

INSTRUCTOR SERVICES AGREEMENT

THIS INSTRUCTOR SERVICES AGREEMENT (the "Agreement") is made at Orange, California, on this 25 day of March, 2023 (the "Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and MATTHEW MEAD, a sole proprietor ("Instructor"), who agree as follows:

1. Services Subject to the terms and conditions set forth in this Agreement, Instructor shall provide to the reasonable satisfaction of City the services set forth in Exhibit "A," which is attached hereto and incorporated herein by reference. Instructor represents and warrants that it has thoroughly investigated and considered the scope of services and fully understands the expectations and requirements in performing the work, including those contained in Exhibit "B," which are attached hereto and incorporated herein by reference. The services which are the subject of this Agreement are not in the usual course of City's business and City relies on Instructor's representation that it is independently engaged in the business of providing such services, is experienced in performing the work and will follow the highest professional standards in performance of the work. All services provided shall conform to all federal, state and local laws, rules and regulations and to the best professional standards and practices. The terms and conditions set forth in this Agreement shall control over any terms and conditions in Exhibits "A" or "B" to the contrary.

The Community Services Department designee ("CSD Designee"), shall be the person to whom Instructor will report for the performance of services hereunder. It is understood that Instructor's performance hereunder shall be in cooperation with the CSD Designee, that Instructor shall coordinate its services hereunder with the CSD Designee to the extent required by the CSD Designee, and that all performances required hereunder by Instructor shall be performed to the satisfaction of the CSD Designee and the City Manager.

2. Compensation. Instructor's total compensation for all services performed under this Agreement, shall not exceed THIRTY THOUSAND DOLLARS and 00/100 (\$30,000.00), without the prior written authorization of City.

3. Method of Payment. Instructor's total compensation under this Agreement shall be that amount which represents the agreed percentage of the registration fee(s) paid to City for the class(es) to be taught by Instructor, which shall be due and payable within forty-five (45) days after satisfactory completion of all classes taught by Instructor pursuant to and in accordance with Exhibit "A." The total compensation payable hereunder shall include costs incurred in connection with transportation, materials and equipment required for furnishing services pursuant to this Agreement.

4. Changes. No payment for extra services or classes outside of the scope contained in this Agreement shall be made unless and until such extra services or classes and a price therefor have been previously recommended for approval by the CSD Designee and authorized in writing and approved by City as an amendment to this Agreement. The amendment shall set forth the

extra services or classes, additional time, and adjustment of the amount of compensation paid by City to Instructor.

5. Licenses. Instructor represents that it and any substitutes it may engage, possess any and all licenses which are required under state or federal law to perform the work contemplated by this Agreement and that Instructor and its substitutes, if any, shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Agreement.

6. Independent Contractor. At all times during the term of this Agreement, Instructor shall be an independent contractor and not an employee of City. City shall have the right to control Instructor only insofar as the result of Instructor's services rendered pursuant to this Agreement. Instructor shall comply with City's administrative and accounting requirements, which shall not be considered part of the performance of the work. City shall not have the right to control the instructional means by which Instructor accomplishes services rendered pursuant to this Agreement. In some instances, Instructor shall, at its sole cost and expense, furnish all facilities, materials and equipment that may be required for furnishing services pursuant to this Agreement. Instructor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its substitutes, agents and employees, including compliance with social security withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Instructor acknowledges that it and any substitutes, agents or employees employed by Instructor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

7. Instructor Not An Agent. Except as City may specify in writing, Instructor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Instructor shall have no authority, express or implied, to bind City to any obligation whatsoever.

8. Designated Persons. Except as otherwise authorized by the CSD Designee, only those persons designated in Exhibit "A," if any, shall perform work provided for under this Agreement. It is understood by the parties that clerical and other nonprofessional work may be performed by persons other than those designated.

9. Assignment or Subcontracting. No assignment or substitution by Instructor of any part of this Agreement or of funds to be received under this Agreement shall be of any force or effect unless the assignment has had the prior written approval of City. City may terminate this Agreement rather than accept any proposed assignment or substitution. Such assignment or substitution may be approved by the CSD Designee or the City Manager.

10. Time of Completion. Instructor agrees to commence the work provided for in this Agreement and to diligently prosecute completion of the work in accordance with the time period set forth in Exhibit "A" or as otherwise agreed to by and between the representatives of the parties.

Time is of the essence in this Agreement. Instructor shall do all things necessary and incidental to the prosecution of Instructor's work.

