

RESOLUTION NO. 2022-034

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE HEALTHY CONTRIBUTIONS TERMS AND CONDITIONS OF SERVICE TO REPLACE AND SUPERSEDE THE PROGRAM AGREEMENT BETWEEN THE CITY OF COCONUT CREEK AND HEALTHY CONTRIBUTIONS LLC, DATED DECEMBER 14, 2017, PROVIDING FOR PROCESSING OF THE REIMBURSEMENT OF FITNESS MEMBERSHIP FEES FOR THE OPTUM FITNESS PASSPORT PROGRAMS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, OptumHealth Care Solutions (“Optum”) and the City of Coconut Creek entered into an agreement, dated November 28, 2017 (the “Optum 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 Optum Agreement was amended on October 28, 2021, to allow additional individuals to utilize the Program (“Optum Programs”) and to provide technical revisions to the terms and conditions (“Amended Optum Agreement”); and

WHEREAS, participants in the Optum Programs receive a free, standard City of Coconut Creek Fitness membership, which fees are reimbursed to the City by Optum; and

WHEREAS, Healthy Contributions, LLC is the third party vendor utilized by Optum for reporting and payment processing; and

WHEREAS, Healthy Contributions, LLC and the City originally entered into an agreement, dated December 14, 2017 (“HC Agreement”), to provide for reporting and payment processing, which renews automatically unless terminated by one of the parties and remains in effect; and

WHEREAS, Healthy Contributions has updated their terms and conditions to

include all OptumHealth programs the City may participate in and address operational changes; and

WHEREAS, the proposed agreement will replace and supersede the HC Agreement and the updated terms and conditions will apply to processing for all Optum programs in which the City participates.

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 the Healthy Contributions Terms and Conditions of Service for processing of reimbursement of fitness membership fees for the Optum Fitness Passport Programs.

Section 3: That the City Manager, or designee, is hereby authorized to execute the Healthy Contributions Terms and Conditions of Service for reimbursement of fees for the use of City fitness facilities for clients of the Optum Fitness Passport Program.

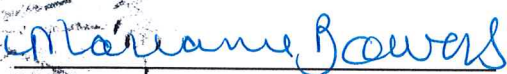
Section 4: That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.


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

Adopted this 24th day of February, 2022.


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>

Healthy Contributions Terms and Conditions of Service

Healthy Contributions, LLC, a Foreign Limited Liability Company ("HC") with principal offices located at 111 Weir Drive, Woodbury, MC 55125, is the payment processor and program administrator for a number of Fitness Incentive Programs offered by multiple, individual Program Providers. By opting to utilize HC as the payment processor and program administrator for the Optum/United Health Fitness Incentive Programs ("Fitness Incentive Program(s)") administered by HC the City of Coconut Creek, a municipal corporation ("Client") with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 agrees to abide by HC's Terms and Conditions set forth below.

Term. This agreement shall replace the prior Program Agreement between HC and Client dated December 14, 2017 and, on a prospective basis, these Terms and Conditions of Service supersede and replace the Terms and Conditions of Service of that Program Agreement previously entered into by the parties.

Appointment of HC as Payment Processor and HC Obligations. By opting to become a Client in any Fitness Incentive Program, now or as may be added in the future during the period of this Agreement, the Client agrees that HC will serve as the payment processor for the Fitness Incentive Program. HC will, among other things, (A) provide an electronic platform for the Client's entry of Fitness Incentive Programs specific data; (B) collect Fitness Incentive Program specific data from the Client (including Program Member usage data) and convey the data and information provided by the Client to the Program Provider; (C) disburse Fitness Incentive Program reimbursements and fees to the Client as directed by the Program Provider. Client agrees that HC has no independent or derivative liability to the Client for any reimbursements, fees or payments due to Client from any Program Provider under any Fitness Incentive Program and that HC's obligations to Participating Program are limited to disbursing monies to Client received by HC from the Program Provider as directed by the Program Provider. Client acknowledges that HC has made no warranty, guarantee or representations to Client concerning the level, if any, of compensation or profit that Client may derive from participating in any Fitness Incentive Program. HC agrees to provide a 1099 Form to each Client that meets applicable IRS thresholds. Client's that do not meet applicable IRS thresholds may request a 1099 Form by contacting: compliance@healthycontributions.com. Client understands and acknowledges that the relationship created hereby is non-exclusive, meaning that either party hereto may do business with any other party that provides the same or similar services. Client agrees that HC may communicate with Client by, among other methods, email or other electronic means in order to, among other things, update Client concerning Fitness Incentive Program changes, enhancements, offers and other pertinent information. These communications may include information concerning health plans or promotional advertisings in connection with Fitness Incentive Programs and/or HC's services.

Payment. Under all the Fitness Incentive Programs in place at the time of execution of this agreement, HC's fees are being completely satisfied by the Program Provider. Client acknowledges and agrees that under some Fitness Incentive Programs HC may receive compensation from a Program Provider (as solely determined by HC and the Program Provider) for providing its services as a payment processor and administrator for a Fitness Incentive Program and that the compensation is fully earned by HC and that Client has no claim to any part of HC's compensation. HC will post on its website each month a report of fees and processing charges charged to the Program Provider on Client's behalf for services

performed by HC in the prior month. If Optum/United Health fails to pay any HC fees on behalf of the Client as set forth herein, HC can immediately terminate this Agreement upon written notice to Client.

