

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 Elena Guerrero, hereinafter referred to as “Contractor.”

WITNESSETH:

WHEREAS, the City owns and maintains facilities known as the City of Madison Wellness Center; and

WHEREAS, the City desires to obtain the services of a professional fitness instructor for classes involving weights and fitness bands; 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 professional training/instruction during classes that shall include scheduling on Tuesday and Thursday from 10:00 a.m. to noon 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 he/she teaches.
 3. Contractor may be allowed to store his/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 free weights, resistance bands and a speaker provided by the City.
 5. Contractor shall maintain an accurate roll for all classes/training he 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 fifteen (15) participants in any one class.
- 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 Contractor shall remit ten percent (10%) of all revenues from classes performed at the Wellness Center to the City in consideration for use of the City facility. The Contractor shall be responsible for accounting for and remitting any applicable federal, state, and local taxes associated with fees paid to Contractor.

SECTION THREE: INDEMNIFICATION

To the fullest extent permitted by law, Contractor agrees to hold harmless and indemnify the City from and against all injuries, deaths, damages, losses, liabilities, judgments, costs, and expenses to the extent caused by the negligent acts, errors and/or omissions of Contractor in performance of the work or services rendered pursuant to the instant Agreement. This promise to indemnify shall survive the expiration of this Agreement.

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
100 Hughes Road
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:
Elena Guerra
Elenamarie12@ymail.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.

E.

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 §

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 August 2024.

Notary Public

Elena Guerra, Contractor

Date: _____

STATE OF ALABAMA

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COUNTY OF MADISON

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I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Elena Guerra, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

Given under my hand this the _____ day of _____, 2024.

Notary Public