11. Equal Employment Opportunity. During the performance of this Agreement, Instructor agrees as follows:

a. Instructor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Instructor shall ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Instructor agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

b. Instructor shall, in all solicitations and advertisements for employees placed by, or on behalf of Instructor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

12. Conflicts of Interest. Instructor agrees that it shall not make, participate in the making, or in any way attempt to use its position as an Instructor to influence any decision of City in which Instructor knows or has reason to know that Instructor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code.

13. Indemnity.

a. To the fullest extent permitted by law, Instructor agrees to indemnify, defend and hold City, its City Council and each member thereof, and the officers, officials, agents and employees of City (the "Indemnitees") entirely harmless from all liability arising out of:

(1) Any and all claims under workers' compensation acts and other employee benefit acts with respect to Instructor's employees or Instructor's substitute's or subcontractor's employees arising out of Instructor's work under this Agreement, including any and all claims under any law pertaining to Instructor or its employees' status as an independent contractor; and

(2) Any claim, loss, injury to or death of persons or damage to property caused by any act, neglect, default, or omission other than a professional act or omission of Instructor, or person, firm or corporation employed by Instructor, either directly or by independent contract, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, or any of them, arising out of, or in any way connected with the work or services which are the subject of this Agreement, including injury or damage either on or off City's property; but not for any loss, injury, death or damage caused by the active negligence or

willful misconduct of City. Instructor, at Instructor's own expense, cost and risk, shall indemnify any and all claims, actions, suits or other proceedings that may be brought or instituted against the Indemnitees on any such claim or liability covered by this subparagraph, and shall pay or satisfy any judgment that may be rendered against the Indemnitees, or any of them, in any action, suit or other proceedings as a result of coverage under this subparagraph.

b. To the fullest extent permitted by law, Instructor agrees to indemnify and hold Indemnitees entirely harmless from all liability arising out of any claim, loss, injury to or death of persons or damage to property caused by the negligent professional act or omission in the performance of professional services pursuant to this Agreement.

c. Except for the Indemnitees, the indemnifications provided in this Agreement shall not be construed to extend any third party indemnification rights of any kind to any person or entity which is not a signatory to this Agreement.

d. The indemnities set forth in this section shall survive any closing, rescission, or termination of this Agreement, and shall continue to be binding and in full force and effect in perpetuity with respect to Instructor and its successors.

14. Insurance.

a. Instructor shall carry workers' compensation insurance as required by law for the protection of its employees during the progress of the work. Instructor understands that it is an independent contractor and not entitled to any workers' compensation benefits under any City program.

b. Instructor shall maintain during the life of this Agreement the following minimum amount of comprehensive general liability insurance or commercial general liability insurance: the greater of (1) One Million Dollars (\$1,000,000) per occurrence; or (2) all the insurance coverage and/or limits carried by or available to Instructor. Said insurance shall cover bodily injury, death and property damage, shall not exclude participants (e.g., no spectator liability policies allowed) and be written on an occurrence basis.

c. Each policy of general liability shall provide that City, its officers, officials, agents and employees are declared to be additional insureds under the terms of the policy, but only with respect to the work performed by Instructor under this Agreement. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Section b, above, shall apply to City as an additional insured.

d. The insurance policies maintained by Instructor shall be primary insurance and no insurance held or owned by City shall be called upon to cover any loss under the policy. Instructor will determine its own needs in procurement of insurance to cover liabilities other than as stated above.

e. Before Instructor performs any work or prepares or delivers any materials, Instructor shall furnish certificates of insurance and endorsements, as required by City, evidencing the aforementioned insurance coverages.

f. All insurance maintained by Instructor shall be issued by companies admitted to conduct the pertinent line of insurance business in the State of California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide.

g. Instructor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Agreement unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Instructor for such costs and any and all damages resulting therefrom, by way of set-off from any sums owed Instructor.

h. Instructor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Instructor shall look solely to its insurance for recovery. Instructor hereby grants to City, on behalf of any insurer providing insurance to either Instructor or to City with respect to the services of Instructor herein, a waiver of any right to subrogation which any such insurer of said Instructor may acquire against City by virtue of the payment of any loss under such insurance.

i. Instructor shall include all substitutes, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each substitute to City for review and approval. All coverages for substitutes shall be subject to all of the requirements stated herein.

15. Termination. City may for any reason terminate this Agreement by giving Instructor not less than three (3) days' written notice of intent to terminate. Upon receipt of such notice, Instructor shall immediately cease work, unless the notice from City provides otherwise. Upon the termination of this Agreement, City shall pay Instructor for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with this Agreement, unless termination by City shall be for cause, in which event City may withhold any disputed compensation. City shall not be liable for any claim of lost profits.

