

BCC Mtg. Date: August 11, 2020

# RESOLUTION

*of the*  
**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**

*regarding*  
**APPROVAL OF A FORM INSTRUCTOR RENTAL AGREEMENT  
RELATING TO THE PARKS AND RECREATION DIVISION**

**Resolution No. 2020-M-27**

**WHEREAS**, the Orange County Parks and Recreation Division endeavors to provide the citizens of Orange County with the opportunity to participate in a variety of recreational activities at the County's various park facilities; and

**WHEREAS**, in order to provide a diverse selection of recreational activities to its citizens, the County engages the expertise of instructors who specialize in certain areas and who desire to provide instruction and/or teach classes at the County's park facilities for remuneration as independent contractors; and

**WHEREAS**, in order to protect the health, safety and welfare of its citizens, the County requires an instructor to enter into a contractual agreement with the County to establish the parameters of the instructor's services including, but not limited to, the times, dates and locations of classes; instructor insurance requirements; participant registration requirements; and class fees; and

**WHEREAS**, due to the high volume of Instructor Agreements and the various amendments and revisions required thereto from time to time, the Board of County Commissioners ("Board") found it expedient and efficient to delegate to the Parks and Recreation Division Manager the limited authority to execute Instructor Rental Agreements on the Board's behalf in Administrative Regulation \_\_\_\_\_ ("Delegation Regulation"); and

**WHEREAS**, the Delegation Regulation limits the Parks and Recreation Division Manager's execution authority to a form Instructor Rental Agreement reviewed by the County Attorney's Office and Risk Management Division and approved by the Board by Resolution.

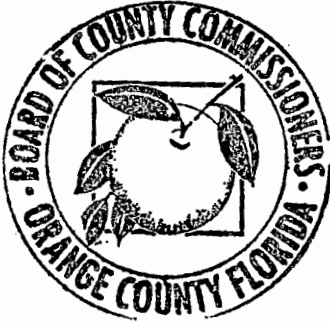
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

**Section 1.** The above recitals are hereby incorporated and are to be considered binding.

**Section 2.** Nothing in this Resolution is intended to impact any Instructor Rental Agreement that was entered into prior to the date of adoption of this Resolution.

**Section 3.** Upon adoption of this Resolution by the Board, the form Instructor Rental Agreement attached hereto as **Exhibit "A,"** and fully incorporated herein by this reference is hereby approved by the Board and replaces any previously-approved form Instructor Rental Agreement for the purposes of the Delegation Regulation.

ADOPTED this \_\_\_\_\_ day of AUG 11 2020, 2020.



**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

By: *Jerry L. Demings*  
for Jerry L. Demings,  
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

BY: *Katie Smith*  
Deputy Clerk

ORANGE COUNTY, FLORIDA

Instructor Rental Agreement

PRK - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Two Digit Year Park ID Instructor Last Name

This **Instructor Rental Agreement** ("Agreement") is made and entered as of the last day signed below by and between Orange County, Florida, a charter county and political subdivision of the state of Florida ("County"), and \_\_\_\_\_, ("Instructor").

**WITNESSETH:**

**WHEREAS**, the County desires to provide affordable opportunities for the community to engage in a variety of recreational activities, and Instructor desires to lead and facilitate recreational activities and/or classes for the Orange County community in exchange for compensation; and

**WHEREAS**, the County and Instructor desire to form a community partnership whereby Instructor will lead and facilitate the recreational activities and/or classes more specifically described herein on behalf of the County using County facilities; and

**WHEREAS**, the County and Instructor desire to memorialize the terms and conditions of their agreement as set forth herein.

**NOW WHEREFORE**, in consideration of the covenants set forth herein, and for other good and valuable consideration, the County and Instructor hereby agree as follows:

1. Term; Termination. The term of this Agreement shall commence upon full execution by both parties hereto and shall terminate on the 31<sup>st</sup> of December 20\_\_ ("Term"). The term of this Agreement may be renewed for up to three (3) consecutive one-year terms upon mutual, written agreement of both parties hereto. Rental rate may be modified year-to-year in the sole discretion of the County. This Agreement may be terminated by either party, with or without cause, and without penalty, upon 30 days' advanced, written notice to the other party.
2. The Program. Instructor agrees to lead, facilitate and/or provide classes during the Term, and any extension thereof, for the following recreational activity(ies): \_\_\_\_\_ ("Program"). The Program

schedule and facility location(s) shall be mutually agreed to in writing by both parties hereto.

