

LICENSE AND USE AGREEMENT FOR GLENDALE REGIONAL HEALTH CENTER
(Strength Training, Inc.)

This LICENSE AND USE Agreement is executed to be effective this 23 day of July, 2015 ("Effective Date") between the CITY OF GLENDALE, an Arizona municipal corporation ("City" or "Licensor"), and STRENGTH TRAINING, INC., an Arizona corporation ("STI" or "Licensee"), for the use of the Glendale Regional Health Center.

RECITALS

- A. City operates the Glendale Regional Public Safety Training Center ("GRPSTC") located at 11550 West Glendale Avenue, which includes approximately 6,000 square feet of space for operation of the Glendale Regional Health Center ("Health Center" or "Premises") under the direction of the Glendale Fire Department. The space is depicted on **Map A** ("GRPSTC") and **Map B** ("Health Center Floor Plan"), which are attached hereto and incorporated by this reference; and
- B. City and STI desire for STI to use the Health Center to provide medical examinations and other related health services for City firefighters and employees of other public safety agencies, as more specifically provided in the "Agreement for Public Safety Physicals and Related Health Services" executed concurrently herewith and attached as **Exhibit A**; and
- C. City and Licensee desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the mutual promises and covenants contained in this License, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and STI agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and are incorporated into and shall constitute a part of this Agreement.

2. Facility License and Use Fee.

2.1 The City hereby grants to Licensee the right to use the Premises consisting of approximately 6,000 square feet as depicted on **Map B** for the Term set forth in this Agreement for payment of a Use Fee equal to Three Thousand Dollars (\$2,500.00) per month payable on a monthly basis on the first day of each month.

Fees for a partial month's use of the Premises shall be pro-rated at the rate of \$83.33 per day.

Licensee acknowledges they have been using the facility since March 17, 2015 and as such, the prorated rent due for the period from March 17, 2015 to June 30, 2015 is \$8,666.62.

Licensee shall remit its first payment of \$11,166.62 to City on July 1, 2015 for STI's continued use of the Premises through July 31, 2015 and on the first day of the first month thereafter in accordance with the schedule outlined above to the following address:

Customer Service
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

If Licensee fails to pay any monthly fee in full on or before the 5th (fifth) day following the due date, the unpaid amount will accrue interest at a rate of 18% per annum or the statutory rate, whichever is less, from the due date until payment is made in full. The City's acceptance of any monies from Licensee is not an admission of the sufficiency of the amount of the payment, and the City reserves all legal rights to question the accuracy of Licensee's payments.

- 2.2 Effective Date & Duration. This License commences June 1, 2015 and continues for a time period consistent with the Term identified below, including any extensions or renewals.
- 2.3 Use Restrictions. Licensee is granted the right during any Term to occupy and use the Premises during the operating hours and only to provide firefighter physicals and related health services as provided in the "Agreement for Public Safety Physicals and Related Health Services." Licensee shall not use or permit others to use the Premises for any purposes other than as expressly permitted herein and within the scope of its ADHS facility license.
- 2.4 No Warranties by City. City licenses the Premises to Licensee in its current condition, "as is," with no representation or warranty by the City as to the quality, condition or suitability of use, and without any liability or obligation on the part of the City of making any alterations, improvements or repairs of any kind on or about the Premises.
- 2.5 Maintenance and Repair. During the Term, Licensee at its sole cost and expense shall keep and maintain the Premises in a neat, clean condition, clear of all obstructions or refuse of any kind.
- 2.6 Alterations and Modifications. Licensee shall not make any alterations or modifications to the Premises without the prior written consent of the City. All City-approved alterations and modifications shall be (i) performed and completed in a good, workmanlike manner at the sole cost and expense of Licensee; (ii) completed in compliance with all applicable laws, ordinances, codes, rules, regulations, and/or orders; and (iii) shall become a part of the Property, and any title shall vest in and be retained by City. Licensee shall, at its sole expense, construct all improvements in compliance with the Americans with Disabilities Act (ADA), as amended from time to time, including City amendments.
- 2.7 Right of Access/Inspection. The City reserves the right to control and manage the GRPSTC, including the Premises, and to enforce all necessary and proper rules for its management and operation. Licensee agrees to permit and escort authorized City employees or agents to enter the Premises, with the exception of any HIPAA protected areas or areas containing medical records or any other information protected by law ("Protected Areas"). If access is needed into Protected Areas for cleaning, repairs, etc., advance notice will be given to the Licensee to allow Licensee to secure all patient charts and other confidential records in the locking storage cabinets. A member of the Licensee's staff must remain present with the City employee or agent until work is completed.
- 2.8 City Obligations.
- a. City shall maintain the Premises in good condition and repair, reasonable wear and tear excepted. City shall provide general house lighting, heating, air conditioning, water, sanitation, custodial service and certain furniture, fixtures and equipment as described on **Exhibit B** ("Equipment"). City is not obligated to provide computers or copiers. The City will provide annual fire inspections per the Arizona Department of Health Service requirements.
- b. Security. The City assumes no obligation to provide security for the Premises, other than the security personnel in place for the GRPSTC. Any additional security or other protective service desired by the Licensee other than normal security provided by City for the GRPSTC facility, must be arranged for by special agreement with the City and the Licensee is responsible for all costs connected with any additional services.
- c. Property Liability. The City assumes no responsibility whatsoever and has no obligation to reimburse the Licensee for any property, fixtures, equipment or other personal property placed by the Licensee in the Health Center. The Licensee expressly releases and discharges the City from any and all liabilities for any loss, injury or damages to property which may or do arise out of or be related to the use of the Health Center under this License.
- d. The City assumes no responsibility for personal items, equipment or other items that remain in the Premises after the expiration of the License.

