



AGENDA ITEM REQUEST FORM

Item No. 9a

TOWN MANAGER

Department Submitting Request

Dept Head's Signature

REG COMMISSION DEADLINE TO Meeting Dates 7:00PM Town Clerk

- | | | |
|--------------------------|--------------|------------------|
| <input type="checkbox"/> | Oct 12, 2010 | Oct 1 (5:00 pm) |
| <input type="checkbox"/> | Nov 9, 2010* | Oct 29 (5:00 pm) |
| <input type="checkbox"/> | Dec 14, 2010 | Dec 3 (5:00 pm) |
| <input type="checkbox"/> | Jan 11, 2011 | Dec 31 (5:00 pm) |
| <input type="checkbox"/> | Feb 8, 2011 | Jan 28 (5:00 pm) |
| <input type="checkbox"/> | Mar 8, 2011 | Feb 25 (5:00 pm) |

ROUNDTABLE DEADLINE TO Meeting Dates 7:00PM Town Clerk

- | | | |
|--------------------------|---------------|------------------|
| <input type="checkbox"/> | Oct 26, 2010 | Oct 15 (5:00 pm) |
| <input type="checkbox"/> | Nov 23, 2010* | Nov 12 (5:00 pm) |
| <input type="checkbox"/> | Dec 28, 2010* | Dec 17 (5:00 pm) |
| <input type="checkbox"/> | Jan 25, 2011 | Jan 14 (5:00 pm) |
| <input type="checkbox"/> | Feb 22, 2011 | Feb 11 (5:00 pm) |
| <input type="checkbox"/> | Mar 22, 2011 | Mar 11 (5:00 pm) |

*Subject to Change

- | | | | | | | | |
|--------------------------|--------------|--------------------------|----------------|--------------------------|--------------|--------------------------|--------------|
| <input type="checkbox"/> | Presentation | <input type="checkbox"/> | Reports | <input type="checkbox"/> | Consent | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | Resolution | <input type="checkbox"/> | Quasi Judicial | <input type="checkbox"/> | Old Business | <input type="checkbox"/> | New Business |

SUBJECT TITLE: Martial Arts Contract Renewal

EXPLANATION: In the previous contract for professional services (FY2009-2010) with Keith Moore, the Town paid Mr. Moore \$12,000 to provide martial art lessons for youth and adults. The new contract (FY2010-2011) is a revenue sharing agreement where Mr. Moore receives 80% of the registration fee for the group lessons. The contract sets the fee for at \$70.00 for a one hour group lesson. The agreement permits Mr. Moore to do special promotions with reduced fees, limited to the first two sessions to increase participation. The agreement also provides that Mr. Moore will conduct (4) free martial art programs and the Town will compensate him at a rate of \$80/session. The participation in the lessons under the previous agreement has been inconsistent and sometimes very low (see Attachment A). Mr. Moore understands that the Town will monitor participation in the Martial Arts Program and that it must increase so that we are making most effective use of the Jarvis Hall space.

RECOMMENDATION:

EXHIBITS: Attachment A- FY10 Martial Arts Participation
Attachment B - Agreement

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

- | | | | |
|--------------------------|----------------------------|--------------------------|-------------------|
| <input type="checkbox"/> | Amount \$ _____ | <input type="checkbox"/> | Acct # _____ |
| <input type="checkbox"/> | Transfer of funds required | <input type="checkbox"/> | From Acct # _____ |

Reviewed by Town Attorney
 Yes No

Town Manager Initials CH

FY 10 Martial Arts Participation

	Youth	Session Avg.	Juniors	Session Avg.	Adults	Session Avg.	TOTAL
November -3 wks	3	1	10	3	9	3	29
December-3 wks	1	.33	10	3	5	2	21
January-4 wks	0	0	9	2	7	2	20
February-3 wks	2	.66	7	2	8	2	22
March-4wks	2	.5	12	3	12	3	32
April-5 wks	3	.6	11	2	13	3	32
May-4 wks	0	0	2	.5	10	3	16
June-2 wks	0	0	2	.67	6	3	12
July- no records							
August- 4 wks	0	0	3	.75	13	3	20
September4 wks	0	0	10	3	11	3	18
TOTAL	11	NA	76	23	94	27	233
*Est. total fees per proposed agreement				\$1,400		\$1,890	\$3,290
Est. total Town share				\$280		\$387	\$667

* Based on 4 classes per sessions, 10 session. FY11 Youth class will combine youth and juniors and may decrease, adult participation expected to remain the same

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 585 105th Ave N, Suite 18-B, Royal Palm Beach, FL 33411, hereinafter referred to as "KEITH MOORE". TOWN and KEITH MOORE may hereinafter collectively be referred to as the "Parties".

