



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, September 26, 2017

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

7:00 pm City Council Special Meeting



Home of the Tualatin River National Wildlife Refuge

SPECIAL MEETING

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA
5. NEW BUSINESS
 - A. Resolution 2017-070, Authorizing the City Manager to execute a Master Services Agreement and Scope of Work with Healthfitness (Joe Gall, City Manager)
6. COUNCIL ANNOUNCEMENTS
7. ADJOURN

AGENDA

SHERWOOD CITY COUNCIL
September 26, 2017

7:00 pm City Council
Special Meeting

Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140

How to Find Out What's on the Council Schedule:

City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, by the Thursday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the Sherwood YMCA, the Senior Center, and the Sherwood Post Office. Council meeting materials are available at the Sherwood Public Library. **To Schedule a Presentation before Council:** If you would like to schedule a presentation before the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or murphys@sherwoodoregon.gov

TO: Sherwood City Council

FROM: Joseph Gall, ICMA-CM, City Manager
Through: Josh Soper, City Attorney, Katie Henry, Finance Director and Kristen Switzer, Community Services Director

SUBJECT: Resolution 2017-070, Authorizing the City Manager to Execute a Master Services Agreement and Scope of Work with HealthFitness

Issue:

Shall the City Council approve a Master Services Agreement and Scope of Work with HealthFitness?

Background:

As a result of the direction given by the City Council on August 15, 2017 in Resolution 2017-065, a team of senior city staff has been negotiating a contract with HealthFitness to operate and manage the city-owned Recreation and Aquatic Center. The city negotiation team included Josh Soper, City Attorney, Katie Henry, Finance Director, Kristen Switzer, Community Services Director and myself as City Manager. Although the overall deadline provided by City Council to conclude contract negotiations is October 15, 2017, the negotiation process concluded on September 25, 2017. Our experience with HealthFitness officials during the negotiation process was quite positive overall. They were professional, responsive and organized in their approach with the City of Sherwood.

Now that the negotiation process is complete, it is time to switch our focus to evaluate the proposed contract terms and conditions and to provide a recommendation to City Council for their consideration. While this evaluation of the proposed contract is multi-dimensional, it does essentially come down to a singular important question – is this contract with HealthFitness in the best interest of the City of Sherwood? As the City Manager for the City of Sherwood, my response to this question is that the proposed contract is not in the best interest of the City of Sherwood. Below are some of the key reasons for my conclusion:

Operational and Management Capabilities

As a result of the selection process and contract negotiation period, our negotiation team is confident that HealthFitness is a company that could be successful in the long term in operating and managing our recreation and aquatic center. It is clear to us that their organization has the experience, knowledge and expertise to provide the services that the City is seeking at our facility. As outlined in the proposed contract, they have committed to maintain the diverse range of programs and services provided by the current operator of our facility. While both HealthFitness and the City acknowledge that significant efforts remain in developing the specific details of a

transition plan for programs and services, we would have nearly an entire year before HealthFitness would assume operational and management control in November 2018.

Revenue Projections

Throughout this process, we have been provided a range of different revenue projections by HealthFitness, including the presentation of their latest projections at the City Council meeting on September 19, 2017. After listening to the assumptions and rationale for these latest projections, I have come to the conclusion that their revenue projections are quite robust. I have serious concerns about their abilities to achieve the projected five percent annual growth rate in membership over the initial five year period. I am especially concerned about the first year of operation with the potential large exodus of current members that utilize our facility. This potential exodus poses significant financial risk and, based upon the proposed contract, this financial risk would fall squarely upon the City of Sherwood to absorb in the first year of operations. While I realize that HealthFitness has been successful at achieving such high levels of membership growth in other facilities around our nation, I am not confident that they would be successful in Sherwood based upon the lack of support from the current membership of our facility. If we are unsuccessful in retaining a large percentage of the current members and/or attracting new members, the financial risks are too significant to our organization's budget.

Expense Projections

The core operating expenses outlined within HealthFitness projections closely parallel the expenses outlined by our current operator in their five-year pro forma. My concern in this category stems from the potential unanticipated expenses that a brand-new operator of the facility may not understand in taking over a nearly 19 year old building. HealthFitness officials have toured our facility during the RFP process, but is it a reasonable expectation to budget non-employee related core operating expenses significantly lower than the figures provided by the current operator (who knows our building better than anyone as an operator for nearly 19 years)? In addition, the City of Sherwood will need to fund a number of one-time expenses as we transition to HealthFitness as an operator, including costs for rebranding, new signage, and interior painting of the facility. Preliminary estimates for such expenses easily approach the \$75,000 to \$100,000 range. In addition, the City of Sherwood will likely face initial costs for fitness equipment to operate the center under a HealthFitness contract. Although we have been unable at this juncture to obtain a preliminary cost estimate for this expense, I am concerned that the costs would be significant.

