

**RESOLUTION NO. 2021-207**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY OF COCONUT CREEK AND OPTUMHEALTH CARE SOLUTIONS, LLC REGARDING THE USE OF COCONUT CREEK FITNESS FACILITIES FOR OPTUM FITNESS PASSPORT PROGRAM CLIENTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, OptumHealth Care Solutions, LLC (“Optum”) and the City of Coconut Creek entered into an agreement, dated November 28, 2017 (the “Agreement”), to allow Optum to utilize Coconut Creek fitness facilities for Optum’s Medicare Advantage Plan members to participate in the Optum Fitness Passport Program (“Program”); and

**WHEREAS**, the Agreement renews automatically unless terminated by one of the parties and remains in effect; and

**WHEREAS**, Optum has proposed amending the Agreement to allow additional individuals to utilize the Program and to provide technical revisions to change the annual renewal date, update definitions, and update the termination provisions consistent with the renewal date change; and

**WHEREAS**, the City of Coconut Creek strives to improve and expand the availability of fitness opportunities.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:**

**Section 1:** That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution. All exhibits attached hereto are incorporated herein and made a specific part of this resolution.

**Section 2:** That the City Commission has reviewed and hereby approves Amendment No.1 to the Agreement between the City of Coconut Creek and OptumHealth

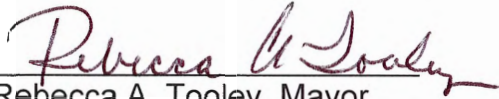
Care Solutions, LLC for the use of City fitness facilities for clients of the Optum Fitness Passport Program.

**Section 3:** That the City Manager, or designee, is hereby authorized to execute the attached Amendment No. 1 to the Agreement between the City of Coconut Creek, and OptumHealth Care Solutions, LLC for the use of City fitness facilities for clients of the Optum Fitness Passport Program.

**Section 4:** That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

**Section 5:** That this resolution shall be in full force and effect immediately upon its adoption.

Adopted this 28th day of October, 2021.

  
Rebecca A. Tooley, Mayor

Attest:

  
  
Marianne Bowers, Interim City Clerk

Tooley	<u>Aye</u>
Rydell	<u>Aye</u>
Sarbone	<u>Aye</u>
Welch	<u>Aye</u>
Railey	<u>Aye</u>

**Amendment No. 1 to the Agreement Between City of Coconut Creek and OptumHealth Care Solutions, LLC**

**This Amendment No. 1** ("Amendment") dated August 1, 2021 (the "Amendment Effective Date") is entered into by and between OptumHealth Care Solutions, LLC, including its affiliates, with its principal place of business at 11000 Optum Circle, Eden Prairie, MN 55344 ("Optum"); and City of Coconut Creek with its principal place of business at 4800 West Copans Road, Coconut Creek, FL 33063 ("Network").

**Whereas**, Optum and Network are parties to the Fitness Passport Service Agreement dated November 28, 2017, (the "Agreement") for the provision of certain services by Optum to Network; and

**Whereas**, the parties desire to amend certain terms and conditions of the Agreement in accordance with this Amendment and agree to new terms and conditions as set forth herein.

**Now, therefore**, the parties mutually agree as follows:

1. Capitalized terms used herein which are not otherwise defined in this Amendment or any attachments hereto shall have the meaning assigned to them in the Agreement.

2. Article 1 Definitions Eligible Member shall be deleted in its entirety and replaced with the following:

**Eligible Member:** A benefit holder enrolled in a qualifying health plan or individual covered by a qualifying employer that may or may not be a member of a Participating Facility and is not enrolled in the Fitness Passport Program.

3. Article 1 Definitions Member shall be deleted in its entirety and replaced with the following:

**Member:** A benefit holder enrolled in a qualifying health plan or individual covered by a qualifying employer that is enrolled in the Fitness Passport Program and is a member of a Participating Facility.

