

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** for professional services is made by and between the City of Madison, Alabama, a municipal corporation, located at 100 Hughes Road, Madison, Alabama 35758, hereinafter referred to as “City,” and Michelle Thao, hereinafter referred to as “Contractor.”

### WITNESSETH:

**WHEREAS**, the City owns and maintains facilities known as the City of Madison Wellness Center, located at 190 Graphics Drive, and the Madison Community Center, located at 1329 Browns Ferry Road; and

**WHEREAS**, the City desires to obtain the services of a professional fitness instructor to provide pre/post-natal strength training for Madison residents; and

**WHEREAS**, Contractor is a unique provider of the services.

**NOW, THEREFORE**, in consideration of mutual covenants and agreements herein set forth, the parties, intending to be legally bound, hereby agree as follows:

### SECTION ONE: SERVICES TO BE PROVIDED

- A. Pursuant to the provisions of this Agreement, Contractor will provide the following services to the City:
1. Contractor shall be responsible for providing professional training and instruction focusing on pre/post-natal strength training, with scheduling of days and times to be mutually agreed upon by Contractor and City, and the Contractor shall have sole responsibility for the manner in which such classes and/or training is conducted.
  2. Contractor shall be responsible for cleanup and the return of equipment to proper locations after each class she teaches.
  3. Contractor may be allowed to store her own equipment in City-provided space, at the sole discretion of the Director of Parks and Recreation. The City shall not be responsible for any damage to and/or loss of Contractor’s equipment.
  4. Contractor shall have access to necessary equipment and a speaker provided by the City.
  5. Contractor shall maintain an accurate roll for all classes/training she conducts and shall provide enrollment lists and attendance records to the City upon request and as otherwise provided in this Agreement.
  6. The City will, when practicable, provide the Contractor with two (2) hours’ notice if classes do not meet the minimum requirements of five (5) participants.

7. The Contractor shall not allow more than twenty-five (25) participants in any one class.
  8. The Contractor's classes shall be offered only to adults eighteen (18) years of age or older and senior citizens.
  9. Contractor shall provide classes to senior citizens at no cost and only charge adults under the age of sixty-five (65) for these classes.
- B. Contractor agrees to comply with all applicable Federal, State, and local laws and regulations, including, but not limited to, those pertaining to wages and hours of employment. Contractor further agrees to observe all City recreation and safety policies, as well as generally recognized training safety standards and policies.
  - C. Contractor shall thoroughly and proficiently perform all services and furnish all supplies, materials, machinery, equipment, and means, except as otherwise expressly specified herein, necessary or proper to carrying out the services required by this Agreement. Contractor shall perform all services in accordance with the provisions of this Agreement. Contractor alone shall be responsible for the legality, safety, efficiency, and adequacy of the services performed hereunder.
  - D. Contractor shall hold a City of Madison business license, as well as any appropriate and necessary governmental and industry-specific licenses and permits. It is the sole responsibility of the Contractor to obtain the same in a timely manner relevant to the performance of the work contemplated hereunder.
  - E. Contractor agrees to submit to a criminal background check conducted pursuant to the City of Madison Parks and Recreation Department's volunteer background check policy.

**SECTION TWO: FEE/EXPENSE STRUCTURE**

The City shall charge and collect course fees of \$5.00 to \$25.00 per paying participant in advance of class dates. The City shall collect all fees and shall remit ninety percent (90%) of gross revenues from each class to the Contractor. The City will retain ten percent (10%) of gross revenues from classes in consideration for use of the City facility.

Contractor shall be responsible for accounting for and remitting any applicable federal, state, and local taxes. Gross revenues include but are not limited to all monies collected pursuant to Contractor's classes, registration fees, and any related expenses, charges, and fees. City shall maintain accurate enrollment lists and payment records for each class.

