

ITEM 6 ATTACHMENT



CITY of CALABASAS

PROFESSIONAL SERVICES AGREEMENT
(John Paul Thornton)

CONTRACT SUMMARY

Name of Contractor:	John Paul Thornton
City Department in charge of Contract:	Kimberly Post
Contact Person for City Department:	Kimberly Post
Period of Performance for Contract:	March 15, 2021- December 31, 2024
Not to Exceed Amount of Contract:	\$160,000.00
Scope of Work for Contract:	Teach Senior Classes

Insurance Requirements for Contract:

yes no - Is General Liability insurance required in this contract? SCMAF

If yes, please provide coverage amounts:

yes no - Is Auto insurance required in this contract?

If yes, please provide coverage amounts:

yes no - Is Professional insurance required in this contract?

If yes, please provide coverage amounts:

yes no - Is Workers Comprehensive insurance required in this contract?

If yes, please provide coverage amounts:

Other:

Proper documentation is required and must be attached.

**PROFESSIONAL SERVICES AGREEMENT
FOR INDEPENDENT CONTRACTOR SERVICES**
(City of Calabasas/ Contract Instructor)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas, a California municipal corporation (“City”), and John Paul Thornton (“Contractor”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a Contractor: Instruct Senior classes offered through the City.
- 2.2 Contractor represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees, without the advice, control or supervision of the City. Contractor further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Contractor agree as follows:

3. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Monday, March 15, 2021 and shall expire at 11:59 p.m. on the Friday, December 31, 2024. unless extended by written agreement of the parties or terminated earlier in accordance with Section 12 (“Termination”) below.

4. CONTRACTOR'S SERVICES AND RESPONSIBILITIES

- 4.1 Contractor shall provide instruction in Senior Classes
- 4.2 Contractor shall perform all work to the highest professional standards of Contractor's profession and in a manner reasonably satisfactory to City, and Contractor agrees to provide proper direction, supervision and safety measures for the conduct of its activities. Contractor shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).

Code Section 81000 *et seq.*).

- 4.3 Contractor represents that it has, or will secure at its own expense, all equipment and personnel required to perform the services. All such services shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.
- 4.4 To the extent Contractor uses any City facility, Contractor will conduct an inspection of the facility to satisfy his or herself that the facility is free of any defects and safe for the intended use. Having conducted such an inspection, Contractor will take proper care in its use of the facility and shall be responsible for damage caused thereto resulting from improper care or usage.
- 4.5 Contractor will furnish the City's Community Services Department with program content and such descriptive material as may be necessary to publicize the activity.
- 4.6 Contractor may set the program registration fee to be paid by participants, however, Contractor is obligated to set rates that are competitive within the industry and reflect fair market value for such programs and services.
- 4.7 Contractor shall determine reasonable times and days for the scheduling of classes, provided, however, that an appropriate facility is available at such time on such days.
- 4.8 Contractor will submit attendance reports when requested by the City.
- 4.9 In accordance with applicable laws, Contractor has the responsibility to report any suspected child abuse to the Community Services Director as soon as Contractor becomes aware of any suspected abuse. By initialing in the space provided, Contractor acknowledges such responsibility. INITIALS: JPT.
- 4.10 Contractor is aware of and agrees to follow the City's "Satisfaction Guaranteed" policy for all participants in activities.

5. CITY'S RESPONSIBILITIES

- 5.1 City will place Contractor's program advertisements in City's brochures and circulars delivered to local residences and businesses.
- 5.2 City will offer use of a facility at which Contractor may conduct its program instruction.
- 5.3 Subject to Section 6.1, City will process participant enrollment, payments, and execution of waivers.

6. COMPENSATION

- 6.1 City agrees to compensate Contractor for the services provided under this Agreement, and Contractor agrees to accept in full satisfaction for such services, 70% of program registration fees at the conclusion of the activity, or if Contractor collects fees, Contractor agrees to compensate City 30% of program registration fees at the conclusion of the activity. See 6.2 and 10.2 below.
- 6.2 The City of Calabasas shall withhold an Administrative Fee of **\$3.00** per participant/per class prior to the program registration fee calculation
- 6.3 Contractor shall submit an invoice to the City for payment for services at the conclusion of the activity. Within ten business days of receipt of the invoice, City shall notify Contractor in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Contractor.

