

ROSSMOOR

COMMUNITY SERVICES DISTRICT



Special Meeting of the Board Agenda Package

SEPTEMBER 6, 2016

PUBLIC COPY

CALL AND NOTICE OF A SPECIAL MEETING

TO THE MEMBERS OF THE BOARD OF DIRECTORS OF THE ROSSMOOR COMMUNITY SERVICES DISTRICT:

NOTICE IS HEREBY GIVEN that the President has called a Special Meeting of the Board to be held in the Rush Park Auditorium, 3021 Blume Drive, Rossmoor, California at 7:00 p.m. on Tuesday, September 6, 2016 for the purposes of convening an open session of the Board. The agenda for the meeting is set forth below:

**AGENDA
BOARD OF DIRECTORS
ROSSMOOR COMMUNITY SERVICES DISTRICT**

SPECIAL MEETING

Rush Park Auditorium
3021 Blume Dr.
Rossmoor, California
**Tuesday, September 6, 2016
7:00 p.m.**

A. ORGANIZATION

1. CALL TO ORDER: 7:00 p.m.
2. ROLL CALL: Directors Casey, Maynard,
President DeMarco
Director Kahlert had an excused absence
3. PLEDGE OF ALLEGIANCE

B. CONSENT CALENDAR

1. MINUTES
 - a. Regular Board Meeting of August 9, 2016.

C. SPECIAL AGENDA:

1. BOARD VACANCY: DISCUSSION AND POSSIBLE ACTION RE: RESIGNATION OF DIRECTOR DAVE BURGESS AND APPROVE THE PROCESS FOR SELECTING A CANDIDATE FOR EITHER ELECTION OR APPOINTMENT TO THE RCSD BOARD.
2. APPROVE RENEWAL OF CONTRACT SERVICES AGREEMENT—HAPPY HOUR FIT CLUB BOOT CAMP AT ROSSMOOR PARKS
3. APPROVE RENEWAL CONTRACT SERVICES AGREEMENT—LONG BEACH BOOT CAMP AT RUSH PARK
4. APPROVE RENEWAL CONTRACT SERVICES AGREEMENT—LINDSEY MARKS SOFTBALL AT RUSH PARK

E. RESOLUTIONS—None

F. CLOSED SESSION—None


G. ADJOURNMENT

It is the intention of the Rossmoor Community Services District to comply with the Americans With Disabilities Act (ADA) in all respects. If, as an attendee or participant at this meeting, you will need special assistance beyond what is normally provided, the District will attempt to accommodate you in every reasonable manner. Please contact the District Office at (562) 430-3707 at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

CERTIFICATION OF POSTING

I hereby certify that the attached Agenda for the September 6, 2016, 7:00 p.m. Special Meeting of the Board of Directors of the Rossmoor Community Services District was posted at least 24 hours prior to the time of the meeting.

ATTEST:



James D. Ruth
General Manager

Date September 1, 2016

ROSSMOOR COMMUNITY SERVICES DISTRICT

AGENDA ITEM B-1a.

Date: September 6, 2016
To: Honorable Board of Directors
From: General Manager
Subject: MINUTES: REGULAR MEETING OF AUGUST 9, 2016

RECOMMENDATION:

Approve the Minutes of the Regular Meeting of August 9, 2016 as prepared by the Board's Secretary/General Manager.

BACKGROUND:

The report reflects the actions of the Board at their meeting of August 9, 2016 Meeting of the Board as recorded by the Board's Secretary/General Manager.

ATTACHMENTS:

1. Minutes-Regular Meeting of August 9, 2016 Prepared by the Board's Secretary/General Manager.



**MINUTES
BOARD OF DIRECTORS
ROSSMOOR COMMUNITY SERVICES DISTRICT**

REGULAR MEETING

RUSH PARK
3021 Blume Drive
Rossmoor, California

Tuesday, August 9, 2016

A. ORGANIZATION

1. CALL TO ORDER: 7:00 P.M.

- 2. ROLL CALL:** Directors Burgess, Casey, Maynard
President DeMarco
Director Kahlert had an excused absence

3. PLEDGE OF ALLEGIANCE

4. PRESENTATIONS: Orange County Sheriff Lt. Robert Gunzel re: Quarterly Crime Statistics

Lt. Robert Gunzel reported to the Board on the latest community crime statistics. He reported that, although there were still occurrences of burglaries and vehicle theft, crime was down overall.

The General Manager stated that the Sheriff's Department was doing a commendable job and was Always very responsive to the needs of the District and the community. The report was received and filed.

B. ADDITIONS TO AGENDA—None

C. PUBLIC FORUM:

Kevin Pearce had comments relative to the LA Fitness Center project. He opined that despite the community's victory against the developer, the issue was not over and the community needed to remain alert. He also opined relative to traffic and the RCSD's role in mitigating Rossmoor's traffic concerns. He concluded that it was in the community's best interest to do a traffic study.

Owen Pearce reported that his Eagle Scout Project had been completed and provided an overview of his accomplishments. He stated that he had raised \$2,343 with the Boy Scout Garage Sale and Spaghetti Fundraiser. The only portion of the project still pending was the signage and plant identifiers.

Mary Holzgang inquired as to why the Tetherball Court had been removed and requested that it be reinstalled at Kempton Park.

D. REPORTS TO THE BOARD:

1. QUARTERLY STATUS REPORT

The General Manager reported to the Board on the status of the District's Quarterly Goals and Objectives. Park Superintendent Omero Perez reported to the Board regarding the District's Maintenance and Operations Program. Discussion ensued relative to new drought restrictions and the status of various public works projects. The report was received and filed.

2. QUARTERLY RECREATION REPORT

Recreation Superintendent, Chris Argueta reported to the Board on the quarterly status of the District's Recreation Program. Discussion ensued relative to a recap of the Rossmoor Community Festival, a successful summer events program, the beginning of a new school year and the need for storage solutions at Rossmoor Park to accommodate the District's first year tenants: The Children's Garden Preschool R.A.S.C.A.L.S. after school program. The report was received and filed.

3. QUARTERLY TREE REPORT

District Tree Consultant, Mary Kingman reported to the Board on the status of the District's Urban Forest Program. The report was received and filed.

E. CONSENT CALENDAR:

DIRECTOR BURGESS REQUESTED THAT ITEM E-2 REVENUE AND EXPENDITURE REPORT BE PULLED FROM THE CONSENT CALENDAR.

1a. MINUTES REGULAR BOARD MEETING—July 13, 2016

Motion by Director Burgess seconded by Director Casey to approve Items E-1a. Minutes of July 13, 2016 on the Consent Calendar as submitted. Motion passed 3-1 with President DeMarco abstaining from the vote as he did not attend the July 13, 2016 Board Meeting.

2. REVENUE AND EXPENDITURE REPORT—May 2016

Director Burgess had questions and comments relative to the report.

Motion by Director Burgess seconded by Director Casey to approve Items E-2, Revenue and Expenditure Report on the Consent Calendar as submitted. Motion passed 4-0.

F. PUBLIC HEARING—None

G. RESOLUTIONS—None

ORDINANCES—None

H. REGULAR CALENDAR:

1. APPROVE THE RECOMMENDATIONS OF THE CIP COMMITTEE FOR PURCHASE OF A NEW DISTRICT TRUCK.

Recommendation to receive, approve and/or modify the recommendation of the Public Works/CIP Committee and provide direction regarding the purchase of the District’s new vehicle.

Lengthy discussion ensued relative to the three truck choices presented and whether or not they were comparable in size, features and functionality. Director Burgess inquired as to why the District didn’t just pay cash. District Accountant Kathy Bell replied that attractive 0% financing options were available and it was wiser and more preferable to leverage those options than pay cash. Director Maynard concurred and stated that the truck purchase had already been approved in policy at previous board and CIP Committee Meetings. President DeMarco concurred and inquired if mileage factored in to the selection. Park Superintendent Omero Perez replied that there wasn’t much difference between the various models.