**SECTION THREE: INSURANCE & INDEMNIFICATION**

Contractor will furnish City a Certificate of General Liability Insurance naming City as an additional insured, as well as evidence of required licensing, all acceptable to City, at the time of execution of this Agreement. To the fullest extent permitted by law, the Contractor shall indemnify

and hold harmless City (including its affiliates, parents, and subsidiaries) and all of its agents, officers, elected officials, members, managers, and employees from and against all claims, damages, losses, and expenses, including but not limited to, court costs, and reasonable attorney's fees, arising out of, related to or resulting from the performance of the Contractor's work or the Contractors' failure to perform its obligations under this Agreement, regardless of whether such claims, damages, losses, and expenses are caused by, or are alleged to be caused by, in whole or in part, the acts, omissions, or negligence of a party indemnified hereunder.

**SECTION FOUR: COMMENCEMENT; TERM**

This Agreement shall come into effect when the authorized representatives of each party finally execute and affix their respective signatures hereto in their duly authorized capacities. In the event the signatures are affixed on different dates, the date of the final signature shall be the date the Agreement comes into effect. The term of this agreement shall be for one (1) year from the date of commencement, and the Agreement shall continue in force from year to year, unless either party gives notice of its intent to terminate thirty (30) calendar days in advance of the anniversary date of commencement.

**SECTION FIVE: TERMINATION**

This Agreement may be terminated by either party, with or without cause, upon the provision of thirty (30) days' notice to the other party.

**SECTION SIX: INDEPENDENT CONTRACTOR RELATIONSHIP**

It is mutually understood and agreed and it is the intent of the parties that an independent contractor relationship be and is hereby established under the terms and conditions of this Agreement. It is further mutually understood and agreed that employees or students of Contractor are not nor shall be deemed to be employees or students of City, and employees of City are not nor shall they be deemed to be employees of Contractor.

It is specifically agreed by the parties that the City's provision of work space or the making of other accommodations for Contractor to perform portions of his work is merely for the City's convenience and is not intended to indicate or create an employer-employee relationship or confer any employment rights or benefits whatsoever on Contractor, including, but not limited to, worker's compensation and health insurance.

**SECTION SEVEN: EXCUSED PERFORMANCE**

In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority, whether the same shall be of Local, State or Federal origin, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent, the party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder during the period of the other party's suspension of performance.

**SECTION EIGHT:        ASSIGNMENT**

Contractor shall not assign or transfer this Agreement or any part thereof without the express, written consent of City.

**SECTION NINE:        ENTIRE AGREEMENT; WAIVER**

This Agreement constitutes the entire Agreement between the parties with respect to the provision of the services outlined herein, and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by duly authorized representatives of Contractor and City. This Agreement supersedes all other agreements between the parties.

**SECTION TEN: NOTICES**

All notices to City shall be addressed to:  
**City of Madison Parks and Recreation Department**  
**8324 Old Madison Pike**  
**Madison, Alabama 35758**

With a copy to:  
**City of Madison Legal Department**  
**100 Hughes Road**  
**Madison, Alabama 35758**

All notices to Contractor shall be addressed to:  
**Michelle Thao**  
**itsmischh@gmail.com**

**SECTION ELEVEN:    GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Alabama.

**SECTION TWELVE:    IMMIGRATION LAW**

By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

**SECTION THIRTEEN: MISCELLANEOUS PROVISIONS**

- A. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court

finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

- B. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- C. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.
- D. The headings of each section are inserted for reference purposes only. Any conflict between a descriptive heading and the content of the section shall be resolved in favor of the language contained in the section.

**IN WITNESS WHEREOF**, the parties hereto affirm that they have the authority to execute this Agreement on behalf of their respective entities for the entire term and have hereunto set their hands and seals on the day and year respectively noted.

**City of Madison, Alabama,  
a municipal corporation**

**Attest:**

By: \_\_\_\_\_  
Paul Finley, Mayor

\_\_\_\_\_  
Lisa D. Thomas, City Clerk-Treasurer

Date: \_\_\_\_\_

**STATE OF ALABAMA** §

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**COUNTY OF MADISON** §

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I, the undersigned Notary Public, in and for said County, in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer, respectively, of the City of Madison, Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation.

Given under my hand and official seal this \_\_\_\_ day of January 2025.

\_\_\_\_\_  
Notary Public

