

DOCUMENT ROUTING FORM

(3) ✓ 4/1/14 (L)

NAME OF DOCUMENT: AGREEMENT BETWEEN CITY OF FORT LAUDERDALE AND NORTH BROWARD HOSPITAL DISTRICT TO PROVIDE FITNESS AND WELLNESS CLASSES AT BEACH COMMUNITY CENTER

Approved Comm. Mtg. on February 4, 2014 CAM #14-0167

ITEM: M - 10

1.) Approved as to Content: [Signature]
Department Director

Capital Improvements defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

Please Check the proper box: CIP FUNDED YES NO
Capital Improvement Projects

2.) Approved as to Funds Available: by _____ Date: _____
Finance Director

Amount Required by Contract/Agreement \$ _____ Funding Source: _____

Dept./Div. _____ Index/Sub-object _____ Project # _____

3.) City Attorney's Office: Approved as to Form: # _____ Originals to City Mgr. By: _____
DJ Williams-Persad _____

4.) Approved as to content: Assistant City Manager:

By: _____ By: _____
Stanley Hawthorne, Assistant City Manager Susanne Torrient, Assistant City Manager

5.) City Manager: Please sign as indicated and forward originals to Mayor.

6.) Mayor: Please sign as indicated and forward originals to Clerk.

7.) To City Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OF FICE

8.) City Clerk: forward document to: Carolyn Bean

Original Route form to Glynis Burney

3/31

2014 MAR 17 PM 12:51
CITY ATTORNEY'S OFFICE

AGREEMENT

THIS IS AN AGREEMENT, entered into on February ~~24~~⁴, 2014, by and between:

CITY OF FORT LAUDERDALE, a
municipal corporation of the State
of Florida, hereinafter referred
to as "City,"

and

NORTH BROWARD HOSPITAL DISTRICT
d/b/a Broward Health, hereinafter
referred to as "District."

WHEREAS, the City desires to retain the services of District to provide specialized health-related programming at the Beach Community Center, located at 3351 N.E. 33rd Avenue, Fort Lauderdale, Florida; and

WHEREAS, District staff will provide trained instructors to offer health-related fitness classes in senior strengthening, chair yoga, body sculpting, flexibility, pilates, tai chi, yoga and zumba and will provide free lectures in health-related programming targeted to adults and older adults; and

WHEREAS, District is recognized as having the necessary expertise, skill and capabilities to provide services set forth herein; and

WHEREAS, the City Commission, at its meeting of February 4, 2014 2014, authorized the proper City officials to execute this Agreement with District to provide health-related fitness classes and programming at the Beach Community Center.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and hereby incorporated into this Agreement.

2. Scope of Services. District shall perform and be responsible for the following:

- (a) District shall provide specialized health-related fitness classes and programming at the Beach Community Center, through the use of District instructors. District shall, in consultation with City, provide a schedule of classes to be offered under this Agreement.
- (b) District shall furnish, hire, provide, pay, and be fully responsible for qualified instructors to provide instruction in a multitude of health-related fitness, wellness, and healing arts classes. District shall also furnish, provide, pay and be fully responsible for physicians from The Wellness Center at Broward Health Center or other District hospitals to provide free lectures targeted towards adults and older adults. Under no circumstances shall these instructors, physicians or other employees or agents of District be considered or held out to be employees of the City, as District is an independent contractor in accordance with Section 4 below. Instructors, physicians and other employees of District, the acts, omissions and negligence of District's employees and the instructors shall be the sole responsibility of District. District shall be fully responsible for its employees, agents, and the instructors hired to provide the instruction under this Agreement. All instructors must provide certification to City which qualifies them to teach their specified fitness class prior to commencement of classes. All instructors must be certified in CPR and provide proof of such to City prior to commencement of classes.
- (c) District shall be responsible for all aspects of the programming to be provided at the Beach Community Center.

