

**INDEPENDENT CONTRACTOR AGREEMENT
RECREATION INSTRUCTOR**

0-4790

This Independent Contractor Agreement ("Agreement") is made and entered into as of this 1st day of October, 2012 ("Effective Date") by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and Danielle Hernandez, a sole proprietor ("Contractor") to provide personal fitness training sessions ("Session" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2013 unless terminated earlier as provided herein.

2. COMPENSATION

2.1 City shall pay Contractor within twenty one (21) business days after the last Personal Training Session. City shall pay the Contractor an amount equal to **seventy percent (70%)** of the amount of the total enrollment fees collected, minus the non-resident fee and a five dollar and no/100 (\$5.00) per person administration fee for each Class held.

2.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

3. DUTIES OF CITY

3.1 *Registration.* City shall register all participants for personal fitness training sessions and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor.

3.2 *Publicity.* City shall provide publicity for the Program in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Program and the Contractor. Publicity may also include flyers created by the City or the Contractor. Contractor created flyers must be approved in writing by the City before distribution.

3.3 *Class Facility.* City shall provide a location for the Program without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Sessions and the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractor's Sessions for them.

3.4 *Refund Processing.* City shall provide refunds to participants when:

3.4.1 The participant drops five (5) business days before the program begins; or

3.4.2 The Program is canceled by the City or Contractor. In the latter instance, the Contractor must provide the City with all required paperwork.

3.5 *Class Roster, Sign-Out and Attendance Sheets.* City shall provide Class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432>. Contractor is responsible for requesting log-in and password information from the City.

4. CONTRACTOR DUTIES

4.1 *Contractors.* Contractor hereby certifies that he/she or any subcontractor, representative or employee (collectively "Representatives") who will be teaching the Class or assisting in teaching the Class are qualified to do so, and qualified to perform the services described above and in the Program outline submitted to City. Contractor is responsible for all Class curriculum development. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all Representatives. Contractor warrants that it will continuously furnish the necessary personnel to provide the Program or Classes as contemplated by this Agreement.

4.2 *Representatives.* Contractor shall provide the City with the name(s), address(es) and phone number(s) of all Representatives who will be providing any services pursuant to this Agreement. All Representatives of Contractor must comply with the Fingerprint Policy (see Section 8). All Representatives must be able to provide proof of legal right to work in the United States.

4.2.1 *Representative Approval Form.* Attached as Exhibit A, and incorporated herein by reference, is the Representative Approval Form ("Form"). Each Contractor Representative is required to obtain the written approval of the Recreation and Senior Services Director prior to performing any services under this Agreement. Prior to Contractor using any Representative to provide any services pursuant to this Agreement, Contractor shall submit to the City a completed Form for each Representative that Contractor desires to use to provide services pursuant to this Agreement. Contractor, at the sole discretion of City, shall remove from the Program any Representative assigned to the performance of services pursuant to this Agreement upon written request of City.

4.3 Please initial the statement that applies:



I will not be using Representatives or employees.



I will be using Representatives. *Any completed and approved Form shall be incorporated herein by reference. Contractor shall not authorize any Representative to provide services pursuant to this Agreement unless and until the Recreation and Senior Services Director has approved in writing the completed Form for that individual Representative.*

4.4 *Subcontracting.* Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

4.5 *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and Representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

4.6 *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the program. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Session cancellation.

4.6.1 City urges Contractor to get a substitute Representative whenever possible instead of cancelling Classes. Contractor shall obtain City's prior written approval of any substitute Representative. Any substitute Representative must have completed a criminal background check pursuant to Section 8 prior to teaching any City Programs or Classes and must have an authorized Representative Approval Form on file with the City.

4.6.2 When cancelling a Session, Contractor shall contact all participants as soon as possible.

4.7 *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within forty eight (48) hours of such change.

4.8 *Other Requirements.* Contractors shall:

4.8.1 Cooperate fully with all reasonable requests from City staff;

4.8.2 Maintain the highest degree of participant safety possible;

4.8.3 Immediately report to the Recreation & Senior Services Office any injuries as a result of Program participation;

4.8.4 *Injuries or Damages.* Immediately report to the Recreation and Senior Services Office any injuries as a result of Class participation, damages to the classroom or Program facility that could cause potential injury to a Class participant, and/or other needed maintenance repairs. Contact the Recreation and Senior Services Office staff by phone or email;

4.8.5 Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants;

4.8.6 Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News*.

