

Manatee County Government Administrative Center
First Floor, Commission Chambers
9:00 a.m. - April 10, 2018

April 10, 2018 - Regular Meeting
Agenda Item #27

Subject

Personal Trainer Agreement

Briefings

None

Contact and/or Presenter Information

Danny Hopkins, Recreation Division Manager, x6005
Debbie Voorhees, Contracts Manager, x6013

Action Requested

Authorization for use of Personal Trainer Agreement and adoption of Resolution R-18-043 authorizing the department director, or his or her designee, to execute Personal Trainer Agreements for the G.T. Bray Recreation Center.

Enabling/Regulating Authority

FS 125

Background Discussion

The G.T Bray Recreation Center currently utilizes a contract approved by the CAO for group fitness instructors the County pays to teach group classes. After reviewing these contracts with the department's contracts manager, it was suggested to create a contract for the personal trainers that utilize the facility as well. Outside (non-staff) personal trainers are granted, for a fee, access to the recreation center to conduct their personal training services, without a contract. The main difference between the two service providers is that the County pays the group fitness instructors, and the personal trainers pay the County.

The attached agreement will be used by credentialed and insured personal trainers who pay to use the G.T. Bray Recreation Center to conduct personal training sessions as part of their own business, if their clients are members of or purchase a daily pass to the G.T. Bray Recreation Center.

Staff is requesting approval for the use of the Personal Training Agreement and to gain authority for the Parks & Natural Resources Department Director, or his designee, to execute agreements to save time and expedite the contract process.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney
Nicodemi

Instructions to Board Records

Please return a copy of the approved agenda to luz.mcquiston@mymanatee.org and cynthia.gray@mymanatee.org

Cost and Funds Source Account Number and Name
1060013000

Amount and Frequency of Recurring Costs
None

Attachment: [R-18-043 Granting Execution Authority.pdf](#)

Attachment: [Personal Trainer Agreement for GT Bray Recreation Center.pdf](#)

Attachment: [CAO Memo PT Agreement final.pdf](#)

MEMORANDUM



To: Ed Hunzeker, County Administrator
From: Diane Vollmer, Agenda Coordinator
Date: April 9, 2018

Subject: Agenda Update for Meeting of April 10, 2018

THIS MEMO AND THE CHANGES INDICATED BELOW ARE REFLECTED IN THE ELECTRONIC AGENDA (E-AGENDA)

CHANGES TO CONSENT AGENDA

NEIGHBORHOOD SERVICES

24. **Emergency Home Energy Assistance for the Elderly Program FY 18/19 Agreement** – The requested action was updated to reflect the correct funding amount of \$54,992.

PARKS AND NATURAL RESOURCES

27. **Personal Trainer Agreement** – Request to authorize the use of Personal Trainer Agreements and to adopt Resolution R-18-043 *deferred to April 24, 2018.*

PUBLIC SAFETY

34. **Law Enforcement Services for Greer Island** – Attachment “A” was added to the Interlocal Agreement.

PUBLIC WORKS

37. **Newport Isles Borrow Pit Application Bonding** – A location map depicting Buckeye Road residential properties was added to the agenda item.

County Administrator's Office
1112 Manatee Avenue West, Bradenton, FL 34205
Phone number: (941) 745-3717

From: [Diane Vollmer](#)
To: [Robin Toth](#)
Subject: RE: BCC Mtg 4/10/18: Item 27, Personal Trainor Agreement/Resolution R-18-043
Date: Monday, April 09, 2018 12:55:33 PM

There is no agreement for the Chairman's signature. They are asking for authorization for departmental use of this agreement.

However, I just found out this morning that this item is being deferred to April 24.

Diane Vollmer

Agenda Coordinator
Manatee County Government
1112 Manatee Avenue West
Bradenton, FL 34205
Phone: 941-745-3724; Fax: 941-745-3790
diane.vollmer@mymanatee.org



From: Robin Toth [mailto:robin.toth@ManateeClerk.com]
Sent: Monday, April 09, 2018 12:35 PM
To: Diane Vollmer <diane.vollmer@mymanatee.org>
Subject: BCC Mtg 4/10/18: Item 27, Personal Trainor Agreement/Resolution R-18-043

Diane,

I am missing the Trainor Agreement with this agenda item.