2.9 The Licensee is responsible for all damage, except normal wear and tear, to the Health Center facilities that occur in connection with Licensee's use, including but not limited to those caused by Licensee and its employees, agents, sub-contractors, invitees, and guests. The Licensee shall take all precautions to maintain the Premises in good repair and restore and return the Premises back to the City upon termination of the Agreement in as good condition as it was provided to the Licensee, ordinary wear excepted. If the Licensee does not maintain the Premises as required by the Agreement, the City may do all things necessary to restore the Premises to the prior condition with all costs being charged to the Licensee. The Licensee shall purchase replacement integrated equipment (chairs, tables, general house lighting, etc.) when the Licensee is responsible for damage as stated 2.9. This does not include the major medical equipment the City will maintain as listed in section 3.1 below.

3. Medical Equipment.

3.1 City shall provide medical equipment described on **Exhibit B** ("Equipment"), including a Spirometer for testing lung capacity, a hearing test booth, a Titmus vision test machine, digital x-ray machine, two treadmills with stress test equipment and EKG machines. The City will provide annual preventative maintenance on the two treadmills with stress test equipment and EKG machine, the Spirometer, and the x-ray machine, along with annual calibration of the Spirometer and hearing booth. Calibration information will be provided to the Licensee for their records. Blood samples may be sent to the Licensee's contracted medical laboratory for analysis and x-rays may be sent to an outside radiologist for interpretation.

3.2 The Licensee is responsible for the control, operation and use of all medical Equipment described on **Exhibit B** ("Equipment"). All damage, except normal wear and tear, to the Equipment that occurs in connection with Licensee's operation and/or use when providing services pursuant to the "Agreement for Public Safety Physicals and Related Health Services," including but not limited to those caused by Licensee and its employees, agents, sub-contractors, invitees, and guests shall be the sole responsibility of the Licensee. The Licensee shall fully indemnify the City for any claims that arise due to its operation and/or use of the equipment as described in Section 11.3, "Indemnification." It shall be the Licensee's sole responsibility to notify the City when any Equipment malfunctions or is in need of repair. While the equipment is under the control, operation and use of the Licensee and its employees, agents, sub-contractors, invitees, and guests, Licensee shall take all precautions to maintain the Equipment in good repair and return the Equipment back to the City upon termination of the Agreement in as good condition as it was provided to the Licensee, normal wear and tear excepted. If the Licensee damages the Equipment the City may do all things necessary to restore the Equipment to the prior condition, including if necessary, replacement of the Equipment, with all costs being charged to the Licensee.

The Licensee shall provide all durable medical supplies or equipment (BP cuffs, stethoscopes, glucose meters, calipers, body fat analyzers, lab equipment and other minor medical equipment) as needed. The City has no obligation to reimburse the Licensee for loss of or damage to their durable medical supplies, equipment or other personal property. The Licensee may insure such supplies, equipment or other personal property as needed.