Obligations of Client. The Client agrees, among other things, to: (A) provide HC only with accurate data and information reflecting actual Program Member participation in the Fitness Incentive Program; (B) correctly update all Program Member data in the Healthy Contributions website by the 5th of every month for the preceding month (for example, by February 5 for January Program Member participation) Data must be submitted to Healthy Contributions by the 5th calendar day of each calendar month (D) promptly reimburse to the Program Provider any monies received by the Client that HC or the Program Provider determine in good faith were paid to the Client based upon inaccurate, false or faulty data or information submitted by the Client or that were paid to the Client by HC or the Program Provider by mistake. Client agrees to provide HC with a completed W-9 Form and verifies that the information on the W-9 Form is accurate. The inability of HC to verify W-9 Form information provided by a Client may result in enrollment delays, payments delays and/or access restrictions. Client agrees to inform HC immediately of any change of control in the Client's ownership. Client agrees that a Program Provider and/or HC may audit Client's participation in any Fitness Incentive Program and that Client will provide full cooperation in connection with any such audit. Client understands and agrees that participation in a Fitness Incentive Program may require the Client to be able to demonstrate that the Client maintains liability insurance at levels required by the Program Provider.

Termination Either party may terminate this agreement by providing thirty (30) days advance notice to the other party. Either party may terminate this agreement immediately if they determine, in their reasonable discretion that the other party has (A) repeatedly failed to abide by the terms and conditions of this agreement or (B) has intentionally provided inaccurate, false or faulty data to the other party in connection with any Fitness Incentive Program or reimbursement. Upon terminating this agreement, Client and HC are obligated to cooperate in closing out Program Member accounts and providing appropriate communications to Program Members.

Trademarks. Client may not create or use any marketing materials or advertisements using any Program Provider's name, trademark, service mark, logo or other commercial symbol without first obtaining written permission from the Program Provider prior to publication. Requests may be facilitated by HC.

Confidential Information/Privacy. Client agrees that, to the extent permitted under Florida law "Confidential Information" shall include, but not be limited to, the identity of Program Members and their unique identifiers, including Program Members Personal Information (defined below). Client agrees, subject to Florida Open Records requirements, to treat Confidential Information as strictly confidential, to protect Confidential Information from disclosure in the same manner and degree that Client protects its own confidential information and to refrain from sharing Confidential Information with third parties without the express consent of HC. In addition, Client agrees to abide by all applicable privacy laws, regulations or rules with respect to any "Personal Information" of Program Members. "Personal Information" includes all information that is deems Personal Information, or the equivalent, by any applicable privacy law, regulation or rule.

Public Records

HC shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, HC agrees to:

- a) Keep and maintain all records that required by the City to perform the services.
- b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat., or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if HC does not transfer the records to the City.
- d) Upon completion of the agreement, transfer, at no cost, to the City all public records in possession of HC or keep and maintain public records required by the City to perform the service. If HC transfers all public records to the City upon completion of the agreement, HC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If HC keeps and maintains public records upon completion of the agreement, HC shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- e) If HC does not comply with this Section, the City shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.
- f) **IF THE HC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO HC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

Indemnification. The parties agree to defend, indemnify and hold each other harmless, its owners, affiliates, officers, directors, employees, agents, insurers and representatives from and against any and all third party demands, losses, actions, damages, claims, costs, expenses and liability, including attorney's fees (collectively, "Claims") that result from or arise out of, directly or indirectly, (a) any act or omission of the other party related to any Fitness Incentive Programs; or (b) any injury or damage caused in connection with providing services under the terms of this agreement.

Dispute Resolution. In the event of any dispute, claim or controversy of any kind or nature between HC and Client related to this agreement, the parties agree make a good faith effort to meet and resolve the dispute. If the parties are unable to informally resolve their dispute, a party may initiate an arbitration proceeding under the Commercial Arbitration Rules of the American Arbitration Association involving a single arbitrator, engaged in the practice of law, who is knowledgeable in the subject matter relevant to the dispute. Any such arbitration shall be held within Broward County, Florida. Nothing in this paragraph shall preclude a party from seeking equitable relief in a court of competent jurisdiction at any time.

Beneficiaries/Assignment. This agreement will inure to the benefit of and shall bind the successors and permitted assigns of both parties to the agreement. Neither Client nor HC may assign or transfer this agreement without the prior written consent of HC.

Entire Agreement. This agreement is the only agreement between the parties concerning the subject matter hereof and supersedes all prior agreements, whether oral or written, relating hereto. No purported amendment, modification or waiver of any provision of this agreement shall be binding unless set forth in a written document signed by both HC and the Client (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Notwithstanding the above, HC may amend the Fee Structure Schedule and the program details of any Fitness Incentive Program. In addition, Client understands that participation in any Fitness Incentive Program requires that the Client review and agree to the terms and conditions of that particular Fitness Incentive Program, which may vary between Fitness Incentive Program.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

CITY OF COCONUT CREEK

ATTEST:



Marianne Bowers
Marianne Bowers, Interim City Clerk

2/24/22
Date

Karen M. Brooks
Karen M. Brooks, City Manager

2/24/22
Date

Approved as to form and legal sufficiency:

Terrill C. Pyburn
Terrill C. Pyburn, City Attorney

2/24/22

[Vendor's Signature to Follow]

Healthy Contributions, LLC

ATTEST:



(Corporate Secretary)



Position: DEVIN GENERAL
COUNSEL Date 1/27/22

JAMES GONIEA

Type/Print Name of Corporate Secy.

SUSAN STEELY

Type/Print Name of Signor

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF Minnesota

COUNTY OF Washington

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 27 day of January, 2022, by Susan Sheely as Deputy General Counsel for Heathy Contributions LLC

Leesa J. Lund
Signature of Notary Public

State of Minnesota at Large



Print, Type or Stamp

Name of Notary Public

- ☒ Personally known to me or
☐ Produced Identification

Type of I.D. Produced

- ☐ DID take an oath, or
☒ DID NOT take an oath.