4.9 *Contractor Photo ID Badge.* Contractors and their Representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay \$5.00 for any lost or replacement Contractor Photo ID Badge. Contractor Photo ID Badges are distributed upon renewal of their Agreement with City.

5. NOTICES

5.1 Unless otherwise indicated, all notices, demands, requests or approvals, including change of address notices, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Vicki Chin, Social Services Supervisor
Recreation and Senior Services Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949 718-1821
E-mail: vchin@newportbeachca.gov

5.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at the contact information provided on page 13 of this Agreement.

6. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement that Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her Representatives. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

7. INSURANCE

7.1 *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport

Beach, its elected or appointed officers, employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction.

7.1.1 Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or through Southern California Municipal Athletic Federation ("SCMAF") or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger).

7.1.2 Contractor's insurance coverage shall be primary insurance and/or primary source of recovery as respects to City, its elected or appointed officers, agents, officials, employees and volunteers with respect to all claims, losses or liability arising directly or indirectly from the Contractor's operations or Service provided to the City. Any insurance or self-insurance maintained by City, its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

7.1.3 Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

7.2 *Workers' Compensation Insurance.* By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.

7.2.1 The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers. Contractor shall submit to City, along with the required certificate of insurance a copy of such waiver of subrogation endorsement.

7.2.2 In the event Contractor has no employees requiring Contractor to provide Workers' Compensation insurance, Contractor shall so certify to City in writing prior to City's execution of this Agreement.

7.3 *Automobile Liability Coverage.* Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as approved by the City's Risk Manager or his/her designee.

7.4 Please initial the statement that applies:

☒ **Contractor is providing a copy of the General Liability Insurance with Additional Insured Endorsement that meets the above requirements.**

☐ **Contractor shall be utilizing the City provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will pay all required fees billed on a quarterly basis by the City. I have reviewed the Contract Contractor Handbook for complete information. Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.**

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

8.1 All Contractors and their Representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for Contractor, or assisting with any Class. Such Contractors and their Representatives are required to submit fees in the amount of up \$73 per person to the City of Newport Beach, Recreation and Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

8.2 In addition, all Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class.

9. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this Section shall survive the termination of this Agreement.

10. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Program site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

11. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

12. INDEMNIFICATION

12.1 *General.* Contractor shall indemnify, defend and hold harmless City, its elected and appointed officers, employees, agents, representatives, the City Council, boards and commissions ("Indemnified Parties") with respect to any loss, liability, injury or damage that arises out of, or is in any way related to, the acts or omissions of Contractor, his or her employees, representatives, officers and agents in the course of performing services under this Agreement; however, Contractor shall not be required to indemnify City from any claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

12.2 *Intellectual Property.* Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from any claim of infringement or other proceedings brought against City for any intentional or unintentional violation by Contractor of the legally protected rights of any third parties, with respect to works performed, logos displayed, or written or digital materials provided by Contractor and used during the performance of this Agreement. Such legally protected rights of third parties include but are not limited to trade secrets, moral rights, proprietary acts, U.S. patents, trademarks, service marks and copyrights vested or issued as of the effective date of this Agreement. If Contractor will be providing a public performance of musical compositions or arrangements that are subject to a license held by a third party, it is the responsibility of Contractor to obtain the appropriate license to perform the material prior to the public performance.

13. TERMINATION

City has the right, at its sole discretion and with or without cause, to terminate this Agreement at any time by giving three (3) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor on a prorated basis for any Sessions or Programs that were actually taught by Contractor, if any, up to the effective date of termination.

14. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Claims Act (Govt. Code §§ 900 *et seq.*).