Thank you,

Robin Toth
Board Records Deputy Clerk
for Angelina Colonnese
Clerk of Circuit Court and Comptroller
www.manateeclerk.com
robin.toth@manateeclerk.com
941-741-4018, Ext. 4179

"Pride in Service with a Vision to the Future"



Florida has a very broad Public Records Law. This agency is a public entity and is subject to Chapter 119 of the Florida Statutes, concerning public records. E-mail communications are covered under such laws & therefore e-mail sent or received on this entity's computer system, including your e-mail address, may be disclosed to the public or media upon request.

RESOLUTION R-18-043

A RESOLUTION OF THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS APPROVING A PERSONAL TRAINING AGREEMENT FOR G.T. BRAY RECREATION CENTER; PROVIDING FOR THE DELEGATION OF AUTHORITY TO EXECUTE THE INDEPENDENT CONTRACTOR PERSONAL TRAINER AGREEMENT; PROVIDING FOR REPORTING; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 125.01, Florida Statutes, Manatee County, a political subdivision of the State of Florida, owns and operates the facility known as G.T. Bray Recreation Center (the "Recreation Center") for the purpose of providing a recreation venue for the citizens of Manatee County, Florida; and

WHEREAS, Manatee County's Parks and Natural Resources Department (the "County") desires to have independent contractors perform personal training services ("Personal Training") for members of the Recreation Center; and

WHEREAS, it is of mutual interest and benefit for the County and the members of the Recreation Center to utilize the County's Personal Training services for their overall healthcare needs; and

WHEREAS, the Board of County Commissioners (the "Board") has determined that it is necessary and in the best interest of the County to approve the form of, and delegate authority to execute, a standard Personal Training Agreement for G.T. Bray Recreation Center, as provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:

SECTION 1. APPROVAL OF FORM AGREEMENT FOR PERSONAL TRAINING SERVICES AT G.T. BRAY RECREATION CENTER. The Board hereby approves the form of the following agreement for the use of G.T. Bray Recreation Center for Personal Training services by independent contractors:

Exhibit (1) –Personal Training Agreement for G.T. Bray Recreation Center-attached

The Director of the Parks and Natural Resources Department (the "Director"), or his or her designee, is hereby authorized and directed to execute the agreement and general conditions substantially in the form set forth in the above referenced exhibit to this Resolution, with such supplemental documents as are incorporated therein and consistent therewith.

SECTION 2. REPORTING. The Director shall annually provide a list to the Board of all agreements approved and executed pursuant to Section 1, above.

SECTION 3. SEVERABILITY. If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Resolution.

SECTION 4. APPLICABILITY. The form of the agreement and general conditions approved herein shall apply and be utilized in all transactions entered into on or after the effective date hereof.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED with a quorum present and voting this ____ day of _____, 2018.

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Chairperson

**ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER**

By: _____
Deputy Clerk

**PERSONAL TRAINING AGREEMENT FOR
G.T. BRAY RECREATION CENTER**

This Agreement (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between Manatee County, a political subdivision of the State of Florida, hereinafter referred to as “County” and _____, herein after referred to as “Contractor.”

WHEREAS, the Manatee County Board of County Commissioners has adopted Resolution R-18-043 authorizing the Director of the Parks and Natural Resources Department or his designee to enter into this Agreement with the Contractor to provide personal training services for members of G.T. Bray Recreation Center; and

WHEREAS, the Contractor desires to provide personal training services for members of the G.T. Bray Recreation Center; and

WHEREAS, it is in the best interest of the health, safety, and welfare of the residents of the County, and serves a valid public purpose, for the County to enter into this Agreement with the Contractor.

NOW THEREFORE, the County and the Contractor in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows.

1. **Services:** The Contractor agrees to provide non-exclusive personal training service(s) associated with the County Parks and Natural Resources Department, hereinafter referred to as “Department” at G.T. Bray Recreation Center.

- a. As this Agreement is not exclusive, the parties agree that Contractor is free to provide similar services to other persons or entities with the exception that such agreements shall not conflict with Contractor’s duties under this Agreement, and that Contractor does not use any County personnel, information, equipment, resource or asset to provide such other services.

