

## AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into as of January 16, 2025, by and between the CITY OF IRVINE, a municipal corporation ("City"), and PATRICE R. EMERY, a California sole proprietorship ("Contractor").

### PART I

#### FUNDAMENTAL TERMS

- A. Location of Project:** The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.
- B. Description of Services/Goods to be Provided:** Instructional computer skill training Courses in accordance with PART IV, Scope of Services, included herein.
- C. Term:** Unless terminated earlier as set forth in this Agreement, the services shall commence on February 01, 2025 ("Commencement Date") and shall continue through May 31, 2026. The City reserves the right to extend this Agreement for up to two (2) additional two (2) year periods. Such extension shall only be valid if effectuated in writing by the City.
- D. Party Representatives:**
- D.1. The City designates the following person/officer to act on City's behalf:  
Christine McLaughlin, email: CLuong@cityofirvine.org
  - D.2. The Contractor designates the following person to act on Contractor's behalf:  
Patrice R. Emery, email: patriceemery@yahoo.com

#### **Contractor Information**

Address for Notices and Payments:

30595 Trabuco Canyon Road, #794  
Trabuco Canyon, CA 92678

**Attn:** Patrice R. Emery  
**Telephone:** 949-601-2762  
**Email:** patriceemery@yahoo.com

- E. Notices:** Contractor shall deliver all notices and other writings required to be delivered under this Agreement to City at the address set forth in Part II ("General Provisions"). The City shall deliver all notices and other writings required to be delivered to Contractor at the address set forth above.
- F. Attachments:** This Agreement incorporates by reference the following Attachments to this Agreement:
- F.1. Part I: Fundamental Terms

F.2. Part II: General Provisions

F.3. Part III: Special Provisions

F.4. Part IV: Scope of Services

F.5. Part V: Budget

- G. Integration:** This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

{Signatures follow on next page}

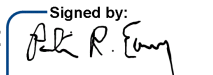
IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

**CITY OF IRVINE**

By:   
3294FE52A9CE497...  
Chris Slama


Its: Director of Community Services

**PATRICE R. EMERY**

By:   
6AD426D3611E4D3  
Patrice R. Emery

Its: Owner

Attest:

By:   
9FCAD91F02E547D...  
Carl Petersen

Its: City Clerk

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

By:   
E04AA49F95474A7...  
Jeffrey Melching

## PART II

### GENERAL PROVISIONS

#### SECTION ONE: SERVICES OF CONTRACTOR

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

**1.2 Changes and Additions to Scope of Services.** City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. City approval and/or payment for work claimed by Contractor as changed or additional shall not act to prevent City at any time to claim such work is covered by the Scope of Work and should be performed by Contractor without additional consideration due. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

**1.3 Standard of Performance.** Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

**1.4 Performance to Satisfaction of City.** Notwithstanding any other provision herein, Contractor agrees to perform all work to the satisfaction of City within the time specified. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

**1.5 Instructions from City.** In the performance of this Agreement, Contractor shall report to and receive instructions from the City's Representative designated in Paragraph D.1 of Part I ("Fundamental Terms") of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

**1.6 Familiarity with Work.** By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If

the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact in writing and shall not proceed except at Contractor's risk until written instructions are received from the City's Representative.

**1.7 Identity of Persons Performing Work.**

- A. Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Any personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law.
- B. Contractor represents that the tasks and services required hereunder will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Contractor will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.
- C. This Agreement contemplates the personal services of Contractor and Contractor's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Contractor. Neither this Agreement nor any interest therein may be assigned by Contractor, except upon written consent of City.

**1.8 Prohibition Against Subcontracting or Assignment.** Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's option in its sole and absolute discretion. No approved transfer shall release any surety of Contractor of any liability hereunder without the express written consent of City.