3. Instructor Rent. Instructor shall pay the County Ten Dollars (\$10.00) per Program hour for facility use. Rent shall not be prorated. Fifteen minutes shall be allotted for both setup and teardown by Instructor at no charge before and after the Program's scheduled time. Payment shall be due for each month no later than the fifteenth (15<sup>th</sup>) day of the following month.
4. Program Registration & Fees. Instructor shall be solely responsible for registering Program participants and for establishing and collecting Program fees. Instructor is encouraged to consider the community partnership this Agreement creates with the County in setting Program fees and to offer the Program at a cost which will not be considered exclusionary.
5. Class Size. Program participation shall yield a monthly average of at least ten (10) participants per class meeting. Attendance less than this minimum may necessitate a change in the time or location of the Program. Any such change shall be at the sole discretion of the County.
6. Program Location. The County and Instructor shall mutually agree on a location within the designated County facility for Instructor to conduct the Program. The County may, at its sole discretion, adjust the location of the Program based on the needs of the facility and the County's programming priorities. Instructor shall not engage in any use of the County facility not expressly authorized herein without the prior, written consent of the County.
7. Storage. Storage space for Instructor may be provided at the County's sole discretion if available. Upon notice to Instructor by the County, Instructor shall remove property within 24 hours of said notice. Instructor relinquishes rights and ownership to property stored for more than 30 days following the date the of Instructor's last class. The County will not be responsible for items stored onsite or abandoned by Instructor.
8. Program Marketing. As a service to its citizens, the County may elect to prepare marketing materials or media for the Program and Instructor may distribute same. Any additional flyers, advertisements, or publications created by Instructor regarding the Program shall be subject to review and approval by the County prior to publication or distribution.

9. Insurance. Instructor shall procure and maintain, at its sole cost and expense, at all times throughout the term of this Agreement, the following insurance coverage through insurance carriers with an A.M. Best's Financial Strength Rating of A- VII or better, and authorized to do business in the State of Florida. Instructor shall provide the County with a certificate of insurance for all required coverage prior to the Agreement commencement date and shall provide renewal certificates upon renewal or replacement of any policy or upon written request from the County. Instructor shall not cancel, alter or allow expiration or other termination of any coverage required herein without at least thirty (30) days prior written notice to the County. Any program of self-insurance maintained by the Instructor must be approved by the County. These requirements, as well as the County's review or acceptance of insurance maintained by Instructor, are not intended to, and shall not in any manner, limit or qualify the liabilities or obligations assumed by Instructor under this Agreement.

**Commercial General Liability** – Instructor shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$500,000 per occurrence. Instructor further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit. Sexual abuse and molestation insurance is required for all Instructors having direct contact with minors or the disabled.

Required Endorsements:

Additional Insured – CG 20 26 or its equivalent

Waiver of transfer of Rights of Recovery – CG 24 04 or its equivalent

Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.

**Workers' Compensation** – Instructor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability. Elective exemptions as defined in Florida Statute Chapter 440 will be considered on a case-by-case basis. Any Instructor using a leasing company shall complete the Leased Employee Affidavit.

Required Endorsements:

Waiver of Subrogation – WC 00 03 13 or its equivalent

Instructor shall require and ensure that each and every contractor, subcontractor, consultant, and service provider, either under this Agreement and/or providing services in or through the facility, shall secure and maintain insurance of the types and limits required under this Agreement (a) until completion of their respective services or (b) for the duration of the Agreement and any extensions thereof.

All such coverages shall be primary and contributory with any insurance or self-insurance maintained by the County. Instructor shall provide current certificates of insurance evidencing all required coverages prior to commencing any operation. Instructor shall notify the County in writing, not less than 30 days prior to any material change or non-renewal of any of the coverages required by this Agreement, and such insurance provider shall be required to notify the County no less than 30 days prior to any cancellation of any insurance coverage.

The certificates shall clearly indicate that Instructor has obtained insurance of the type, amount and classification as required for strict compliance with this section. No material change or cancellation of the insurance shall be effective without 30 days prior written notice to the County. Certificates shall specifically reference the respective contract number. The certificate holder shall read:

Orange County Board of County Commissioners  
Attn: Risk Management Division  
400 E. South Street  
Orlando, FL 32801

Any request for an exception to these insurance requirements must be submitted in writing to the County for the approval of the County's Risk Management Division.

10. Indemnification. Instructor shall defend, indemnify and hold harmless the County from and against all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of, or resulting from the performance or failure of Instructor, or Instructor's agents, servants, invitees or guests to perform the services, obligations and responsibilities under this Agreement. Instructor will take all reasonable precautions for the safety of, and will provide reasonable

protection to prevent damage, injury or loss to all persons and property in the facility.

