

**AGREEMENT BETWEEN
24-7 GET FIT SL, LLC and THE CITY OF SAN LUIS**

This Agreement is made and entered into this ___ day of _____ 201_, by and between 24-7 GET FIT SL, LLC, Contractor (hereinafter "GET FIT"), an Arizona Limited Liability Company operating at 1922 E Juan Sanchez Blvd, in San Luis, Arizona and The City of San Luis, Customer (hereinafter "CITY") located at 1090 E. Union Street, in San Luis, Arizona.

RECITALS:

- A. That CITY is desirous of obtaining wellness health services.
- B. That this is the initial contract between GET FIT and CITY and there are no prior agreements between the two.

NOW, THEREFORE, in consideration of the mutual promises, the parties agree as follows:

1. The recitals are hereby incorporated by reference as agreements of the parties.
2. That the term of this Agreement shall be for the period of six (6) months, commencing on January 1st, 2018, and ending on June 30th, 2018. This agreement may be terminated in writing by either party with a THIRTY (30) day written notice.
3. CITY agrees to pay GET FIT a refundable deposit in the amount of FIVE HUNDRED US DOLLARS (\$500.00). If the CITY is not in default, then the deposit will be refunded at the end of the term of this contract or applied to account balance at the CITY's request.
4. CITY's corporate account must maintain at a minimum 15 GET FIT club members at all time or use the deposit to pay the equivalent of a minimum of 15 members.
5. If CITY does not maintain the minimum required 15 members, then CITY agrees that the difference in the total monthly fee (15 member fees minus actual fees) will be deducted from the \$500.00 deposit on a month to month basis. At the end of the term of this agreement, GET FIT will refund the remaining balance of the deposit to the CITY as per paragraph 2. Under no circumstances, the difference in monthly fees will exceed the \$500 Deposit.
6. If CITY cancels the contract before June 30th, 2018 then CITY is hereby waiving its right to the \$500.00 deposit and NO refund will be issued.
7. If CITY does not maintain the minimum required 15 members, then CITY agrees that the difference in the total monthly fee (15 member fees minus actual fees) will be deducted from the \$500.00 deposit on a month to month basis. At the end of the term of this agreement, GET FIT will refund the remaining balance of the deposit to the CITY as per paragraph 2. Under no circumstances, the difference in monthly fees over the six-month term of this Agreement will exceed the \$500 Deposit.
8. GET FIT will issue gym memberships to CITY employees under CITY's corporate account and provide access to the facility as per GET FIT policies. Employees will have

access to both clubs in Somerton located at 201 N Bingham Ave, Somerton, AZ and in San Luis located at 1922 E Juan Sanchez Blvd, San Luis, AZ.

9. CITY agrees to pay the dues on behalf of its employees.
 - A- GET FIT agrees to waive the enrollment fee, the key card cost, and the pro-rated monthly dues for the initial month. The cost to join will only be the monthly dues.
 - B- The monthly membership fee is \$19.99 per person.
 - C- If the account is in good standing, no additional fees will be charged for services provided under this agreement.
 - D- CITY agrees to issue a check for the full amount to GET FIT within two (2) weeks of the CITY receiving the monthly invoice for the total dollar amount due for memberships under the corporate account.
10. CITY agrees that if a payment is returned for insufficient funds, or rejected due to a closed account, an NSF fee of \$25.00 will be applied to the account.
11. If CITY fails to pay any amount when due under this agreement, GET FIT shall be entitled, anytime and in its sole discretion, to suspend or cancel the corporate account and the employees memberships and to require CITY to immediately pay all past due balances. Suspension or cancellation shall not relieve CITY from the obligation to pay any unpaid balances. Any payments owing from CITY to GET FIT that are not received when due shall bear interest at 10% per annum. If CITY fails to pay any amount to GET FIT when due, CITY shall pay all costs and expenses incurred by GET FIT to collect the unpaid balance, including reasonable attorney's fees and expenses.
12. CITY understands that each of its employees will sign a separate membership agreement with GET FIT to adhere and comply with the company's rules and regulations as they may thereafter be modified, amended or supplemented. The separate membership agreement entails GET FIT's policies including but not limited to health representation, guest policy, waiver of liability and hold harmless agreement.
13. CITY is responsible to notify GET FIT if an employee is terminated. Once notice is received, GET FIT will remove terminated employees from the corporate account.
14. GET FIT will e-mail monthly the City's HR Department the invoice and a report detailing all active corporate members with visit count, and the previous month new members.
15. If any dispute or disagreement arises with respect to any provision of this agreement or the performance of either party under the agreement, the dispute or disagreement shall be settled by arbitration, to which the parties bind themselves as follows:

