

RESOLUTION NO. 2007- 35

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA WAIVING THE COMPETITIVE BIDDING PROCESS FOR THE 2007 SUMMER BASEBALL CAMP; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO ENTER INTO AN AGREEMENT BETWEEN THE CITY AND ALEX OTHON'S BASEBALL CAMP TO PROVIDE A SUMMER BASEBALL CAMP AT DORAL MEADOW PARK; DIRECTING CITY STAFF TO ISSUE A REQUEST FOR PROPOSAL FOR THE 2008 SUMMER BASEBALL CAMP; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in 2006, Alex Othon's Baseball Camp was selected to provide a summer baseball camp in the City of Doral; and

WHEREAS, City staff found that the 2006 Summer Baseball Camp was successful; and

WHEREAS, due to timing constraints, City staff requested Alex Othon's Baseball Camp to provide a 2007 Summer Baseball Camp; and

WHEREAS, to the extent that it is required, the City Council expressly waives the competitive bidding process, consistent with Ordinance 2004-03, and authorizes the appropriate City officials to enter into an Agreement between the City and Alex Othon's Baseball Camp to provide a 2007 Summer Baseball Camp at Doral Meadow Park;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

Section 2. The City Council of the City of Doral, Florida, hereby waives the competitive bidding process and authorizes the appropriate City officials to retroactively enter into an Agreement between the City of Doral and Alex Othon's Baseball Camp to provide a 2007 Summer Baseball Camp at Doral Meadow Park, which Agreement is attached hereto and incorporated herein as Exhibit "A."

Section 3. At the appropriate time, City staff is directed to issue a Request for Proposal for the 2008 Summer Baseball Camp.

Section 4. This Resolution shall become effective upon its passage and adoption by the City Council.

[Section left blank intentionally]

WHEREAS, a motion to approve the Resolution was offered by Vice Mayor Cabrera who moved its adoption. The motion was seconded by Councilman DiPietro and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Peter Cabrera	Yes
Councilmember Michael DiPietro	Yes
Councilwoman Sandra Ruiz	Yes
Councilmember Robert Van Name	Yes

PASSED AND ADOPTED this 13th day of June, 2007.



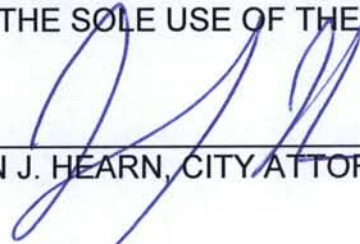
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE SOLE USE OF THE CITY OF DORAL:



JOHN J. HEARN, CITY ATTORNEY

EXHIBIT "A"

**CITY OF DORAL
PARKS & RECREATION DEPARTMENT
CONTRACT FOR OUTSIDE INSTRUCTORS**

THIS IS AN AGREEMENT, made this 14 day of May, 2007, between:

THE CITY OF DORAL, a municipal corporation organized and operating under the laws of the State of Florida, with a business address of 8300 NW 53 Street, Suite 100, Doral, Florida 33166, hereinafter referred to as the "CITY"

and

ALEX OTHON d/b/a ALEX OTHON'S BASEBALL CAMP, 494 SW 159 Lane, Pembroke Pines, FL 33027
(Name of Instructor or Business) (Address)

hereinafter referred to as "INSTRUCTOR". CITY and INSTRUCTOR may hereinafter collectively be referred to as "the Parties".

In consideration of the mutual obligations of the Parties and for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1.0 INSTRUCTOR's Services and Responsibilities

1.1 INSTRUCTOR shall conduct SUMMER BASEBALL CAMPS class at DORAL MEADOW PARK (Fields 1 and 2) 11555 NW 58 Street located in Doral, Florida, for a time period beginning 6/04/2007 and ending 8/10/2007, INSTRUCTOR must meet minimum student enrollment based upon the type of program as described below in section titled "Activity Classifications and Class Minimums".

1.2 The INSTRUCTOR's services shall be performed during the following days and hours: Summer Camp 6/04/2007-8/10/2007 9:00am-4:00pm Full day 9:00am-12:00pm Half day
(Specify number of sessions per day, number of days per week, and hours for each session)

1.3 The fee charged to each student will be \$ 100.00 half/\$135.00 full day for residents of Doral and \$122.50 half/\$166.25 full day for non-residents of Doral. The entire balance of this surcharge for non-resident students shall be paid to the CITY.