Motion by Director Maynard, seconded by Director Burgess to authorize the General Manager to purchase a new District truck for a price not to exceed \$33,000. Motion passed 4-0.

2. APPROVE EXTENDED HOURS REQUEST FOR USE OF RUSH PARK FOR ANNUAL SCHOOL GHOUL 5K RUN: GUS QUINONEZ.

Recommendation to approve the extended hours request for the use of Rush Park for the annual School Ghoul 5K Run. Discussion ensued relative to the hours, County permitting requirements and neighborhood impact and notifications. Chris Argueta stated that, as in past years, the event was successfully run by Gus Quinonez and his team and he did not foresee any issues.

Motion by Director Maynard, seconded by Director Burgess to approve Gus Quinonez’s extended hours request for the use of Rush Park for the Annual School Ghoul 5K Run. Motion passed 4-0.

I. GENERAL MANAGER ITEMS:

The General Manager reported that this morning he had been informed by Seal Beach City Manager, Jill Ingram, that the developer of the property at the Shops at Rossmoor withdrew his proposal at the City Council Meeting on Monday, August 7th. By withdrawing his project the City Council then did not take action on the proposed resolution to deny the project. It was his understanding that the developer is taking into consideration a counter proposal, the specifics of which are unknown at this time. It is also his understanding that the developer can't resubmit the identical proposal which has been under consideration but must address the issues raised in the public hearings to date. In summary, the project is not dead and depending on the developer’s intentions, he can resubmit a new proposal at any time in the future. Had the City Council taken an action to deny the appeal, the developer wouldn't have been allowed to submit a new proposal for one year. The General Manager stated that he would keep the Board and community apprised as new information evolves. Discussion ensued relative to the General Manager’s report. President DeMarco stated that the developer would still be mandated to address the issues raised by the community in his next project proposal. The General Manager agreed. The report was received and filed.

J. BOARD MEMBER ITEMS:

Director Casey stated that although he was pleased about the denial of the LA Fitness Health Club Project, he cautioned the community to remain vigilant. He had knowledge of at least one Seal Beach City Council Member who was in favor of adding low income housing to the Shops at Rossmoor Center and there was concern that the proposal could be revived. He concluded that something was going to be built in that spot, and encouraged residents to stay tuned and on top of the issue. He thanked the staff for their excellent reports to the board.

Director Maynard thanked Lieutenant Robert Gunzel for his crime report and reminded residents to sign up on the District website for a free vacation home check to help prevent future burglaries. He thanked Kevin Pearce for his comments on the traffic and Owen Pearce for his fundraising efforts toward the Eagle Scout Project at Kempton Park. He thanked Director Burgess for his volunteer efforts at Kempton Park and Director Kahlert for being a former Eagle Scout. Finally, he thanked President DeMarco for spearheading the effort to improve the lighting on Montecito Road. He encouraged the community to attend the August 19th Concert/Movie Two-For-One event. Due to the high turnout at the events, the Sheriff will be present to ensure public safety. Finally, as a designated Tree City USA, he reminded Rossmoor residents to water and care for their parkway trees, even during the drought. A slow drip would be more than sufficient.

President DeMarco began by commending Rossmoor Town Homes Margaret Parker, Susan Taylor and all the citizen activists involved in preventing the proposed LA Fitness Health Club project from being constructed in the Shops at Rossmoor. He stated that despite the limitations on the ability of the District's involvement due to legal restrictions, the community did a remarkable job advocating for their neighbors, rose to the occasion. The citizens prevailed against considerable odds. On behalf of the Board he thanked them for their efforts. President DeMarco also thanked Eagle Scout Project participant Owen Pearce for his outstanding garden project at Kempton Park. He added that he was looking forward to the completion of the Rush Park Canopy Project. He thanked Director Maynard for his comments regarding the Montecito Road Lighting Project, and added that he hoped to see the new higher wattage bulbs installed by winter. Finally, he reminded everyone to attend the final Movie/Concert event of the Summer, featuring the King Salmon Band and Zootopia.

K. CLOSED SESSION—None

L. ADJOURNMENT:

Motion by Director Casey, seconded by Director Burgess to adjourn the regular meeting at 9:00 p.m.
Motion passed 4-0.

SUBMITTED BY:

James D. Ruth
General Manager

ROSSMOOR COMMUNITY SERVICES DISTRICT

AGENDA ITEM C-1

Date: September 6, 2016

To: Honorable Board of Directors

From: General Manager

Subject: BOARD VACANCY: DISCUSSION AND POSSIBLE ACTION RE:
PROCESS TO FILL BOARD VACANCY BY APPOINTMENT.

RECOMMENDATION:

Approve the process for selecting a candidate to fill board vacancy by appointment to the RCSD Board of Directors.

BACKGROUND:

On August 27, 2016, Director Dave Burgess submitted his formal resignation to the General Manager and Board of Directors. His resignation effective date was August 29, 2016.

California Government Code section 1780(a) requires the Board within 60 days of the effective date of the resignation to either call for an election or appoint a new director to fill the vacancy. Policy 4040.21 Director Vacancy, governs the procedure to be followed in the case of a director vacancy. However, 4040.21 was last updated in 2006. Since that time, Government Code section 1780 was amended by the legislature. The provisions of Government Code section 1780(a)-(e) will control. In short, the Board's options are to: 1) appoint a Director to fill former Director Burgess' unexpired term; or 2) call an election within 60 days of being notified of the vacancy. If the Board chooses to call an election, the election will have to be on the next election date that is 130 or more days after the date the Board calls the election - i.e., it cannot be held this November. Should the Board agree with staff's recommendation to appoint a successor rather than call for an election a Notice of Vacancy will be posted.

The Notice of Vacancy will be posted at three conspicuous places in the District as required (for more than 15 days) and published in local newspapers. The Notice requested that any interested person, who is a resident and registered voter within the boundaries of the Rossmoor Community Services District, submit a letter of interest and/or resume setting forth a brief summary of the person's interest, qualifications and background. A deadline for submitting a letter of interest and/or resume was no later than 5:00 p.m. on Friday, October 28, 2016. Once residents respond with an letter of interest and resume to the General Manager we will

place the item and those candidates qualified for the position on the November 1, 2016 agenda for consideration and selection by the Board.

ATTACHMENTS:

1. Notice of Board Vacancy
2. Oath of Office.
3. Policy No. 4040 Terms of Office for Board Officers and Directors.

**NOTICE OF VACANCY
ON THE
BOARD OF DIRECTORS OF THE
ROSSMOOR COMMUNITY SERVICES DISTRICT**

Please take notice that Director Dave Burgess has resigned from the Board of Directors of the Rossmoor Community Services District effective August 29, 2016. There is now a future vacancy on the Board of Directors.

Pursuant to Government Code Section 1780, the Board of Directors may, within 60 days of August 29, 2016, appoint a successor for the office of Director.

A person appointed to the office of Director must be a resident and registered voter within the boundaries of the Rossmoor Community Services District.

Anyone interested in being appointed is required to submit a letter of interest and/or a resume setting forth a brief summary of the person's interest, qualifications, and background. Letters of interest and/or resumes should be personally delivered, emailed or mailed to the District offices so that they are received at the District offices no later than 5:00 p.m. on Friday, October 28, 2016. Letters of interest and/or resumes should be emailed to: ideering@rossmoor-csd.org or hand delivered or mailed to the following address:

James D Ruth, General Manager
Rossmoor Community Services District
3001 Blume Drive
Rossmoor, CA 90720

Dated: August 29, 2016

OATH OF OFFICE

I (State your name), do solemnly swear or affirm
that I will support and defend
the Constitution of the United States
and the Constitution of the State of California
against all enemies, foreign and domestic;
that I will bear true faith and allegiance
to the Constitution of the United States
and the Constitution of the State of California;
that I take this obligation freely,
without any mental reservation or purpose of
evasion;
and that I will well and faithfully discharge the
duties
upon which I am about to enter.

