Item No. 12c

TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Town Manager
Department Submitting Request

Esther Colon
Dept Head's Signature

	Commission Meeting Dates	Last date to turn in to Town Clerk's Office		Commission Meeting Dates	Last date to turn in to Town Clerk's Office		Commission Meeting Dates	Last date to turn in to Town Clerk's Office
☐	Nov 10, 2009	Oct. 30 (5:00 p.m.)	☒	Jan 26, 2010	Jan 15 (5:00 p.m.)	☐	March 23, 2010	Mar 12 (5:00 p.m.)
☐	Dec 1, 2009	Nov 20 (5:00 p.m.)	☐	Feb 9, 2010	Jan 29 (5:00 p.m.)	☐	April 13, 2010	April 2 (5:00p.m.)
☐	Dec 8, 2009	Nov 25 (5:00 p.m.)	☐	Feb 23, 2010	Feb 12 (5:00 p.m.)	☐	April 27, 2010	April 16 (5:00p.m.)
☐	Jan 12, 2010	Dec 31 (5:00 p.m.)	☐	Mar 4, 2010	Feb 19 (5:00p.m.)	☐	May 11, 2010	April 30 (5:00p.m.)

NATURE OF AGENDA ITEM

☐ Presentation	☐ Resolution	☐ New Business
☐ Report	☐ Ordinance	☐ Manager's Report
☒ Consent Agenda	☐ Public Hearing	☐ Attorney's Report
☐ Bids	☐ Old Business	☐ Other

EXPLANATION: Commission approval of a ninety (90) day contract extension for Martial Arts Instructor

STAFF RECOMMENDATION:

BOARD/COMMITTEE RECOMMENDATION:

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

☐ Amount $_____ ☐ Acct # _____

☐ Transfer of funds required ☐ From Acct #_____

☐ Bid ☐ Grant ☐ Amount represents matching funds

Town Attorney review required

☐ Yes ☒ No

Town Manager's Initials: _____

Revised 1/14/2010

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT, made this _____ day of _____2010, by and between:

THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, a municipal corporation organized and operating under the laws of the State of Florida, hereinafter referred to as "TOWN"

AND

JAPAN KARATE-DO GENBU OF FLORIDA, INC., a corporation with an address of 121 Monterey Way – Royal Palm Beach, FL 33411, hereinafter referred to as "CONTRACTOR". TOWN and CONTRACTOR may hereinafter collectively be referred to as the "Parties".

WITNESSETH:

WHEREAS, the TOWN and **JAPAN KARATE-DO GENBU-KAI of FLORIDA, INC.** have determined that it is in the best interest of the parties to jointly create, operate and fund a Martial Arts program in order to help address the recreational needs of the children and adult residents of the TOWN; and

WHEREAS, the TOWN and **JAPAN KARATE-DO GENBU OF FLORIDA, INC.** agree to enter a short-term Professional Service Agreement to monitor and evaluate the success of such services;

NOW, THEREFORE, in consideration of the mutual promises, Terms, provisions, covenants and payments set forth herein, it is hereby agreed by and between the TOWN and **JAPAN KARATE-DO GENBU OF FLORIDA, INC.** as follows:

1.0 Recitals. The above recitals are true and correct and are hereby incorporated herein.

2.0 Services and Responsibilities of JAPAN KARATE-DO GENBU of FLORIDA, INC..

2.1 JAPAN KARATE-DO GENBU OF FLORIDA, INC. agrees to create and operate a Martial Arts Program in the TOWN to be operated at the TOWN JARVIS HALL for the benefit of the citizens and residents of the TOWN. It is recognized and agreed by the parties that such programming shall be a gradual process that will develop according to the requests of participants and the identification of appropriate volunteers.

2.2 In the operation of the Martial Arts Program, JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall undertake the following responsibilities:

2.2.1 Hire and train instructors and volunteers if necessary.

2.2.2 Provide direct on-going supervision of the Martial Arts instructors and/or volunteers as well as all other necessary administrative support.

2.2.3 Assist in the promotion of positive media coverage for the Martial Arts Program and the TOWN.

2.3 JAPAN KARATE-DO GENBU OF FLORIDA, INC., in consultation with the TOWN Manager, shall identify the interests and needs of the residents of the TOWN and develop programs to fulfill those needs.

