

## **AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, between the

- City of San Luis of P.O. Box 1170, San Luis, Arizona, 85349 ("City") and
- Border Gym Fitness, L.L.C., of P.O. Box 5107, 1938 E. Juan Sanchez Blvd, Suite 1, 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 Agreement.

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

### **SECTION ONE DESCRIPTION OF WORK**

#### **A. Gym Membership**

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 by this reference. Contractor reserves the right to cancel any classes offered during the term of this Agreement without advance notice. Contractor will not be responsible for providing audio equipment or any other special accommodations necessary for fitness activity participants, including but not limited to seating and water.

#### **B. Equipment**

Exercise equipment shall be in good working condition so that it may be operated safely and for the exercises for which the equipment was intended. For any equipment which is not in good working order as just described here, the Contractor shall restore it to good working order or replace it within twenty-one (21) days from the day the it is no longer in good working condition.

#### **C. Cleanliness**

The all locations of Contractor's gyms shall be clean, free of pests and air conditioning operational to the satisfaction of representatives of the City's H.R. Department and the Wellness Committee.

#### **D. Invoicing**

Contractor shall e-mail to the City every first Monday of every month its invoice for the previous month.

#### **E. Reporting**

Contractor shall report every month to the City the attendance of City employees enrolled in the City's Gym Membership Benefit.

**SECTION  
TWO  
PAYMENT**

City will pay Contractor \$22.00 per month per the number of City employees who are enrolled in the Gym Membership Benefit who use the services of the Contractor during that month for up to 50 employees during the term of this Agreement. Payment will be made on or before the 15<sup>th</sup> day of each month either by check or direct deposit to Contractor.

In addition upon execution of this Contract, City will pay Contractor \$125.00 in advance for its administrative costs.

**SECTION  
THREE  
RELATIONSHIP OF PARTIES**

The parties intend that an independent contractor relationship will be created by this Agreement. City is interested only in the results to be achieved and not the manner and means of achieving it. 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. The employees of Contractor are not to be considered agents or employees of the City. It is understood that City does not agree to use Contractor exclusively. It is further understood that Contractor is free to contract to provide similar services for others while under this Agreement with City.

**SECTION  
FOUR  
LIABILITY**

The work to be performed under this Agreement 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 Agreement. Contractor will carry, for the duration of this Agreement, 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 Agreement.

**SECTION  
FIVE  
EQUIPMENT**

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

**SECTION  
SIX  
DURATION**

This Agreement shall begin on January 1, 2018 and terminate on March 31, 2018. Either party may cancel this Agreement on ten (10) days written notice; otherwise, the Agreement shall remain in force for its term. In the event of cancellation, no further monies will be owed by City to Contractor. Termination of any individual City Employee from City's Gym Benefit is determined by the Enrollment Agreement Exhibit B, which is incorporated into this agreement by this reference.

The Agreement may be renewed for an additional three months on the recommendation of the Wellness Committee, the City's HR Department and the approval of the City Council.

**SECTION  
SEVEN  
MISCELLANEOUS**

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                      Owner  
   P.O. Box 5107 (by United States Postal Service)  
   1938 E. Juan Sanchez Blvd.  
   Suite 1 (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.

#### **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 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 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.

**K. Arizona Laws**

- (1) Contractor 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,
- (2) Contractor 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.
- (3) **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 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 Agreement.

**O. Business License**

Contractor 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. **BORDER GYM FITNESS, L.L.C.**

by

**Luis Chang, Owner**

**CITY OF SAN LUIS**

by

**Gerardo Sanchez, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Sonia Cornelio, City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Kay Marion Macuil, City Attorney**