2. **County Requested Services:** The parties agree that when the County desires the service(s) of the Contractor, it will provide Contractor with as much advance schedule notice as reasonably possible. While Contractor may decline to perform the service upon being provided the service request, unless the Contractor immediately declines to provide the service(s) expressly and in writing, then he/she shall be bound to adhere to the scheduled program and must provide the related service(s).

3. **Term:** This Agreement shall become effective on the date of execution first written above and shall remain in effect until December 31, 2019, unless terminated at an earlier date.

4. **Payment Schedule:** The Contractor agrees to perform the service(s) of this Agreement with a fee paid to the Department as follows:

- a. 1-2 clients: \$___/hour session and \$___/30-minute session,
- b. 3-9 clients: \$___/hour session

- c. 10+ clients: \$ ____/hour session.

This fee shall be paid at the time of use at the G.T. Bray Recreation Center front desk and processed through the recreation software registration program. This fee is not refundable.

5. **Equipment Usage:** The service(s) shall be performed at the G.T. Bray Recreation Center and Contractor shall be authorized to utilize the equipment therein for the performance of the service(s). Contractor is obligated to clean and put away all fitness center equipment immediately after use. Contractor is permitted to utilize his/her own equipment; however, the County assumes no liability or risk for use.

6. **Membership:** When using G.T. Bray Recreation Center to provide personal training services, Contractor's clients shall be members of or obtain a daily pass to G.T. Bray Recreation Center at the time of the service. Additionally, Contractor must be a member of G.T. Bray Recreation Center or obtain a daily pass in order to use the facility for personal use.

7. **Compliance with Laws:** Contractor and his/her clients agree to comply with all rules, regulations, policies, and procedures of the G.T. Bray Recreation Center. Contractor, in his/her performance under this Agreement, shall comply with all applicable federal, state and local laws and regulations.

8. **Schedule; Non-Assignability:** Contractor understands that the County and the customers of the relevant recreational program are relying heavily on the Contractor to arrive at the program location in a timely manner to ensure the program is successfully provided. If for any reason Contractor is unable to meet the agreed schedule, Contractor shall immediately contact his/her Department contact and arrange for the program to be cancelled, or to allow the Department to identify an alternative service provider.

a. To ensure unauthorized or unqualified persons do not gain access to children or otherwise perform service(s) for the Department, under no circumstances is Contractor permitted to subcontract or otherwise assign his/her duty to provide service(s) to any other person without the express prior approval of the Department. Alternatively, if the Department maintains a list of authorized providers of the service(s) in question, Contractor may arrange coverage with that Contractor, but shall still inform his/her Department staff contact of the change.

b. Contractor agrees that if he/she fails to provide a scheduled service, the Department may, at its sole discretion, either suspend the Contractor from eligibility to provide service(s) or cancel this Agreement. Contractor further agrees that if the County experiences costs to cover the absence of Contractor, the County may require payment for the original service(s) from the Contractor.

c. For purposes of this Section, Contractor's Department contact is: _____.
Contractor can reach his/her Department by phone: _____ or email: _____.

9. **Termination:** County has the right and authority to terminate Contractor at any time, with

no refund, if Contractor does not follow this Agreement or fails to conduct him/herself in an appropriate manner. Furthermore, if any workout or exercise is deemed inappropriate or unsafe by County staff, this Agreement may be terminated.

- a. Either Party may terminate the Agreement for any reason or no reason upon ten (10) days notice to the other Party. Upon termination, any funds due to County shall be paid by Contractor as provided for in Section 4 above.

10. **Independent Contractor:** Parties agree that the Contractor’s status is that of an independent contractor. The manner and method the Contractor provides the service(s) shall be in accordance with the Contractor’s professional discretion, guided only by the general program requirements, rules of a given sport, and general industry standards (if any) applicable to the provision of the service(s). Nothing contained in this Agreement shall be deemed or interpreted to constitute the Independent Contractor as an employee, agent or partner of County for any purpose, and Contractor is not entitled to any of the benefits afforded to County employees.

11. **Certification Requirements:** Contractor must maintain and present a current Personal Training Certification, CPR/AED. The County shall have the right to conduct background investigations of the Contractor, of its choosing, at any time during the term of this Agreement.

