AMENDED AGREEMENT

THIS AMENDED AGREEMENT (hereinafter "Amended Agreement") effective this _____ day of _____, 2012, by and between the CITY OF SANIBEL (hereinafter "City"), a Florida municipal corporation, and Dalia Jakubauskas, (hereinafter "Fitness Instructor"), amending that certain Agreement previously entered into on September 8, 2012.

WITNESSETH:

WHEREAS, the City operates a Recreation Center adjacent to the Sanibel School; and

WHEREAS, Dalia Jakubauskas is able and willing to provide certain fitness classes and services to the City at the Recreation Center through its designated primary Fitness Instructor, Dalia Jakubauskas, or a substitute fitness instructor approved in accordance with the requirements for this Amended Agreement; and

WHEREAS, the parties wish to set forth the circumstances and conditions under which such Fitness Instructor services shall be provided to the City;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, agreed by the parties to be good and sufficient consideration, the City and Dalia Jakubauskas hereby agree as follows:

1. Fitness Instructor shall be a certified, insured and experienced instructor, qualified to provide fitness classes at the City Recreation Center as follows (if absent the Fitness Instructor shall provide, in accordance with the requirements of this Amended Agreement, a pre-approved substitute instructor who meets the same requirements):

    (a) Beginning October 1, 2012 through September 30, 2013 the following group fitness classes will be conducted by the Fitness Instructor:

Cycling

Bosu and Ball

Land Aerobics

Body Sculpting

Bosu Pilates

City, through the Recreation Director, reserves the right to change the name of a fitness class, revise the type of fitness class offered, change the time or day a class is given or otherwise adjust the class offering provided such change does not exceed the approved budget for payment pursuant to this Amended Agreement. Any change to a fitness class will be coordinated with the Fitness Instructor to assure that a change in time/day, or a change in the fitness class name or the content of the class, can be accommodated by the Fitness Instructor. The City reserves the right at its sole discretion to cancel any fitness class or category of fitness classes, and Dalia Jakubauskas understands and agrees that no future classes are guaranteed to occur.

(b) The Fitness Instructor must maintain applicable fitness certifications and CPR/AED certifications in a valid and current status at all times.

(c) There shall be a mandatory fingerprint background check of Fitness Instructor (and any substitute fitness instructors used) prior to any fitness class being provided by such Fitness Instructor. The cost of the above fingerprint background check will be at the expense of the Fitness Instructor and deducted from the monthly invoice.

(d) The Fitness Instructor and all substitute instructors shall wear a uniform shirt or cap supplied by the City while instructing classes for the Recreation Center.

(e) Classes will be held on holidays that the Recreation Center is open.

(f) Each fitness class shall be 60 minutes and include a variety of creative choreography.

(g) Each fitness class will include an adequate warm-up (approximately 10 minutes), aerobic or strength training segment (approximately 40 minutes), and an appropriate cool-down and stretch (approximately 10 minutes). These time periods may vary slightly depending upon the fitness class being taught. If equipment is used, proper training will be provided by the instructor to the patron.

(h) Fitness Instructor will be available 5 minutes before and after each class to prepare, answer questions and provide any necessary clean up or organization.

(i) Fitness Instructor will provide music for operation with the stereo provided by the City as described below.

(j) Fitness Instructor shall make announcements whenever requested by the Recreation Staff, regarding upcoming City of Sanibel events at the beginning of each class. **Fitness Instructor shall also be responsible for marketing classes to promote attendance.**

(k) Fitness Instructors are to report to the Fitness Contracts Coordinator assigned to handle fitness programming and contracts. If the Fitness Contracts Coordinator is not available, the Fitness Instructor will report to the Recreation Director or his/her designee.

(l) Fitness Instructor shall report any accident to staff and fill out accident reports if an accident occurs in the Fitness Instructor's class.

(m) Fitness Instructor shall fill out an incident/facility report form if they see any equipment broken, facility safety hazard, inappropriate actions

taking place by facility patrons or violations of the Recreation Center Code of Conduct.

(n) There will be a mandatory orientation/training session for all Fitness Instructors and pre-approved substitute fitness instructors, which will include AED locations, emergency procedures and the Recreation Center Code of Conduct

(o) There will be quarterly meetings of all Fitness Instructors for the purpose of on-going communication with the Recreation Staff.

