

8) **Independent Contractor Agreement for Instruction with National Junior Basketball League**

Approve and authorize the City Manager to execute an agreement/contract with National Junior Basketball League in an amount not to exceed \$60,000 for basketball league, practices, games, and instruction in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not exceeding a 10% contingency of \$6,000 for uncertainties and adjustments.



REPORT TO CITY COUNCIL

To: Honorable Mayor and Members of the City Council

From: Jason Simpson, City Manager

Prepared by: Johnathan Oliver Skinner, Director Of Community Services

Date: July 9, 2024

Subject: Independent Contractor Agreement for Instruction with National Junior Basketball League

Recommendation

Approve and authorize the City Manager to execute an agreement/contract with National Junior Basketball League in an amount not to exceed \$60,000 for basketball league, practices, games, and instruction in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not exceeding a 10% contingency of \$6,000 for uncertainties and adjustments.

Background

The City of Lake Elsinore contracts with private instructors to perform recreational instruction at City-owned facilities such as the Lake Community Center, Dream Extreme Neighborhood Center, and Lake Elsinore Senior Center. The City of Lake Elsinore collects all registration fees for the classes through Rec1, a software program. Upon the City's receipt of the invoice, the City then pays each of the contract instructors 75 percent of the participation Registration Fees collected. The City retains 25 percent of the fees for facility maintenance and staffing costs.

Discussion

National Junior Basketball (NJB) is an existing business providing basketball instruction, practice, and games at the Lake Community Center and our joint-use Terra Cotta Middle School Gymnasium. In NJB's inaugural season with the City, they registered over 100 participants. With their success, ability to offer multiple seasons, addition of camps and workshops, and capacity to accommodate more than 200 participants per season, we anticipate that NJB will grow in popularity. Thus, we anticipate the instructor portion of registration fees will exceed the City Manager's authority threshold. The Independent Contractor Agreement is attached as Attachment 1 and provides authorization for payment of the instructor share of registration fees up to \$60,000.

Fiscal Impact

Since the City collects the Registration Fees, pays the instructor their 75 percent dues, and retains 25 percent to cover staffing and maintenance, the expenses are countered with the appropriate revenue stream and therefore, no fiscal impact is anticipated.

Attachments

Attachment 1 - Agreement

CITY OF LAKE ELSINORE INDEPENDENT CONTRACTOR AGREEMENT FOR INSTRUCTION

THIS INDEPENDENT CONTRACTOR AGREEMENT FOR INSTRUCTORS ("Agreement") is made and entered into on July 1, 2024 by and between the CITY OF LAKE ELSINORE, hereinafter the "CITY," and National Junior Basketball League, hereinafter the "CONTRACTOR."

1. **Purpose.** The CITY hereby engages CONTRACTOR for purposes of providing instruction in skillful and competent manner, and shall abide by all laws in doing so. CONTRACTOR shall perform such other duties as are customarily performed by one holding such position in other same or similar businesses or enterprises as that engaged in by CITY and shall maintain instruction area in a clean, safe and orderly manner.
2. **Contractor's Status.** CONTRACTOR is an independent contractor and is solely responsible for his or her own actions or omissions. CONTRACTOR is not City's employee for any purpose. Any additional personnel performing the services under this Agreement on behalf of CONTRACTOR shall also not be employees of the CITY and shall at all times be under Contractor's direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel in connection with their performance of this Agreement and as required by law.
3. **Term.** The term of this Agreement shall begin July 1, 2024 and end June 30, 2025.
4. **Collection of Fees/Class Size.** CONTRACTOR shall establish the per student registration fee of each class. Registration fees shall be collected by the CITY through set registration procedures implemented by designated CITY staff. The CONTRACTOR is not authorized to collect registration fees. Following the collection of registration fees, the CITY shall confirm the number of participants enrolled. The CONTRACTOR will be compensated only for participants who have paid. Size of each class may vary. Class minimum and maximum size shall be established by CONTRACTOR subject to the City's consent based on the capacity of the facility where the class will be conducted.
5. **Compensation.** In consideration of the performance of the instruction and/or services provided herein, the CONTRACTOR shall receive seventy-five percent (75%) of the participation registration fees collected for instruction and/or services identified in Section 1 above, exclusive of any facility entrance, pool use, field/court night lights, insurance fees and/or publicity fees were charged. Compensation to be paid to the Contractor shall not exceed \$60,000 without prior additional written authorization from the City. It is also understood that all taxes and/or other withholdings are the CONTRACTOR'S responsibility.
6. **Payment.** The compensation provided in Section 5 shall be paid upon satisfactory completion of instruction and/or services and receipt of an invoice within 45 days by CONTRACTOR submitted to the Community Services Department in the format specified by the Department, net 45 days.
7. **Business License, Insurance, and LiveScan.** CONTRACTOR and any subcontractor agrees to obtain and follow all business license requirements as required by the Lake Elsinore Municipal Code, Chapter 5.08. All business license requirements must be met prior to contract approval. CONTRACTOR and any subcontractor agrees to obtain all insurance required and present valid insurance certificates in accordance with the attached Terms and Conditions. CONTRACTOR, its employees, agents, consultants, contractors and volunteers agrees to perform and provide proof of LiveScan.
8. **Terms and Conditions.** This Agreement includes the terms and conditions as printed and set forth on the following page, which terms and conditions are incorporated herein by reference; and the CONTRACTOR, by executing this Agreement, agrees to comply with such terms and conditions.