WITNESSETH:

WHEREAS, the Parties have determined that it is in their best interest and the best interest of the residents and local community to jointly create, operate, monitor, evaluate and fund a martial arts program to help address the recreational needs of the children and adult residents of the TOWN and local area; and

WHEREAS, the Parties hereby agree to this Professional Service Agreement (the "Agreement") to provide such services.

NOW, THEREFORE, in consideration of the mutual promises, terms, provisions, covenants and payments set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

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

2.0 Services and Responsibilities of KEITH MOORE.

2.1 KEITH MOORE agrees to create and operate a martial arts program in the TOWN at Jarvis Hall for the benefit of the citizens and residents of the TOWN and surrounding community. The Parties acknowledge that implementation of changes from any prior martial arts program shall be a gradual process that will develop according to the requests of participants and the identification of appropriate volunteers.

2.2 KEITH MOORE shall undertake the following responsibilities:

2.2.1 Develop and implement a fee based martial arts program as described herein and in Attachment A hereto.

2.2.2 Develop and implement four (4) free youth programs to be held quarterly. The TOWN will pay KEITH Moore \$80.00 per session for the implementation of

each of the four approved programs. Payment from TOWN to KEITH MOORE shall be upon completion of each quarterly session.

2.2.3 At his option, utilize other professional martial arts instructors at a black belt level and volunteers as assistant instructors at an intermediate level, provided that adequate liability insurance covers their activities on TOWN property and evidence thereof is provided to TOWN.

2.2.4 Assist TOWN in the promotion of positive media coverage for the martial arts program.

2.3.5 In consultation with the TOWN Manager, identify the interests and needs of the residents of the TOWN and develop programs to fulfill those needs.

2.3 KEITH MOORE shall provide a monthly participation report to the TOWN Manager or her designee by the fifteenth of each month for the previous month. The report shall contain sufficient detail to allow TOWN to evaluate the popularity and the benefit of the program to the citizens of the TOWN and surrounding areas.

2.4 The Parties acknowledge and agree that the martial arts program and related services shall be open to the public; however preference shall be given to TOWN residents and their invited guests in the event of space and/or schedule limitations.

3.0 Services and Responsibilities of TOWN.

3.1 The TOWN shall provide space at Jarvis Hall for the program and other facilities and locations (such as rest rooms and alternate space) when such other facilities and locations are not otherwise reserved for scheduled activities.

3.2 The Parties agree to cooperate in the operation and management of the martial arts program, including, but not limited to, providing information necessary to obtain available grant funds for the operation of the martial arts program.

3.3 The TOWN shall register the participants and collect the registration fees. KEITH MOORE shall collect the fees for payment made after TOWN business hours and shall remit the fees to TOWN within five (5) business days of collection.

3.4 The TOWN Manager shall review and approve the program and schedule of use of the TOWN'S facilities for the martial arts program in advance of implementation.

4.0 Term and Termination.

4.1 This Agreement shall take effect as of the date of full execution.

4.2 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.

5.0 Insurance. KEITH MOORE shall not commence work under this Agreement until it has obtained \$1,000,000.00 in general liability insurance coverage with an endorsement that names the TOWN as additional insured and has provided the appropriate certificate of insurance reflecting such coverage to TOWN. KEITH MOORE shall maintain worker's compensation insurance in accord with statutory limits during the term of this Agreement.

5.1 KEITH MOORE shall not allow any subcontractor to commence work on any services hereunder unless and until the same coverage as described above has been obtained for subcontractor and evidence thereof has been provided to TOWN. The TOWN reserves the right to require any other insurance coverage it deems necessary depending upon the risk in the circumstances in TOWN's reasonable judgment.

6.0 Protection of TOWN's Property.

6.1 The Parties understand and acknowledge the TOWN is self insured and shall not provide insurance coverage in connection with this Agreement.

6.2 At all times during the performance of this Agreement, KEITH MOORE shall protect the TOWN's property from all damage and return the property to TOWN in its original condition, subject only to normal wear and tear.

7.0 Indemnification. KEITH MOORE hereby 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, liability 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 resulting directly or indirectly from KEITH MOORE'S negligent acts, errors, omissions or intentional misconduct with regard to this Agreement. The covenants and representations relating to this indemnification provision shall survive and continue in full force and effect after any termination or expiration of this Agreement.

