Drawer 14250
Fort Lauderdale, Florida 33302

With a copy sent to the City Attorney at the same address.

Contractor:

ARTICLE 10
PUBLIC ENTITY CRIMES

The Contractor represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from the City's competitive procurement activities.

In addition to the foregoing, the Contractor further represents that there has been no determination, based on an audit, that he or she has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that he or she has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether the Contractor has been placed on the convicted vendor list.

ARTICLE 11 IMPROVEMENTS BY CONTRACTOR

- 11.1 Contractor shall not make any alterations, improvements, additions or modifications to their designated area without first having obtained the written approval of the Parks and Recreation Department Superintendent or his/her designee. Contractor shall submit plans and specifications of any proposed improvements at least thirty days in advance of the intended date of installation or construction. No variations from approved plans shall be permitted without the approvals set forth above.
- 11.2 Any construction or installation performed by Contractor shall be free and clear of any and all encumbrances whatsoever. Contractor shall deliver to the City a written, detailed statement of costs of construction or installation of any improvements and shall furnish proof, by affidavit or otherwise, that all claims, liabilities, and obligations incurred in the construction or installation of improvements, and costs associated with furnishings, fixtures and equipment necessary or incidental to the business use of the designated area have been paid in full.
- 11.3 The failure of the Contractor to comply with any term, condition or covenant of this paragraph shall constitute a material breach and default under this Agreement, entitling the City to all remedies, rights and privileges granted to it in this Agreement.
- 11.4 All improvements, structures and fixtures of every kind hereafter erected, installed or placed within the designated area, with the exception of specially designed and fabricated fixtures employed by the Contractor, shall, at the end of the term or earlier termination of this Agreement, for any reason, be and become property of the City and shall be left in good condition and repair, ordinary wear and tear excepted.

ARTICLE 12 MISCELLANEOUS

- 12.1 Amendment. No modification, amendment, or alteration of the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- 12.2 Assignment. The Contractor shall not transfer, assign or subcontract the performance of services called for in this Agreement without the prior written consent of the City.

- 12.3 Compliance with Laws. The Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses and for complying with any and all applicable federal, state, the City and municipal laws, codes and regulations in connection with the performance of the services specified herein. The Contractor shall be responsible for all damage to persons and/or property that occurs as a result of the Contractor's actions or negligence.
- 12.4 No Promotion of Private Business. The Contractor shall not promote any privately owned business or studio in a City parks and recreation facility or solicit a participant in a City parks and recreation facility class for any privately owned business or studio. It is further understood that such action(s) shall result in immediate termination of this Agreement by the City.
- 12.5 News Releases and Publicity. The Contractor shall not issue a news release, publicity release, advertisement, or marketing material relating to this Agreement without having obtained prior approval from the City. The Contractor is responsible for the costs of all marketing and promotional material including, but not limited to typesetting, printing, and distribution.
- 12.6 No Exclusive Contract. The Contractor agrees and understands that this Agreement shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services at the City's sole option.
- 12.7 Third Party Beneficiaries. Neither the Contractor nor the City intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
- 12.8 Audit Right and Retention of Records. The City shall have the right to audit the books, records, and accounts of the Contractor related to this Agreement. The Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

The Contractor shall preserve and make available, at reasonable times for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the City to be applicable to the Contractor's records, the Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the City's disallowance and recovery of any payment upon such entry.

- 12.9 Conflicts. Neither the Contractor nor his or her employees or agents shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with the Contractor's loyal and conscientious exercise of judgment related to his or her performance under this Agreement.

The Contractor agrees that none of his or her employees shall, during the term of this Agreement, serve as an expert witness against the City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of the City in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement.

In the event the Contractor is permitted to use subcontractors to perform any services required by this Agreement, the Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this Article.

- 12.10 Waiver of Breach and Materiality. Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. The City and the Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
- 12.11 Severance. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the City or the Contractor elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven days after the finding by the court becomes final.
- 12.12 Joint Preparation. The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 12.13 Integration. This Agreement, all exhibits attached hereto, and the City's RFP #742-9013 constitute the entire agreement between the City and the Contractor and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. No prior written, prior, or contemporaneous oral promises or representations shall be binding. To the extent that the

terms of the City's RFP #742-9013 conflict with the terms of this Agreement, the terms of the Agreement shall control.

- 12.14 Applicable Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.
- 12.15 Multiple Originals. This Agreement may be executed in three copies, each of which shall be deemed to be an original.

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the 14 day of October, 2004.

WITNESSES:

CITY OF FORT LAUDERDALE

Donna Varisco

Donna Varisco

[Witness type/print name]

Yvonne Brackett Buck

YVONNE BRACKETT BUCK

[Witness type/print name]

(CORPORATE SEAL)

By [Signature]
Mayor

By [Signature]
City Manager

ATTEST:

Jonda K. Joseph
City Clerk

Approved as to form:

[Signature]
City Attorney

WITNESSES:

CONTRACTOR

Carol Malcolm
CAROL MALCOLM
[Witness print/type name]

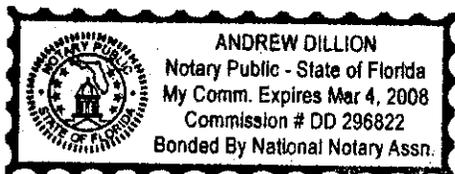
By *Mark Roberts*
Mark Roberts

Phyllis A Stubbs
Phyllis A Stubbs
[Witness print/type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 23rd August, 2004, by MARK ROBERTS. He is personally known to me or has produced FL DL as identification.
R. 163-541-50-182-0

(SEAL)



Andrew Dillion
Notary Public, State of Florida (Signature of Notary taking Acknowledgment)

Andrew Dillion
Name of Notary Typed, Printed or Stamped

My Commission Expires: MARCH 4, 2008

DD 296822
Commission Number