15. STANDARD PROVISIONS

15.1 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

15.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

15.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

15.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

15.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

15.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

15.7 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

15.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

15.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

15.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

15.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 10/15/12

By: [Signature]
Aaron C. Harp
City Attorney

mb 10-15

**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: 10.18.12

By: [Signature]
Laura Detweiler
Recreation and Senior Services Director

ATTEST:
Date: 10/29/12

By: [Signature] DEPUTY CITY CLERK
for Leilani I. Brown
City Clerk



CONTRACTOR: DANIELLE HERNANDEZ

[Signature] 9/29/12 DANIELLE HERNANDEZ Personal Trainer
Signature Date Print Name Print Title

Signature Date Print Name Print Title

111 S. LAKEVIEW AVE, UNIT J, PLACENTIA CA 92870
Business Mailing Address, City, State Zip Tax ID/ SSN

626-297-5938 _____
Cell Phone Business Phone Home Phone Alternate Phone
hernandez.dani82@yahoo.com _____
E-mail Address Alternate E-mail Business Website

Home Address (if different from business mailing address)

[END OF SIGNATURES]

document1

CITY OF NEWPORT BEACH

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

I hereby certify that in the performance of the work for which this Agreement is entered into, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of the State of California.

Executed on this 29 day of SEPTEMBER, 2012, at Newport Beach, California.

DANIELLE HERNANDEZ

(Add Consultant's name and title)

Sadler Sports: Fitness Instructor Insurance Plan

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/03/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
SADLER & COMPANY, INC.
P.O. BOX 5866
COLUMBIA, SOUTH CAROLINA 29250-5866

CONTACT NAME: Sports Dept
PHONE (A/C, No. Ext): 800-622-7370 | FAX (A/C, No): 803-256-4017
E-MAIL ADDRESS: instructor@sadlersports.com
PRODUCER CUSTOMER ID#:

INSURED
Danielle Hernandez
DBA
21301 Banff Ln
Huntington Beach, CA 92646

A Member of the Sports, Leisure & Entertainment RPG

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Nationwide Mutual Insurance Company
INSURER B:
INSURER C:
INSURER D:

COVERAGES

CERTIFICATE NUMBER

REVISION NUMBER

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			RPG51647	12:01AM ET 05/18/2012	12:01AM ET 05/18/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MEDICAL EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$3,000,000 PRODUCTS- COMP/OP AGG \$1,000,000 PROFESSIONAL LIABILITY \$1,000,000 LEGAL LIAB TO PARTICIPANTS \$1,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON- OWNED AUTOS <input type="checkbox"/> NOT PROVIDED WHILE IN HAWAII						COMBINED SINGLE LIMIT (Ea Accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS- MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION						EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT
	MEDICAL PAYMENTS FOR PARTICIPANTS						PRIMARY MEDICAL EXCESS MEDICAL

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: Personal Training, (NON- CERTIFIED)
PROFESSIONAL LIABILITY \$1,000,000

With respect to the General Liability, the Certificate Holder is added as an Additional Insured solely in its capacity as a property owner or sponsor, but only with respect to liability arising out of the insured's operations. This insurance does not apply to the sole negligence of the Additional Insured.

CERTIFICATE HOLDER

CANCELLATION

RELATIONSHIP:
Property Owner/ Lessor
City of Newport Beach, its officers, officials, employees and volunteers

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

City of Newport Beach
801 Narcissus Avenue
Corona Del Mar, CA 92625

AUTHORIZED REPRESENTATIVE

John S. Sadler

Coverage is only extended to U.S. events and activities

** NOTICE TO TEXAS INSURED: The Insurer for the purchasing group may not be subject to all the insurance laws and regulations of the State of Texas.

ACORD 25 (2009/09)

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POLICY NUMBER: 6BRPG0000005164700

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY INSURANCE – ADDITIONAL INSURED

This endorsement modifies insurance under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, a. the following is added:

Coverage afforded under this Policy is primary insurance and OTHER INSURANCE shall not apply as respects to the additional insured named below, however this insurance does not apply to the sole negligence of such additional insured. Further, we will have no duty to defend such additional insured against any suit to which this insurance does not apply.

Additional Insured: Owner/Lessor of Premises
City of Newport Beach, its officers, officials, employees and volunteers
801 Narcissus Ave
Corona Del Mar CA 92625

Insured
Danielle Hernandez
CP #716

ISO | Commercial General Liability Forms | 07/01/04

POLICY NUMBER: RPG51647
INSURED: Danielle Hernandez

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

1. Name of Additional Insured Person(s) or Organizations(s):
City of Newport Beach, its officers, officials, employees and volunteers
City of Newport Beach
801 Narcissus Avenue
Corona Del Mar, CA 92625

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

Date Added: 04/03/2012 06:59:22 PM

CG 20 26 07 04

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CITY OF NEWPORT BEACH

DANIELLE M HERNANDEZ
1316 SARAZEN DR
ALHAMBRA, CA 91803

ACCOUNT NUMBER: BT30034827

EXPIRATION DATE: 03/31/2013

INSTRUCTIONS AND CONDITIONS

Welcome to the City of Newport Beach, and thank you for your business tax payment. This business tax certificate is evidence that the named business has paid a tax to conduct the business activity designated, within the City of Newport Beach, until the expiration date shown. Please notify the Revenue Division immediately if any of the information on the certificate changes.

