

AGREEMENT

This agreement is made this ____ day of _____, 2016, between the

- City of San Luis of P.O. Box 1170, San Luis, Arizona, 85349 (“City”),
- Border Gym Fitness, L.L.C., of P.O. Box 5107, 1620 Kennedy Lane, San Luis, Arizona, 85349 (“Contractor”).

A. City is desirous of obtaining wellness health services.

B. Contractor agrees to perform these services for City under the terms and conditions set forth in this contract.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

SECTION ONE DESCRIPTION OF WORK

The purpose of the Wellness Program shall be to help improve overall fitness of employees of the City by providing gym membership with the Contractor for up to 50 City employees. Gym membership includes services as well as access to facilities and equipment as more fully described in Exhibit A, which is incorporated into this agreement. Contractor reserves the right to cancel any classes offered during the agreement of this contract without advance notice. Border Fitness Gym L.L.C. will not be responsible for providing audio equipment or any other special accommodations necessary for fitness activity participants, such as seating or water.

SECTION TWO PAYMENT

City will pay contractor \$25.00 per month per number of employees who use the services of the contractor during that month for up to 50 employees during the term of this contract. Payment will be made on or before the 15th day of each month.

SECTION THREE RELATIONSHIP OF PARTIES

The parties intend that an independent contractor-employer relationship will be created by this contract. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with contractor. Contractor is not to be considered an agent or employee of City for any purpose, and the employees of contractor are not entitled to any of the benefits that owner provides for City's employees. It is understood that City does not agree to use contractor exclusively. It is

further understood that contractor is free to contract for similar services to be performed for others while under contract with City.

SECTION
FOUR
LIABILITY

The work to be performed under this contract will be performed entirely at contractor's risk, and contractor assumes all responsibility for the condition of the premises and equipment used in the performance of this contract. Contractor will carry, for the duration of this contract, public liability insurance in an amount acceptable to City. Contractor agrees to indemnify City for any and all liability or loss arising in any way out of the performance of this contract.

SECTION
FIVE
EQUIPMENT

Contractor shall supply all equipment and supplies needed to perform this agreement without additional charge.

SECTION
SIX
DURATION

This contract shall begin on July 1, 2016 and terminate on June 30, 2017. Either party may cancel this contract on ten (10) days written notice; otherwise, the contract shall remain in force for its term. In the event of cancellation, no further monies will be owed by City to Contractor.

SECTION
SEVEN
MISCELLANEOUS

A. Waiver

No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Contractor or City of the breach of any covenant of this agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this contract.

B. Attorneys' Fees

In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the another party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgment

is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

C. Counterparts

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

D. Headings

The descriptive headings of the paragraphs of this agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

F. Time of the Essence

Time is of the essence of this contract.

G. No Partnership and Third Parties

It is not intended by this agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other similar arrangement between Contractor or City. No term or provision of this agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

H. Entire Agreement

This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

I. Amendment

No change or additions are to be made to this agreement except by a written amendment executed by the parties hereto.

J. Governing Law

This agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this agreement is subject to the provisions of A.R.S. § 38 511.

L. Venue

Any legal action relating to this agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the District of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this

paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

M. Severability

Every provision of this agreement is, and will be construed to be, a separate and independent covenant. If any provision of this agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

N. No Personal Liability

No member, official or employee of the City shall be personally liable to Contractor, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Contractor or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this contract.

O. Business License

Contractor shall obtain and maintain during the term of this contract a city business license.

The parties have executed this agreement on the day and year first above written. The parties have executed this agreement on the day and year first above-mentioned.

Tadeo A. De La Hoya, Interim City Manager
City of San Luis

Luis A. Chang, Manager
Border Gym Fitness

Approved As To Form:

By: _____
Kay Marion Macuil
San Luis City Attorney