

INSTRUCTOR SERVICE AGREEMENT

This Agreement is made and entered into this 17th day of **MAY, 2018** by and between the City of Grand Junction, a Colorado home rule municipality, and **ELIZABETH FORTUSHNIAK/GRAND JUNCTION STAND UP PADDLE**, the Instructor. Collectively, the City and the Instructor may be referred to as the "Parties".

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties as follows:

1. **Definitions:** For the purposes of this Agreement, the following terms shall have the meanings ascribed to them in this section:
 - a. "City" shall mean the City of Grand Junction, a Colorado home rule municipality.
 - b. "Instructor" shall mean the person or person's who provide Services as described in the Scope of Services for the Program;
 - c. "Program" shall mean the structured and scheduled meetings, class(es), course(s) or event(s) which is provided by the Instructor in accordance with the Scope of Services.
 - d. "Program Participant" shall mean any person who registers to participate and actually participates in one or more meetings, classes or events offered in the Program. Observers or guests who accompany Program Participants shall not be considered Program Participants.
 - e. "Program Space" shall mean the physical area, both indoors or outdoors, in which the Program is conducted. In the case of a Program which is conducted in whole or in part outdoors, the Program Space shall include any equipment upon which Program Participants exercise, play or otherwise physically occupy.
 - f. "Scope of Services or Services" or Services shall mean the duties and obligations to be performed by the Instructor as more fully described on Exhibit A attached hereto and incorporated herein by reference as if fully set forth.
2. **Term of Contract:** This Agreement shall commence **MAY 17, 2018** and shall continue in full force and effect until **MAY 17, 2019** unless terminated earlier for any reason by either party. Instructor shall provide at least fifteen (15) days notice prior to the termination date unless otherwise agreed in writing by the City. Notice by either party shall be effective when delivered to the other in person or when mailed, postage prepaid, and sent to the following addresses:

Name: **ELIZABETH FORTUSHNIAK/GRAND JUNCTION STAND UP PADDLE**
Address: **2414 SANDRIDGE CT. GRAND JUNCTION, COLORADO 81507**
Phone: **970-433-4760**
Email: **ELIZABETH@GJSUP.COM**
Program: **POOL SUP YOGA**

If Notice is to the City:

Name: **LARRY MANCHESTER, RECREATION SUPERVISOR**
Address: **1340 Gunnison Avenue, Grand Junction, Co 81501**

In the event of early termination by the City, the Instructor shall be paid for services rendered prior to the date of termination. Such payment shall be the Instructor's sole right and remedy for such termination. The Instructor shall not claim or be entitled to claim lost profit or lost or failed commercial advantage.

3. **Scope of Services:** The Program offered under this Agreement (the "Program") is specifically described in the attached Scope of Services. The Instructor shall provide Services in accordance with the Scope of Services. Instructor shall be required to provide all supplies, equipment, and facilities for the Program without additional compensation unless otherwise agreed to in writing by the Parties. If the City agrees to provide any supplies, equipment, and/or facilities said agreement shall be attached hereto as Exhibit "A" and incorporated herein as if fully set forth. Instructor for the same shall not incur any expense or debt on behalf of the City without written authorization of the City Parks and Recreation Director or his/her designee.