4. Fund Appropriation Contingency.

Licensee understands that the continuation of this Agreement after the close of the City's current fiscal year, which ends on June 30, is subject to City Council appropriation of the necessary expenditures required by this Agreement, including expenditures for the operation of the Health Center. Should the appropriation required for funding of the GRPSTC, Health Center or the "Agreement for Public Safety Physicals and Related Health Services" not be made or not be made in full, the City may terminate this License as of the close of any fiscal year during the term of this License or at the time appropriation or funding for the necessary expenditures is not available.

5. **Termination.**

- 5.1 For Convenience. City or Licensee may terminate this License for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 90 days following the date of delivery.
- 5.2 For Cause. City may terminate this License for cause if Licensee fails to cure any breach of this License within seven days after receipt of written notice specifying the breach.

6. **Conflict.** Licensee acknowledges this License is subject to A.R.S. § 38-511, which allows for cancellation of this agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on City's behalf is also an employee, agent, or consultant of any other party to this agreement.

7. **Insurance.**

- 7.1 Requirements. Licensee shall procure and maintain the following insurance for the duration of the License ("Required Insurance"):
- a. Licensee and each Sub-Licensee, if any, performing work or services or providing materials related to this License must procure and maintain the insurance coverages described below (collectively referred to herein as the "Licensee's Policies"), until all obligations under this License are completed.
 - b. Commercial General Liability. Licensee and Sub-licensee must at all times carry commercial general liability on an occurrence basis with limits of at least \$5,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury and property damage, including products-completed operations and personal and advertising injury and Fire damage legal liability with limits at least \$500,000 with coverage as broad as ISO Form CG 00 01.
 - c. Automobile Liability with coverage as broad as ISO Form CA 00 01 with limits no less than \$1,000,000 per accident for Licensee and \$1,000,000 per accident for Sub-licensee and covering owned, non-owned and hired automobiles.
 - d. Workers' Compensation and Employer's Liability. Licensee and Sub-Licensee shall provide workers' compensation insurance as required by State of Arizona with statutory limits and Employer's Liability insurance with limits no less than \$1,000,000 per accident for bodily injury and disease.
 - e. Professional Liability (including medical malpractice and errors and omissions) insurance for liability arising out of, or in connection with the performance of all required services under the "Agreement for Public Safety Physicals and Related Health Services" with limits no less than \$5,000,000 per occurrence and \$5,000,000 aggregate. If the policy is written on a claims-made basis, the retroactive date must be shown and must be before the date of the contract. Insurance must be maintained for at least two years after termination of this contract. If coverage is canceled or non-renewed and not replaced with another claims made policy with a retroactive date prior to the contract effective date, the Licensee must purchase "extended reporting coverage" for a minimum of two years after contract termination.
 - f. If Licensee or Sub-licensee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained.
 - g. Notice of Changes. Licensee and Sub-licensee must provide for not less than 30 days' advance written notice to City Representative of Cancellation or termination of Licensee's or Sub-Licensee's Policies.
 - h. Waiver of Subrogation. Licensee and Sub-Licensee hereby grant to City a waiver of any right to subrogation which any insurer of said Licensee or Sub-Licensee may acquire

against the City by virtue of the payment of any loss under such insurance. Licensee and Sub-Licensee agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

i. Certificates of Insurance.

- (1) Within 10 business days after the execution of the Agreement, Licensee must deliver to City Representative certificates of insurance for each of Licensee and Sub-Licensee's Policies, which will confirm the existence or issuance of Licensee and Sub-Licensee's Policies in accordance with the provisions of this section, and copies of the endorsements of Licensee and Sub-Licensee's Policies in accordance with the provisions of this section.
- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Licensee and Sub-Licensee's Policies, or to examine Licensee and Sub-Licensee's Policies, or to inform Licensee or Sub-Licensee in the event that any coverage does not comply with the requirements of this section.
- (3) Licensee's failure to secure and maintain Licensee Policies and to assure Sub-Licensee policies as required will constitute a material default under the j.

j. Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered and endorsed as additional insured's on the commercial liability and automobile liability policies.

k. The Licensees and Sub-Licensees insurance coverage must be primary. Any insurance or self-insurance policies or programs maintained by City shall be excess of Licensee's or Sub-Licensee's insurance and shall not contribute to it.

l. All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

7.2 Sub-Licensees.

- a. Licensee must also cause its Sub-Licensees to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-Licensee if City is satisfied the amounts required are not commercially available to the Sub-Licensee and the insurance the Sub-Licensee does have is appropriate for the Sub-Licensee's work under this Agreement.
- c. Licensee and Sub-Licensees must provide to the City proof of the Required Insurance whenever requested.