Rossmoor Community Services District

Policy

No. 4040

TERMS OF OFFICE FOR BOARD OFFICERS AND DIRECTORS

4040.10 Board Officers: The officers of the Board of Directors of the Rossmoor Community Services District shall be the President, First Vice-President and Second Vice-President.

4040.11 Term of Office: The term for Board officers shall be one year. Elections for these officers shall take place at the first Board meeting in January for the succeeding year. Officers shall serve until their successors are elected, or they resign, die or illness prevents further service as an officer.

4040.12 Officer Vacancy: If a Director elects to resign as an officer, he/she should immediately send a signed letter of resignation as an officer with an effective date to the General Manager or Board President who upon receipt of the letter will immediately notify all other members of the Board. Announcement of the resignation and replacement of the officer shall be done at the next regular meeting of the Board or as soon thereafter as possible.

4040.20 Board of Directors: The term of office for individual Directors is four (4) years. Normally, two or three Directors are elected in November of even-numbered years, and each Director takes office on the first Friday of December (Cal. Govt. Code section 61042).

4040.21 Director Vacancy: If a Director elects to resign from the Board, he/she should immediately send a signed letter of resignation with an effective date to the President and General Manager who will immediately notify all other members of the Board. At the next meeting any vacancy on the Board created by a resignation, illness or death of a Director will be made public by the General Manager or the President. The Board shall determine if the vacancy is to be filled by a Board appointment or a public election within sixty (60) days of receiving the letter of resignation or the effective date, whichever is later. If a vacancy is to be filled by Board appointment, a Notice of Vacancy is to be posted at least fifteen (15) days before appointment is made at the next Board meeting, and if by election, the General Manager is to notify the Orange County Registrar of Voters within sixty (60) days of the resignation date. If appointment is made, the Registrar of Voters is to be notified within fifteen days (Cal. Govt. Code sections 1780(a) and 61225).

Adopted: December 8, 1993
 Amended: October 17, 2000
 Approved Renumbering & Format: October 8, 2002
 Reaffirmed: March 11, 2003
 Amended: April 13, 2004
 Amended: First Reading - May 9, 2006
 Amended: Second Reading and Approval - August 8, 2006

ROSSMOOR COMMUNITY SERVICES DISTRICT

AGENDA ITEM C-2

Date: September 13, 2016
To: Honorable Board of Directors
From: General Manager
Subject: CONTRACT SERVICES AGREEMENT-HAPPY HOUR FIT CLUB BOOT CAMP AT ROSSMOOR PARKS

RECOMMENDATION:

Authorize General Manager to execute the first of two one-year extended term agreements contract with Happy Hour Fit Club Boot Camp at Rossmoor Parks.

BACKGROUND:

For the past year the District has had a Professional Services Agreement with Ms. Kerrie DaVannon for the provision of operating a for profit, Happy Hour Fitness Boot Camp at Rossmoor Parks. At your September 8, 2015 Board meeting, the Board approved a new contract services Agreement with Mrs. DaVannon.

Mrs. DaVannon has been in full compliance with the terms of her initial one-year Agreement and she is requesting a renewal of her Agreement for the first of one-year Extended Terms. General Counsel has prepared the one-year Extended Term Agreement which is attached.

ATTACHMENTS:

1. One Year Extended Term Agreement: Happy Hour Fit Club.

ROSSMOOR COMMUNITY SERVICES DISTRICT

PARK USE AGREEMENT

KERRIE DAVANNON: HAPPY HOUR FIT CLUB INSTRUCTOR

This Park Use Agreement (“AGREEMENT”) is made and entered into this 6th day of September, 2016 by and between Rossmoor Community Services District (“DISTRICT”), and Kerrie DaVannon (“USER”). The DISTRICT and USER are sometimes referred to in this AGREEMENT, each individually as a “Party,” or collectively, as the “Parties.”

RECITALS

WHEREAS, the Rossmoor Community Services District is a public agency authorized to own, operate, maintain and repair parks and facilities for public recreation;

WHEREAS, the DISTRICT has the authority to establish fees or other charges for use of the two parks operated by the DISTRICT;

WHEREAS, the DISTRICT is establishing a new fee structure for entities that use Rossmoor parks that are for-profit businesses providing exercise classes and coaching services for a fee;

WHEREAS, USER has established an exercise program for the benefit of its members, the majority of whom are residents of Rossmoor;

WHEREAS, USER has operated its exercise programs over the past three years primarily in Rossmoor Parks;

WHEREAS, USER is a for-profit business that charges its members a fee for its services;

WHEREAS, The DISTRICT and USER have mutual interest in continuing to provide exercise programs and offering them to the residents of Rossmoor and other individuals;

WHEREAS, USER desires to continue providing such exercise programs on the terms and conditions set forth in this Agreement.

WHEREAS, The DISTRICT desires to enter into this Agreement for the non- exclusive use of District parks;

NOW, THEREFORE, DISTRICT AND USER AGREE AS FOLLOWS:

1. USE

- 1.1 USER may use the Rossmoor parks as specified in Exhibit A, Use of Parks, for the provision and administration of outdoor softball instruction and related activities subject to approval by the DISTRICT’s Board of Directors.

- 1.2 USER promises and agrees to furnish all labor, materials, tools, equipment, and services necessary to fully and adequately perform its fitness programs. USER shall be responsible for offering, scheduling, and conducting all the outdoor fitness program activities set forth in Exhibit A, Use of Parks, attached hereto.
- 1.3 USER assumes all risk of loss, damage, or harm to such equipment or materials arising in connection with the provisions of such services.
- 1.4 USER is not allowed to distribute and/or sell personal items or equipment.

2. AGREEMENT

- 2.1 DISTRICT grants the USER a non-exclusive permit to utilize District property in accordance with the Use of Parks specified in Exhibit A, attached hereto, and the terms and conditions set forth herein below. The USER shall not use the facilities in any manner contrary to the terms of this AGREEMENT without DISTRICT's prior written consent.
- 2.2 No legal title or leasehold interest in the Facilities is created or vested by the USER by this AGREEMENT.
- 2.3 DISTRICT agrees that the fee charged USER under this AGREEMENT will be the same as those applied to all similar for-profit entities that charge a fee for the same or similar services in Rossmoor parks. For clarification, this provision will specifically apply to individuals or organizational entities that provide guided exercise classes for individuals or groups on a fee-for-service basis and are other than not-for-profit organizations. Further, if any such entity is charged a lower fee, USER will be subject to equal fee rates.

3. TERM & TERMINATION

- 3.1 The initial term of the USER permit shall be from September 6, 2016 to September 6, 2017.
- 3.2 Prior to the expiration of the initial term or an additional term, this Agreement may be extended for up to two (2) additional one (1) year terms in the sole discretion of the District General Manager, provided USER is in compliance with all of the provisions of this AGREEMENT.
- 3.3 The initial term or any additional term may be terminated by DISTRICT upon giving 30 days written notice to USER.
- 3.4 This Agreement, and the permit granted hereunder, may be terminated by the DISTRICT based upon a breach of any of the terms and conditions of this Agreement by the USER. DISTRICT will provide USER notice of the breach and be given five days to cure the breach before termination becomes effective.

3.5 **Termination by USER.** USER may terminate this Agreement upon giving 30 days written notice to DISTRICT. This Agreement is not transferable or assignable by USER to any other person or entity without the prior written consent of DISTRICT.