The parties shall endeavor to agree on a single arbitrator, and such person shall act as sole arbitrator of the matter or matters submitted to him or her and his or her decision shall be final and binding on the parties. If the parties are unable to agree on a single arbitrator, each party shall appoint one arbitrator and the two arbitrators so selected shall agree on and appoint a third. The three arbitrators so selected shall act as the board of arbitrators and a majority decision of the board shall be final and binding on the parties. The rules and procedures for arbitration shall, so far as is practicable, be pursuant to Rule 10 of the Local Rules of the Superior Court for Yuma County, Arizona. Arbitration shall include reasonable attorney fees and costs to the prevailing party.

16. This Agreement constitutes the entire Agreement between the parties and may not be amended except by a writing signed by each of the parties.
17. This Agreement shall be construed under the laws of the State of Arizona.
18. The signer for both parties represent that it has full power, authority and legal right to execute and deliver this contractual agreement.
19. Miscellaneous covenants
 - A- Notices.

All notices, approvals and communications provided for herein, or given in connection herewith, shall be validly given, made, delivered or served if in writing

and delivered personally by process server or sent by a nationally recognized courier (e.g., Federal Express, Airborne, UPS) or by United States Postal Service certified with return receipt requested and postage prepaid to:

If to the CITY: City Manager
 City of San Luis
 P.O. Box 1170 (by United States Postal Service)
 1090 East Union Street (by personal process or courier)
 San Luis, Arizona 85349

With a copy to: San Luis City Attorney
 The City of San Luis
 P.O. Box 1170
 San Luis, AZ 85349

If to the CONTRACOR: Scott Awar
 P.O. Box 736 (by United States Postal Service)
 Somerton, AZ 85350

1922 E. Juan Sanchez Blvd.
Suite 6 (by personal process or courier)
San Luis, Arizona, 85349

or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices, approvals, changes of addresses and other communications provided for herein shall be effective upon receipt as hereinabove provided, prepaid and addressed as set forth above.

B- Waiver.

No delay in exercising any right or remedy shall constitute a waiver thereof. The failure of either party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, shall not be construed as subsequently waiving any such terms, or any others, but the terms shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

C- Attorneys' Fees.

In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the other 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.

D- 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.

E- 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 Agreement.

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 Get Fit and 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.

K- Arizona Laws.

- i. Get Fit certifies that it does not participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317,
- ii. Get Fit certifies that pursuant to A.R.S. §41-4401(A), the undersigned is authorized to and does warrant its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214, subsection A, e-verify. A breach by the undersigned or his/her employer of this warranty shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract. The City retains the legal right to inspect the papers of any contractor or subcontractor employee who works under this Agreement to ensure that the undersigned, his/her employer or the employer's subcontractor or subcontractors are complying with this warranty.
- iii. **Notice of A.R. S. §38-511:** Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in

which he or she is, directly or indirectly, interested. 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 court of competent jurisdiction in Yuma County, Arizona 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 Get Fit, 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 Get Fit or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

O- Business License.

Get Fit shall obtain and maintain during the term of this Agreement a City business license.

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

24-7 GET FIT SL, LLC

CITY OF SAN LUIS

by _____
S. Scott Awar, President

by _____
Gerardo Sanchez, Mayor

ATTEST:

APPROVED AS TO FORM:

Sonia Cornelio, City Clerk

Kay Marion Macuil, City Attorney
