

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Leisure Services Partnership Agreement with HDFitPro, LLC

DEPARTMENT: Leisure Services

DIVISION: Parks and Recreation

AUTHORIZED BY: Joe Abel

CONTACT: Julia Thompson

EXT: 2001

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute a Facility Use Agreement with for HDFitPro, LLC to provide fitness programming to the public in Seminole County Active Parks.

District 5 Brenda Carey

Julia Thompson

BACKGROUND:

HDFitpro, LLC will be offering a variety of fitness programming for youth and adults at our county parks. Programming will include basic fitness, strength training, cardio-vascular training and stretching. The County will receive 20% of the gross proceeds from the agreement.

STAFF RECOMMENDATION:

Staff recommends Board approval of the Partnership Agreement between Seminole County Government with HDFitPro, LLC.

ATTACHMENTS:

1. Agreement

Additionally Reviewed By:	
<input checked="" type="checkbox"/>	County Attorney Review (Ann Colby)
<input checked="" type="checkbox"/>	Revenue Review (Cecilia Monti, Lisa Spriggs)

**FACILITIES USE AGREEMENT
HD FITPRO LLC**

THIS FACILITIES USE AGREEMENT is made and entered into this ____ day of _____, 20____, between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 E. First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY", and **HD FITPRO LLC**, whose address is 1677 Canoe Creek Road, Oviedo, Florida 32766, hereinafter referred to as "USER".

W I T N E S S E T H:

WHEREAS, the COUNTY is the owner and operator of certain public sports facilities located in Seminole County; and

WHEREAS, the COUNTY desires to expand sports programs offered to the public at those facilities; and

WHEREAS, the USER operates fitness programs for adults and children to encourage exercise, strength training and health and wishes to locate that program at the COUNTY's Red Bug Lake Park,

NOW, THEREFORE, in further consideration of the mutual covenants and promises stated herein between COUNTY and USER, the parties agree as follows:

SECTION 1. RIGHT OF USE. The COUNTY does hereby grant the USER the non-exclusive right to use the Red Bug Lake Park general meeting spaces for USER's fitness classes for adults and children. This right of use shall be year-round usage of the general meeting spaces in accordance with approved park schedule and hours, and shall be

contingent upon USER's compliance with all the terms and conditions of this Agreement.

SECTION 2. SERVICES TO BE PROVIDED BY THE COUNTY. The COUNTY agrees to provide the following services on behalf of the USER:

(a) The COUNTY will provide scheduled use of the general meeting spaces owned by the COUNTY for program purposes.

(b) The COUNTY will maintain its general park spaces in good working condition and any maintenance/repairs will be corrected in a timely manner by the COUNTY.

(c) The COUNTY will provide promotion/advertising for the USER's program through the COUNTY web site, COUNTY leisure service guide, and other mediums as deemed appropriate by staff.

(d) The USER will be responsible for the registration and collection of fees from each participant in the classes/programs, unless otherwise agreed upon or specified.

(e) The USER will provide COUNTY with an updated roster prior to each class.

(f) The COUNTY will administer criminal history background checks for USER's coaches, teachers and volunteers. Background checks for all coaches and volunteers must be completed prior to the first day of working with participants. COUNTY reserves the right, after review of the criminal history background checks, to prohibit individuals with unsatisfactory checks from participating in youth programs on COUNTY property.

(g) The USER will secure release forms and provide the roster with copies of registration forms to the COUNTY.

SECTION 3. SERVICES TO BE PROVIDED BY THE USER. The USER agrees to provide the following services:

(a) USER, or upon the consent and approval of the Leisure Services Director, its authorized representative shall be on the site at all times reasonably necessary for the performance of the job responsibilities specified by this Agreement.

(b) USER will provide additional equipment as necessary to ensure safe and proper execution of fitness programs.

(c) USER is responsible for all promotional and registration materials necessary for advertising and marketing its program with assistance from the COUNTY as stated in Section 2(c).

(d) USER shall provide a quality program which must be approved in advance by the Leisure Services Director or designee, with such determination to be final. If USER's performance is not acceptable to the COUNTY, the program may be cancelled at any time by the COUNTY.