4. **SERVICES OF USER**

4.1 USER agrees to the following:

- a. USER will provide all required personnel and be responsible for the supervision of their class(es). USER will furnish all necessary and appropriate equipment and materials.
- b. USER is responsible for the care of all DISTRICT owned equipment and property utilized by the USER. In the event the District's equipment and property are made available through Joint-Use Agreements, USER shall be responsible for the care and proper use of said items.
- c. DISTRICT is not obligated to provide for storage for any USER owned goods, equipment, or materials. In the event that storage is made available, DISTRICT is not responsible for theft, damage, loss, fire, or other event that may cause damage to USER property.

4.2 **Standard of Performance.** USER agrees that all exercise classes shall be performed in a competent, professional, manner, and that all goods, materials, equipment or personal property used in the classes shall be of good quality, fit for the purpose intended.

4.3 **USER** stipulates that he/she is trained and qualified to teach or conduct courses.

4.4 **Professionalism.** USER agrees to treat parks patrons, passersby, DISTRICT staff and agents with respect and act in a professional manner. Inappropriate conduct or attitude towards any of the above may result in termination of this agreement.

4.5 **Facility Availability.** USER agrees that the DISTRICT cannot guarantee park location and assignment of such. Assignments are determined based on availability of each facility and class size.

5. **COMPENSATION:** USER may charge fees for Services rendered under this AGREEMENT as follows:

5.1 USER shall be solely responsible for imposing and collecting all fees charged for its fitness classes.

5.2 USER shall not be entitled to expense reimbursements or any other amounts in connection with performance of this AGREEMENT.

- 5.3 USER shall be responsible for registration of participants, refund processing, and marketing for all classes and programs.
- 5.4 The DISTRICT has the right to observe any instructional class conducted by USER at no charge.

6. INDEPENDENT USER

- 6.1 USER shall perform all activities described herein as an independent USER of DISTRICT's facilities and shall remain at all times wholly independent of the DISTRICT.
- 6.2 DISTRICT shall not in any way or for any purpose become or be deemed to be a partner of USER in its business or otherwise, or a joint venturer, or a member of any joint enterprise with USER.
- 6.3 USER shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of DISTRICT. Neither USER nor any of USER's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the DISTRICT; and neither USER nor any of its employees shall be paid by DISTRICT time and one-half for working in excess of forty (40) hours in any one week.
- 6.4 DISTRICT is under no obligation to withhold State and Federal tax deductions from USER's compensation. Neither USER nor any of USER's employees shall have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

7. USE OF PREMISES

- 7.1 **Schedule of Use.** USER shall comply with the Use of Parks attached in Exhibit A. DISTRICT reserves the right to use, sublease, or issue permits for areas of the Rossmoor parks to third parties. USER is aware and acknowledges that the Schedule of Use is subject to change with 15 days notice to meet the scheduling and maintenance needs of the DISTRICT and agrees to indemnify and hold DISTRICT harmless for any such changes to the Schedule of Use.
- 7.2 **No Unlawful Uses.** USER shall only be permitted to use the Premises for instructional service activities and programs and USER agrees not to use the Premises for any immoral or unlawful purpose.
- 7.3 **Preservation of Insurance.** USER shall not commit any acts on the facilities, nor use the facilities in any manner that will cause the cancellation of any fire, liability, or other insurance policy insuring the facilities or the improvements on the facilities.

- 7.4 **No Waste or Nuisance.** USER shall not commit any waste or any public or private nuisance upon the facilities.
- 7.5 **Legal Compliance.** USER shall not violate any federal, state, or District law, rule, regulation or order of court that may be applicable to the use of the Premises.

8. INDEMNIFICATION

- 8.1 USER shall indemnify, defend (with counsel approved by DISTRICT), and hold harmless DISTRICT, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in any way connected with fitness classes and/or USER's use of District property hereunder or USER's failure to comply with any of its obligations continued in this Agreement, regardless of DISTRICT's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the DISTRICT. Should DISTRICT in its sole discretion find USER's legal counsel unacceptable, then USER shall reimburse the District its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The USER shall promptly pay any final judgment rendered against the DISTRICT (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.
- 8.2 The requirements as to the types and limits of insurance coverage to be maintained by USER as required by Section 9, below and any approval of said insurance by District are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by USER pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

9. MISCELLANEOUS

- 9.1 **Entire Agreement.** This Agreement, dated September 6, 2016 contains the entire agreement between the parties hereto with respect to the subject matter hereof, and any other purported agreement made shall be ineffective to change, modify, discharge or effect an abandonment of this AGREEMENT in whole or in part unless such purported agreement is in writing and signed by the party against whom enforcement is sought.
- 9.2 **Applicable Law.** This AGREEMENT shall be governed and interpreted in accordance with the laws of the State of California.

- 9.3 **No Brokers.** Each party represents to the other that it has not engaged or used the services of any broker, finder, or salesperson in connection with this AGREEMENT.
- 9.4 **Counterparts.** This AGREEMENT may be executed in multiple counterparts each of which shall be deemed an original for all purposes.
- 9.5 **The Individuals Signing this Agreement.** Individuals Represent and warrant that they have the right, power, and authorization to bind their respective entities to the terms of the AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DISTRICT:

General Manager
3001 Blume Drive
Rossmoor, CA 90720
Rossmoor Community Services District

By: _____
Kerrie DaVannon

By: _____

Exhibit A: Use of Parks

I. USER Classes

A. USER will provide instructional services for outdoor athletic instruction for up to eleven, one-hour classes per week as set forth on the schedule below. The average size of the classes will not exceed fifteen.

Time	Monday	Tuesday	Wednesday	Thursday	Friday
8:45 am	Rush Park	Rush Park	Rush Park	Rush Park	Rossmoor Park
10:00 am	Rush Park		Rush Park		Rossmoor Park
1:45 pm			Rush Park (kids)*		
5:00 pm	Rush Park*			Rush Park*	

B. DISTRICT agrees to make available to the USER designated space in its parks according to the schedule and the attached diagram.

C. DISTRICT and USER will meet regularly to modify the intended schedule and designate specific areas of the park for each class held by USER.

1. Requests for additional dates and/or hours of use shall be submitted within 30 days of request. Additional requests may require authorization by the General Manager and/or approval of the Board.
2. DISTRICT may modify the schedule in response to unforeseen circumstances with as much notification to USER as possible.

D. Neither DISTRICT nor USER may modify the schedule or location of the classes without giving the other party 15-days notice.

E. DISTRICT will provide USER with the schedule and location of all maintenance so that USER may avoid interference.

F. USER will maintain a record of the time, location and the number of participants for each class held by USER on DISTRICT parks. USER will submit a summary report of this data to DISTRICT each quarter.

II. USER FEES

- A. Hourly use charge of \$10.00 per hour paid within 15 days of the end of each quarter.

III. USE OF DISTRICT PROPERTY

Any violations of the following regulations may result in Termination of Agreement:

- A. Equipment provided by USER may not exceed 25 pounds in weight.
- B. Park equipment and installations may not be used for exercise activity including, but not limited to light poles, drinking fountains, bleachers, picnic tables, benches, railings, chain link fencing, trees, freestanding signs, bike racks, and barbeque grills.
 - 1. The only exception is for equipment designed for adult exercising.
 - 2. Adults may not exercise on playground equipment.
 - 3. Class participants will be permitted to place personal belongings on the benches and participants are permitted to sit on the benches. However, DISTRICT will have no liability for loss or damage to personal belongings.
- C. Walkways, sidewalks and any public shared access areas may not be blocked or used by fitness classes.
- D. Temporary marking of hard surfaces with chalk or other informative materials is prohibited. Spray chalk may not be used on the grass
- E. DISTRICT acknowledges that music is an integral part of USER's exercise program. However, no music may be played at a volume that would be a nuisance to other users of the park or nearby residents, which shall be determined in the discretion of DISTRICT.
- F. Permit holders must display a District-issued name badge or display card, printed with photograph and name, at all times while conducting instruction, classes or camps.
- G. Permit holders shall follow staff instructions regarding locations in order to avoid damage to park facilities or turf areas, and to avoid interfering with maintenance schedules.
- H. Permit holders must be at least 50 feet from sidewalks, picnic areas, playgrounds, buildings, and other user groups.
- I. Instruction is not to take place before 7:00am or after 8:00pm (5:00pm during daylight savings)
- J. Classes will not be permitted on weekends, Saturdays, or holidays.