11. Safety and Protection of Persons and Property. Instructor shall, at all times, initiate, maintain, and supervise safety precautions and programs in connection with its services or use of the facility. Instructor shall:

- a. Take all reasonable precautions to prevent injury to employees, including County employees, and all other persons affected by Instructor's Program.
- b. Take all reasonable precautions to prevent damage or loss to property of the County, or of other vendors, consultants, or agencies, and be held responsible for replacing or repairing any such loss or damage.
- c. Comply with all ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property or their protection from damage, injury or loss. This includes but is not limited to:
  - i. Occupational Safety and Health Act ("OSHA")
  - ii. National Institute for Occupational Safety & Health ("NIOSH")
  - iii. National Fire Protection Association ("NFPA")
  - iv. American Society of Heating, Refrigeration & Air-Conditioning Engineers ("ASHRAE")
- d. Comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at: <http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

12. Certification. At the request of the County, Instructor may be required to provide a copy of their certification and that of any employees or contractors working with the Program. The County reserves the right to require specific, current certification in the area related to the Program.

13. Participant Satisfaction. The County may survey Program participants regarding the quality of the Program and participants' satisfaction or dissatisfaction with

same. A pattern of poor evaluations may result in the termination of this Agreement.

14. Background Screenings. Instructor shall provide proof that Instructor and all of Instructor's employees and volunteers that participate in the Program for ten or more hours per month have been subjected to Level 2 security background screenings consistent with the requirements of section 435.04, Florida Statutes, which shall be updated annually. Employees or volunteers whose participation in the Program does not exceed ten hours per month shall be exempt from the screening requirements of this section as long as any such employees and volunteers are always physically accompanied by the Instructor or another employee or volunteer that has been subjected to the required background screening. Background screenings shall be at the sole cost and expense of Instructor. New employees and volunteers shall not be permitted to instruct participants in the Program until after Instructor provides the County with proof that a background screening on said individuals has been completed. The County may, at its sole discretion, prohibit Instructor's employees or volunteers from instructing participants pursuant to this Agreement should those individuals' background screenings reveal a conviction or pending charges for any crime designated as a felony in Florida, or any crime outside Florida which would be considered a felony in Florida, including, but not limited to criminal offenses for drug use, violent offenses with a weapon, child abuse, domestic violence, or sexual abuse. Should Instructor's background screening reveal a felony conviction or pending felony charges, the County may terminate this Agreement immediately at its sole discretion without penalty.
15. Non-discrimination. Instructor shall not unlawfully discriminate against any persons desiring to participate in the Program.
16. Additional Instructor Obligations. Instructor shall be responsible for the following:
  - a. Agreeing to a course outline or plan with the County prior to the start of the Program.
  - b. Making all necessary pre-class arrangements such as preparing and assembling needed materials and equipment.
  - c. Keeping an accurate record of attendance and reporting same to the County's Site Supervisor at the close of each class each day.



- d. Submitting bi-annually or upon request, a report to the Site Supervisor, which shall address any facility concerns, administrative concerns, or marketing concerns.
  - e. Contacting the County at least six (6) hours prior to the start of the Program in the event of a class cancellation. It will be the responsibility of Instructor to make every reasonable effort to contact the program registrants via e-mail or phone to notify them of the cancellation. The County will post a notice of cancellation at the facility for that day's program. The County may terminate this Agreement, at its sole discretion, if twenty percent (20%) or more of the scheduled classes are cancelled in a 30-day period.
17. Default. In the event the Instructor defaults in its performance of, or fails to comply with, any material term or condition of this Agreement, the County shall have the right to terminate this Agreement if, after no less than 30 days of receiving written notification from County of any such default or failure, to cure said default or failure.
18. Independent Contractor. Instructor acknowledges that he or she is an independent contractor and is not an employee of the County and therefore, all insurance and other benefits for Instructor and/or his or her employees are the responsibility of Instructor and not the County. Instructor is not subject to sovereign immunity or the provisions of Section 768.28, Florida Statutes.
19. Signs. Instructor shall not display or locate any signs in any County facility without the express, written consent of the County.
20. Liability for Program. Instructor assumes all responsibility and liability for the Program. At all times during the term of this Agreement, Instructor shall procure and maintain a Waiver of Liability from each participant. Said waiver is to be in a form approved by the County's Risk Management Division.
21. Complete Agreement. This Agreement contains all understandings and agreements between the parties and no modifications or amendments shall be effective unless embodied in writing.
22. No Assignment. The Instructor shall not assign or transfer this Agreement or subcontract or delegate the performance of any service required herein to any other person without the prior, written consent of the County.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date last set forth below.

**[SIGNATURE PAGE FOLLOWS]**

ORANGE COUNTY, FLORIDA

\_\_\_\_\_  
Print: \_\_\_\_\_  
Manager, Parks and Recreation Division  
(pursuant to signature authority granted by  
Administrative Regulation \_\_\_\_\_ and Resolution  
No. \_\_\_\_\_)

Date: \_\_\_\_\_

INSTRUCTOR

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

County Site Supervisor: \_\_\_\_\_

Center or Park Name: \_\_\_\_\_