CITY OF LAKE ELSINORE

By: _____
Shannon Buckley, Risk Manager

By: _____
Jason Simpson, City Manager

ATTEST:

Candice Alvarez, MMC, City Clerk

CONTRACTOR

By:

Print Name: Dennis Murphy

Title: Owner

Business Name: National Junior Basketball League

Business License Number: 027862

Class(es): Youth Basketball for Girls & Boys

Address: 23963 Augusta Dr.

City/State/Zip: Temescal Valley, CA 92883

Email Address: damurphy@njbl.org

Phone Number: 714-397-0678

TERMS AND CONDITIONS

1. **EQUIPMENT AND LABOR:** The Contractor shall furnish all tools, equipment, apparatus, supplies and materials unless otherwise mutually agreed by City. Contractor assumes all risk of loss, damage or harm to such equipment or materials arising in connection with this Agreement. The Contractor shall perform the services under this Agreement in a skillful and competent manner and shall abide by all laws in doing so.
2. **COMMUNITY HEALTH PROGRAM PARTICIPATION:** The Contractor shall participate in the City's community health program by providing at least one hour of scheduled class services at least twelve times per year (i.e. once per month or during a seasonal series) free of charge to the program participants. The location of the classes shall be at the discretion of the City.
3. **SUBCONTRACTORS:** In the event a contractor will not be able to teach class due to illness, etc. the Contractor will implement the following procedure:
 - a. Contractor will procure a substitute contractor equally or better qualified and acceptable to the City to instruct class at the prescribed time and place. Subcontractors must meet the criminal background screening and fingerprinting requirements according to Cal Public Resources Code Section 5164.
 - b. Contractor will notify assigned designated staff regarding the substitute's name, qualifications, address and phone. Payment for subcontractors shall be responsibility of the Contractor.
 - c. If a substitute cannot be procured, the class will be canceled and a make-up class added to the end of the session. The contractor will be responsible for notifying the students of the cancellation.
 - d. Contractor is responsible for ensuring subcontractors must meet all of the criteria stipulated in these Terms and Conditions, including but not limited to, maintaining a valid City of Lake Elsinore Business License, providing valid certificates of insurance in accordance with City policies, and providing proof of LiveScan.
4. **SUPERVISION:** Contractor agrees to establish appropriate rules for conducting the class and to assume responsibility for student discipline to ensure adequate protection of students and facility.
5. **FACILITY:** The City shall be responsible for providing a suitable facility for the conduct of the class, unless otherwise noted under "Special Arrangements". Contractor shall pay City for any and all costs associated with using the facility. Contractor agrees to assume full responsibility for setting up any facility for instruction and for cleaning and/or restoring the facility to its usual condition following each class session.
6. **ACCESS TO FACILITY:** City representatives shall at all times have access to facility, whenever class is in progress to monitor programs for quality.
7. **CONDUCT:** Contractor understands that the City is a public entity under the laws of the State of California, and that the City's purpose in engaging Contractor is to provide its residents with recreational activities in a manner that will foster a sense of community, security, fun and fair play. Contractor agrees to conduct himself/herself in a manner that will further these goals. Contractor further acknowledges that failure to do so will result in immediate termination of this Agreement.
8. **COORDINATION OF WORK:** The Contractor agrees to coordinate with the City specified time(s) and date(s) in order to avoid conflict of use. It is agreed that the resolution of any conflict is at the sole discretion of the City Manager or his/her designee. Contractor agrees to work with assigned City staff to maintain accurate enrollment records.
9. **RULES:** Contractor agrees to obey all rules and regulations of the City of Lake Elsinore and any directives and memoranda issued by the Department's Director.
10. **LIVESCAN:** Contractor, its employees, agents, consultants, contractors and volunteers must comply with fingerprinting requirements, Public Resources Code, Section 5164, by presenting proof of LiveScan to the City, prior to commencing work with minors.
11. **HOLD HARMLESS AND INDEMNIFICATION.** The Contractor shall defend, indemnify, and hold harmless the City, its officials, officers, agents, employees and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity to property or persons, including wrongful death, in any manner arising out of our incident to any alleged acts, omissions or willful misconduct of Contractor, its employees, agents, consultants, contractors and volunteers arising out of or in connection with the performance of the services in this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Contractor shall pay and satisfy any judgment, award or decree that maybe rendered against City or its officials, officers, employees, agents, or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers. Such indemnification shall cover death or bodily injury to any person; injury to, loss, or theft of property, injury arising from the furnishing or use of any copyrighted or uncopyrighted composition, secret process, or patented or unpatented invention, or any other type of injury, whether such injury or damage occurs on or off City property.
12. **INSURANCE:** Contractor, its employees, agents, consultants, contractors and volunteers understand that certain types of activities create additional exposure of risk to City. Unless otherwise waived or modified by the City's Risk Manager, Contractor and any agents, consultants, or subcontractors shall similarly maintain the following insurance requirements and present the applicable valid certificates to the City of Lake Elsinore. Commercial General Liability/Umbrella Insurance total limits shall be no less than \$1,000,000 per accident and \$2,000,000 general aggregate. Contractor shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the work to be performed under this Agreement,

