

AGREEMENT

This agreement (the "Agreement") is made this _____ day of _____, 2018, 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"). (The City and the Contractor may be referred to singularly as the "Party" and collectively as the "Parties").

A. The 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 the 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. The 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 it is no longer in good working condition.

C. Cleanliness

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

The 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 15th day of each month either by check or direct deposit to Contractor.

In addition, upon execution of this Contract, City will pay Contractor \$250.00 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. The 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. The 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 and 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. The 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 July 1, 2018, and terminate on December 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 six 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 to be given under this Agreement, or which may be given by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by means of prepaid service by:

- deposit in the United States Postal Service by certified mail, return receipt requested, and postage prepaid,
- personal delivery by a process server or
- sent by a nationally recognized courier (e.g., Federal Express, UPS)

and addressed to the respective Parties as follows:

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 CONTRACTOR

**Luis Chang, 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.

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 in this Agreement.

G. No Agency, Partnership or Third Parties

It is not intended by this agreement to, and nothing contained in this agreement shall create any agency, partnership, joint venture or other similar arrangement between the Contractor and the 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. Compliance with the Law and Provisions Required by Arizona Law

The Contractor agrees it will comply with all federal, state and local laws including but not limited to:

- (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.

P. Authority

The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement.

Q. Notice of Conveyance or Assignment

The Contractor shall give notice to the City of any sale of Contractor's gym business at least 10 days prior to the effective date of the sale. The Contractor may assign all of its rights under this Agreement to any one or more persons or entities, on such terms as Contractor may deem appropriate, provided that Contractor may not convey said rights unless the corresponding obligations of the Contractor are assumed by the assignee of the Contractor's rights. Notice of the assignment of rights and assumption of obligations shall be in a document signed by the Contractor and such assignee. Contractor shall be released from the obligations assumed by the assignee once the City receives notice under the notice requirements of the Agreement.

[Intentionally left blank, signature page follows]

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, ARIZONA

Gerardo Sanchez, Mayor

ATTEST:

APPROVED AS TO FORM:

Sonia Cornelio, City Clerk

Kay Marion Macuil, City Attorney

Exhibit A

Border Gym Fitness L.L.C Gym Membership for up to 50 City of San Luis Employees

Locations:

1938 Juan Sanchez Blvd Suite 1 & 2
San Luis, Arizona

240 W. Main St.
Somerton, Arizona

Access and Services:

Access to open gym and exercise equipment 24 hours per day, 7 days per week at both locations;

Classes at the San Luis location only (Zumba, Yoga, Spinning, Cross-Training and Cardio Boxing, all of which are subject to change or cancellation without notice);

Three (3) scheduled free orientations with a trainer which includes instruction on how to use each of our machines;

30-minute circuit;

Kids-care area Monday through Thursday from 6 p.m. to 8 p.m. ; and

Kids-rest area in Somerton.

BORDER FITNESS

Employee's Agreement for Gym Membership Benefit July - December 2018

Acuerdo del Empleado(a) Para Beneficio de membresía de Gimnasio – julio – diciembre 2018

Purpose / Propósito

For the purpose of promoting a healthy workforce, the City of San Luis, Arizona (further referred to as "City") wishes to provide voluntary gym membership free of charge to its full-time, non-temporary, non-seasonal employees.

Con el propósito de promover una fuerza laboral saludable, la Ciudad de San Luis, Arizona (de aquí en adelante referida como "Ciudad") desea proveer, a los empleados que así lo deseen, una membresía libre de costo a los empleados de tiempo completo, pero no a empleados temporales ni estacionales.

Agreement / Acuerdo

By signing below, I verify, understand and agree that:

Al firmar, verifico, entiendo y estoy de acuerdo que:

1. I am a full-time, non-temporary, non-seasonal employee of the City of San Luis, Arizona.
Soy empleado(a) de tiempo completo, no temporal ni estacional de la Ciudad de San Luis, Arizona.
2. This gym membership is voluntary and is offered for my personal benefit and it is not related to my work duties or functions.
Esta membresía del gimnasio es voluntaria y se ofrece para mi beneficio personal y no tiene relación alguna con mis funciones o deberes laborales.
3. If I am injured in the scope of using this Gym benefit, I understand I am not covered by City of San Luis workers' compensation insurance benefit.
En caso de lesión en uso del beneficio del gimnasio, entiendo que el beneficio que ofrece la Ciudad de San Luis de compensación al trabajador no será disponible.
4. Gym membership is offered through **Border Gym Fitness** which has facilities in Somerton and San Luis, Arizona.
La membresía del gimnasio es ofrecida a través de Border Gym Fitness, el cual tiene instalaciones en Somerton y San Luis, Arizona.
5. Border Gym Fitness is a third-party, independent contractor and it is not to be considered an agent, representative, or employee of the City for any purpose.
Border Gym Fitness es un contratista tercero e independiente y no debe ser considerado un agente, representante, o empleado de la Ciudad.
6. The City assumes no responsibility for the premises, equipment, or employees of Border Gym Fitness for any reason or purpose, whatsoever.
La Ciudad no asume ninguna responsabilidad por las instalaciones, el equipo, o empleados de Border Gym Fitness por cualquier motivo o finalidad, en absoluto.
7. Border Gym Fitness might cancel any classes offered during the term of the membership without advanced notice. Note: Classes only available in San Luis facility.
Border Gym Fitness reserva el derecho de cancelar cualquiera de las clases que ofrezca durante el término de la membresía sin previa notificación previo aviso. Nota: Clases solo disponibles en el local de San Luis.
8. I agree to attend Border Gym Fitness at least 8 times per calendar month unless my absence is excused through the Human Resources Department of the City (HR).
Me comprometo asistir a Border Gym Fitness por lo menos 8 veces por mes, a menos de que mi ausencia sea justificada por el Departamento de Recursos Humanos de la Ciudad (referido de aquí en adelante como "HR").

9. I understand that if I fail to attend Border Gym Fitness at least 8 times in one calendar month without an excuse accepted by HR then I will be suspended from the program the next calendar month. After the month of suspension, I may apply for the Gym Benefit.
Entiendo que si no cumplo con mi asistencia a Border Gym Fitness por lo menos 8 veces en un mes sin una razón que haya sido justificada por HR, seré suspendido del programa por un mes. Al cumplir con el mes de suspensión, puedo solicitar por el beneficio del Gimnasio.
10. I understand that HR has the sole reasonable discretion to excuse my non-attendance at Border Gym Fitness.
Entiendo que HR usará una discreción razonable para justificar mi falta de asistencia a Border Gym Fitness.
11. I understand that the City cannot exceed 50 memberships per month by contract with Border Gym Fitness. I understand that HR must take into consideration this limit on membership when deciding whether to excuse non-attendance.
Entiendo que la Ciudad de San Luis no puede exceder el límite de 50 membresías por mes especulado en el contrato con Border Gym Fitness. Entiendo que HR debe tener en cuenta este límite de membresías a la hora de decidir si se debe excusar la falta de asistencia.
12. I understand that HR has the sole reasonable discretion to permanently terminate my gym benefit or require me to reimburse the City for the cost of my benefit if I am not using my gym benefit to participate in fitness activities.
Entiendo que HR es la única entidad que tiene poder de decidir terminación de mi beneficio de gimnasio. Entiendo que HR usará discreción razonable sobre la cancelación permanente del uso del beneficio o exigirme que reembolse a la ciudad por el costo del beneficio de gimnasio si no participo en actividades de acondicionamiento físico.
13. I agree that I must contact HR immediately to request to be excused from attendance. If I do not contact HR immediately, HR will not consider my request after the first business day of the following month of my absence. (For example: if an employee couldn't go to the gym at least 8 times in July because the employee was sick, the employee must contact HR to be excused, no later than first Monday in August.)
Estoy de acuerdo en comunicarme con HR inmediatamente para solicitar una justificación por cualquier ausencia. Si no me comunico con HR inmediatamente, HR no considerará mi solicitud después del primer día de labores del mes siguiente de mi ausencia. (Por ejemplo: si un empleado(a) no puede ir al gimnasio por lo menos 8 veces en Julio porque el empleado(a) estaba enfermo(a), el empleado(a) deberá de comunicarse con HR para solicitar un justificante que no pase del primer Lunes de Agosto).
14. My free membership benefit through Border Gym Fitness continues until December 31, 2018 unless it is terminated sooner because I am no longer employed through the City of San Luis, or I failed to follow the rules of Border Gym Fitness, or I failed to attend *Border Gym Fitness* at least 8 times per month without an excuse accepted by HR.
Mi beneficio de membresía gratuita a través de Border Gym Fitness continuará hasta el 31 de diciembre 2018, a menos de que sea terminada antes porque ya no estoy empleado(a) por la Ciudad de San Luis, o porque no seguí las reglas de Border Gym Fitness, o dejé de ir al Border Gym Fitness por lo menos 8 veces al mes sin justificación alguna que no haya sido aprobada por HR.
15. I understand that it will be employee's responsibility to pay \$20.00 for proxy key to Border Fitness, if I request one.
Entiendo que sera la responsabilidad del empleado de pagar \$20 por una llave electronica a Border Firtness, si yo la solicito.

Employee Signature / Firma De Empleado(a)

Date/Fecha

Print Employee Name / Nombre De Empleado(a) Por Escrito