4. **Additional Instructor Duties:** In addition to the Scope of Services, the Instructor will perform the following:
 - a. Promptly correct all misconduct, profanity, or property damage of City property or other unwarranted acts of misbehavior.
 - b. Instruct the Program(s) on the days, hours, and locations pursuant to this Agreement, subject only to changes agreed upon in advance by the City and Instructor.
 - c. Instructor shall notify City when illness or emergency prevents Instructor from reporting for a scheduled class or meeting. In the event of temporary unavailability, it shall be the responsibility of the Instructor to provide for make-up schedules and/or provide for a qualified substitute to fulfill the Instructor's commitments herein. The City must consent to any substitute. If program registration is the responsibility of the City and the Program or a scheduled class or meeting must be cancelled, the City shall inform all class members by telephone that the class will not meet, but will be rescheduled. If program registration is the responsibility of the Instructor and the Program or a scheduled class or meeting must be cancelled, the Instructor shall inform all class members by telephone that the class will not meet, but will be rescheduled.
 - d. Instructor shall report all accidents and/or incidents to the City immediately, but no later than twenty-four (24) hours following the accident and/or incident. For the purposes of this Agreement, "incident" means any event which differs from the ordinary conduct of the Services and which affects a participant or facility during the scope of the Program. An incident may not necessarily result in injury. Examples of an incident include, but are not limited to: inappropriate verbal outbursts by a Program participant or observer; a child or other Program participant who is otherwise misbehaving; a fight that erupts in the Program space or parking lot; or a theft of property, either from a Program participant or from the Program space. The Contractor shall be solely responsible for determining under what circumstances a Participant shall be removed from the Program. Contractor shall be solely responsible for any liability associated with its decision to remove or not remove a Participant from the Program. At any time, the City may recommend the removal of a Participant from the Program
 - e. Instructors responsible for collecting program registrations are responsible for forwarding all drop-in registrant information and payments to the City's Parks and Recreation Department on a monthly basis. Information and payments are due within five (5) business days of the end of the previous month.
 - f. If the Program is to be administered on City property or with City property, then the Instructor shall assume responsibility for the proper use and care of City equipment, the building and/or grounds to which assigned. Instructor shall return all Program Space and equipment used during the Program to its original condition. No Program Participant shall be allowed to smoke, drink any beverage other than water, or eat in the Program Space.
5. **Program Fees and Program Participant Disclaimers:** The City shall establish and collect all fees from Program Participants. The City shall determine if a refund shall be granted to a Program Participant. Each Program Participant, if twelve years of age or older, and each Program Participant's parent or guardian shall be required to sign a waiver which has been approved as to form and content by the City, holding the City harmless from any claims or damages arising out of the Program.
6. **Compensation:** In consideration of the Services to be performed pursuant to this Agreement, the City agrees to pay the Instructor **\$15.00** of the registration cost per registered Program Participant for which a refund has not been granted. Upon completion of the Program and within one (1) week therefrom, the Instructor shall provide Program attendance sheets to the Program supervisor or Program coordinator. Payment shall then be tendered by the City for Services adequately and fully rendered to the Instructor within ten (10) week days of receipt of the attendance sheet.
7. **Independent Contractor:** The Services are contracted for and shall be rendered as an independent contractor not as an agent of the City. Instructor agrees to use Instructor's best efforts to provide the Services agreed to herein on behalf of the City using Instructor's own discretion in formulating Program development. The City shall not direct or control the Services of the Instructor concerning the Scope of Services and the time and dates of the Program(s), except as otherwise mutually agreed to herein. The Instructor shall not become or be considered an employee of the City. As an independent contractor the Instructor is not entitled to worker's compensation benefits nor to unemployment benefits, except as may be provided by the Instructor or some other entity. The Instructor is obligated for all federal and state income tax on any moneys earned or paid pursuant to this Agreement. The City shall not be responsible for withholding any portion of Instructor's

compensation due hereunder for the payment of FICA, worker's compensation, other taxes, and benefits or for any other purpose.

8. **Personal Service:** It is understood that the City enters into this Agreement based on the special abilities of the Instructor and that this Agreement shall be considered as an agreement for personal instruction and teaching services. The Instructor shall be solely responsible for the quality, technical accuracy, timely completion, and the coordination of all services rendered by the Instructor. Accordingly, the Instructor shall neither assign any responsibilities nor delegate any duties under this Agreement without the prior written consent of the City.
9. **Assignment:** Instructor shall not assign or delegate this Agreement or any portion of the Agreement or any money due to or which becomes due hereunder without the written consent of the City.
10. **Background Checks and Drug Free:** The Instructor, upon request of the City's Parks and Recreation Director and at the cost of the Instructor, shall participate in a criminal background investigation, including but not limited to, fingerprinting, written consents to obtain information concerning misdemeanor and felony convictions. The Instructor shall report to the Program mentally and physically fit to perform the Services. The Instructor shall be free from alcohol, illegal controlled drugs and/or substances, and all other intoxicants whether legal or illegal.
11. **American Disabilities Act:** Instructor shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and amended from time to time and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans Disabilities Act may be requested at any time during the life of this Agreement.
12. **Insurance:** The Instructor shall have the minimum insurance listed below with the City named as an additional insured for primary insurance and containing a severability of interests provision. The City may request from the Instructor valid certificates of insurance evidencing the required minimum coverage. Each and every policy of the Instructor shall be primary insurance and any insurance carried by the City, its officers or employees shall be excess and not contributory insurance to that provided by Instructor. Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The Instructor shall not be relieved of any liability, claims, demands or other obligations by reason of failure to procure or maintain insurance in sufficient amounts, duration, and types.
 - a. The Instructor shall provide one of the following, to be determined by City:
 - Level One:* Commercial General Liability or Homeowners Liability policy with City of Grand Junction endorsed as additional insured and combined single limits of no less than \$500,000.
 - Level Two:* Commercial General Liability with minimum combined single limits of \$500,000 per occurrence, and \$1,000,000 in the aggregate.
 - XX *Level Three:* Commercial General Liability with minimum combined single limits of \$1,000,000 per occurrence and in the aggregate. For professional occupations and services, the same minimum limit amounts for errors and omissions insurance for the professional.
 - b. If the Instructor has employees, then the Instructor shall provide Workers' Compensation Insurance as required by the State of Colorado.