TERMS AND CONDITIONS

including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$300,000 combined single limit for each occurrence. Contractor shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in an amount not less than \$1,000,000 in accordance with the laws of the State of California. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Contractor for City. City and its employees and agents shall be added as additional insureds using ISO additional insured endorsement form CG 20 10 or CG 20 26 (in no event will City accept an endorsement form with an edition date later than 1990). Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Contractors and subcontractors must maintain this insurance requirement and have the City listed as additionally insured in accordance with the above statements.

13. **CONTRACTOR NOT OFFICER, EMPLOYEE OR AGENT OF CITY.** While engaged in carrying out the terms and conditions of the Agreement, the Contractor is an independent contractor and not an officer, employee or agent of the City. The Contractor has no authority, express or implied, to act on behalf of the City as an agent or representative of the City under this Agreement to bind the City to any obligation. The Contractor is not eligible for benefits from Social Security, State Unemployment Insurance, Disability Insurance or Workman's Compensation Insurance. In the event of injury, the Contractor is responsible for his/her own medical expenses.
14. **PUBLICITY:** Contractor shall not advertise, print or publish any promotional materials in connection with the instruction or service to be conducted under this Agreement without the prior written approval of the Director of Community Services or his/her authorized representative.
15. **ASSUMPTION OF RISK.** Contractor works at his/her own risk. Contractor shall ensure each participant signs the City's "Waiver & Release Agreement" prior to participation.
16. **COLLECTION OF FEES:** The Contractor agrees not to accept any registration fees from students. All registration fees shall be paid directly to the City and the Contractor shall be paid at the conclusion of the course by the City. The Contractor may collect additional fees for materials and supply costs. The Contractor shall appropriately inform the participants of the additional material fees prior to registration. Participants may be required to bring certain supplies and materials to class.
17. **PAYMENT OF FEES:** City agrees to pay Contractor according to compensation provision provided on first page of this Agreement. Contractor is responsible for payment to any subcontractors.
18. **AMERICANS WITH DISABILITIES ACT.** Contractor agrees that he/she shall make every attempt to accommodate people with physical and/or mental disabilities.

19. **GENERAL COMPLIANCE WITH LAWS.** Contractor shall comply with all federal, state, and local laws, statutes, rules and regulations in any manner affecting the performance of this Agreement. By law, Contractor, Contractor's employees and any agreed upon substitute personnel or subcontractor must comply with the requirements of Cal Pub Resources Code Section 5164 before engaging in the services under this Agreement. Contractor, Contractor's employees and any agreed upon substitute personnel or subcontractor hereby agree to a criminal background check as required under Cal Pub Resources Code Section 5164 by the City's Police Department if Contractor or any of Contractor's employees or agreed upon substitute personnel or subcontractor shall work with persons of eighteen (18) years of age or under. Contractor, Contractor's employees or any agreed upon substitute personnel or subcontractor must be cleared by City prior to working with persons of eighteen years of age or under. If the background check for Contractor, Contractor's employees or agreed upon substitute personnel or subcontractor reveals illegal or objectionable information or activities, the person to whom the background check applies shall be prohibited from providing the services hereunder and, in City's sole and absolute discretion, this Agreement may be terminated, in which case Contractor will be entitled to no further compensation under this Agreement. Contractor, Contractor's employees, and any agreed upon substitute personnel or subcontractor shall not be permitted to provide services hereunder for classes with attendees who are eighteen years of age or under unless a criminal background check has been performed and clearance has been received from the Department of Justice.
20. **MODIFICATION.** No waiver, modification or termination of this Agreement is valid unless made in writing.
21. **NONASSIGNMENT.** Contractor shall not have any right to assign and/or transfer his/her rights and/or obligations under this Agreement without the prior written consent of the City.
22. **DEFAULT BY CONTRACTOR:** Failure to comply with any of the terms and/or conditions of this agreement shall constitute default by the Contractor.
23. **TERMINATION:** The agreement may be terminated by the City upon 30 days' notice given in writing. Both parties will perform in accordance with the agreement prior to the effective termination date. Nothing contained herein shall diminish the right of the City to cancel, immediately and without prior notice, the agreement for cause without penalty or liability on the part of the City.
24. **ENTIRE AGREEMENT:** This contract constitutes the entire Agreement between the parties concerning the subject matter hereof and supersedes all agreements, representations, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof.
25. **SPECIAL ARRANGEMENTS:**