2.4 JAPAN KARATE-DO GENBU OF FLORIDA, INC. agrees to cooperate with the TOWN in the operation of the Martial Arts Program and provide a monthly participation report to the TOWN Manager, or his or her designee. The TOWN agrees to cooperate with the registration process of the participants.

2.5 Town Of Lauderdale-By-The-Sea agrees to provide the funding for materials used in the Martial Arts Program not to exceed $750.00. These funds shall be provided to JAPAN KARATE-DO GENBU OF FLORIDA, INC. on a reimbursement basis within a reasonable time after receipt by TOWN of satisfactory evidence of the materials expenditure.

3.0 <u>Services and Responsibilities of TOWN.</u>

3.1 The TOWN shall make available for use by the Martial Arts Program existing space at Jarvis Hall, and other facilities and locations, such as the rest rooms and Jarvis Hall, which is not otherwise reserved for scheduled activities by other parties.

3.2 The TOWN agrees to provide funding for the ninety (90) day term of this Agreement not to exceed $ 2,769.18 to be disbursed in 6 bi-monthly payments at the beginning and on the 15th of each month during which services shall be rendered in the amount of $ 461.53. It is expressly agreed that JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall not be an employee of the TOWN.

3.3 JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall submit a proposed activity calendar and budget to the TOWN 30 days after the end of the Martial Arts Pilot Program TOWN may consider continuing the Martial Arts Program for the fiscal year. Upon review of program and approval of such budget by the TOWN, the TOWN shall continue to provide funds for the purposes enumerated herein. After the 90 day Martial Art Program the TOWN may require registration fees of the participant to continue the operation of the Town Martial Arts Program.

3.4 The TOWN and JAPAN KARATE-DO GENBU OF FLORIDA, INC. agree to cooperate in each other's efforts to operate and manage the Martial Arts Program, including, but not limited to, providing any information necessary in order to obtain available grant funds for the operation of the Martial Arts Program.

4.0 <u>Term and Termination</u>.

4.1 This Agreement shall take effect as of the date of execution, hereinafter the "Effective Date". However, the term of this Agreement shall not commence until February 01, 2010, hereinafter referred to as the "Commencement Date," in order to provide JAPAN KARATE-DO GENBU OF FLORIDA, INC. with sufficient time to set up the Martial Arts Program prior to opening. This Agreement shall be for a term of ninety (90) day upon mutual consent of the parties.

4.2 It is the intent of the parties to continue to provide the developed services and activities provided by the Martial Arts Program. However, the parties mutually agree and understand that there is no guarantee of funding or that services may only continue assuming the funding dollars continue to be available and performance and utilization of the Martial Arts Program warrants continued funding.

4.3 This Agreement may be terminated by either party for convenience, upon written notice to the other party. Upon receipt of such notice, the Agreement shall be terminated at the end of the next full calendar month subsequent to the month in which the notice was received in order to allow for the completion of scheduled activities and proper feedback to volunteer instructors and participants.

5.0 Liability Insurance. JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall not commence work under this contract until it has obtained insurance for the term of this Agreement, and in amounts and coverages as reflected in the attached copy of insurance certificate, and an original certificate of insurance has been received by the TOWN. JAPAN KARATE-DO GENBU OF FLORIDA, INC. will not allow any Subcontractor to commence work on any sub-contract until all similar such insurance required of the subcontractor has been obtained.

5.1 Worker's Compensation Insurance shall be maintained during the life of this contract to comply with statutory limits. In the case any work is sublet, and then JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall require the Subcontractors similarly to provide Workers Compensation Insurance.

5.2 The TOWN reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

6.0 Protection of TOWN's Property.

6.1 All parties hereto understand and agree that the TOWN is self insured and does not intend to property insurance in connection with this project.

6.2 At all times during the performance of this Contract, JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall protect the TOWN's property from all damage whatsoever on account of the work being carried on under this contract.

7.0 Indemnification.

7.1 JAPAN KARATE-DO GENBU OF FLORIDA, INC. agrees to release the TOWN from and against any and all liability and responsibility in connection with the above-mentioned matters. JAPAN KARATE-DO GENBU OF FLORIDA, INC. further agrees not to

sue or seek any money or damages from the TOWN in connection with the above-mentioned matters.

7.2 JAPAN KARATE-DO GENBU OF FLORIDA, INC. agrees to indemnify, defend, and hold harmless the TOWN, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the TOWN or any third party arising out of, or by reason of, or resulting from the Consultant's negligent acts, errors, or omissions.