This certificate is valid only at the address indicated and must be displayed in a conspicuous location. If your business is not conducted at a permanent location Municipal Code requires that any representative, while transacting business within the city, carry this certificate.

This business tax certificate does not authorize the named business to conduct any activities regulated by the City of Newport Beach or other agencies. Authorization for such activities must be obtained from the appropriate departments prior to application for business tax. Certificates are not transferable to any other party or person and are not pro-rated. Refunds are not provided once the certificate has been issued.

Your business tax certificate is valid until the expiration date, and must be renewed annually prior to that date. Changes in type of ownership (i.e. from a sole proprietorship to a partnership or LLC), nature of business, or ownership void the current certificate and require filing of and payment for a new application. Additional certificates are required if additional types of business activity are initiated at the same address, or additional locations of the same business are established (Municipal Code sections 5.04 through 5.08).

For your convenience, the Revenue Division will mail a courtesy renewal notice, prior to the expiration date, to the billing address of record. Non-receipt of the notice does not alleviate the requirement to renew. Penalties are imposed for late renewal at a rate of 25% per month to a maximum of 100% of the base tax.

The Revenue Division is available to answer any questions regarding business tax certification and requirements. Call (949) 644-3141; e-mail us at: RevenueHelp@newportbeachca.gov, or visit us on the internet at www.newportbeachca.gov and view the Municipal Code on line.

DISPLAY CONSPICUOUSLY AT PLACE OF BUSINESS FOR WHICH ISSUED

CITY OF NEWPORT BEACH BUSINESS TAX CERTIFICATE

THIS TAX PAYMENT EXPIRES: 03/31/2013

ACCOUNT NUMBER: BT30034827

SERVICE ADDRESS:

DANIELLE M HERNANDEZ
1316 SARAZEN DR
ALHAMBRA, CA 91803

OWNER/PRINCIPAL NAME:

HERNANDEZ, DANIELLE M

OWNERSHIP TYPE:

SOLE PROPRIETORSHIP

BUSINESS CATEGORY:

MISC SPECIAL TRADE CONTRACTORS

TAX INCLUDES PAYMENT FOR:

0 EMPLOYEES

SELLERS PERMIT: NO SELLERS PERMIT

DATE OF ISSUE: 03/14/2011

PRINT DATE: 03/29/2012

INSURANCE IDENTIFICATION CARDSTATE: **CALIFORNIA**

COMPANY:

21st Century Insurance CompanyPOLICY NO: **1094 33 47** COMPANY NO: **12963**EFFECTIVE DATE: **08/11/12** EXPIRATION DATE: **02/11/13**VEHICLE IDENTIFICATION NUMBER: **4T1BE46K97U182063** YEAR: **07**MAKE/MODEL: **TOYOTA CAMRY/LE/XLE/SE**

INSURED:

**DANIELLE HERNANDEZ
1316 SARAZEN DR
ALHAMBRA, CA 91803-4633**

AGENCY/COMPANY ISSUING CARD:

**21st CENTURY INSURANCE
21ST CENTURY PLAZA
P.O. BOX 15510
WILMINGTON, DE 19850-5510**THIS POLICY MEETS MINIMUM COVERAGES REQUIRED BY LAW
IN SECTION 16056.
SEE IMPORTANT NOTICE ON REVERSE SIDE

ID-CA (1/10)

INSURANCE IDENTIFICATION CARDSTATE: **CALIFORNIA**

COMPANY:

21st Century Insurance CompanyPOLICY NO: **1094 33 47** COMPANY NO: **12963**EFFECTIVE DATE: **08/11/12** EXPIRATION DATE: **02/11/13**VEHICLE IDENTIFICATION NUMBER: **4T1BE46K97U182063** YEAR: **07**MAKE/MODEL: **TOYOTA CAMRY/LE/XLE/SE**

INSURED:

**DANIELLE HERNANDEZ
1316 SARAZEN DR
ALHAMBRA, CA 91803-4633**

AGENCY/COMPANY ISSUING CARD:

**21st CENTURY INSURANCE
21ST CENTURY PLAZA
P.O. BOX 15510
WILMINGTON, DE 19850-5510**THIS POLICY MEETS MINIMUM COVERAGES REQUIRED BY LAW
IN SECTION 16056.
SEE IMPORTANT NOTICE ON REVERSE SIDE

ID-CA (1/10)



Please note you are required by law to keep this card with you when in your vehicle. You may need it to renew your license and/or vehicle registration and you will need to provide it as proof of insurance if requested by a law enforcement officer. Please check the name, address and vehicle information on the ID card to make sure it matches your registration. If any of the information is incorrect, please contact us to correct it.

C-4790

**CITY OF NEWPORT BEACH
Recreation & Senior Services Department
INDEPENDENT CONTRACTOR AGREEMENT
FOR PERSONAL TRAINER**

This Independent Contractor Agreement ("Agreement") is made and entered into as of April 1, 2011 by and between the City of Newport Beach, a California Municipal Corporation and Charter City ("City"), and Danielle Hernandez, a sole proprietor, ("Contractor") to provide personal fitness training sessions ("Sessions" or "Program") hereby agreed upon, as scheduled and described in the *Newport Navigator* and/or *OASIS News*, which is incorporated herein by this reference, and as approved in writing by the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the above written date, and shall terminate on the 30th day of September 2012 unless terminated earlier as provided herein.

2. COMPENSATION

City shall pay Contractor on a monthly basis, provided that Contractor has had registered clients during that month. City shall pay the Contractor **seventy percent** (70%) of the amount of the total enrollment fees collected by City, less the non-resident fee and a five dollar (\$5.00) per person administration fee for each registered session.

City may renegotiate compensation with Contractor anytime during the term of this Agreement, should Contractor fail to perform any of the terms contemplated herein.

The City pays Contractors electronically; the Contractor shall complete and return with the contract documents the "Direct Deposit Authorization Form."

3. DUTIES OF CITY

- A. *Registration.* City shall register all participants for personal fitness training sessions and shall collect all enrollment fees. Contractor shall not accept enrollment fees directly from a participant unless the City approves, in advance and in writing, the acceptance of enrollment fees by the Contractor.
- B. *Publicity.* City shall provide publicity for the Program in the *Newport Navigator* (published on a quarterly basis) and/or the *OASIS News* (published on a monthly basis). City shall have the sole discretion to decide what information will be included in the *Newport Navigator* and/or the *OASIS News* about the Program and the Contractor. Publicity may also include flyers

created by the City or the Contractor. Contractor created flyers must be approved in writing by the City prior to distribution.

C. *Class Facility.* City shall provide a location for the Program without charging Contractor any rental fees, unless otherwise agreed by the parties. The Contractor will request dates and times for the Sessions, the City will inform the Contractor if the facility is available. It is the Contractor's sole responsibility to request these dates/times, the City will not schedule the Contractors' Sessions for them.

D. *Refund Processing.* City shall provide refunds to participants when:

- The participant drops five (5) business days before the Program begins; or
- The Program is canceled by the City or Contractor. In this instance, the Contractor must provide the City with all required paperwork.

E. *Class Roster, Sign-Out and Attendance Sheets.* City shall provide class rosters, sign-out sheets and attendance sheets to Contractor online via <http://newportbeachca.gov/index.aspx?page=1432> . Contractor is responsible for requesting a log-in and password from the City.

4. **CONTRACTOR DUTIES**

A. *Contractors.* Contractor hereby certifies that he/she or any contractor, representatives, or employee who will be teaching the Class or assisting in teaching the Class is qualified to do so, and qualified to perform the services described above and in the course outline submitted to City. Contractor is responsible for all class curriculum development.

City staff must approve in writing all assigned representatives and employees prior to any of them performing any services under this Agreement. The City requires the Contractor and all representatives and employees of the Contractor to be fingerprinted prior to performing services under this Agreement in accordance with Section 8 below. A current roster of representatives and employees must be provided prior to City approval of the Contractor's representatives and employees. Contractor and Contractor's representatives and employees must be able to provide proof of legal right to work in the United States. Contractor is responsible for training, supervising, evaluating, scheduling, and any other requirements by law for all representatives, and employees.

