

**AGREEMENT WITH SAN MATEO UNION HIGH SCHOOL DISTRICT
FOR RECREATION INSTRUCTOR SERVICES FACILITATED BY SAN MATEO ADULT AND CAREER
EDUCATION**

This Agreement is made and entered into this day _____ by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and San Mateo Union High School District facilitated by San Mateo Adult and Career Education, a Public Educational High School District, whose address is 650 North Delaware Street, San Mateo, CA 94401. ("CONTRACTOR").

RECITALS:

- A. CITY desires certain Recreation Instructor Services hereinafter described.

- B. CITY desires to engage CONTRACTOR to provide these Recreation Instructor Services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONTRACTOR under this Agreement is as described in Exhibit A to this Agreement, which is attached and incorporated by reference.

SECTION 2 - DUTIES OF CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONTRACTOR represents that it is qualified to furnish the services described under this Agreement.

CONTRACTOR shall be responsible for employing or engaging all persons necessary to perform the services of CONTRACTOR.

CONTRACTOR agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONTRACTOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONTRACTOR'S work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on January 6, 2025 and be completed on June 30, 2026.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONTRACTOR pursuant to rates stated in Exhibit B, attached and incorporated by reference.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement upon receipt of said written notice.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONTRACTOR in the performance of this Agreement are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONTRACTOR in connection with the performance of this Agreement are confidential until released by CITY to the public. CONTRACTOR shall not make any such documents or information available to any individual or organization not employed by CONTRACTOR or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONTRACTOR

CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONTRACTOR'S STATUS

It is expressly agreed that in the performance of the services required under this Agreement, CONTRACTOR shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONTRACTOR an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONTRACTOR agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's performance of this Agreement, except for those claims arising out of CITY's sole negligence or willful misconduct. CONTRACTOR agrees to defend City, its elected and appointed officials, employees, and agents against any such claims. The CONTRACTOR'S duty to indemnify shall survive expiration or early termination of this Agreement.

SECTION 12 - INSURANCE

Contractor shall procure and maintain for the duration of the contract the insurance specified in Exhibit C to this Agreement.

SECTION 13 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONTRACTOR and cannot be transferred, assigned, or subcontracted by CONTRACTOR without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON SKILL OF CONTRACTOR

It is mutually understood and agreed by and between the parties hereto that CONTRACTOR is skilled in the performance of the work agreed to be done under this Agreement and that CITY relies upon the skill of CONTRACTOR to do and perform the work in the most skillful manner, and CONTRACTOR agrees to thus perform the work. The acceptance of CONTRACTOR's work by CITY does not operate as a release of CONTRACTOR from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 17 - NON-DISCRIMINATION

CONTRACTOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONTRACTOR nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 18 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - LITIGATION

CONTRACTOR shall testify at CITY's request if litigation is brought against CITY in connection with CONTRACTOR's services under this Agreement. Unless the action is brought by CONTRACTOR, or is based upon CONTRACTOR's wrongdoing, CITY shall compensate CONTRACTOR for preparation for testimony, testimony, and travel at CONTRACTOR's standard hourly rates at the time of actual testimony.

SECTION 20 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: *Tracy Brumett
City of San Mateo
330 W. 20th Ave.
San Mateo, CA 94403*

To CONTRACTOR: *San Mateo Adult and Career Education
Attn: Jeri McGovern
789 East Poplar Ave.
San Mateo, CA 94401*

**SECTION 21 - AGREEMENT CONTAINS ALL
UNDERSTANDINGS; AMENDMENT**

This document represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONTRACTOR.

SECTION 22 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

SCOPE OF SERVICES

Contractor Information

The Contractor for this agreement is San Mateo Union High School District, with the main contact being Jeri McGovern from the San Mateo Adult and Career Education program. The district is located at 789 East Poplar Ave., San Mateo, CA 94401. Jeri McGovern can be reached at 650-558-2100 or via email at jmcgovern@smuhsd.org.

Agreement Term

The agreement term begins upon execution and continues through June 30, 2026.

Instructional Services

The Contractor agrees to provide instructional services for adult programs located at the San Mateo Senior Center, specifically in-person courses, with a minimum enrollment requirement of 8 participants. Drop-in services will not be offered for these programs.