IV. PARTICIPANT WAIVER

Each participant must sign a waiver, the form of which is included below, and maintained by USER in a file.

RELEASE, HOLD HARMLESS AND AGREEMENT NOT TO SUE

I hereby release, discharge and agree not to sue Rossmoor Community Services District, including its officers, employees, and agents, (hereinafter the "District") for any injury, death or damage to or loss of personal property arising out of, or in connection with, my and/or my child's participation in the Happy Hour Fit Club Program from whatever cause, including the active or passive negligence of the District or any other participants in the Happy Hour Fit Club Program. The parties to this agreement understand that this document is not intended to release any party from any act or omission of "gross negligence," as that term is used in applicable case law and /or statutory provision. In consideration of being permitted to participate in the Happy Hour Fit Club Program I hereby agree, for myself, my heirs, administrator, executors and assigns, that I shall defend, indemnify and hold harmless the District from any and all claims, demands, actions or suits arising out of or in connection with my and/or my child's participation in the Happy Hour Fit Club Instruction Program.

I HAVE CAREFULLY READ THIS RELEASE, HOLD HARMLESS AND AGREEMENT NOT TO SUE AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT IT IS A FULL RELEASE OF ALL LIABILITY AND SIGN OF MY OWN FREE WILL.

PARTICIPANT:

(Please Sign)

By: _____

(Please Print)

Name & Title: _____

(Please Print)

ROSSMOOR COMMUNITY SERVICES DISTRICT

AGENDA ITEM C-3

Date: September 13, 2016
To: Honorable Board of Directors
From: General Manager
Subject: CONTRACT SERVICES AGREEMENT-LONG BEACH BOOT CAMP AT
ROSSMOOR PARKS

RECOMMENDATION:

Authorize General Manager to execute the first of two one-year extended term agreements contract with Long Beach Boot Camp at Rossmoor Parks.

BACKGROUND:

For the past year the District has had a Professional Services Agreement with Long Beach Boot Camp for the provision of for-profit, exercise instruction boot camp at Rossmoor Parks.

Long Beach Boot Camp has been in full compliance with the terms of its initial one-year Agreement and is requesting a renewal of its Agreement for the first of one-year Extended Terms. General Counsel has prepared the one-year Extended Term Agreement which is attached.

ATTACHMENTS:

1. One Year Extended Term Agreement: Long Beach Boot Camp.

ROSSMOOR COMMUNITY SERVICES DISTRICT

PARK USE AGREEMENT

LONG BEACH BOOT CAMP

This Park Use Agreement (“AGREEMENT”) is made and entered into this 6th day of September, 2016 by and between Rossmoor Community Services District (“DISTRICT”), and Shannon Paul, Long Beach Boot Camp (“USER”). The DISTRICT and USER are sometimes referred to in this AGREEMENT, each individually as a “Party,” or collectively, as the “Parties.”

RECITALS

WHEREAS, the Rossmoor Community Services District is a public agency authorized to own, operate, maintain and repair parks and facilities for public recreation;

WHEREAS, the DISTRICT has the authority to establish fees or other charges for use of the two parks operated by the DISTRICT;

WHEREAS, the DISTRICT is establishing a new fee structure for entities that use Rossmoor parks that are for-profit businesses providing exercise classes and coaching services for a fee;

WHEREAS, USER has established an exercise program for the benefit of its members, the majority of whom are residents of Rossmoor;

WHEREAS, USER has operated its exercise programs over the past three years primarily in Rossmoor Parks;

WHEREAS, USER is a for-profit business that charges its members a fee for its services;

WHEREAS, The DISTRICT and USER have mutual interest in continuing to provide exercise programs and offering them to the residents of Rossmoor and other individuals;

WHEREAS, USER desires to continue providing such exercise programs on the terms and conditions set forth in this Agreement.

WHEREAS, The DISTRICT desires to enter into this Agreement for the non- exclusive use of District parks;

NOW, THEREFORE, DISTRICT AND USER AGREE AS FOLLOWS:

1. USE

- 1.1 USER may use the Rossmoor parks as specified in Exhibit A, Use of Parks, for the provision and administration of outdoor softball instruction and related activities subject to approval by the DISTRICT’s Board of Directors.

- 1.2 USER promises and agrees to furnish all labor, materials, tools, equipment, and services necessary to fully and adequately perform its fitness programs. USER shall be responsible for offering, scheduling, and conducting all the outdoor fitness program activities set forth in Exhibit A, Use of Parks, attached hereto.
- 1.3 USER assumes all risk of loss, damage, or harm to such equipment or materials arising in connection with the provisions of such services.
- 1.4 USER is not allowed to distribute and/or sell personal items or equipment.

2. AGREEMENT

- 2.1 DISTRICT grants the USER a non-exclusive permit to utilize District property in accordance with the Use of Parks specified in Exhibit A, attached hereto, and the terms and conditions set forth herein below. The USER shall not use the facilities in any manner contrary to the terms of this AGREEMENT without DISTRICT's prior written consent.
- 2.2 No legal title or leasehold interest in the Facilities is created or vested by the USER by this AGREEMENT.
- 2.3 DISTRICT agrees that the fee charged USER under this AGREEMENT will be the same as those applied to all similar for-profit entities that charge a fee for the same or similar services in Rossmoor parks. For clarification, this provision will specifically apply to individuals or organizational entities that provide softball instruction for individuals or groups on a fee-for-service basis and are other than not-for-profit organizations. Further, if any such entity is charged a lower fee, USER will be subject to equal fee rates.

3. TERM & TERMINATION

- 3.1 The initial term of the USER permit shall be from September 6, 2016 to September 6, 2017.
- 3.2 Prior to the expiration of the initial term or an additional term, this Agreement may be extended for up to two (2) additional one (1) year terms in the sole discretion of the District General Manager, provided USER is in compliance with all of the provisions of this AGREEMENT.
- 3.3 The initial term or any additional term may be terminated by DISTRICT upon giving 30 days written notice to USER.
- 3.4 This Agreement, and the permit granted hereunder, may be terminated by the DISTRICT based upon a breach of any of the terms and conditions of this Agreement by the USER. DISTRICT will provide USER notice of the breach and be given five days to cure the breach before termination becomes effective.

3.5 **Termination by USER.** USER may terminate this Agreement upon giving 30 days written notice to DISTRICT. This Agreement is not transferable or assignable by USER to any other person or entity without the prior written consent of DISTRICT.

4. **SERVICES OF USER**

4.1 USER agrees to the following:

- a. USER will provide all required personnel and be responsible for the supervision of their class(es). USER will furnish all necessary and appropriate equipment and materials.
- b. USER is responsible for the care of all DISTRICT owned equipment and property utilized by the USER. In the event the District's equipment and property are made available through Joint-Use Agreements, USER shall be responsible for the care and proper use of said items.
- c. DISTRICT is not obligated to provide for storage for any USER owned goods, equipment, or materials. In the event that storage is made available, DISTRICT is not responsible for theft, damage, loss, fire, or other event that may cause damage to USER property.

4.2 **Standard of Performance.** USER agrees that all exercise classes shall be performed in a competent, professional, manner, and that all goods, materials, equipment or personal property used in the classes shall be of good quality, fit for the purpose intended.

4.3 **USER** stipulates that he/she is trained and qualified to teach or conduct courses.