7.3 Indemnification.

a. Licensee shall indemnify, defend, save and hold harmless the City, and their officers, officials, agents, and employees (hereinafter referred to as "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Licensee or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Laws or arising out of the failure of Licensee to conform to any federal, state or local law, statute, ordinance, rule, regulation or court order/decree. It is the specific intention of the

parties that the Indemnitees shall, in all instances, except for Claims arising solely from the negligent or willful act or omissions of the Indemnitees, be indemnified by Licensee from any and all Claims. Licensee is responsible for primary loss investigation, defense and judgment costs where this indemnification applies.

- b. Licensee is not required to indemnify any Indemnitees for, from, or against any Claims, demand or expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party

8. Performance Surety Requirements.

The performance sureties shall be in the form of a bond, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. Letters of credit are not acceptable. Individual sureties are not acceptable.

The Licensee shall, at the time of entering into the contract, furnish a performance surety in the form of a bond, money order or certified or cashier's check, in the amount of 25 percent of the contract amount for the Initial Term guaranteeing the faithful performance of the contract.

If a bond is submitted, it shall be written on the Performance Bond form, see **Exhibit C** provided by the City. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney. The bond must be written by a surety with a Best Rating no less than an A and must be authorized and licensed to do business in this State by the Arizona Department of Insurance. Individual sureties and letters of credit are not acceptable.

9. Media Releases and Relations

Licensee agrees that the City has primary responsibility for press contact and interaction. Any release of information to the media regarding the Health Center or any of its activities will be coordinated by the Glendale Fire Department ("GFD") Public Information Officer ("Glendale PIO") and Human Resources & Risk Management Department ("HR"), with input from the Licensee. News releases pertaining to the Health Center or any part of the services provided pursuant to this Agreement shall not be made by Licensee without prior written approval of the Glendale PIO. Prior to release, a copy of all public record and media releases regarding the Health Center or its participating agencies and activities shall be forwarded to the Glendale PIO and to Licensee. Licensee will not reveal any investigative information or operational procedures of the Health Center outside the parties except as required by law or competent authority.

10. Immigration Law Compliance.

- 10.1 Licensee, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 10.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 10.3 City retains the legal right to inspect the papers of any Licensee or subcontractor employee who performs work under this Agreement to ensure that the Licensee or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 10.4 City may conduct random inspections, and upon request of City, Licensee shall provide copies of papers and records of Licensee demonstrating continued compliance with the warranty under subsection 9.1 above. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

- 10.5 Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Licensee and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 10.6 Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 10.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

11. Notices.

- 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

- a. Licensee. Licensee's representative (the "Licensee's Representative") authorized to act on Licensee's behalf with respect to the Project, and his or her address for Notice delivery is:

James ("Jim") Maher
c/o Strength Training, Inc.
17233 N. Holmes Blvd.
Phoenix, Arizona 85053
602-349-2545

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Fire Chief
6829 North 58th Drive
Glendale, Arizona 85301
623-930-4401

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Licensee identifying the designee(s) and their respective addresses for notices.
- d. Changes. Licensee or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. **Entire Agreement; Survival; Counterparts; Signatures.**

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Licensee and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

13.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties, unless otherwise provided herein. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

- 13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.
- 13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
14. **Term**. The initial term of the contract shall be for one (1) year beginning on the Effective Date. The City may, at its option and with the approval of the Licensee, extend the term of this Agreement for one year, renewable in six-month increments, based upon satisfactory Licensee and Sub-Licensee performance. The City Manager or designee is authorized to execute any and all documents required to extend the contract. Licensee will be notified in writing by the City Materials Manager of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original Agreement period. Price adjustments will be reviewed only during the Agreement renewal period. There are no automatic renewals of this Agreement.
15. **Dispute Resolution**. Each claim, controversy and dispute (each a "Dispute") between Licensee and City will be resolved in accordance with **Exhibit D**. The final determination will be made by the City.
16. **Exhibits**. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.
- | | |
|-----------|---|
| Exhibit A | Agreement for Public Safety Physicals and Related Health Services |
| Exhibit B | Equipment |
| Exhibit C | Performance Bond |
| Exhibit D | Dispute Resolution |
| Map A | GRPSTC Layout |
| Map B | Health Center Floor Plan |