NOTE: Non-residents currently participating in the Doral Little League will be classified as residents

1.4 The INSTRUCTOR warrants to CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under this Agreement.

1.5 The INSTRUCTOR shall stipulate and certify that he/she is qualified to teach the course he/she is hired to teach, maintains the education and required licenses or permits necessary to teach the class and shall continue to maintain such licenses or permits during the tenure of this Agreement.

1.6 This Agreement is considered a non-exclusive Agreement between the Parties. The CITY shall have the right to purchase the same kind of services to be provided by the INSTRUCTOR from other sources during the term of this Agreement. The INSTRUCTOR is not precluded from providing the same or similar services for other parties so long as such other engagements do not interfere with the INSTRUCTORS provision of services to the CITY.

1.7 The Director of the Parks & Recreation Department, hereinafter referred to as the "DEPARTMENT", must approve any promotional material, flyers, and posters advertising the class prior to its release.

1.8 The INSTRUCTOR shall abide by the rules and regulations of the DEPARTMENT as promulgated from time to time.

1.9 All class materials and equipment needed or pertaining to the above stated class will be provided by the INSTRUCTOR.

1.10 The CITY will provide no storage space to the INSTRUCTOR, unless otherwise mutually agreed upon in a separate written agreement.

1.11 Any supplies or equipment left at the facility will be the responsibility of the INSTRUCTOR. The CITY will not be responsible for any lost, stolen, or broken equipment or supplies.

1.12 All assistants, substitutes, and additional instructors utilized by the INSTRUCTOR must have prior written approval of the DEPARTMENT.

1.13 INSTRUCTOR shall provide necessary supervisory personnel to ensure that the participants of the program obey all DEPARTMENT Rules and Regulations.

1.14 The DEPARTMENT or CITY may require that the INSTRUCTOR not be permitted to utilize specific assistants, substitutes, or additional instructors who have failed to follow the DEPARTMENT rules.

1.15 Although the CITY shall not control the INSTRUCTOR's techniques, methods, procedures, or sequence of instruction, the INSTRUCTOR will endeavor to comply with the CITY's and DEPARTMENT's policies and procedures so as not to interfere with their operation, harm or damage the equipment or facilities afforded to INSTRUCTOR for his/her class or to otherwise disrupt the other on-site activities being offered at such public facilities.

1.16 The INSTRUCTOR also acknowledges that he or she is primarily responsible for the conduct of the students in all classes under his or her charge.

1.17 The INSTRUCTOR shall inspect the premises and equipment offered to him/her for his/her proposed activity and if there he or she finds anything wrong with the premises or equipment before each class commences that cannot be corrected immediately by the

DEPARTMENT, the class shall be canceled and the matter reported to the DEPARTMENT for correction. If the INSTRUCTOR elects to hold his/her class in the facility provided, it will be presumed that the INSTRUCTOR has inspected the premises and facilities and equipment provided for such class and has accepted same as being safe and suitable for the use intended.

1.18 If the INSTRUCTOR will be providing recreational/instructional services directly with minor children without parental supervision, the INSTRUCTOR shall, prior to commencing services under this Agreement, comply with the CITY's policy regarding criminal background screening in accordance with Chapter 435, Florida Statutes, Level I screening.

1.19 INSTRUCTOR shall be required to require all participants to sign a Waiver and Release of Liability form on behalf of the CITY which will be provided to the INSTRUCTOR by the CITY, a copy of which is attached hereto as **Exhibit "A"**

2.0 Compensation and Method of Payment

2.1 The INSTRUCTOR will collect all fees from the students. The INSTRUCTOR shall pay twenty percent (20%) of the gross monthly income of each class to the CITY. As provided in Paragraph 1.3 above, the non-resident surcharge is fully payable to the CITY and shall not be included in the gross monthly income calculation. The payment is due by the tenth (10th) day of each month for classes occurring the previous month.

2.2 Late Charges: If any monies due and owed to CITY are not received by CITY within ten (10) calendar days after said amount is due, then the INSTRUCTOR shall pay to CITY a late charge equal to the maximum permitted by law.

2.3 The INSTRUCTOR must complete the CITY's registration sheet each month and submit it to the Supervisor in charge of the facility with the commission payment.

2.4 As a condition for utilizing CITY's facilities and premises, INSTRUCTOR agrees it shall charge twenty-five percent (25%) more for class participants not residing within Doral. Example: \$20.00 per month for resident of Doral and \$25.00 per month for non-residents.