B. *Representatives/Employees.* Contractor shall provide the City with the Name(s), Address(es) and Phone Number(s) of all representatives or employees who will be providing any services pursuant to this Agreement. All representatives or employees must comply with the fingerprint policy (Section 8).

Please initial the statement that applies:

- ☒ I will not be using representatives or employees.
- ☐ **I will be using representatives or employees.** Attached please find as Exhibit A, and incorporated herein by reference the full names, addresses and phone numbers of all representatives or employees who will be providing any services pursuant to this Agreement.

Contractor shall not subcontract or assign any portion of the rights, obligations or duties required under this Agreement, without first obtaining prior written approval from the City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

C. *Anti-Discrimination Laws.* Contractor agrees and certifies that, except as permitted by law, no person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, be excluded from participation in or be denied the benefits of the services provided pursuant to this Agreement, and Contractor agrees not to discriminate on said grounds in the hiring and retention of employees and representatives, unless authorized under Section 12940 of the California Government Code. Contractor shall, where applicable, conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

D. *Absences.* Contractor shall obtain permission from City one (1) week prior to any planned absence from the Program. In the event of illness, Contractor is required to notify City and Participants twelve (12) hours prior to any Session cancellation.

City urges Contractor to get a substitute, whenever possible, instead of cancelling Sessions. Contractor shall obtain City's prior written approval of any substitute Contractor. Any substitute contractor, representative or employee must have completed a criminal background check pursuant to Paragraph 8 prior to teaching any City programs or sessions.

When cancelling a Session, Contractor shall contact all participants as soon as possible.

E. *Contact Information.* Contractor is required to notify City in writing of any name, address, telephone number, email, website or direct deposit payment changes within 48 hours of such change.

F. *Other Requirements.* Contractors shall:

- i. Cooperate fully with all reasonable requests from City staff.
- ii. Maintain the highest degree of participant safety possible.
- iii. Immediately report to the Recreation & Senior Services Office any injuries as a result of Program participation.
- iv. Immediately report to the Recreation & Senior Services Office any damage to the classroom or Program facility that could cause potential injury to a Class participant, or other needed maintenance repairs.
- v. Contact participants, if/when a Session is cancelled and confirm all cancellations and/or make-up sessions, in writing, with City staff.
- vi. Schedule make-up sessions in advance.
- vii. Know facility rules and regulations and provide pertinent information (i.e. refunds) to participants.
- viii. Abide by all City policies and procedures including, but not limited to, the requirements set forth in the *Newport Navigator* and *OASIS News*.

G. *Contractor Photo ID Badge.* Contractors and their employees and/or representatives are required to wear a City provided Contractor Photo ID Badge at all times while engaging in services for the City. Contractor shall be required to pay five dollars and no/100 (\$5.00) for any lost or replacement Contractor Photo ID Badges. Contractor Photo ID Badges are distributed upon renewal of Agreements with City.

5. INDEPENDENT CONTRACTOR

The parties intend and agree that at all times during the performance of services under this Agreement; Contractor shall act as an Independent Contractor and shall not be considered an agent or employee of City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her employees or representative. Contractor also agrees to provide liability insurance as required by City and described more fully below. City shall not be liable for any payment or compensation in any form to Contractor other than as provided herein. City reserves the right to employ other independent contractors and Contractors who teach the same or similar classes. City shall provide Contractor with IRS 1090 or other applicable IRS forms at the end of the calendar year for all fees paid to Contractor.

6. INSURANCE

- a. *General Liability Insurance.* Contractor must provide and maintain at all times general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. The policy shall carry a general liability special endorsement naming the City of Newport Beach, its elected or appointed officers,

employees, agents and volunteers as additional named insured in the amount of one million dollars (\$1,000,000) per occurrence. Evidence of insurance certificate shall be sent to the Recreation & Senior Services Department and must be approved by the City Risk Management or their designee prior to the first Class/day of instruction. Contractor shall have the option of purchasing coverage through the City of Newport Beach's Special Event insurance program, or providing his/her own coverage. If a Contractor elects to obtain his/her own coverage, said coverage must have the policy limits described above and be provided by an insurance carrier with a Best's Insurance Guide Rating of A- (or higher) and Financial Size Category Class of VII (or larger). Said policy must also provide a written thirty (30) day notice of cancellation (ten (10) day written notice for non-payment of premium) to the City of Newport Beach Recreation & Senior Services Department, at the following address: P.O. Box 1768/ 3300 Newport Boulevard, Newport Beach, CA 92658.