The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation



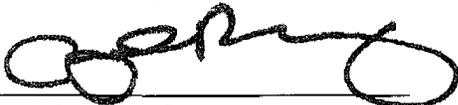
By: Richard A. Bowers
Its: Acting City Manager

ATTEST:



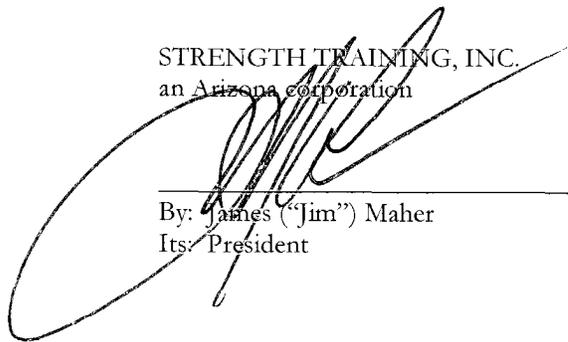
Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Michael D. Bailey, City Attorney

STRENGTH TRAINING, INC.
an Arizona corporation



By: James ("Jim") Maher
Its: President

**LICENSE AND USE AGREEMENT FOR GLENDALE REGIONAL HEALTH CENTER
(Strength Training, Inc.)**

EXHIBIT A

Agreement for Public Safety Physicals and Related Health Services

**LICENSE AND USE AGREEMENT FOR GLENDALE REGIONAL HEALTH CENTER
(Strength Training, Inc.)**

**EXHIBIT B
EQUIPMENT**

The City will provide and maintain the following equipment:

Type of Equipment	<u>COG inv id</u>	<u>serial no</u>	<u>location id</u>
X-Ray Machine	COG25531	170-11893	GRPSTC H-7
Pulmonary Machine	COG23788	AJS01277	GRPSTC H-15
Hearing Test Machine	COG23779	BC 181 559	GRPSTC H-6
Treadmills 1	COG23780	Q5005279	GRPSTC H-4
Treadmills 2	COG23781	Q5005278	GRPSTC H-5
Vision testing 1		E243462	GRPSTC H-17
Health O Meter Scale		4020057900	GRPSTC H-18
Health O Meter Scale		4020057905	GRPSTC H-19
Tango M2 BP monitor			GRPSTC H-4
Exam light		0035134	GRPSTC H-16
Exam light		0035137	GRPSTC H-17
Exam light		0035138	GRPSTC H-18
Exam light		0035139	GRPSTC H-19
Exam light		0035142	GRPSTC H-20
Exam light		B3H000003345	GRPSTC H-10
Microwave		801TAXT02098	GRPSTC H-32
Refrigerator 1		DR312701	GRPSTC H-13
Refrigerator 2		AR312536	GRPSTC H-32

**LICENSE AND USE AGREEMENT FOR GLENDALE REGIONAL HEALTH CENTER
(Strength Training, Inc.)**

EXHIBIT C
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter called the "Principal"), as Principal, and _____, a corporation organized under the laws of the State of _____, (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the City of Glendale, a municipal corporation in the State of Arizona (hereinafter called the "Obligee"), as Obligee in the amount of _____ Dollars (\$ _____), for the payment whereof the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract with the Obligee, dated the _____ day of _____, 20____, whereby Principal agreed to _____

_____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that, if Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract, with or without notice to the Surety, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all authorized amendments, modifications or exercise of options to said contract that may hereafter be made between the Principal and Obligee, notice of such amendments, modifications or exercise of options to this Surety being hereby waived, then this obligation shall be null and void, otherwise to remain in full force and effect.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the Court.

Signed this _____ day of _____, 20 _____.

"Principal"

By: _____

Its: _____

"Surety"

By: _____

**LICENSE AND USE AGREEMENT FOR GLENDALE REGIONAL HEALTH CENTER
(Strength Training, Inc.)**

**EXHIBIT D
DISPUTE RESOLUTION**

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Licensee must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Licensee in accordance with this Agreement.
4. **Exceptions.**
- 4.1 Third Party Claims. City and Licensee are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Licensee.
- 4.2 Liens. City or Licensee may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

**LICENSE AND USE AGREEMENT FOR GLENDALE REGIONAL HEALTH CENTER
(Strength Training, Inc.)**

MAP A

GRPSTC LAYOUT

[See attached]

**LICENSE AND USE AGREEMENT FOR GLENDALE REGIONAL HEALTH CENTER
(Strength Training, Inc.)**

MAP B

HEALTH CENTER FLOOR PLAN

[See attached]