(e) USER will make all necessary program arrangements such as preparing and assembling needed materials and equipment, training, communication with participants, and schedules.

(f) USER will keep an accurate record of participant session dates and attendance and provide COUNTY with same.

(g) USER will provide the Leisure Services Department with preliminary schedules at least thirty (30) days prior to start of the program. Any changes must be submitted with fourteen (14) days advance notice. All scheduling must be approved by the COUNTY prior to starting of the program.

(h) USER is responsible for coordinating with the Leisure Services Department to ensure program does not interfere with events of the COUNTY or the public. Program must yield to events/needs of the COUNTY.

(i) USER will be responsible for hiring of all staff or recruiting of volunteers needed to have proper ratios. USER will be responsible for notifying COUNTY regarding any new staff hires to ensure background checks are processed.

(j) Any sponsorship obtained by USER must be approved by the COUNTY.

(k) USER agrees to make all required tax payments as may be necessitated under its programs, including any tax obligation arising from the hiring of additional USER employees for its programs and as may be necessary to comply with the terms of this Agreement.

(l) USER agrees to conduct itself in such a manner as to advance good relations for the COUNTY and its citizens.

(m) USER further agrees to control the conduct, demeanor and appearance of employees, agents, representatives, customers, and patrons in such a manner as to advance good relations for the COUNTY and its citizens. Upon objection by the Leisure Services Director concerning the conduct, demeanor, or appearance of any person, USER shall immediately take all necessary steps to correct the course of such objection.

(n) USER shall not conduct any business or activity on COUNTY property not specifically authorized by this Agreement unless approved in advance by the COUNTY.

SECTION 4. REVENUE SHARING. The COUNTY and USER shall share all USER program registration revenues generated at Red Bug Lake Park with the COUNTY to receive twenty percent (20%) of the revenue and USER to receive eighty percent (80%) of the revenue. USER shall be responsible for the collection and accounting for such revenue and shall submit to the COUNTY its twenty percent (20%) on a monthly basis no later than the 15th day of each month with accompanying support documentation.

SECTION 5. INSURANCE.

(a) General. USER shall, at its own cost, procure the insurance required under this Section.

(1) Before taking possession of the leased premises, USER shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Commercial General Liability and Property Insurance). COUNTY and its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy provided by the USER. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by USER, USER shall provide COUNTY with a renewal or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with this Agreement and that the insurance is in full Compliance with the requirements of this

Agreement. In lieu of the statement on the Certificate, USER shall, at the option of COUNTY, submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in accordance with this Agreement and that the insurance is in full compliance with the requirements of this Agreement.

(3) In addition to providing the Certificate of Insurance, if required by COUNTY, USER shall, within thirty (30) days after receipt of the request provide COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by USER shall relieve USER of its full responsibility for performance of any obligation including its indemnification of COUNTY under this Agreement.

(b) Insurance Company Requirements. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida.

(2) In addition, such companies other than those authorized by Section 624.4621, Florida Statutes, shall have and maintain a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall (i) lose its Certificate of Authority, (ii) no longer comply with Section 624.4621, Florida Statutes, or (iii) fail to maintain the requisite Best's Rating and Financial Size Category, USER shall, as soon as it has knowledge of any circumstance, immediately notify COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as USER has replaced the unacceptable insurer with an insurer acceptable to COUNTY, USER shall be deemed to be in default of this Agreement.

(c) Specifications. Without limiting any of the other obligations or liability, USER shall, at its sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in this Agreement, the insurance shall become effective prior to the commencement of this Agreement by USER and shall be maintained in full force until this Agreement's completion date. The amounts and types of insurance shall conform to the following minimum requirements:

(1) COMMERCIAL GENERAL LIABILITY.

(A) USER's insurance shall cover USER for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance

Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment, and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by USER (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

	<u>LIMITS</u>
General Aggregate	\$1,000,000.00
Personal & Advertising	
Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

(2) PROPERTY INSURANCE. USER shall provide property insurance covering real property, and if this Agreement includes construction of or additions to above ground buildings or structures, Builder's Risk insurance, as follows:

(A) *Form*. Coverage is to be no more restrictive than that afforded by the latest edition of Insurance Services Office Form CP 00 20 and CP 00 30.