4. Article 2 Section 2.1 of the Agreement shall be deleted in its entirety and replaced amended as follows:

**Term.** The initial term of this Agreement shall begin on the Effective Date and shall continue for a period of twelve (12) months ("Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term"), unless sooner terminated in accordance with Section 2.2 of this Agreement. Notwithstanding the foregoing, the Renewal Term for the year in which Amendment No. 1 to this Agreement is executed shall extend to December 31, 2021. Thereafter, this Agreement shall automatically renew on the same terms and conditions on January 1st of each calendar year for successive twelve (12) month terms (each a "Renewal Term"), unless otherwise agreed to in writing prior to September 1st of each calendar year or otherwise terminated in accordance with Section 2.2 of this Agreement. The Initial Term and each subsequent Renewal Term may be referred to collectively or separately as "Term."

5. Article 2 Section 2.2 of the Agreement shall be deleted in its entirety and replaced amended as follows:

**2.1 Termination.** This Agreement may be terminated by any of the following:

- a) If either party provides written notice of non-renewal for the next Renewal Term no later than September 1<sup>st</sup> of the current Term. Following proper notice of non-renewal the current Term will effectively terminate as of midnight local time of Network on December 31; or
- b) By either Party upon mutual written agreement; or
- c) If either Party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after written notice is given by the non-breaching Party, the Agreement shall terminate at the end of the thirty (30) day period.
- d) This Agreement shall terminate immediately and automatically upon delivery to the other Party of written notice of termination on the occurrence of one of the following:

- i. Bankruptcy, insolvency or the dissolution of either Party;

- ii. Unauthorized assignment of this Agreement; or
- iii. The loss of any license, qualification, authorization, accreditation or certification required for a Party to perform its duties under this Agreement that was not the result of such Party's willful or negligent act or omission.

Each Party agrees to notify the other Party in writing not later than five (5) business days after the occurrence of any of the events referred to immediately above.

6. **Section II of Appendix A Fees and Descriptions of Services** is deleted and replaced in its entirety with the following:

II. **Network Reimbursement Fees:** In connection with participating in the Fitness Passport Program, Optum will reimburse Network a pre-determined amount each calendar month for each participating Member, following Network's validation and representation that the Member has met the program criteria as defined by Optum below. The Network Facility Reimbursement payment is based on a Member's cumulative number of monthly visits to any Participating Facility. For the avoidance of doubt, only one Network Facility Reimbursement payment shall be made for each participating Member per month, regardless of the number of Network Participating Facilities that the participating Member visited.

Medicare Member Participation Requirement	Network Reimbursement amount paid by Optum
Medicare Member visits any Participating Facility during calendar month	\$4.00 per visit to Participating Facility with a maximum monthly payment of \$32.00 (8 visits)
Commercial Member Participation Requirement	Network Reimbursement amount paid by Optum
Commercial Member visits any Participating Facility during calendar month	\$4.00 per visit to Participating Facility with a maximum monthly payment of \$32.00 (8 visits)

Unless Network has notified Optum in writing no later than August 1<sup>st</sup> of the current Term the Network Reimbursement Fee will not be negotiable and will continue for the next Renewal Term.

- 7. This Amendment and the Agreement constitutes the entire agreement and understanding of the parties hereto and supersede all prior agreements, consents, and understandings relating to the subject matter hereof whether oral or in writing. The parties agree that there are no other oral or other agreements between the parties that have not been incorporated into this Amendment and the Agreement.
- 8. All other terms and conditions of the Agreement not in conflict with this Amendment No. 1 shall remain in full force and effect and are incorporation herein.
- 9. Each of the persons signing this Amendment represents and warrants that he/she is a duly authorized officer, director or agent of the party on whose behalf the person is signing, and further represents and warrants that the person signing has the power and authority to bind the party, and that the party has the legal power to enter into this Amendment.

OptumHealth Care Solutions, LLC

Signature:

Print Name:

Title:

Date:

Agreement Number: 00409536.1

ATTEST:

By: Marianne Bowers

Marianne Bowers, Interim City Clerk

CITY OF COCONUT CREEK

By: Karen M. Brooks

Karen M. Brooks, City Manager

28<sup>th</sup> day of October, 2021

APPROVED AS TO LEGAL FORM & SUFFICIENCY:

By: Terrill C. Pyburn

Terrill C. Pyburn, City Attorney