4.4 **Professionalism.** USER agrees to treat parks patrons, passersby, DISTRICT staff and agents with respect and act in a professional manner. Inappropriate conduct or attitude towards any of the above may result in termination of this agreement.

4.5 **Facility Availability.** USER agrees that the DISTRICT cannot guarantee park location and assignment of such. Assignments are determined based on availability of each facility and class size.

5. **COMPENSATION:** USER may charge fees for Services rendered under this AGREEMENT as follows:

5.1 USER shall be solely responsible for imposing and collecting all fees charged for its fitness classes.

5.2 USER shall not be entitled to expense reimbursements or any other amounts in connection with performance of this AGREEMENT.

- 5.3 USER shall be responsible for registration of participants, refund processing, and marketing for all classes and programs.
- 5.4 The DISTRICT has the right to observe any instructional class conducted by USER at no charge.

6. INDEPENDENT USER

- 6.1 USER shall perform all activities described herein as an independent USER of DISTRICT's facilities and shall remain at all times wholly independent of the DISTRICT.
- 6.2 DISTRICT shall not in any way or for any purpose become or be deemed to be a partner of USER in its business or otherwise, or a joint venturer, or a member of any joint enterprise with USER.
- 6.3 USER shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of DISTRICT. Neither USER nor any of USER's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the DISTRICT; and neither USER nor any of its employees shall be paid by DISTRICT time and one-half for working in excess of forty (40) hours in any one week.
- 6.4 DISTRICT is under no obligation to withhold State and Federal tax deductions from USER's compensation. Neither USER nor any of USER's employees shall have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

7. USE OF PREMISES

- 7.1 **Schedule of Use.** USER shall comply with the Use of Parks attached in Exhibit A. DISTRICT reserves the right to use, sublease, or issue permits for areas of the Rossmoor parks to third parties. USER is aware and acknowledges that the Schedule of Use is subject to change with 15 days notice to meet the scheduling and maintenance needs of the DISTRICT and agrees to indemnify and hold DISTRICT harmless for any such changes to the Schedule of Use.
- 7.2 **No Unlawful Uses.** USER shall only be permitted to use the Premises for instructional service activities and programs and USER agrees not to use the Premises for any immoral or unlawful purpose.
- 7.3 **Preservation of Insurance.** USER shall not commit any acts on the facilities, nor use the facilities in any manner that will cause the cancellation of any fire, liability, or other insurance policy insuring the facilities or the improvements on the facilities.

- 7.4 **No Waste or Nuisance.** USER shall not commit any waste or any public or private nuisance upon the facilities.
- 7.5 **Legal Compliance.** USER shall not violate any federal, state, or District law, rule, regulation or order of court that may be applicable to the use of the Premises.

8. INDEMNIFICATION

- 8.1 USER shall indemnify, defend (with counsel approved by DISTRICT), and hold harmless DISTRICT, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in any way connected with fitness classes and/or USER's use of District property hereunder or USER's failure to comply with any of its obligations continued in this Agreement, regardless of DISTRICT's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the DISTRICT. Should DISTRICT in its sole discretion find USER's legal counsel unacceptable, then USER shall reimburse the District its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The USER shall promptly pay any final judgment rendered against the DISTRICT (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.
- 8.2 The requirements as to the types and limits of insurance coverage to be maintained by USER as required by Section 9, below and any approval of said insurance by District are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by USER pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

9. MISCELLANEOUS

- 9.1 **Entire Agreement.** This Agreement, dated September 6, 2016 contains the entire agreement between the parties hereto with respect to the subject matter hereof, and any other purported agreement made shall be ineffective to change, modify, discharge or effect an abandonment of this AGREEMENT in whole or in part unless such purported agreement is in writing and signed by the party against whom enforcement is sought.
- 9.2 **Applicable Law.** This AGREEMENT shall be governed and interpreted in accordance with the laws of the State of California.

- 9.3 **No Brokers.** Each party represents to the other that it has not engaged or used the services of any broker, finder, or salesperson in connection with this AGREEMENT.
- 9.4 **Counterparts.** This AGREEMENT may be executed in multiple counterparts each of which shall be deemed an original for all purposes.
- 9.5 **The Individuals Signing this Agreement.** Individuals Represent and warrant that they have the right, power, and authorization to bind their respective entities to the terms of the AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DISTRICT:

General Manager
3001 Blume Drive
Rossmoor, CA 90720
Rossmoor Community Services District

By: _____
Shannon Paul
Long Beach Boot Camp

By: _____

Exhibit A: Use of Parks

I. USER Classes

A. USER will provide instructional services for outdoor athletic instruction for up to eleven, one-hour classes per week as set forth on the schedule below. The average size of the classes will not exceed fifteen.

Time	Monday	Tuesday	Wednesday	Thursday	Friday
8:15 am-9:15 am	Rossmoor Park	Rossmoor Park	Rossmoor Park	Rossmoor Park	

B. DISTRICT agrees to make available to the USER designated space in its parks according to the schedule and the attached diagram.

C. DISTRICT and USER will meet regularly to modify the intended schedule and designate specific areas of the park for each class held by USER.

1. Requests for additional dates and/or hours of use shall be submitted within 30 days of request. Additional requests may require authorization by the General Manager and/or approval of the Board.
2. DISTRICT may modify the schedule in response to unforeseen circumstances with as much notification to USER as possible.

D. Neither DISTRICT nor USER may modify the schedule or location of the classes without giving the other party 15-days notice.

E. DISTRICT will provide USER with the schedule and location of all maintenance so that USER may avoid interference.

F. USER will maintain a record of the time, location and the number of participants for each class held by USER on DISTRICT parks. USER will submit a summary report of this data to DISTRICT each quarter.

II. USER FEES

- A. Hourly use charge of \$10.00 per hour paid within 15 days of the end of each quarter.

III. USE OF DISTRICT PROPERTY

Any violations of the following regulations may result in Termination of Agreement:

- A. Equipment provided by USER may not exceed 25 pounds in weight.
- B. Park equipment and installations may not be used for exercise activity including, but not limited to light poles, drinking fountains, bleachers, picnic tables, benches, railings, chain link fencing, trees, freestanding signs, bike racks, and barbeque grills.
 - 1. The only exception is for equipment designed for adult exercising.
 - 2. Adults may not exercise on playground equipment.
 - 3. Class participants will be permitted to place personal belongings on the benches and participants are permitted to sit on the benches. However, DISTRICT will have no liability for loss or damage to personal belongings.
- C. Walkways, sidewalks and any public shared access areas may not be blocked or used by fitness classes.
- D. Temporary marking of hard surfaces with chalk or other informative materials is prohibited. Spray chalk may not be used on the grass
- E. DISTRICT acknowledges that music is an integral part of USER's exercise program. However, no music may be played at a volume that would be a nuisance to other users of the park or nearby residents, which shall be determined in the discretion of DISTRICT.
- F. Permit holders must display a District-issued name badge or display card, printed with photograph and name, at all times while conducting instruction, classes or camps.
- G. Permit holders shall follow staff instructions regarding locations in order to avoid damage to park facilities or turf areas, and to avoid interfering with maintenance schedules.
- H. Permit holders must be at least 50 feet from sidewalks, picnic areas, playgrounds, buildings, and other user groups.
- I. Instruction is not to take place before 7:00am or after 8:00pm (5:00pm during daylight savings)
- J. Classes will not be permitted on weekends, Saturdays, or holidays.

IV. PARTICIPANT WAIVER

Each participant must sign a waiver, the form of which is included below, and maintained by USER in a file.