12. **Indemnification:** Contractor, his/her agents, successors, and assigns, shall indemnify and hold County harmless from all liability or loss, and against all claims or actions based upon or arising out of damage or injury (including death) to any and all persons or property caused by or sustained in connection with Contractor’s performance of this Agreement or by conditions created thereby, or based upon any violation of any statute, ordinance or law under State of Florida, and the defense of any such claims or actions. Nothing herein shall be interpreted as a waiver of the County’s rights and protection from liability as set forth in Florida Statutes § 768.28, which rights are expressly retained by County. Contractor shall assume full responsibility for payment of all applicable federal, state and local taxes or contributions imposed or required under unemployment insurance, workers’ compensation insurance, or social security and income tax laws with respect to the Contractor and his/her employees engaged in performance of this Agreement.

13. **Insurance:** Within 10 days following the execution of the contract and prior to beginning services at G.T. Bray Recreation Center, Contractor must provide a Certificate of Insurance certifying the following insurance coverage:

- a. Minimum Limits
 - i. General Liability – Each Occurrence / Aggregate \$200,000 / \$300,000
 - ii. Property Damage \$200,000

b. Coverage must be afforded under a per occurrence policy form and endorsed to include “Manatee County, a political subdivision of the State of Florida” as an Additional Insured. Coverage must remain in effect for the term of the contract, or for as long as the Contractor is utilizing G.T. Bray Recreation Center or other Manatee County facilities.

c. Appropriate Certificates of Insurance shall be provided by the Contractor to the County prior to beginning services. Thirty days prior to expiration of insurance, Contractor

will provide new or renewal Certificates of Insurance with endorsements as per above.

d. Contractor shall promptly provide complete copies of relevant insurance policies.

14. **Duty to Report:** Contractor agrees that he/she is responsible to immediately report to the Department any injury, accident, or property damage which may occur during his/her provision of the service(s), and to cooperate in any subsequent investigation of the event.

15. **Disclaimer of Third-Party Beneficiaries:** This Agreement is entered into for the sole benefit of the Parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party.

16. **Notice:** All written notices or written communications required or permitted hereunder shall be deemed to have been given when received if hand delivered or when deposited in the U.S. mail, postage paid and addressed as follows:

To the County: MANATEE COUNTY PARKS & NATURAL
RESOURCES DEPARTMENT
5502 33rd AVENUE DRIVE WEST
BRADENTON, FL 34209
ATTN: DEBBIE VOORHEES

To the Contractor: _____[NAME]_____
_____ [ADDRESS] _____
_____ [TELEPHONE] _____
_____ [EMAIL] _____

17. **Governing Law; Venue:** This Agreement will be interpreted in accordance with Florida law. Venue shall lie in Manatee County. In the event of any litigation between the parties concerning this Agreement, or the related service(s), each party shall bear its own attorney fees. This Agreement consists of the entire agreement between the parties and the parties agree that there are no other additional or supplemental agreements, verbal or in writing, between them, and that any amendment to this Agreement shall be by written amendment, signed by the parties.

18. **Headings:** All sections and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation thereof.

19. **Construction:** It is agreed between the parties that there are no other agreements or understandings between them relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements, oral or written, between the parties and is intended as a complete and exclusive statement of the agreement between the parties. No Change or modification of this Agreement shall be valid unless the same be in writing and signed by the parties,

20. **Severability:** Should any section, sentence or clause of this Agreement be deemed unlawful by a court of competent jurisdiction, no other provision hereof shall be affected and all other provisions of this Agreement shall continue in full force and effect to the extent permitted

by law.

IN WITNESS WHEREOF, the County has caused this Agreement to be duly executed herein below set forth.