2.5 The sales or advertisement of merchandise is restricted to those materials utilized in and for the class. The INSTRUCTOR shall obtain the CITY's approval of such merchandise prior to its distribution and advertisement or sale.

2.6 It is the responsibility of the INSTRUCTOR to pay all applicable local, state, and federal taxes associated with this Agreement, and to acquire and pay for all necessary permits, licenses, and insurance required for the execution of this Agreement.

3.0 Independent Instructor

3.1 This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the INSTRUCTOR is an independent contractor under this Agreement and not a CITY employee for all purposes, including but not limited to, the

application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, The State Workers Compensation Act, and the State unemployment insurance law. The INSTRUCTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out INSTRUCTOR's activities and responsibilities hereunder. The INSTRUCTOR agrees that it is a separate and independent enterprise from the CITY, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work required hereunder. This Agreement shall not be construed as creating any joint employment relationship between the INSTRUCTOR and the CITY and the CITY will not be liable for any obligation incurred by INSTRUCTOR, including but not limited to unpaid minimum wages or overtime premiums.

3.2 INSTRUCTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the INSTRUCTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

4.0 Insurance

4.1 INSTRUCTOR shall not provide any service until all insurance required under this paragraph has been obtained and approved by the Risk Manager of the CITY.

4.2 Certificates of Insurance. Certificates of Insurance reflecting evidence of the required insurance shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. These Certificates shall contain a provision that coverages afforded under these policies will not be cancelled until at least forty-five days (45) prior written notice has been given to the CITY. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than "A-VI" in the latest edition of "Best Key Rating Guide", published by A.M. Best Guide.

4.3 Insurance shall be in force until the obligations required to be fulfilled under the terms of the Agreement are satisfied. In the event the insurance certificate provided indicated that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the INSTRUCTOR shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The INSTRUCTOR shall not provide any service pursuant to this Agreement unless all required insurance remains in full force and effect.

4.4 Commercial General Liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

\$1,000,000	Combined Single Limit – each occurrence
\$1,000,000	Combined Single Limit – general aggregate
\$1,000,000	Personal Injury
\$1,000,000	Products/Completed Operations Aggregate

INSTRUCTOR shall have its insurer name the City of Doral as an additional insured on its General Liability policy.

4.5 Worker's Compensation insurance shall be maintained during the life of this Agreement to comply with the statutory limits for all employees, and in the case any work is sublet, the INSTRUCTOR shall require the subcontractor(s) similarly provide Workers Compensation Insurance for all the latter's employees unless and until such employees are covered by the protection afforded by the INSTRUCTOR. The INSTRUCTOR and his subcontractors shall maintain during the life of this Agreement Employers Liability Insurance. The following limits must be maintained:

A.	Workers Compensation	Statutory
B.	Employer's Liability	\$100,000 each accident \$500,000 Disease-policy limit \$100,000 Disease-each employee

If INSTRUCTOR or its subcontractor claims to be exempt from this requirement, INSTRUCTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt INSTRUCTOR, written on INSTRUCTOR or subcontractor's letterhead.

5.0 Term and Termination

5.1 After the three (3) month trial period, the class will be evaluated by DEPARTMENT, and the remainder of this Agreement will either be terminated or continue in full force and effect. If at any time after the three (3) month evaluation, class enrollment should fall below the required minimum, the INSTRUCTOR will be allotted four (4) weeks to bring enrollment up to the required minimum. The class will be reevaluated and execution or termination of the contract will be determined by the DEPARTMENT.

5.2 Activity Classifications and Class Size Minimums:

ACTIVE: Active classes will include high-risk activities such as martial arts, boxing, athletic activities, and aerobics. Class size shall be a minimum of fifteen (15) students per class, fifty-one percent (51%) of which must be Doral residents.

SEMI-ACTIVE: Semi-Active classes will include moderate risk activities such as dance, ballet, baton, yoga, thi-chi, and gymnastics. Class size shall be a minimum of fifteen (15) students per class, fifty-one percent (51%) of which must be Doral residents.

PASSIVE: Passive classes will include low risk activities such as homeowners' associations, instructional classes for arts and crafts, sewing and card clubs. Class size shall be a minimum of ten (10) students per class or club, fifty-one percent (51%) of which must be Doral residents.