- b. Workers' Compensation Insurance. By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act.
- c. Automobile Liability Coverage. Contractor shall maintain automobile insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence, or as otherwise approved by the City's Risk Manager or his/her designee.

7. COMPLIANCE WITH ALL LAWS

Contractor, and his/her employees, agents and representatives shall at all times observe and comply with all laws, ordinances and regulations.

8. FINGERPRINTS AND CRIMINAL BACKGROUND CHECK

All Contractors and their employees, agents and representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for contractor or assisting with any Class. Such Contractors and their employees, agents and representatives are required to submit fees in the amount of up to seventy three dollars and no/100 (\$73) per person to the City of Newport Beach, Recreation & Senior Services Department, to cover all costs associated with fingerprinting through the City of

Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years.

In addition, all Programs involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe session instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Session. By signing this Agreement, Contractor agrees to the provisions of this Paragraph.

9. CONFIDENTIALITY; OWNERSHIP OF DOCUMENTS

All Class rosters, participant addresses and contact information, and any other such information or documents compiled by City and provided to Contractor, shall remain the property of City. Contractor shall not release such information to others without the prior written authorization by City. Contractor shall not use such information for any other purpose than those authorized by City. All Class rosters, Class participant addresses and contact information, shall be used by the Contractor solely for administration of Classes and performing City business. Contractor will take reasonable steps consistent with the law to prevent distribution of such information. Contractor's obligations under this paragraph shall survive the termination of this Agreement.

10. USE OF NAMES AND LOGOS; ADVERTISING, PRESS RELEASES AND PUBLICITY

Contractor shall not include City's name, logos or insignia, or photographs of the Class site or participants, in any publicity pertaining to Contractor's services or Class in any magazine, trade paper, newspaper, radio or television production, Internet, or other printed or electronic medium without the prior written consent of City and participants.

11. BUSINESS LICENSE

Newport Beach Municipal Code Chapter 5.04 provides that every business operating in the City must obtain a business license prior to conducting business in the City, and pay the required business license fee. This ordinance applies to businesses operating at commercial or residential locations within the City, or using a City of Newport Beach address or P.O. Box for receiving mail. The City Business License Fee is an annual tax, due every twelve (12) months. Contractor agrees to obtain a City business license as required by Chapter 5.04 and provide proof of compliance annually. Business License Applications are available in the Revenue Division Office in Newport Beach City Hall. In certain circumstances, Contractor may be eligible for paying a reduced Business License Tax, which is known as an Apportioned Business Tax. A Declaration for Apportioned Business Tax is available in the Revenue Division Office at City Hall. ***A copy of your Business License must be submitted with this Contract.*** All Contractors must have a valid business license.

authorship of this Agreement or any other rule of construction which might otherwise apply.

17. INTEGRATED CONTRACT

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties, and all preliminary negotiations and agreements are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

18. SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

19. WAIVER

A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

20. CLAIMS

The Contractor and the City expressly agree that in addition to any claims filing requirements set forth in the Contract and Contract documents, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Government Tort Claims Act (Government Code sections 900 *et seq.*).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

CITY OF NEWPORT BEACH,
A California Municipal Corporation

Date: 4/15/11

Date: 4.18.11

By: [Signature]
Mynette D. Beauchamp
Assistant City Attorney

By: [Signature]
Laura Detweiler, Director
Recreation & Senior Services

ATTEST:

Date: 4.19.11

By: [Signature]
Leilani Brown, City Clerk



CONTRACTOR: **DANIELLE HERNANDEZ**

By: [Signature] 3/26/11
Signature Date

Print Name and Title: Danielle Hernandez
Recreation Contract Inspector

By: _____
Signature Date

Print Name and Title: _____

13116 Saracen Dr. Alhambra CA 91803
Address City State Zip

(626) 297-5138 SAME (626) 376-7692
Cell Phone Business Phone Home Phone

hernandez.danielle.m@gmail.com
Email Address Web Site Address

SAME
Home Address (if different from above) City State Zip

Attachments: Exhibit A: Representatives and /or Employees of Contractor