**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: Parks and Natural Resources Department

By: _____

Director

[Contractor's Name]

By: _____

Executive Director

Date: _____



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher De Carlo, Assistant County Attorney
Geoffrey K. Nichols, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

Date: March 13, 2018
To: Mallory Carteaux, Recreation Supervisor, Parks and Natural Resources Department
Through: Mitchell O. Palmer, County Attorney *MOP 3-13-18*
From: Alexandria C. Nicodemi, Assistant County Attorney *ACN*
RE: **G.T. Bray Personal Trainer Agreement; Matter No. 2018-0031**

This memorandum is in response to the above referenced Request for Legal Services in which you asked this office to review a draft agreement for Personal Training Services at G.T. Bray Recreation Center ("Agreement"). Per your request, I have reviewed the proposed terms of the draft Agreement you submitted. Based on my review, I have made the appropriate edits so that it is in legally sufficient form. I provide the following legal advice in response:

1. Attached is a redlined revision of the Agreement reflecting the comments of this office.
2. The majority of suggested changes are intended to provide clarity and to conform the document to the practices and standard contract provisions of the County.
3. Recitals have been added to the Agreement. Recitals set forth the purpose of the Agreement and conform with the standard practices of County Agreements.
4. I have forwarded this Agreement to the Risk Management Division for a separate review of the "Insurance" provision in Section 13 of the Agreement.
5. The draft Agreement you provided indicates the Parks and Natural Resources Department ("Department") is seeking authorization from the Board of County Commissioners ("Board") for the Department Director, Mr. Hunsicker, to execute this Agreement. Signatory authority for County agreements is typically reserved to the County Administrator and/or Chairperson of the Board. Due to the likelihood that this Agreement

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

Mallory Carteaux, Recreation Supervisor, Parks and Natural Resources Department

March 13, 2018

Page 2 of 2

will be executed multiple times, I have drafted Resolution R-18-043. This Resolution delegates to the Department Director the limited authority to execute this Agreement without Board approval. Such standard of practice will allow the Department a streamlined process for executing this Agreement on an "as needed" basis. Under this Resolution it will be the duty of the Department Director to provide an annual list to the Board documenting each time this Agreement has been executed.

Subject to the inclusion of my recommended changes to the Agreement and the accompanying Resolution, I have no objection from a legal standpoint to scheduling the adoption of the Resolution by the Board. I express no opinion as to the business judgment of adopting the Resolution or implementing the Agreement approved thereunder.

This completes the response to your Request for Legal Services. If you have any further questions, comments, or concerns, please feel free to contact me.

Copies to: Ed Hunzeker, County Administrator
 Dan Schlandt, Deputy County Administrator
 Cheri Coryea, Deputy County Administrator
 Charlie Hunsicker, Director, Parks and Natural Resources Department
 Linda Klasing, Risk Manager

RESOLUTION R-18-043

A RESOLUTION OF THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS APPROVING A PERSONAL TRAINING AGREEMENT FOR G.T. BRAY RECREATION CENTER; PROVIDING FOR THE DELEGATION OF AUTHORITY TO EXECUTE THE INDEPENDENT CONTRACTOR PERSONAL TRAINER AGREEMENT; PROVIDING FOR REPORTING; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 125.01, Florida Statutes, Manatee County, a political subdivision of the State of Florida, owns and operates the facility known as G.T. Bray Recreation Center (the "Recreation Center") for the purpose of providing a recreation venue for the citizens of Manatee County, Florida; and

WHEREAS, Manatee County's Parks and Natural Resources Department (the "County") desires to have independent contractors perform personal training services ("Personal Training") for members of the Recreation Center; and

WHEREAS, it is of mutual interest and benefit for the County and the members of the Recreation Center to utilize the County's Personal Training services for their overall healthcare needs; and

WHEREAS, the Board of County Commissioners (the "Board") has determined that it is necessary and in the best interest of the County to approve the form of, and delegate authority to execute, a standard Personal Training Agreement for G.T. Bray Recreation Center, as provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:

SECTION 1. APPROVAL OF FORM AGREEMENT FOR PERSONAL TRAINING SERVICES AT G.T. BRAY RECREATION CENTER. The Board hereby approves the form of the following agreement for the use of G.T. Bray Recreation Center for Personal Training services by independent contractors:

Exhibit (1) –Personal Training Agreement for G.T. Bray Recreation Center-attached

The Director of the Parks and Natural Resources Department (the "Director"), or his or her designee, is hereby authorized and directed to execute the agreement and general conditions substantially in the form set forth in the above referenced exhibit to this Resolution, with such supplemental documents as are incorporated therein and consistent therewith.