2. (a) The City of Sanibel shall compensate the Fitness Instructor at the rate of $55.00 for each fitness class, or other City-approved class, conducted in accordance with this Amended Agreement. The Fitness Instructor shall submit a monthly invoice to City specifying the number of classes conducted during the previous month including the time, date and instructor for each such class. After approval of the invoice, the City shall pay the Fitness Instructor's monthly invoice in accordance with the City's prompt payment requirements. The total amount invoiced to City for the Fitness Instructor's services shall not exceed the City's proposed budget of $45,600.00.

(b) In the event that a scheduled fitness class does not take place or starts more than 5 minutes past the scheduled time, through no fault of the City (e.g. the Fitness Instructor is not available at the scheduled time and no approved substitute fitness instructor is present), no payment from the City shall be applicable for that scheduled class and, in addition, a penalty in the amount of $55.00 shall be effective and shall be deducted from that month's invoice submitted by Fitness Instructor

(with such $55.00 penalty being applicable to any and all scheduled classes which do not take place or which start more than 5 minutes past the scheduled time).

3. The City shall make available, for Fitness Instructor, an adequate air-conditioned room at the City Recreation Center. In addition, the City shall provide a stereo unit which can be operated in conjunction with a wireless microphone.
4. **Class size (number in attendance) shall be monitored on a weekly basis. If the number of participants drops below 10 class members for two weeks in a row, the class will be evaluated by the City for possible cancellation or replacement at the City's sole discretion.**
5. Fitness Instructor is and shall be construed as an independent contractor with respect to the City and the services provided pursuant to this Amended Agreement. Fitness Instructor is not, and shall not represent him/herself as an employee or agent of the City.
6. Fitness Instructor will not solicit, promote or sell personal products or services while providing contract services for the City or while on City property.
7. This Amended Agreement shall remain in full force and effect until September 30, 2013 unless terminated earlier pursuant to law and/or the terms of this Amended Agreement.
8. The City may terminate this Amended Agreement at any time, with or without cause, upon 30 days' prior written notice to the other party to this Amended Agreement. In the event this Amended Agreement is terminated by the City, Fitness Instructor shall be paid for all services rendered through the date of termination.

9. Dalia Jakubauskas shall defend, hold harmless and indemnify the City from and against any and all liability, loss, claims, injuries, damages, costs, attorneys' fees and expenses of whatever kind or nature which City may incur by reason of the intentional or negligent acts, errors or omissions arising out of Dalia Jakubauskas, Fitness Instructor or their substitute fitness instructors or their agents, representatives, subcontractors and/or employees performance of, or in any way connected with Fitness Instructor's services as set forth in this Amended Agreement. Upon completion of all services, obligations and duties provided for in this Amended Agreement, or if this Amended Agreement is terminated for any reason, the terms and conditions of this section shall survive. The first $10.00 paid under the terms of this Amended Agreement shall constitute separate consideration for this indemnity and hold harmless provision, such consideration acknowledged by Fitness Instructor to be sufficient.

10. Fitness Instructor must provide the City with the Florida Department of Agriculture and Consumer Services Certificate of Health Studios Registration or Affidavit of Exemption.

11. Fitness Instructor and all substitute fitness instructors shall procure and maintain the following insurance coverage:

(a) General Aggregate Limit (Other than products - Completed Operations)	$2,000,000
(b) Products - Completed Operations Aggregate Limit	$2,000,000
(c) Each Occurrence Limit	$1,000,000
(d) Personal and Advertising Injury Limit	$1,000,000
(e) Fire Damage Limit, any one fire	$ 100,000

City shall be notified immediately by Fitness Instructor in the event that insurance coverage is amended or modified in any way. In the event of a cancellation of such insurance coverage, such Fitness Instructor and all substitute fitness instructors shall be prohibited from conducting any class until such coverage has been reinstated.

12. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Amended Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Amended Agreement to be executed and their official seals affixed hereto on the day and year first written above.

(SEAL)

CITY OF SANIBEL

BY: _____
Kevin Ruane, Mayor

ATTEST:

_____
Pamela Smith, City Clerk

WITNESS:

_____
Witness #1 Signature

_____
Witness #1 Printed Name

BY: _____

Print Name: _____
Title: Fitness Instructor

_____
Witness #2 Signature

_____
Witness #2 Printed Name

APPROVED AS TO FORM: _____ 9/26/12
Kenneth B. Cuyler, City Attorney Date