16. Maintenance and Inspection of Records. In accordance with generally accepted accounting principles, Instructor and its substitutes shall maintain reasonably full and complete books, documents, papers, accounting records, and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Agreement. City and its authorized representatives shall have access to and the right to audit and reproduce any of Instructor's records regarding the services provided under this Agreement. Instructor shall maintain all such records for a period of at least three (3) years after termination or completion of this Agreement. Instructor agrees to make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days' notice from City, and copies thereof shall be furnished if requested.

17. Compliance with all Laws/Immigration Laws.

a. Instructor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement.

b. Instructor represents and warrants that it:

(1) Has complied and shall at all times during the term of this Agreement comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Agreement who is ineligible to work in the United States or under the terms of this Agreement; and

(3) Has properly maintained, and shall at all times during the term of this Agreement properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Instructor's employees; and

(4) Has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

c. Instructor shall require all substitutes to make the same representations and warranties as set forth in Subsection 17.b.

d. Instructor shall, upon request of City, provide a list of all employees working under this Agreement and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Instructor. Once such request has been made, Instructor may not change employees working under this Agreement without written notice to City, accompanied by the verification required herein for such employees.

e. Instructor shall require all substitutes to make the same verification as set forth in Subsection 17.d.

f. Any Instructor or substitute who knowingly employs an employee providing work under this Agreement who is not authorized to work in the United States, and/or fails to follow federal laws to determine the status of such employee shall constitute a material breach of this Agreement and may be cause for immediate termination of this Agreement by City.

g. Instructor agrees to indemnify and hold City, its officers, officials, agents and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures, City may sustain by reason of Instructor's failure to comply with said laws, rules and regulations in connection with the performance of this Agreement.

18. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California and Instructor agrees to submit to the jurisdiction of California courts. Venue for any dispute arising under this Agreement shall be in Orange County, California.

19. Integration. This Agreement constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by both parties. Any work performed which is inconsistent with or in violation of the provisions of this Agreement shall not be compensated.

20. Notice. Except as otherwise provided herein, all notices required under this Agreement shall be in writing and delivered personally, by e-mail, or by first class mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by e-mail shall be deemed received on the date of the e-mail transmission.

“INSTRUCTOR”

“CITY”

Matthew Mead
1 Bodega Bay Dr.
Corona Del Mar, CA 92625

City of Orange
300 E. Chapman Avenue
Orange, CA 92866-1591
Attn.: Community Services Director

Telephone: (949) 400-9929
E-Mail: mjmead@me.com

Telephone: (714) 744-7274
E-Mail: lhardy@cityoforange.org

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

[Remainder of page intentionally left blank; signatures on next page]

IN WITNESS of this Agreement, the parties have entered into this Agreement as of the year and day first above written.

“INSTRUCTOR”

“CITY”

MATTHEW MEAD, a sole proprietor

CITY OF ORANGE, a municipal corporation

*By: Matthew Mead
Printed Name: Matthew Mead
Title: Pickleball Instructor

By: Thomas C Kisela
Thomas C. Kisela, City Manager

*By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Mary E. Binning
Mary E. Binning, City Attorney

***NOTE:**
-- *City requires the following signature(s) on behalf of Instructor:*
(1) the Chairman of the Board, the President or a Vice-President, AND (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. OR
-- *The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to City.*

✓

EXHIBIT "A"

SCOPE OF SERVICES

[Beneath this sheet.]

Exhibit A

Matthew Mead

1 Bodega Bay Dr.
Corona Del Mar, CA 92625
(949) 400-9929

**Scope of Service
City of Orange
Recreation Class Contract Instruction**

Service	% of Revenue Charge
Teach Recreation Classes as directed by City of Orange staff	60%

Classes offered throughout the duration of this agreement shall be the same and/or similar to the type of classes listed below.

Course Description(s) – applies to adults:

Pickleball Lessons

Lessons are designed for those new to the sport or those looking to improve their game in this popular, fast-growing sport.

Location:

Classes will be taught in a City facility – outdoor tennis courts at El Camino Real Park.

Class location is subject to change per the request of City staff whether it be due to a maintenance and/or safety concern or a matter of availability or preference.

Equipment Provided by the City:

None

EXHIBIT “B”

SPECIAL PROVISIONS

[Beneath this sheet.]