- (d) District shall provide any necessary course or program materials.
- (e) District shall jointly cooperate with City in organizing, scheduling and directing publicity for the health-related programming provided under this Agreement.
- (f) District shall use the City's real and personal property exclusively for the activities described herein. District shall not allow the City's property or any part thereof to be used for any immoral or illegal purposes, and shall not allow, suffer or permit such premises to be used for any such purpose, business, activity, use, function or object to which the City objects.
- (g) District shall immediately inform appropriate City personnel of any repairs or maintenance necessary to keep all instruction areas used under this Agreement in good and safe condition.
- (h) District shall operate and conduct the business covered by this Agreement in accordance with all applicable statutes, rules, regulations, ordinances and laws of the State of Florida, Broward County, and the Charter and ordinances or other regulations of the City of Fort Lauderdale and its Parks and Recreation Department, as may now exist or as may be hereafter adopted.
- (i) District, while acting pursuant to this Agreement shall not discriminate against any worker, employee, patron or member of the public on the basis of race, creed, religion, age, sex, disability or national origin.
- (j) All program instruction shall be conducted within a designated area at the Beach Community Center or another suitable area approved by District and the City's Parks and Recreation Director.
- (k) District agrees that no sales or advertising or merchandise or services of any description shall be made during class instruction or on City

property by instructors or participants, unless expressly approved by City.

(1) District agrees to provide a ten (10%) percent discount to all City of Ft. Lauderdale employees for the specialized health-related fitness classes and programming to be provided by District under this Agreement.

3. Responsibilities of City. City shall be responsible for the following:

- (a) City shall provide classroom training facilities at the Beach Community Center and shall provide a designated area within the Beach Community Center or another suitable area approved by District and the City's Parks and Recreation Director.
- (b) City shall be responsible for registering students for the classroom instruction to be provided under this Agreement and for collecting and handling student fees. Those fees collected by City will be provided to District in accordance with Paragraph 5 below.
- (c) City shall provide District with a participant roster of students registered for each class. The roster shall be delivered at the end of each calendar month and shall contain signatures of each registered student and the amount paid for the class.
- (d) The parties acknowledge that the City is not obligated or required to purchase any additional equipment or materials to assist in District's performance of this Agreement.
- (e) City reserves the right to request that a particular instructor of District be removed and replaced.
- (f) City reserves the right to cancel or reschedule any of District's classes due to scheduling conflicts or other emergencies, as determined by

City's Parks and Recreation Director, or his or her designee.

- (g) City reserves the right to suggest or comment on subjects taught by District under this Agreement.

4. Independent Contractor. District and City agree that District (and District's agents, employees and instructors of District) is/are independent contractor(s) with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither District nor employees, agents, or instructors of District shall be entitled to any benefits, including but not limited to health and dental insurance, wellness, pension, or workers compensation accorded City employees, by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security, or for contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to District or any employee, agent or instructor of District.

5. Compensation.

- (a) City shall pay District eighty (80%) percent of gross revenues in registrant fees received by City under this Agreement for every one month period ("Payment Period").
- (b) City shall provide payment to District within thirty (30) days after close of each Payment Period covered under this Agreement. District shall not be entitled to any reimbursable expenses, unless otherwise specifically provided in this Agreement.
- (c) District shall have the right to audit or examine the books and records maintained by City with respect to registrant fees received by City under this Agreement.

6. Term. Unless otherwise terminated as provided in Paragraph 7, the term of this Agreement shall be from February 1, 2014 through January 31, 2019.

7. Termination.

- (a) This Agreement may be terminated for convenience or cause by either party by giving ninety (90) days written notice of said termination to the other. The City Manager or his designee is authorized to terminate this Agreement on behalf of the City.
- (b) Upon such Notice of Termination, no further students shall be registered or enrolled in classes offered at the Beach Community Center by District. The City is not precluded from offering similar classes after expiration or earlier termination of the Agreement.
- (c) Upon notice of termination, District shall only be paid for classes taught by District instructors.

8. Changes. City may, from time to time, request reasonable changes in the scope of services to be performed by District. Changes which are mutually agreed upon by City and District shall be incorporated in written amendments to this Agreement signed by both parties.

9. Assignment. District shall not assign any interest in this Agreement and shall not transfer any of its obligations in the same whether by assignment, novation or otherwise without the consent and approval by City. Notwithstanding the foregoing, the District may, in its discretion, engage qualified independent contractor(s) to provide any portion of the instruction as set forth herein. Such engagement shall not be deemed an assignment, and District shall ensure that its independent contractor(s) at all times comply with the duties and responsibilities set forth herein.

10. Indemnification. City agrees to indemnify, defend, and hold harmless District from any and all claims, judgments, costs, liabilities, damages and expenses, including reasonable attorney's fees, arising in connection with any negligent acts or omissions by the City in the performance of its obligations under this Agreement. Nothing in this section is intended to alter or waive the City's entitlement to sovereign immunity, or to extend the City's liability beyond the limits established in

section 768.28, Florida Statutes, as amended.