7. RELATIONSHIP OF THE PARTIES

- 7.1 Contractor enters into this agreement as, and shall continue to be, an independent contractor. Consistent with this, Contractor may represent, perform services for, or be employed by any other additional persons, companies, or agencies as Contractor sees fit. Under no circumstances shall Contractor look to the City as her or her employer, or as a partner, agent, or principal. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner employees of City. Contractor shall not be entitled to any benefits accorded to City's employees, including workers' compensation, disability insurance, vacation, or sick pay. Where applicable, Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, disability, workers' compensation, or other insurance as well as licenses and permits usual or necessary for performing the Services.
- 7.2 Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation, including estimated taxes and shall provide the City with proof of payment on demand. Contractor indemnifies the City for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by City arising out of Contractor's breach of this section.

8. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not

be disclosed by Contractor without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

9. INDEMNIFICATION

- 9.1 Contractor, and its employees and partners agree to, and shall, defend, indemnify, protect and hold harmless the City, its elective and appointive boards, officers, officials, employees, agents and volunteers from and against any and all claims, demands, losses, defense costs, fines, penalties, expenses, causes of action and judgments at law or in equity, or liability of any kind or nature, whether known or unknown, (including without limitation, third party claims and reasonable attorneys' fees) which the City, its elective and appointive boards, officers, officials, employees, agents and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of or in any way connected to Contractor's performance under the terms of this Agreement, excepting only liability arising out of the sole negligence of the City. Such costs and expenses shall include reasonable attorney fees incurred by counsel of City's choice. Contractor's obligation pursuant to this provision shall survive termination of this Agreement.
- 9.2 City shall have the right to offset against the amount of any compensation due Contractor under this Agreement any amount due City from Contractor as a result of Contractor's failure to pay City promptly any indemnification arising under this section and related to Contractor's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

10. INSURANCE

- 10.1.1 Contractor shall, at Contractor's expense, obtain and keep in force during the term of this Agreement commercial general liability insurance, including property damage, against liability for bodily injury, personal injury, death, and damage to property with combined single limit coverage of at least One Million Dollars (\$1,000,000.00) per occurrence and a general aggregate combined single limit of bodily injury and property damage liability of at least One Million Dollars (\$1,000,000.00); that policy shall include contractual liability, insuring Contractor's performance of indemnification obligations contained in this Agreement. The policy of insurance required to be carried by Contractor shall name City and any other parties in interest that City reasonably designates as additional insureds; shall be primary insurance that provides that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage of City; shall be in a form satisfactory to City; shall be carried with companies reasonably acceptable to City; shall provide that the

policy shall not be subject to cancellation, lapse, or change, except after at least thirty (30) days' prior written notice to City; and shall not have a deductible in excess of any amount reasonably approved by City.

- 10.1.2 Worker's Compensation insurance as required by the laws of the State of California.
- 10.1.3 Contractor shall also purchase either as an endorsement to the commercial general liability policy or as a separate policy, insurance covering sexual misconduct, abuse and/or molestation. Said insurance shall be an occurrence policy with limits not less than \$250,000.00 per incident, covering claims for abuse, molestation, sexual misconduct, negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature. The city and its officers and employees shall be named as additional insureds under the policy, in a form satisfactory to City. In addition, said insurance shall include an endorsement or provision to directly pay, or reimburse the insured or additional insured for any defense costs incurred in defending an innocent party.

OR

- 10.2 Contractor will purchase commercial general liability insurance, which conforms to the requirements of Section 10.1, from City's insurer. The City will assist Contractor in doing so, including processing necessary paperwork and documents to effectuate the purchase of such insurance. After Contractor is paid in accordance with the terms of Section 6 above, the amount of \$2.00 will be deducted per participant per class for such insurance.

11. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Contractor's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Calabasas
100 Civic Center Way
Calabasas, CA 91302
Attn: Community Services Department
Calabasas Senior Center
Telephone: (818) 224-1600
Facsimile: (818) 591-6707

If to Consultant:

John Paul Thornton
4712 Louise Ave.
Encino, CA. 91316
Telephone: (818) 378-8381

12. TERMINATION

- 12.1 City shall have the right to terminate this Agreement for any reason on seven calendar days' written notice to Contractor. Consultant shall have the right to terminate this Agreement for any reason on 60 calendar days' written notice to City. Contractor agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 12.2 If City terminates this Agreement due to no fault or failure of performance by Contractor, then Contractor shall be paid based on the work satisfactorily performed at the time of termination, subject to deductions for insurance in accordance with Section 9.2. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the services required by this Agreement.