Exhibit B

Special Provisions

Please initial next to each of the following subparagraphs after carefully reading each statement and agreeing with each statement:

- a. _____ All class and/or camp registration must be processed through the City of Orange Community Services Department. Instructors are not allowed to directly accept registration money from students at any time.
- b. _____ Applicable class material fees must be approved by the City prior to the class start date and may be paid by the participant directly to the instructor. If a participant withdraws from a class and requests a refund of the paid material fee, the instructor is obligated to refund at a minimum a pro-rated amount of that material fee directly to the participant.
- c. _____ To maintain quality customer service with our customers, instructor or a designated representative are expected to attend at a minimum ten minutes of the first class meeting, even if the class is canceled due to lack of enrollment.
- d. _____ If a class cancels and the instructor is unable to attend the first class meeting, it is the responsibility of the Instructor to contact the City's Community Services Coordinator prior to informing participants of the class cancellation.
- e. _____ All student and class transfers must first be approved by the City's Community Services Coordinator.
- f. _____ It is the responsibility of the instructor to regularly take class attendance and communicate discrepancies immediately to the Community Services Coordinator. The Instructor is paid according to City records.
- g. _____ Instructors must notify the City's Community Services Coordinator within 24 hours if a student does not show up on the first day of class, "drops out" of class, or requests a refund. Instructors are not paid for participants that never attended class.
- h. _____ It is the responsibility of the Instructor to meet quarterly proposal submittal deadlines. If deadlines are not met, the City has the right to withhold class information from appearing in the upcoming *Our Orange*. The City has the right to accept or decline each quarter, all submitted class proposals either in part or in its entirety.

Exhibit B

Special Provisions

- i. _____ Instructors are required to supply their own instructional materials and equipment at each class. The City and its employees are not responsible for lost, damaged, or stolen materials left behind by Instructors or their participants.

On-site instructors: in most cases, there is no on-site storage available. However, in the event class is taught in a location that does have storage, arrangements must be made with the Community Services Coordinator prior to leaving any equipment or materials. Equipment and materials left in storage is done so at the instructor's own risk.

- j. _____ Instructors must make every effort to prevent injury to students and property and are expected to report unsafe park and/or facility conditions to the Community Services Coordinator immediately.

- k. _____ Instructors must leave City facilities neat and clean after each use.

On-site instructors: are responsible for communicating their room set-up at a minimum one week prior to the first class meeting. Despite the activity, any table used during class must be covered to prevent damage or staining.

- l. _____ The City reserves the right to observe all classes and complete periodic evaluations of services rendered unannounced.

- m. _____ Under no circumstances shall the instructor speak to members of the media on behalf of the City. If an instructor is approached by a member of the media, the instructor shall contact the Community Services Department immediately.

- n. _____ NOTE to Instructors working with minors: Section 5164 of the Public Resources Code and 10911.5 of the Education Code requires instructors and their employees, volunteers, or assistants working with minors under the age of 18 to be fingerprinted.

Off-site instructor: shall provide the City with a written declaration stating they are in accordance with California State Laws, section 5164 of the Public Resources Code and 10911.5 of the Education Code.

On-site instructors: working with minors under the age of 18 must be fingerprinted through the City of Orange Police Department. This includes any substitutes, assistants, or volunteers that work with minors.

Exhibit B

Special Provisions

o. _____ In addition to compliance with fingerprinting laws, Instructors who are employers are expected to:

- Conduct “Google” or other reasonable internet name searches prior to hiring new staff members to ensure new staff members meet the qualifications and standard under the guidelines contained herein
- Maintain staff employment eligibility on a quarterly basis by conducting “Google” or other reasonable internet name searches prior to the start of the new season of scheduled classes to ensure staff members are eligible under the guidelines contained herein
- Provide a list of active employees when requested by the City

p. _____ Guidelines for Instructor Conduct:

The City of Orange is seeking Instructors who relate well with others, have a good self-image, positively represent the City, are personable and pleasant, demonstrates poise and maturity, and are interested in providing excellent customer service.

Each instructor is expected to behave in a professional and courteous manner which includes, but is not limited to:

- Uses appropriate and positive language
- Does not discriminate on the basis of age, race, sex, religion, ethnicity, and physical disabilities and/or limitations
- Wears appropriate, non-offensive clothing or attire (anything with explicit language and/or related to sex, drugs, alcohol, politics, etc. is not considered appropriate attire)
- Encourages participants, never belittles, scolds, or disciplines through use of physical force
- Makes each participant feel valued and appreciated