**SECTION TWO: INSURANCE AND INDEMNIFICATION**

**2.1 Insurance.** Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section 2.1.

**2.1.1 Insurance Coverage Required.** The Insurance obligations under this agreement shall be (1) all the Insurance coverage and/or limits carried by or available to the

Contractor; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The policies and minimum amounts of insurance required hereunder shall be as follows:

**A. Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

***A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.***

**B. Automobile Liability Insurance** with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

***A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.***

**C. Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of the Contractor providing any service in the performance of this Agreement. Such insurance shall be endorsed to:

- (1) Waive the insurer's right of Subrogation against the City and City Personnel.

***A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.***

In the performance of the work under this Agreement, if Contractor does not employ any person in any manner so as to become subject to the workers' compensation laws of California, Contractor agrees to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Contractor's failure to provide such worker's compensation insurance. Contractor agrees that, if firm should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, firm shall forthwith comply with those provisions, immediately furnish insurance certificates evidencing such coverage as set forth herein, and notify the City of the change in status.

- D. Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

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

- E. Evidence of Insurance:** Contractor shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided. The City project title or description MUST be included in the "Description of Operations" box on the certificate.

The City's insurance certificate tracking services provider, Exigis, LLC, will send Contractor an email message providing instructions for submitting insurance certificates and endorsements.

**Certificate Holder:** City of Irvine, California  
c/o: Exigis LLC  
PO Box 4668 ECM #35050  
New York, NY 10168-4668

- F. Endorsements:** A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements **shall not**:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Contractor
4. Contain any other exclusion contrary to the Agreement.

**G. Any Deductible in Excess of \$100,000 and/or Self-Insured Retentions** must be approved in writing by the City.

**H. Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

**I. Insurance of Subcontractors.** Contractor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subcontractor's policies.

**2.2 Indemnification.** Contractor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

**2.2.1** Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

**2.2.2** Contractor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

**2.2.3** In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Contractor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

These Indemnification provisions are independent of, and shall not in any way be limited by, the Insurance Requirements of this Agreement. City approval of the insurance contracts required by this Agreement does not in any way relieve the Contractor from liability under this section.

### **SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES**

**3.1 Compliance with Laws.** Contractor shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

**3.2 Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

**3.3 Covenant against Discrimination.** Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

**3.4 Nondiscrimination in City Contracts.** Any business that enters into a contract for goods or services with the City of Irvine or any of its boards, agencies, or departments shall:

- (a) Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment-related decision or benefit on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (b) Not discriminate in the performance of the contract on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (c) Incorporate the foregoing provisions in all subcontracts hereunder.

**3.5 Independent Contractor.** Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Contractor nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

**3.6 Covenant against Contingent Fees.** Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**3.7 Use of Patented Materials.** Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials consistent with Section 2.2 herein.

**3.8 Proprietary Information.** All proprietary information developed specifically for City by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to City, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

**3.9 Retention of Funds.** Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Contractor's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay City any sums Contractor owes City.

**3.10 Termination by City.** City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from City, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement contractor and similar expenses, exceeds the Budget.

**3.11 Right to Stop Work; Termination by Contractor.** Contractor shall have the right to stop work and terminate only if City fails to timely make a payment required under the terms of the Budget. Contractor shall provide City thirty (30) day prior written notice of such claimed payment owed and City shall have an opportunity to remedy any such claimed breach during such time with no legal consequence to City. Contractor shall immediately cease all services hereunder following the thirty (30) day notice, except such services as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to termination and for any services authorized in writing by City thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.10 relating to City's right to take over and finish the work and Contractor's liability shall apply.

**3.12 Waiver.** No delay or omission in the exercise of any right or remedy by a nondefaulting party with respect to any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act. A waiver by either party of any default must be in writing.

**3.13 Legal Actions.** Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

**3.14 Rights and Remedies are Cumulative.** Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

**3.15 Attorneys' Fees.** In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

**3.16 Force Majeure.** The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Contractor, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.14.