13. GENERAL PROVISIONS

- 13.1 Contractor shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Contractor.
- 13.2 In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 13.3 The waiver by City or Contractor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this

Agreement shall be deemed to have been waived by City or Consultant unless in writing.

- 13.4 In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.
- 13.5 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 13.6 This instrument contains the entire Agreement between City and Contractor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Contractor.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Calabasas

By _____
James Bozajian, City Mayor

Date: _____

"Contractor"
John Paul Thornton

By: *John Paul Thornton*
John Paul Thornton

Date: 4-17-2021

By _____
Kindon Meik, City Manager

Date: _____

By *Marty Hall*
Marty Hall, Acting Community Services Director

Date: 4/19/21

Attest:

By _____

Maricela Hernandez, MMC,
City Clerk

Date: _____

Approved as to form:

By _____
Scott H. Howard
Colantuono, Highsmith & Whatley, PC
City Attorney


Date: _____

WORKERS' COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: 4-2-2021

By: 
John Paul Thornton

Attest:

By: (Signature)

(Title)



CITY of CALABASAS

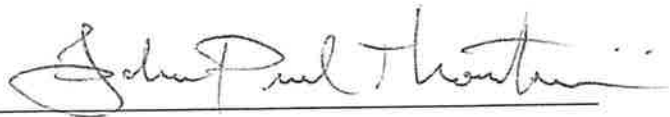
AFFIDAVIT OF COMPLIANCE WITH WORKERS' COMPENSATION
INSURANCE REQUIREMENTS

The Consultant shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I, the undersigned, do hereby declare that the business has no employees other than myself.

I, the undersigned, also hereby declare that I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Date: 04/03/2021

By: 
Signature

Company: JOHN PAUL THORNTON FINE ART

Title: OWNER

Attest:
By: _____

Signature: _____

Title: _____

The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing.

All participants in recreational activities must comply with safety measures outlined in the prevention plan and social distancing must be followed; six feet between all members of the activity when outdoors and twelve feet indoors. A public health officer may inspect a program at any time and act if measures to control infection is insufficient.

Participants taking part in online activities offered by the City agree to abide by the City's safety standards and any other requirements as deemed necessary by City staff. Independent contractors offering online instruction also consent to the City's use of names, photos, likenesses and written feedback in any and all publications, advertising and publicity, and grants permission to be filmed or taped by the City or the news media.

By signing this agreement, I represent that I will adhere to the aforementioned preventive measures according to Los Angeles County and the City of Calabasas. Further, on my behalf, by signing this agreement, I acknowledge the contagious nature of COVID-19 and voluntarily assume the risk that each instructor may be exposed to or infected by COVID-19 by participating in recreation activities/training and that such exposure or infection may result in personal injury, illness, permanent disability, and death. Further, on my behalf, I hereby release, waive, covenant not to sue, discharge, and hold harmless the City of Calabasas, its employees, agents, and representatives, of and from any such liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. I understand and agree that this release includes any claims based on the actions, omissions, or negligence of the City, its employees, agents, and representatives.

Section 1542 of the Civil Code of the State of California provides as follows:

"A General Release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release which if known by him must have materially affected his settlement with the debtor."

I hereby represent that I have read and understand Civil Code Section 1542 and that I hereby waive all present and future rights and benefits under Section 1542 to the extent it would permit claims arising from my participation in recreation activities/training, including without limitation,

any based on facts found to be different from the facts believed to be true at the time this Release and Waiver of Liability was executed.

To the extent that I, individually, or my heirs, guardians, legal representatives or assigns bring a claim of any kind whatsoever against the City of Calabasas, I agree that this Release and Waiver of Liability is to be construed under the laws of the State of California, and that if any portion hereof is held invalid, the balance hereof shall, notwithstanding, continue in full legal force and effect. Any claims or causes of action arising out of or related to participation in recreation activities/training, of which I am voluntarily participating, shall be tried exclusively in the Superior Court of Los Angeles County.