RELEASE, HOLD HARMLESS AND AGREEMENT NOT TO SUE

I hereby release, discharge and agree not to sue Rossmoor Community Services District, including its officers, employees, and agents, (hereinafter the "District") for any injury, death or damage to or loss of personal property arising out of, or in connection with, my and/or my child's participation in the Long Beach Boot Camp from whatever cause, including the active or passive negligence of the District or any other participants in the Long Beach Boot Camp. The parties to this agreement understand that this document is not intended to release any party from any act or omission of "gross negligence," as that term is used in applicable case law and /or statutory provision. In consideration of being permitted to participate in the Long Beach Boot Camp I hereby agree, for myself, my heirs, administrator, executors and assigns, that I shall defend, indemnify and hold harmless the District from any and all claims, demands, actions or suits arising out of or in connection with my and/or my child's participation in the Long Beach Boot Camp.

I HAVE CAREFULLY READ THIS RELEASE, HOLD HARMLESS AND AGREEMENT NOT TO SUE AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT IT IS A FULL RELEASE OF ALL LIABILITY AND SIGN OF MY OWN FREE WILL.

PARTICIPANT:

(Please Sign)

By: _____
(Please Print)

Name & Title: _____
(Please Print)

ROSSMOOR COMMUNITY SERVICES DISTRICT

AGENDA ITEM C-4

Date: September 13, 2016
To: Honorable Board of Directors
From: General Manager
Subject: CONTRACT SERVICES AGREEMENT-LINDSEY MARKS SOFTBALL
INSTRUCTOR AT ROSSMOOR PARKS

RECOMMENDATION:

Authorize General Manager to execute the first of two one-year extended term agreements contract with Lindsey Marks Softball Instructor at Rossmoor Parks.

BACKGROUND:

For the past year the District has had a Professional Services Agreement with Ms. Lindsey Marks for the provision of for-profit, Softball Instruction at Rossmoor Parks.

Ms. Marks has been in full compliance with the terms of her initial one-year Agreement and she is requesting a renewal of her Agreement for the first of one-year Extended Terms. General Counsel has prepared the one-year Extended Term Agreement which is attached.

ATTACHMENTS:

1. One Year Extended Term Agreement: Lindsey Marks-Softball Instructor.

ROSSMOOR COMMUNITY SERVICES DISTRICT

PARK USE AGREEMENT

LINDSEY MARKS: SOFTBALL INSTRUCTOR

This Park Use Agreement (“AGREEMENT”) is made and entered into this 6th day of September, 2016 by and between Rossmoor Community Services District (“DISTRICT”), and Lindsey Marks (“USER”). The DISTRICT and USER are sometimes referred to in this AGREEMENT, each individually as a “Party,” or collectively, as the “Parties.”

RECITALS

WHEREAS, the Rossmoor Community Services District is a public agency authorized to own, operate, maintain and repair parks and facilities for public recreation;

WHEREAS, the DISTRICT has the authority to establish fees or other charges for use of the two parks operated by the DISTRICT;

WHEREAS, the DISTRICT is establishing a new fee structure for entities that use Rossmoor parks that are for-profit businesses providing exercise classes and coaching services for a fee;

WHEREAS, USER has established an exercise program for the benefit of its members, the majority of whom are residents of Rossmoor;

WHEREAS, USER has operated its exercise programs over the past three years primarily in Rossmoor Parks;

WHEREAS, USER is a for-profit business that charges its members a fee for its services;

WHEREAS, The DISTRICT and USER have mutual interest in continuing to provide exercise programs and offering them to the residents of Rossmoor and other individuals;

WHEREAS, USER desires to continue providing such exercise programs on the terms and conditions set forth in this Agreement.

WHEREAS, The DISTRICT desires to enter into this Agreement for the non- exclusive use of District parks;

NOW, THEREFORE, DISTRICT AND USER AGREE AS FOLLOWS:

1. USE

- 1.1 USER may use the Rossmoor parks as specified in Exhibit A, Use of Parks, for the provision and administration of outdoor softball instruction and related activities subject to approval by the DISTRICT’s Board of Directors.

- 1.2 USER promises and agrees to furnish all labor, materials, tools, equipment, and services necessary to fully and adequately perform its fitness programs. USER shall be responsible for offering, scheduling, and conducting all the outdoor fitness program activities set forth in Exhibit A, Use of Parks, attached hereto.
- 1.3 USER assumes all risk of loss, damage, or harm to such equipment or materials arising in connection with the provisions of such services.
- 1.4 USER is not allowed to distribute and/or sell personal items or equipment.

2. AGREEMENT

- 2.1 DISTRICT grants the USER a non-exclusive permit to utilize District property in accordance with the Use of Parks specified in Exhibit A, attached hereto, and the terms and conditions set forth herein below. The USER shall not use the facilities in any manner contrary to the terms of this AGREEMENT without DISTRICT's prior written consent.
- 2.2 No legal title or leasehold interest in the Facilities is created or vested by the USER by this AGREEMENT.
- 2.3 DISTRICT agrees that the fee charged USER under this AGREEMENT will be the same as those applied to all similar for-profit entities that charge a fee for the same or similar services in Rossmoor parks. For clarification, this provision will specifically apply to individuals or organizational entities that provide softball instruction for individuals or groups on a fee-for-service basis and are other than not-for-profit organizations. Further, if any such entity is charged a lower fee, USER will be subject to equal fee rates.

3. TERM & TERMINATION

- 3.1 The initial term of the USER permit shall be from September 6, 2016 to September 6, 2017.
- 3.2 Prior to the expiration of the initial term or an additional term, this Agreement may be extended for up to two (2) additional one (1) year terms in the sole discretion of the District General Manager, provided USER is in compliance with all of the provisions of this AGREEMENT.
- 3.3 The initial term or any additional term may be terminated by DISTRICT upon giving 30 days written notice to USER.
- 3.4 This Agreement, and the permit granted hereunder, may be terminated by the DISTRICT based upon a breach of any of the terms and conditions of this Agreement by the USER. DISTRICT will provide USER notice of the breach and be given five days to cure the breach before termination becomes effective.

3.5 **Termination by USER.** USER may terminate this Agreement upon giving 30 days written notice to DISTRICT. This Agreement is not transferable or assignable by USER to any other person or entity without the prior written consent of DISTRICT.

4. **SERVICES OF USER**

4.1 USER agrees to the following:

- a. USER will provide all required personnel and be responsible for the supervision of their class(es). USER will furnish all necessary and appropriate equipment and materials.
- b. USER is responsible for the care of all DISTRICT owned equipment and property utilized by the USER. In the event the District's equipment and property are made available through Joint-Use Agreements, USER shall be responsible for the care and proper use of said items.
- c. DISTRICT is not obligated to provide for storage for any USER owned goods, equipment, or materials. In the event that storage is made available, DISTRICT is not responsible for theft, damage, loss, fire, or other event that may cause damage to USER property.

4.2 **Standard of Performance.** USER agrees that all exercise classes shall be performed in a competent, professional, manner, and that all goods, materials, equipment or personal property used in the classes shall be of good quality, fit for the purpose intended.

4.3 **USER** stipulates that he/she is trained and qualified to teach or conduct courses.

4.4 **Professionalism.** USER agrees to treat parks patrons, passersby, DISTRICT staff and agents with respect and act in a professional manner. Inappropriate conduct or attitude towards any of the above may result in termination of this agreement.

4.5 **Facility Availability.** USER agrees that the DISTRICT cannot guarantee park location and assignment of such. Assignments are determined based on availability of each facility and class size.

5. **COMPENSATION:** USER may charge fees for Services rendered under this AGREEMENT as follows:

5.1 USER shall be solely responsible for imposing and collecting all fees charged for its fitness classes.

5.2 USER shall not be entitled to expense reimbursements or any other amounts in connection with performance of this AGREEMENT.

- 5.3 USER shall be responsible for registration of participants, refund processing, and marketing for all classes and programs.
- 5.4 The DISTRICT has the right to observe any instructional class conducted by USER at no charge.