**3.17 Non-liability of City Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

**3.18 Conflicts of Interest.**

- A.** No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any federal, state or city statute, ordinance or regulation. Contractor shall not employ, contract for, or receive consulting services from any such person, whether for compensation or not, while this Agreement is in effect.
- B.** Contractor represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.
- C.** Contractor acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Contractor to be a "Contractor" as that term is defined by the Act. In the event City makes such a determination, Contractor agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Contractor further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

**3.19 Contractor Ethics.** Contractor represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Contractor shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to Contractor as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Contractor shall not possess or maintain any business relationship with the applicant or any other person or entity which Contractor knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to City in accordance with this Agreement Contractor shall not advocate either for or against said project and/or application, and (iii) Contractor shall immediately notify City in the event Contractor determines that Contractor has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section shall be applicable to all of Contractor's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

**3.20 Compliance with California Unemployment Insurance Code Section 1088.8.** If Contractor is a Sole Proprietor, then prior to signing the Agreement, Contractor shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and

Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

**3.21 CalPERS Annuitants.** If Contractor is a California Public Employees' Retirement System ("CalPERS") annuitant, Contractor must provide the City with written notification of such fact a minimum of 14 calendar days prior to commencement of services under this Agreement. Failure to provide such notification may result in termination of the Agreement, and any penalties or other costs relating thereto shall be borne by Contractor. If this Agreement remains in place, Contractor shall execute any amendment(s) to this Agreement requested by the City in order to comply with all laws and regulations applicable to CalPERS annuitants.

**3.22 Levine Act.** California Government Code section 84308, commonly referred to as the Levine Act, precludes an Irvine City Councilmember from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Councilmember, or received by the officer on behalf of any other Councilmember, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires a Councilmember that has received such a contribution to disclose the contribution on the record of the proceeding. Review California Government Code section 84308 for more information.

#### **SECTION FOUR: MISCELLANEOUS PROVISIONS**

**4.1 Records and Reports.** The City Manager of the City of Irvine or his/her designee reserves the right to perform such audits, performance reviews, and other evaluations (collectively 'audit') that relate to or concern this Agreement at any time. Contractor agrees to participate and cooperate in up to five (5) hours of meetings and interviews (at no additional cost to City), if the same are requested by the City in connection with such an audit. Further, provided that the City pays Contractor's commercially reasonable hourly rate for services, Contractor agrees to participate and cooperate in such additional meetings and interviews (in excess of five (5) hours), if the same are requested by the City in connection with such an audit. Upon request by City, Contractor shall prepare and submit to City any reports concerning Contractor's performance of the services rendered under this Agreement. City shall have access, with 72 hours advance written notice delivered to Contractor, to the books and records of Contractor related to Contractor's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) shall not be made available to any individual or entity without prior written approval of City. The obligations of this Section 4.1 shall survive the expiration (or earlier termination) of this Agreement for a period of three (3) years. During said three (3) year period, Contractor shall keep and maintain all records and reports related to this Agreement, and City shall have access to such records in the event any audit is required.

**4.2 Notices.** Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to

the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

To City: City of Irvine  
One Civic Center Plaza (92606) (Hand Deliveries)  
P. O. Box 19575  
Irvine, CA 92623-9575

Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I of this Agreement, to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

**4.3 Construction and Amendment.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

**4.4 Severability.** Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

**4.5 Authority.** The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**4.6 Special Provisions.** Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

**4.7 Precedence.** In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget") of this Agreement, the order of precedence shall be as follows:

- Part III
- Part II
- Part IV
- Part V
- Part I

### PART III

#### SPECIAL PROVISIONS

1. **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.
2. **Insurance Requirements.** PART II, GENERAL PROVISIONS, Section 2.1.1 - A. Comprehensive General Liability, limits of liability is replaced with the following: "...not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate."
3. **Insurance Requirements.** PART II GENERAL PROVISIONS, Section 2.1.1 B. Automobile Liability, and D. Professional Liability Insurance are deleted in their entirety.
4. **Cancellation.** City reserves the right to decline to offer or to cancel after offering, any course, class, camp, service, or activity. Reasons for such declination or cancellation may include but are not limited to availability of space, low interest, low enrollment, and equipment shortages. In the event of cancellation, City will provide notice to Contractor at least 24 hours prior to the start of the scheduled course, class, camp, service, or activity. City shall not be liable to Contractor for any compensation in the event City declines to offer, or cancels, any course, class, camp, service, or activity.
5. **Confidentiality Ownership of Documents.** All class and/or program documents (including but not limited to rosters, emergency forms, and evaluations), participant contact information (including but not limited to name, mailing address, phone number, and emails), and any other information or documents compiled by the City and provided to the Contractor by the City, shall remain the property of the City. Contractor shall not release any information to anyone or any entity without explicit authorization by the City. Contractor shall not use such information to solicit for non-City business, activities, classes, or programs or outside services to City program participants, parents, guardians, or spectators while executing the terms and scope of this Agreement. In addition, Contractor shall take reasonable steps consistent with the law to prevent distribution of such information during and after termination of this Agreement.
6. **Live Scan Fingerprinting Requirements.** Prior to commencing services, all employees and individuals performing services on behalf of Contractor are required to successfully pass a Department of Justice fingerprinting background check ("Live Scan") performed by a certified fingerprinting service provider or at the City of Irvine Police Department. Contractor shall be responsible for ensuring that all employees and individuals performing services on behalf of Contractor have completed the Live Scan process and shall bear the cost thereof. The agency completing Live Scan must provide the City of Irvine Human Resources with the results of the background check and subsequent records for review. Lack of compliance with the above requirements is grounds for immediate termination of this Agreement.
7. **ID Badge.** During the performance of services on City property, all employees and individuals performing services on behalf of Contractor must affix a visible photo identification to clothing or lanyard, provided by Contractor at its cost, identifying the individual by name, containing a clear photograph of the individual's face, and listing Contractor's name. If an employee or individual performing services on behalf of Contractor requires access inside a City facility without City staff present, Contractor must obtain for that individual a contractor's badge

issued by City of Irvine Human Resources prior to performing work inside a City facility without City staff present. Persons attempting to provide services without a required photo identification may be required to leave City property.

**PART IV**  
**SCOPE OF SERVICES**

**Services shall be performed as set forth below.**

1. Instructional computer skill training courses at City Facilities.
2. Contractor shall be responsible for proper care and use of all City-owned equipment utilized for programs and/or classes. In the event of any damage to City-owned equipment, Contractor shall reimburse City for all reasonable and customary repair and/or replacement costs.
3. Provide City 24-hour notice of cancellation of any scheduled program and/or class. City shall not be liable to Contractor for any compensation in the event of any program and/or class cancellation.
4. City reserves the right to request that Contractor provide a one-day, one-hour quarterly free demonstration or instructional camp or class scheduled at any City location at City's discretion.
5. Arrive and prepare to render services no more than 30 minutes prior to program and/or class designated start, or unless otherwise approved by City staff.
6. Complete clean-up within 30 minutes after the conclusion of each program and/or class.
7. Comply with all City registration, and facility use policies and procedures.

City will routinely evaluate classes, programs, workshops, and/or camps. In addition, City staff will take pictures of said programs, workshops, and/or camps to use in future City publicity.

**PART V**  
**BUDGET**

This is a revenue-generating contract.

City shall receive fees from registrants which will be shared with Contractor as follows:

Type of Service	Fee Split* (City / Contractor)
All Programs	50% / 50%

\*Fee Split shall be consistent of all programs and/or class fees collected for all programs and/or classes, per program and/or class, per participant, and in accordance with PART III, SPECIAL PROVISIONS, **Cancellation**, of this Agreement.

Included in the total compensation are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with City representatives, and incidental costs incurred in performing under this Agreement. The total compensation for the Scope of Services set forth herein shall include all amounts payable to Contractor for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement.

Payment by City under this Agreement shall not be deemed as a waiver of the City's right to claim at a later point that such payment was not due under the terms of this Agreement.

Payment for services shall be based on class and/or program participation and registrations collected for classes and/or programs performed by Contractor, and verified by City, in accordance with PART II, GENERAL PROVISIONS, Section 4.1.

Registration surcharges (e.g., non-resident fees, extended hour fees, etc.) are collected by City and are excluded from Contractor payment.