Additional Responsibilities and Terms

- a. The Contractor shall cooperate with other City Parks and Recreation programs and exercise reasonable and diligent care to protect City property at all times.
- b. The Contractor shall hold the class or classes if at least the required minimum number of students, as outlined in Exhibit A, have enrolled.
- c. The Contractor shall attend required training programs provided by the City's Parks and Recreation Department and assist with publicity efforts by giving demonstrations or participating in Department shows, fairs, and special events.
- d. The Contractor shall not allow any person to participate in the program who is not registered through the Department or a partner city in a jointly offered program.
- e. The Contractor shall ensure that all participants in City-sponsored programs are registered using a Department standard registration form, which must include the participant's or their parent/guardian's signature.
- f. The Contractor may only use City-provided participant information for purposes directly related to the participant's enrollment or participation in the specific activity. The Contractor is prohibited from using this information to contact participants for any other purpose or providing this information to any third-party organization or individual unless specifically approved by the Contractor's City representative. The Contractor may allow participants, or the parents of minor participants, the opportunity to voluntarily provide their contact information to the Contractor within the classroom setting.

EXHIBIT B

PAYMENT RATES

Payment Rates

For the performance of the instructional services as described in Exhibit A, the Contractor will be compensated as follows:

- The rate for in-person or virtual courses held on City property is 70% of the course revenue, less administrative factor surcharges.

Special Terms

If a course is canceled due to low enrollment, neither the City nor the Contractor will receive any revenue or payment, as all patrons will be refunded 100%.

No make-up classes will be scheduled for this course.

Payment Terms

The Contractor will be paid in one installment at the end of each session, according to the Recreation Production Schedule. Payment will be made within three weeks of the session's conclusion. If a registrant signs up after the class start date or withdraws before it ends, the fees will be prorated, and the Contractor's payment will also be adjusted accordingly.

EXHIBIT C

INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain a Certificate of Insurance and endorsements that shows the following coverage:

<input type="checkbox"/> Low to Medium-Risk Activities <input checked="" type="checkbox"/> \$1,000,000 each occurrence and \$2,000,000 Aggregate Limit Minimum	<input type="checkbox"/> High-Risk Activities \$2,000,000 each occurrence and \$4,000,000 Aggregate Limit Minimum <i>(Not offered through Alliant)</i>
Lectures, Seminars etc. Music Lessons-Group or Private Book Club Adult/Youth Dance and Fitness Arts and Crafts (not involving heavy machinery or hazardous materials) Learning and Enrichment (Science, cooking, language, etc.) Yoga/Chair Yoga Other: _____	Physical Sports- Contact Football, Tennis, Swimming, Softball etc. Horseback riding Skateboarding, Ice Skating, etc. Sailing or other water sports Gymnastics Martial Arts Cheerleading Other: _____

A. Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence (\$2,000,000 if required above). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
3. **Proof of Automobile Insurance** for the vehicle the Contractor will use as required by the State of California. If the Contractor’s vehicle changes, it is the Contractor’s responsibility to update the proof of automobile insurance provided to the City.
4. **Sexual Abuse or Molestation (SAM) Liability:** If the work will include contact with minors, and the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, Contractor shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$1,000,000 per occurrence or claim.

If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Certificate Holder:

City of San Mateo
330 W 20th Ave
San Mateo, CA 94403

B. Insurance Endorsement Requirements:

The CGL policy is to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Endorsement

The City, its elected and appointed officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

The Additional Insured Endorsement should be a separate document from the certificate and should indicate: "The City of San Mateo, its elected and appointed officials, employees, and agents are named as additional insured."

2. Primary & Non-Contributory Endorsement

For any claims related to this contract, the Contractor's CGL coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be in excess of the Contractor's insurance and shall not contribute with it.

3. Waiver of Transfer (Subrogation) Endorsement

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Waiver of Transfer (Subrogation) Endorsement should be a separate document from the certificate and should indicate: "The City of San Mateo, its elected and appointed officials, employees, and agents are named as additional insured."

C. Additional Insurance Information

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be cancelled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this Exhibit. All certificates and endorsements are to be received and approved by the City before work commences, at least **30 days** before programming begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Failure to provide required insurance documents may result in cancellation or postponement of scheduled programming.

The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.