SECTION 2. REPORTING. The Director shall annually provide a list to the Board of all agreements approved and executed pursuant to Section 1, above.

SECTION 3. SEVERABILITY. If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Resolution.

SECTION 4. APPLICABILITY. The form of the agreement and general conditions approved herein shall apply and be utilized in all transactions entered into on or after the effective date hereof.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED with a quorum present and voting this ____ day of _____, 2018.

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

**PERSONAL TRAINING AGREEMENT FOR
G.T. BRAY RECREATION CENTER**

This Agreement (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between Manatee County, a political subdivision of the State of Florida, hereinafter referred to as “County” and _____, herein after referred to as “Contractor.”

WHEREAS, the Manatee County Board of County Commissioners has adopted Resolution R-18-043 authorizing the Director of the Parks and Natural Resources Department or his designee to enter into this Agreement with the Contractor to provide personal training services for members of G.T. Bray Recreation Center; and

WHEREAS, the Contractor desires to provide personal training services for members of the G.T. Bray Recreation Center; and

WHEREAS, it is in the best interest of the health, safety, and welfare of the residents of the County, and serves a valid public purpose, for the County to enter into this Agreement with the Contractor.

NOW THEREFORE, the County and the Contractor in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows.

1. **Services:** The Contractor agrees to provide non-exclusive personal training service(s) associated with the County Parks and Natural Resources Department, hereinafter referred to as “Department” at G.T. Bray Recreation Center.
 - a. As this Agreement is not exclusive, the parties agree that Contractor is free to provide similar services to other persons or entities with the exception that such agreements shall not conflict with Contractor’s duties under this Agreement, and that Contractor does not use any County personnel, information, equipment, resource or asset to provide such other services.
2. **County Requested Services:** The parties agree that when the County desires the service(s) of the Contractor, it will provide Contractor with as much advance schedule notice as reasonably possible. While Contractor may decline to perform the service upon being provided the service request, unless the Contractor immediately declines to provide the service(s) expressly and in writing, then he/she shall be bound to adhere to the scheduled program and must provide the related service(s).
3. **Term:** This Agreement shall become effective on the date of execution first written above and shall remain in effect until December 31, 2019, unless terminated at an earlier date.
4. **Payment Schedule:** The Contractor agrees to perform the service(s) of this Agreement with a fee paid to the Department as follows:
 - a. 1-2 clients: \$___/hour session and \$___/30-minute session,

- b. 3-9 clients: \$___/hour session
- c. 10+ clients: \$___/hour session.

This fee shall be paid at the time of use at the G.T. Bray Recreation Center front desk and processed through the recreation software registration program. This fee is not refundable.

5. **Equipment Usage:** The service(s) shall be performed at the G.T. Bray Recreation Center and Contractor shall be authorized to utilize the equipment therein for the performance of the service(s). Contractor is obligated to clean and put away all fitness center equipment immediately after use. Contractor is permitted to utilize his/her own equipment; however, the County assumes no liability or risk for use.

6. **Membership:** When using G.T. Bray Recreation Center to provide personal training services, Contractor's clients shall be members of or obtain a daily pass to G.T. Bray Recreation Center at the time of the service. Additionally, Contractor must be a member of G.T. Bray Recreation Center or obtain a daily pass in order to use the facility for personal use.

7. **Compliance with Laws:** Contractor and his/her clients agree to comply with all rules, regulations, policies, and procedures of the G.T. Bray Recreation Center. Contractor, in his/her performance under this Agreement, shall comply with all applicable federal, state and local laws and regulations.

8. **Schedule; Non-Assignability:** Contractor understands that the County and the customers of the relevant recreational program are relying heavily on the Contractor to arrive at the program location in a timely manner to ensure the program is successfully provided. If for any reason Contractor is unable to meet the agreed schedule, Contractor shall immediately contact his/her Department contact and arrange for the program to be cancelled, or to allow the Department to identify an alternative service provider.

a. To ensure unauthorized or unqualified persons do not gain access to children or otherwise perform service(s) for the Department, under no circumstances is Contractor permitted to subcontract or otherwise assign his/her duty to provide service(s) to any other person without the express prior approval of the Department. Alternatively, if the Department maintains a list of authorized providers of the service(s) in question, Contractor may arrange coverage with that Contractor, but shall still inform his/her Department staff contact of the change.

b. Contractor agrees that if he/she fails to provide a scheduled service, the Department may, at its sole discretion, either suspend the Contractor from eligibility to provide service(s) or cancel this Agreement. Contractor further agrees that if the County experiences costs to cover the absence of Contractor, the County may require payment for the original service(s) from the Contractor.

c. For purposes of this Section, Contractor's Department contact is: _____.
Contractor can reach his/her Department by phone: _____ or email: _____.