5.3 CITY shall have the right to terminate this Agreement immediately upon notification by the DEPARTMENT.

5.4 INSTRUCTOR must notify the DEPARTMENT in writing of any class cancellations at least one (1) week prior to the scheduled cancellation.

5.5 CITY reserves the right to cancel or reschedule any of the INSTRUCTOR's classes, in the case of scheduling conflicts or other emergencies, as determined by the DEPARTMENT.

6.0 Indemnification

6.1 INSTRUCTOR agrees to indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind of nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, including paralegal fees, liabilities, damages, orders, judgments, or decrees, sustained by the CITY or any third party arising out of, or by reason of, or resulting from the negligent acts, errors, or omissions of the INSTRUCTOR his agents or employees.

6.2 The Parties recognize that various provisions of this Agreement, including but not necessarily limited to this section, provide for indemnification by the INSTRUCTOR requires a specific consideration be given therefore. The Parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by the INSTRUCTOR. Furthermore, the Parties understand and agree that the covenants and representations, relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the Party's responsibility to indemnify.

7.0 American Disabilities Act

7.1 INSTRUCTOR shall not lawfully discriminate against any person in its operation and activities in 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 American 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 and all applicable regulations, guidelines, and standards.

7.2 INSTRUCTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, 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 delivery of service.

7.3 Any violation of this Agreement may be reason for immediate termination.

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seal the day and year first written above.

CITY:

ATTEST:

Barbara Herrera
BARBARA HERRERA, CITY CLERK

[Signature]
BY: SERGIO PURRINOS, CITY MANAGER

APPROVED AS TO FORM:

JOHN J. HEARN, CITY ATTORNEY

INSTRUCTOR:

WITNESS:

[Signature]
BY: ALEX OTHON

STATE OF Florida)
COUNTY OF Miami-Dade) ss:

ON THIS 14th day of May, 2007, before me, personally appeared Alex Othon, who is the person who subscribed to the foregoing instrument and who acknowledged that (s)he executed the same and was duly authorized to do so.

Personally Known _____ OR Produced Identification X
Type of Identification Produced Drivers License

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL:

[Signature]
NOTARY PUBLIC

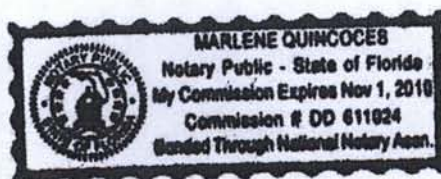


EXHIBIT "A"

CITY OF DORAL
WAIVER AND RELEASE OF LIABILITY

NOTICE: This form contains a Release and Waiver of Liability and when signed is a contract with legal consequences. **PLEASE READ IT CAREFULLY BEFORE SIGNING.**

TO THE CITY OF DORAL: in consideration of the opportunity afforded to me or my minor child/ward to participate in the activity described herein at:

Doral Meadow Park, 11555 NW 58 Street

(Name and Address of Facility)

I, the undersigned, on behalf of myself or my child/ward named herein, do freely agree to make the following contractual representations and agreements.

I, on behalf of myself or my child/ward named herein, acknowledge and understand that participation in the activity involves the risk of serious injury, including permanent disability and/or death and severe social and economic losses.

I, on behalf of myself or my child/ward named herein, do hereby knowingly, freely, and voluntarily assume all liability for any damage or injury which may occur as a result of my or my child/ward's participation in such activity and further agree to release, waive, discharge, and covenant not to sue the City of Doral, its officers, agents, employees, and volunteers from any and all liability or claims which may be sustained by me, my minor child/ward, or a third party directly or indirectly in conjunction with, or arising out of participation in the activity described herein, whether caused in whole or in part by the negligence of the City of Doral or otherwise.

I, on behalf of myself or my child/ward, have read the above provision, fully understand its terms, and understand that I, on behalf of myself or my child/ward, have given up substantial rights by signing this waiver and I acknowledge that I signed it freely and without any inducement or assurance of any nature and intend it to be a complete and unconditional release of any and all liability to the greatest extent allowed by law and I agree that, if any portion of this contract is held to be invalid, the balance, notwithstanding, shall continue in full force and effect.

Name of Participant: _____ Date: _____

Signature (Local Guardian if participant is a Minor): _____

Complete Address: _____

Day Phone: _____

Class Title: _____

Instructor's Name: _____