6. INDEPENDENT USER

- 6.1 USER shall perform all activities described herein as an independent USER of DISTRICT's facilities and shall remain at all times wholly independent of the DISTRICT.
- 6.2 DISTRICT shall not in any way or for any purpose become or be deemed to be a partner of USER in its business or otherwise, or a joint venturer, or a member of any joint enterprise with USER.
- 6.3 USER shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of DISTRICT. Neither USER nor any of USER's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the DISTRICT; and neither USER nor any of its employees shall be paid by DISTRICT time and one-half for working in excess of forty (40) hours in any one week.
- 6.4 DISTRICT is under no obligation to withhold State and Federal tax deductions from USER's compensation. Neither USER nor any of USER's employees shall have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

7. USE OF PREMISES

- 7.1 **Schedule of Use.** USER shall comply with the Use of Parks attached in Exhibit A. DISTRICT reserves the right to use, sublease, or issue permits for areas of the Rossmoor parks to third parties. USER is aware and acknowledges that the Schedule of Use is subject to change with 15 days notice to meet the scheduling and maintenance needs of the DISTRICT and agrees to indemnify and hold DISTRICT harmless for any such changes to the Schedule of Use.
- 7.2 **No Unlawful Uses.** USER shall only be permitted to use the Premises for instructional service activities and programs and USER agrees not to use the Premises for any immoral or unlawful purpose.
- 7.3 **Preservation of Insurance.** USER shall not commit any acts on the facilities, nor use the facilities in any manner that will cause the cancellation of any fire, liability, or other insurance policy insuring the facilities or the improvements on the facilities.

- 7.4 **No Waste or Nuisance.** USER shall not commit any waste or any public or private nuisance upon the facilities.
- 7.5 **Legal Compliance.** USER shall not violate any federal, state, or District law, rule, regulation or order of court that may be applicable to the use of the Premises.

8. INDEMNIFICATION

- 8.1 USER shall indemnify, defend (with counsel approved by DISTRICT), and hold harmless DISTRICT, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in any way connected with fitness classes and/or USER's use of District property hereunder or USER's failure to comply with any of its obligations continued in this Agreement, regardless of DISTRICT's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the DISTRICT. Should DISTRICT in its sole discretion find USER's legal counsel unacceptable, then USER shall reimburse the District its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The USER shall promptly pay any final judgment rendered against the DISTRICT (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.
- 8.2 The requirements as to the types and limits of insurance coverage to be maintained by USER as required by Section 9, below and any approval of said insurance by District are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by USER pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

9. MISCELLANEOUS

- 9.1 **Entire Agreement.** This Agreement, dated September 6, 2016 contains the entire agreement between the parties hereto with respect to the subject matter hereof, and any other purported agreement made shall be ineffective to change, modify, discharge or effect an abandonment of this AGREEMENT in whole or in part unless such purported agreement is in writing and signed by the party against whom enforcement is sought.
- 9.2 **Applicable Law.** This AGREEMENT shall be governed and interpreted in accordance with the laws of the State of California.

- 9.3 **No Brokers.** Each party represents to the other that it has not engaged or used the services of any broker, finder, or salesperson in connection with this AGREEMENT.
- 9.4 **Counterparts.** This AGREEMENT may be executed in multiple counterparts each of which shall be deemed an original for all purposes.
- 9.5 **The Individuals Signing this Agreement.** Individuals Represent and warrant that they have the right, power, and authorization to bind their respective entities to the terms of the AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DISTRICT:

General Manager
3001 Blume Drive
Rossmoor, CA 90720
Rossmoor Community Services District

By: _____
Lindsey Marks

By: _____

Exhibit A: Use of Parks

I. USER Classes

A. USER will provide instructional services for outdoor athletic instruction for up to eleven, one-hour classes per week as set forth on the schedule below. The average size of the classes will not exceed fifteen.

Time	Monday	Tuesday	Wednesday	Thursday	Friday
			Rossmoor Park 1 pm to 6 pm		Rossmoor Park 3 pm to 6 pm

B. DISTRICT agrees to make available to the USER designated space in its parks according to the schedule and the attached diagram.

C. DISTRICT and USER will meet regularly to modify the intended schedule and designate specific areas of the park for each class held by USER.

1. Requests for additional dates and/or hours of use shall be submitted within 30 days of request. Additional requests may require authorization by the General Manager and/or approval of the Board.
2. DISTRICT may modify the schedule in response to unforeseen circumstances with as much notification to USER as possible.

D. Neither DISTRICT nor USER may modify the schedule or location of the classes without giving the other party 15-days notice.

E. DISTRICT will provide USER with the schedule and location of all maintenance so that USER may avoid interference.

F. USER will maintain a record of the time, location and the number of participants for each class held by USER on DISTRICT parks. USER will submit a summary report of this data to DISTRICT each quarter.

II. USER FEES

- A. Hourly use charge of \$10.00 per hour paid within 15 days of the end of each quarter.

III. USE OF DISTRICT PROPERTY

Any violations of the following regulations may result in Termination of Agreement:

- A. Equipment provided by USER may not exceed 25 pounds in weight.
- B. Park equipment and installations may not be used for exercise activity including, but not limited to light poles, drinking fountains, bleachers, picnic tables, benches, railings, chain link fencing, trees, freestanding signs, bike racks, and barbeque grills.
 - 1. The only exception is for equipment designed for adult exercising.
 - 2. Adults may not exercise on playground equipment.
 - 3. Class participants will be permitted to place personal belongings on the benches and participants are permitted to sit on the benches. However, DISTRICT will have no liability for loss or damage to personal belongings.
- C. Walkways, sidewalks and any public shared access areas may not be blocked or used by fitness classes.
- D. Temporary marking of hard surfaces with chalk or other informative materials is prohibited. Spray chalk may not be used on the grass
- E. DISTRICT acknowledges that music is an integral part of USER's exercise program. However, no music may be played at a volume that would be a nuisance to other users of the park or nearby residents, which shall be determined in the discretion of DISTRICT.
- F. Permit holders must display a District-issued name badge or display card, printed with photograph and name, at all times while conducting instruction, classes or camps.
- G. Permit holders shall follow staff instructions regarding locations in order to avoid damage to park facilities or turf areas, and to avoid interfering with maintenance schedules.
- H. Permit holders must be at least 50 feet from sidewalks, picnic areas, playgrounds, buildings, and other user groups.
- I. Instruction is not to take place before 7:00am or after 8:00pm (5:00pm during daylight savings)
- J. Classes will not be permitted on weekends, Saturdays, or holidays.

IV. PARTICIPANT WAIVER

Each participant must sign a waiver, the form of which is included below, and maintained by USER in a file.

RELEASE, HOLD HARMLESS AND AGREEMENT NOT TO SUE

I hereby release, discharge and agree not to sue Rossmoor Community Services District, including its officers, employees, and agents, (hereinafter the “District”) for any injury, death or damage to or loss of personal property arising out of, or in connection with, my and/or my child’s participation in the Lindsey Marks Softball Instruction Program from whatever cause, including the active or passive negligence of the District or any other participants in the Lindsey Marks Softball Instruction Program. The parties to this agreement understand that this document is not intended to release any party from any act or omission of “gross negligence,” as that term is used in applicable case law and /or statutory provision. In consideration of being permitted to participate in the Lindsey Marks Softball Instruction Program I hereby agree, for myself, my heirs, administrator, executors and assigns, that I shall defend, indemnify and hold harmless the District from any and all claims, demands, actions or suits arising out of or in connection with my and/or my child’s participation in the Lindsey Marks Softball Instruction Program.

I HAVE CAREFULLY READ THIS RELEASE, HOLD HARMLESS AND AGREEMENT NOT TO SUE AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT IT IS A FULL RELEASE OF ALL LIABILITY AND SIGN OF MY OWN FREE WILL.

PARTICIPANT:

(Please Sign)

By: _____
(Please Print)

Name & Title: _____
(Please Print)