(B) *Amount of Insurance*. The amount of coverage shall be equal to one hundred percent (100%) of the completed value of such additions, buildings or structures.

(C) *Maximum Deductible*. FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) each claim.

(D) *Waiver of Occupancy Clause and Warranty*. The policy must be specifically endorsed to eliminate any "Occupancy Clauses" or similar warranty or representation that the building, additions, or structures, in the course of construction, shall not be occupied without specific endorsement of the policy. The policy must

be endorsed to provide that Builder's Risk coverage will continue to apply until final acceptance of the buildings, additions, or structures by COUNTY.

(F) *Flood Insurance.* If buildings or structures are located within a special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures, or the maximum amount of flood insurance coverage available under the National Flood Program.

(d) Coverage. The insurance provided by USER pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by COUNTY or COUNTY's officials, officers, or employees shall be excess of and not contributing to the insurance provided by or on behalf of USER.

(e) Occurrence Basis. The Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis.

(f) Obligations. Compliance with the foregoing insurance requirements shall relieve USER, its employees or agents of liability from any obligation under this Section or any other portions of this Agreement.

SECTION 6. TERM. This Agreement shall take effect upon its execution by the parties and shall remain in effect until December 31, 2009. This Agreement may be renewed upon written acknowledgement by both parties for an additional year.

SECTION 7. TERMINATION. COUNTY may, by written notice to USER, terminate this Agreement, in whole or in part, at any time, either for

COUNTY's convenience or because of the failure of USER to fulfill USER's Agreement obligations. Upon receipt of such notice, USER shall immediately discontinue all services and programs affected unless the notice directs otherwise. USER may discontinue services at any time, but must give a thirty (30) day written notice to the COUNTY, and fulfill all obligations to any customers who have paid for the program and hold the COUNTY harmless from any claims brought by said customer.

SECTION 8. NON-DISCRIMINATION. USER agrees that it will not discriminate against any employee or applicant for programs under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps to ensure that employees are treated during employment, without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 9. ASSIGNMENT. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto, without prior written consent of the opposite party and only by a document of equal dignity herewith.

SECTION 10. SUBCONTRACTORS. In the event USER, during the course of this Agreement, requires the services of any subcontractors or other professional associates in connection with this Agreement, USER must secure the prior written approval of the COUNTY. If subcontractors or other professional associates are required in connection with this

Agreement, USER shall remain fully responsible for the services of subcontractors or other professional associates.

SECTION 11. INDEMNIFICATION OF COUNTY. USER agrees to hold harmless, replace, and indemnify the COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by USER, whether caused by USER or otherwise. This hold harmless, release, and indemnification shall include any claim based on negligence, action, or inaction of the parties.

SECTION 12. AUDIT OF RECORDS.

(a) COUNTY may perform or have performed an audit of the records of USER to verify payments and percentages made to the COUNTY. This audit would be performed at a time mutually agreeable to USER and COUNTY subsequent to the close of the final fiscal period in which the last program is concluded.

(b) USER agrees to maintain all books, documents, papers, accounting records and other evidences pertaining to programs conducted under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at USER's office at all reasonable times during the Agreement period and for two (2) years from the date of final payment under the contract for audit or inspection as provided for in subsection (a) of this Section.

SECTION 13. MODIFICATIONS, AMENDMENTS OR, ALTERATIONS. No modification, amendment or, alteration in the terms or conditions

contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 14. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting USER including its officers, employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. USER is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

SECTION 15. EMPLOYEE STATUS. Persons employed by USER in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY's officers and employees either by operation of law or by the COUNTY.

SECTION 16. PUBLIC RECORDS LAW. USER acknowledges COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. USER acknowledges that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this document for the purposes herein expressed.

HD FITPRO LLC

Witness

By: _____

Print Name

Print Name

Witness

Title: _____

Print Name

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BOB DALLARI, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney
AEC/lpk
3/20/09 6/9/09
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