The District agrees to indemnify, defend, and hold harmless City from any and all claims, judgments, costs, liabilities, damages and expenses, including reasonable attorney's fees, arising in connection with any negligent acts or omissions by the District in the performance of its obligations under this Agreement. Nothing in this section is intended to alter or waive the District's entitlement to sovereign immunity, or to extend the District's liability beyond the limits established in section 768.28, Florida Statutes, as amended. The District is a sovereign entity, as such, is afforded the protection of Section 768.28, Florida Statutes, as amended.

11. Insurance. The District maintains a self-insurance fund, which provides for liability coverage. The District agrees to keep such self-insurance fund in full force and effect continuously during the term of this Agreement. The District will provide City with evidence of the existence of its self-insurance fund upon written request.

12. Governing Law. This Agreement shall be governed by the laws of the State of Florida, with venue lying in Broward County, Florida, for the purposes of any legal action, including any litigation or administrative proceedings, arising out of this Agreement.

13. Extent of Agreement. This Agreement represents the entire and integrated Agreement between City and District and supersedes all prior negotiations, representations or agreements, either written or oral.

14. Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice sent by registered U.S. mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until changed by written notice in compliance with the provisions of this paragraph:

City:

City of Fort Lauderdale
Parks and Recreation Director
1350 West Broward Boulevard
Fort Lauderdale, Florida 33312

With a copy to:

City Attorney's Office
City of Fort Lauderdale
100 North Andrews Avenue, 7th Floor
Fort Lauderdale, Florida 33301

District:

North Broward Hospital District d/b/a
Broward Health
Attn: Manager, Contract Administration &
Vendor Relations
303 S.E. 17th Street
Fort Lauderdale, Florida 33316

North Broward Hospital District
Attn: Contract Administration and Vendor
Relations
303 S.E. 17th Street
Fort Lauderdale, Florida 33316

General Counsel
North Broward Hospital District
303 S.E. 17th Street
Fort Lauderdale, Florida 33316

15. Severability. If any provision of this Agreement or the application of any provision to any party or circumstance shall be prohibited by or invalid under applicable law, the provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of the Agreement or their application to other parties or circumstances.

16. Waiver. The City's waiver of any breach of any term, condition, or covenant of this Agreement shall not constitute

the waiver of any other breach of the same or any other term, condition, or covenant of this Agreement.

17. Joint Preparation. The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of their rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

18. Compliance with Laws. In performance of the services contemplated under this Agreement, District shall comply with applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria and standards.

19. Attorney's Fees. In connection with any litigation, mediation, arbitration, special proceeding or other proceeding arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees through and including any appeals and any post-judgment proceedings. The District's and the City's liability for costs and reasonable attorney's fees, however, shall not alter or waive either party's entitlement to sovereign immunity, or extend either's liability beyond the limits established in section 768.28, Florida Statutes, as amended.

20. Sovereign Immunity. The parties hereto acknowledge that each is a political subdivision of the State of Florida and enjoys sovereign immunity. Nothing in this Agreement shall be construed to require either party to indemnify the other party or insure the other party for that party's negligence or to assume any liability for the other party's negligence. Further, any provision in this Agreement that requires either party to indemnify, hold harmless or defend the other party from liability for any other reason shall not alter the indemnifying party's waiver of sovereign immunity or extend that party's liability beyond the limits established in section 768.28, Florida Statutes, as amended.

[Remainder of Page Intentionally Left Blank]
[Signature Pages Follow]

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

WITNESSES:

CITY OF FORT LAUDERDALE

Safeya Ali
Safeya Ali
[Witness type/print name]

By [Signature]
Mayor

Miranda Scott
MIRANDA SCOTT
[Witness type/print name]

By [Signature]
City Manager

(CORPORATE SEAL)

ATTEST:

Jonda K. Joseph
City Clerk

Approved as to form:

[Signature]
Assistant City Attorney

WITNESSES:

NORTH BROWARD HOSPITAL
DISTRICT

Melinda Jacobs

Melinda Jacobs
[Witness print/type name]

By Robert K Martin
Robert K. Martin, Senior VP/CFO

[Print/type name and title]

Melinda Jacobs

[Witness print/type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 19th of February, 2014, by Robert K. Martin as Senior VP/CFO of NORTH BROWARD HOSPITAL DISTRICT. He/She is personally known to me or have produced _____ as identification.

(SEAL)



(Signature
Acknowledgment)

Katherine M. Cameron
Notary Public, State of Florida
of Notary taking

Katherine M. Cameron
Name of Notary Typed, Printed or

Stamped

My Commission Expires:

7-12-2017
Commission Number