7.3 The parties recognize that various provisions of this Agreement, including, but not necessarily limited to this Section, provide for indemnification by JAPAN KARATE-DO GENBU OF FLORIDA, INC. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

8.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that JAPAN KARATE-DO GENBU OF FLORIDA, INC. is an independent contractor under this Agreement and not the TOWN's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall retain sole and absolute discretion in the judgment of the manner and means of carrying out JAPAN KARATE-DO GENBU OF FLORIDA, INC.'S activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of JAPAN KARATE-DO GENBU OF FLORIDA, INC., which policies of JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall not conflict with the TOWN, H.U.D., or United States policies, rules or regulations relating to the use of JAPAN KARATE-DO GENBU OF FLORIDA, INC.'S funds provided for herein. JAPAN KARATE-DO GENBU OF FLORIDA, INC. agrees that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between JAPAN KARATE-DO GENBU OF FLORIDA, INC. and the TOWN and the TOWN will not be liable for any obligation incurred by JAPAN KARATE-DO GENBU OF FLORIDA, INC., including, but not limited to, unpaid minimum wages and/or overtime premiums.

9.0 Equal Employment Opportunity. In the performance of this Agreement, JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall not discriminate against any firm, employee or applicant for employment or any other firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

10.0 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, by

hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section.

For the present, the JAPAN KARATE-DO GENBU OF FLORIDA, INC. and the TOWN designate the following as the respective places for giving of notice:

TOWN: Esther Colon, Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 776-0576
Fax: (954) 776-1857

Copy To: Susan L. Trevarthen, Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Phone: (954) 763-4242
Fax: (954) 764-7770

Contractor: JAPAN KARATE-DO GENBU of FLORIDA, INC.
121 Monterey Way
Royal Palm Beach, FL 33411
Phone: (561)-804-1071
Cell: (561)-214-5299

11.0 Ownership. The parties agree that all items, equipment, property and materials owned or purchased by JAPAN KARATE-DO GENBU OF FLORIDA, INC. and provided for the execution of this Agreement shall remain the property of JAPAN KARATE-DO GENBU OF FLORIDA, INC. The parties further agree that all items, equipment, property and materials owned or purchased by the TOWN and provided for the execution of this Agreement shall remain the property of the TOWN.

12.0 Assignments. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by JAPAN KARATE-DO GENBU OF FLORIDA, INC. without the prior written consent of the TOWN. For purposes of this Agreement, any change of ownership of JAPAN KARATE-DO GENBU OF FLORIDA, INC. shall constitute an assignment, which requires TOWN approval. However, this Agreement shall run to the TOWN and its successors and assigns.

13.0 No Contingent Fees. JAPAN KARATE-DO GENBU OF FLORIDA, INC. warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for JAPAN KARATE-DO GENBU OF FLORIDA, INC. to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for JAPAN KARATE-DO GENBU OF FLORIDA, INC., any fee, commission, percentage, gift, or other consideration

contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the TOWN shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

14.0 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

15.0 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

16.0 Headings. Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.

17.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

18.0 Waiver. Failure of the TOWN to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

19.0 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

20.0 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

21.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

22.0 Extent of Agreement. This Agreement represents the entire and integrated agreement between the TOWN and the JAPAN KARATE-DO GENBU OF FLORIDA, INC. and supersedes all prior negotiations, representations or agreements, either written or oral.

23.0 Attorney's Fees. In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

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

ATTEST:

BY: _____
JUNE WHITE, TOWN CLERK

TOWN OF LAUDERDALE-BY-THE-SEA

BY: _____
ESTHER COLON, TOWN MANAGER

APPROVED AS TO FORM:

_____
TOWN ATTORNEY

CONTRACTOR:
BY:

_____
JAPAN KARATE-DO GENBU OF FLORIDA, INC.

_____
Print Name

_____
Witness

_____
Print Name

STATE OF FLORIDA _____)

COUNTY OF BROWARD)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____as _____of JAPAN KARATE-DO GENBU OF FLORIDA, INC. a corporation authorized to do business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of JAPAN KARATE-DO GENBU OF FLORIDA, INC. for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal t in the State and County aforesaid on this _____day of _____, 2010

My Commission Expires:

_____
NOTARY PUBLIC