9. **Termination:** County has the right and authority to terminate Contractor at any time, with no refund, if Contractor does not follow this Agreement or fails to conduct him/herself in an appropriate manner. Furthermore, if any workout or exercise is deemed inappropriate or unsafe by County staff, this Agreement may be terminated.

a. Either Party may terminate the Agreement for any reason or no reason upon ten (10) days notice to the other Party. Upon termination, any funds due to County shall be paid by Contractor as provided for in Section 4 above.

10. **Independent Contractor:** Parties agree that the Contractor's status is that of an independent contractor. The manner and method the Contractor provides the service(s) shall be in accordance with the Contractor's professional discretion, guided only by the general program requirements, rules of a given sport, and general industry standards (if any) applicable to the provision of the service(s). Nothing contained in this Agreement shall be deemed or interpreted to constitute the Independent Contractor as an employee, agent or partner of County for any purpose, and Contractor is not entitled to any of the benefits afforded to County employees.

11. **Certification Requirements:** Contractor must maintain and present a current Personal Training Certification, CPR/AED. The County shall have the right to conduct background investigations of the Contractor, of its choosing, at any time during the term of this Agreement.

12. **Indemnification:** Contractor, his/her agents, successors, and assigns, shall indemnify and hold County harmless from all liability or loss, and against all claims or actions based upon or arising out of damage or injury (including death) to any and all persons or property caused by or sustained in connection with Contractor's performance of this Agreement or by conditions created thereby, or based upon any violation of any statute, ordinance or law under State of Florida, and the defense of any such claims or actions. Nothing herein shall be interpreted as a waiver of the County's rights and protection from liability as set forth in Florida Statutes § 768.28, which rights are expressly retained by County. Contractor shall assume full responsibility for payment of all applicable federal, state and local taxes or contributions imposed or required under unemployment insurance, workers' compensation insurance, or social security and income tax laws with respect to the Contractor and his/her employees engaged in performance of this Agreement.

13. **Insurance:** Within 10 days following the execution of the contract and prior to beginning services at G.T. Bray Recreation Center, Contractor must provide a Certificate of Insurance certifying the following insurance coverage:

a. Minimum Limits

i. General Liability – Each Occurrence / Aggregate \$200,000 / \$300,000

ii. Property Damage \$200,000

b. Coverage must be afforded under a per occurrence policy form and endorsed to include "Manatee County, a political subdivision of the State of Florida" as an Additional Insured. Coverage must remain in effect for the term of the contract, or for as long as the Contractor is utilizing G.T. Bray Recreation Center or other Manatee County facilities.

c. Appropriate Certificates of Insurance shall be provided by the Contractor to the County prior to beginning services. Upon request by the County, Contractor shall promptly provide complete copies of relevant insurance policies.

14. **Duty to Report:** Contractor agrees that he/she is responsible to immediately report to the Department any injury, accident, or property damage which may occur during his/her provision of the service(s), and to cooperate in any subsequent investigation of the event.

15. **Disclaimer of Third-Party Beneficiaries:** This Agreement is entered into for the sole benefit of the Parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party.

16. **Notice:** All written notices or written communications required or permitted hereunder shall be deemed to have been given when received if hand delivered or when deposited in the U.S. mail, postage paid and addressed as follows:

To the County: MANATEE COUNTY PARKS & NATURAL
RESOURCES DEPARTMENT
5502 33rd AVENUE DRIVE WEST
BRADENTON, FL 34209
ATTN: DEBBIE VOORHEES

To the Contractor: _____[NAME]_____
_____ [ADDRESS] _____
_____ [TELEPHONE] _____
_____ [EMAIL] _____

17. **Governing Law; Venue:** This Agreement will be interpreted in accordance with Florida law. Venue shall lie in Manatee County. In the event of any litigation between the parties concerning this Agreement, or the related service(s), each party shall bear its own attorney fees. This Agreement consists of the entire agreement between the parties and the parties agree that there are no other additional or supplemental agreements, verbal or in writing, between them, and that any amendment to this Agreement shall be by written amendment, signed by the parties.