8.0 Independent Contractor. This Agreement does not create an employee/employer relationship or joint employment relationship between the Parties. It is the intent of the Parties that KEITH MOORE be an independent contractor under this Agreement and not the TOWN's employee for any purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, the 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. KEITH MOORE shall retain sole and absolute discretion in the judgment of the manner and means of carrying out KEITH MOORE'S activities and responsibilities hereunder. The procedures applicable to services rendered under this Agreement shall be those of KEITH MOORE and shall not conflict with the TOWN, United States policies, or any law or regulation applicable to this Agreement. KEITH MOORE 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 services hereunder. The TOWN shall not be liable for any obligation incurred by KEITH MOORE, including, but not limited to, unpaid minimum wages and/or overtime premiums.

9.0 Equal Employment Opportunity. In the performance of this Agreement, KEITH MOORE shall not discriminate against any firm, employee or applicant for employment or in providing services hereunder due to or on account of sex, age, race, color, religion, ancestry or national origin.

10.0 Notice. Whenever any party desires to give notice to the 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 at the place last specified herein or as changed by written notice provided in accord with this section. The Parties designate the following as the respective places for giving notice:

TOWN: Constance Hoffmann, 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

KEITH MOORE: JAPAN KARATE-DO GENBU OF FLORIDA, INC
Attn: Keith Moore
585 105th Avenue N, Suite 18-B
Royal Palm Beach, FL 33411
Phone: (561)-804-1071
Cell: (561)-214-5299

11.0 Ownership of Property. All items, equipment, property and materials owned or purchased by KEITH MOORE and provided for the execution of this Agreement shall remain the property of KEITH MOORE. 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. Neither this Agreement nor any interest herein, shall be assigned, transferred or otherwise encumbered by KEITH MOORE.

13.0 No Contingent Fees. KEITH MOORE warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working solely for KEITH MOORE 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 KEITH MOORE, 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 compensation payable hereunder, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

14.0 Binding Authority. Each person signing this Agreement individually warrants and represents 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 regarding any interpretation of this Agreement.

17.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits are fully incorporated herein by reference for all purposes.

18.0 No 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. The Parties acknowledge that each 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.

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 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 Parties and supersedes all prior negotiations, representations or agreements, either written or oral.

23.0 Attorney's Fees. The prevailing party in any suit related to this Agreement 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 indicated herein.

ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA

BY: _____ Date _____
JUNE WHITE
TOWN CLERK

BY: _____ Date _____
CONSTANCE HOFFMANN
TOWN MANAGER

APPROVED AS TO FORM:

SUSAN L. TREVARTHEN
TOWN ATTORNEY Date _____

JAPAN KARATE-DO GENBU OF FLORIDA, INC

BY: Keith Moore Date 10/29/10
KEITH MOORE

Kathleen S. Margolis Date 10/29/10
Witness

Kathleen S. Margolis
Print Name

STATE OF FLORIDA

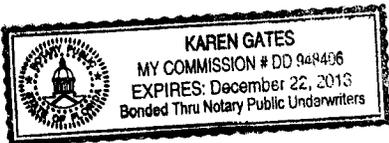
COUNTY OF BROWARD

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Keith Moore as DIRECTOR 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 said corporation for the use and purposes mentioned herein and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He is personally known to me or has produced D/L as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal in the State and County aforesaid on this 29 day of October, 2010

My Commission Expires: 12/22/2013

Karen Gates
NOTARY PUBLIC



ATTACHMENT A

SCOPE OF WORK:

Name of Class: Juniors, ages 7-12, (Group) Martial Arts Lessons
Adult (Group) Martial Arts Lessons

Responsibilities: Communicate scheduling with Town Manager

Day and Time: Fridays: Adults-2-3pm, Juniors -3:15-4:15pm

Each session will include four one-hour classes with the first session in 2010 commencing November 19th. The schedule will be submitted to Town at a minimum of 2 weeks in advance of the first class in each session and requires approval by Town Manager.

Participant registration fee:

\$70 per one-hour class session. Registration fee can be prorated for late registration.

Special Promotions:

The Town will allow special rate promotions limited to the first two sessions in the interest of increasing participation in the program. The special promotion proposal will be submitted by Keith Moore to the Town no less than 2 weeks in advance of first class in each session and can only be implemented with prior approval by the Town Manager.

Location: Jarvis Hall, unless otherwise specified by Town Manager

PAYMENTS:

Fee paid to Keith Moore: 80% of fees collected

Keith Moore shall submit an invoice to Town based on session registration.

Payment by Town shall be made for each session within 14 calendar days after receipt of and approval of invoice by Town Manager.