

AGREEMENT

This agreement (the "Agreement") is effective January 1, 2019, 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 60 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 60 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 January 1, 2019, and terminate on June 30, 2019. 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.

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