18. **Headings:** All sections and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation thereof.

19. **Construction:** It is agreed between the parties that there are no other agreements or understandings between them relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements, oral or written, between the parties and is intended as a complete and exclusive statement of the agreement between the parties. No Change or modification of this Agreement shall be valid unless the same be in writing and signed by the parties,

20. **Severability:** Should any section, sentence or clause of this Agreement be deemed

unlawful by a court of competent jurisdiction, no other provision hereof shall be affected and all other provisions of this Agreement shall continue in full force and effect to the extent permitted by law.

IN WITNESS WHEREOF, the County has caused this Agreement to be duly executed herein below set forth.

**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: Parks and Natural Resources Department

By: _____
Director

[Contractor's Name]

By: _____
Executive Director

Date: _____

Mallory Carteaux

From: Linda Klasing
Sent: Monday, March 19, 2018 9:30 AM
To: Mallory Carteaux
Subject: RE: Response to CAO Matter No. 2018-0031 / G.T. Bray Personal Trainer Agreement

Mallory,

I reviewed the insurance and gave it back to Alex, and she included it in the memo. For better clarification, you may want to changed "c" to the following.

- c. Thirty days prior to expiration of insurance, Contractor will provide new or renewal Certificates of Insurance with endorsements as per above.
- d. Contractor shall promptly provide complete copies of relevant insurance policies.

Letters "a" and "b" are good to go.

Sincerely,

Linda R. Klasing, MBA, ACA, CWCL, CWC
Risk Manager
Risk Management Division
County Attorney's Office
Manatee County
1112 Manatee Ave. West, Suite 969
Bradenton, FL 34205
(941) 745-3750
Linda.klasing@mymanatee.org



From: Mallory Carteaux
Sent: Monday, March 19, 2018 8:27 AM
To: Linda Klasing <linda.klasing@mymanatee.org>
Subject: FW: Response to CAO Matter No. 2018-0031 / G.T. Bray Personal Trainer Agreement

Good afternoon Linda,

I received the comments from the CAO regarding the attached personal trainer agreement. Alex mentioned that she would send it along to you to review Section 13, the highlighted "Insurance" section of the agreement. I wanted to

follow up with you to see if I could get your review by the end of the month so I can have it on the board agenda by April.

Thank you for your time. Have a great Monday!

Mallory

Mallory Carteaux, MS, CSCS
Fitness and Wellness Supervisor

Manatee County Parks and Natural Resources
G.T. Bray Recreation Center
5502 33rd Avenue Drive West
Bradenton, FL 34209
941.742.5923 x6007
www.mymanatee.org/parks



BRAY
FITNESS

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From: Tracy Hanrahan
Sent: Wednesday, March 14, 2018 9:23 AM
To: Mallory Carteaux <Mallory.Carteaux@mymanatee.org>
Cc: Ed Hunzeker <ed.hunzeker@mymanatee.org>; Dan Schlandt <dan.schlandt@mymanatee.org>; Cheri Coryea <cheri.coryea@mymanatee.org>; Charlie Hunsicker <charlie.hunsicker@mymanatee.org>; Linda Klasing <linda.klasing@mymanatee.org>; Mitchell Palmer <mitchell.palmer@mymanatee.org>; Alex Nicodemi <alex.nicodemi@mymanatee.org>; Katie Pearson <katie.pearson@mymanatee.org>
Subject: Response to CAO Matter No. 2018-0031 / G.T. Bray Personal Trainer Agreement

Good Morning:

Please see the attached Response Memorandum prepared by the County Attorney's Office with regards to the above matter. Should you have any questions or concerns, please do not hesitate to contact our office.

Thank you.

Tracy Hanrahan

Legal Assistant to:
Christopher M. De Carlo, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Manatee County Attorney's Office
1112 Manatee Avenue West, Ste. 969