Insurance is to be purchased from insurers licensed to do business within the State of Colorado. Failure on the part of the Instructor to procure or maintain the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Instructor to the City upon demand, or the City may offset the cost of the premiums against any monies due to the Instructor from the City.

13. **Indemnity:** The Instructor shall indemnify, save and hold harmless the City, its officers and employees from all damages whatsoever claimed by third parties or loss to Instructor, Instructor's employee(s) or agent(s), against the City, its officers and employees. This indemnity shall include but not be limited to the payment of

the City's costs and reasonable attorney and expert witness fees, arising directly or indirectly out of the Instructor's performance or non-performance of any services, copyright or trademark infringement, and/or personal injury. The indemnity specifically includes but is not limited to the actions or inactions of Instructor or Instructor's employee(s) or agent(s) either directly or indirectly. The provisions of this paragraph shall survive the termination of this Agreement.

- 14. **Receipt Does Not Constitute Waiver:** The City's receipt and acceptance of material, documents, and/or the Instructor's training materials prepared or furnished hereunder shall not in any way relieve the Instructor of responsibility for the quality or technical accuracy of the same.
- 15. **Binding Effect:** This Agreement, together with exhibit(s) attached hereto, constitutes the entire agreement between the Parties and shall be binding upon the Parties, their officers, employees, and agents.
- 16. **Severability:** In the event, any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable the remainder of this Agreement shall remain in full force and effect.
- 17. **Law and Venue:** The laws of the City of Grand Junction, Mesa County, Colorado, shall govern this Agreement. Any action arising out of or under this Agreement shall be brought in Mesa County, Colorado. Instructor expressly consents to venue and waives any and all defenses to an action in Mesa County, Colorado that it may have including diversity of citizenship.
- 18. **Rule of Construing Ambiguities Against the Drafter:** Each party has been encouraged to obtain the advice of its own legal and tax counsel and, therefore, the rule of construing ambiguities against the drafter shall have no application to this Agreement.

In Witness whereof, the Parties hereto have caused this Agreement to be fully executed, intending to be bound thereby.

INSTRUCTOR NAME/BUSINESS

Signature: Elizabeth Fortushniak
Grand Junction Stand Up Paddle
Print Name: Elizabeth Fortushniak
Tax ID Number: [REDACTED]
Date: 8/27/2018

City of Grand Junction

Authorized Signature: [Signature]
Print Name: Larry Manchester
Title: Recreation Supervisor
Date: 7/5/18

EXHIBIT A
SCOPE OF SERVICES

1. The Program shall consist of:
 - a. Classes, including meeting locations, times, and dates, will be determined by the City.

2. The Instructor shall:
 - a. Instruct the Program Participants in the subject matter or activities offered in the Program as set forth by the Parks and Recreation seasonal activity guide.
 - b. Ensure that the program attendance sheet waiver is signed by all participants and returned to Program staff as prescribed in this agreement.
 - c. If applicable, forward all drop-in registrant information and payments to the City's Parks and Recreation Department within five (5) business days of the end of the month.
 - d. Provide all staff necessary to offer instruction to Program Participants.
 - e. Provide the following equipment and supplies necessary for Program:
 - i. PADDLEBOARD EQUIPMENT

3. The City shall:
 - a. Advertise the program in the Parks and Recreation seasonal activity guide when possible
 - i. As of this contract, the Summer 2018 guide had already been published.
 - ii. Fall and Winter classes at the Orchard Mesa Pool will be published in the guide.
 - b. Register the Program Participants.
 - c. Collect all registration fees and disclaimers from Program Participants.
 - d. Compensate the Instructor in accordance with the terms of this Agreement.
 - e. Provide the Lincoln Park-Moyer Pool or Orchard Mesa Community Center Pool facility for class space.
 - f. Provide facility staff for safety
 - i. One manager on duty
 - ii. One lifeguard on duty