Financial Risk-Sharing

One of the key components of our contract negotiations with HealthFitness has focused upon the question of which organization (the City and/or HealthFitness) would absorb operational losses on an annual basis during the contract period. After significant discussion, HealthFitness has proposed a level of financial risk sharing that is outlined within Section 7 (g) of the Master Services Agreement. HealthFitness officials have indicated to City staff that this type and level of financial risk sharing is unique to our proposed contract. In other words, it is not the norm in their contracts to operate and manage other recreation and aquatic centers. So while I appreciate their willingness to take on some level of financial risk, this proposed agreement does not go far enough. Our city's budget cannot absorb significant operational losses. With the uncertainty of both revenue and expense projections as outlined earlier in this staff report, especially in the first year of operations, there is simply too much financial risk to our organization with this proposed risk sharing agreement.

While there are certainly many other questions and issues related to this proposed contract that I am not highlighting in this staff report, the bottom line for me as the City Manager is that there is too much risk, especially financial risk, in approving this proposed contract.

Financial Impacts:

There are significant potential financial impacts as a result of approval of this resolution. I have outlined many of them in the section above. In addition, I would like to share this specific recommendation from Katie Henry, our Finance Director, as an additional point of reference below:

“I cannot recommend moving forward with approving the proposed contract at this time. The City is currently in a tight budgetary position with several unknowns on the horizon. In such a tight financial situation I believe that the City cannot afford to take on risky endeavors at this time. Although the proposed contract does share some risk/reward with HealthFitness, this sharing does not begin until the second year of the contract and is limited to \$50,000 per year. There are also some costs of a transition that remain unknown such as potential equipment replacement costs. There has also been some indication in the community that there could be significant decrease in membership at the facility, should the transition occur. The effect this could have on revenues, especially in the first year, is unknown.

With no current budgetary surplus with which to absorb any potential operating losses and without adequate fund balance to cover the potential transition costs, I do not recommend approval of the proposed HealthFitness contract.”

Recommendation:

Staff respectfully recommends City Council to not approve Resolution 2017-070, Authorizing the City Manager to Execute a Master Services Agreement and Scope of Work with HealthFitness.



RESOLUTION 2017-070

AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER SERVICES AGREEMENT AND SCOPE OF WORK WITH HEALTHFITNESS

WHEREAS, the City recently conducted a Request for Proposals (“RFP”) in regard to the operation of a City-owned recreation facility; and

WHEREAS, by Resolution 2017-065 and pursuant to the terms of that RFP, the City Council, acting as the Selection Review Committee, established a final ranking of proposers and directed the City Manager to attempt to negotiate a contract with the proposers in ranked order, and to bring any such negotiated contract back to City Council for its consideration and approval or rejection; and

WHEREAS, the City Manager negotiated a proposed contract with the top-ranked proposer, HealthFitness, and presented that contract to the City Council during a public meeting on September 26, 2017; and

WHEREAS, it appears to the City Council that approval of such contract is in the best interest of the City;

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The Sherwood City Council hereby authorizes and directs the City Manager to sign the Master Services Agreement and Scope of Work with HealthFitness, in a form substantially similar to the attached Exhibit A;

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 26th of September, 2017.

Krisanna Clark-Endicott, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

MASTER SERVICES AGREEMENT
between City of Sherwood, Oregon
and Health Fitness Corporation

This Master Services Agreement (this “**Agreement**”) is entered into as of the ___ day of October, 2017 (the “**Effective Date**”) by and between the City of Sherwood , an Oregon municipal corporation , with its principal place of business located at 22560 SW Pine Street, Sherwood, Oregon 97140 (hereinafter called “**Client**”) and Health Fitness Corporation, a Minnesota corporation, with its principal place of business located at 1700 West 82nd Street, Suite 200, Minneapolis, MN 55431 (hereinafter called “**HealthFitness**”). Each of Client and HealthFitness are referred to in this Agreement as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, HealthFitness is in the business of providing integrated health and fitness management solutions; and

WHEREAS, Client desires that HealthFitness provide to Client, and HealthFitness is willing to provide to Client, the Services (as hereinafter defined) and related staff, equipment and resources, all as more fully described in Scopes of Work (as hereinafter defined) in connection with Client’s health and/or fitness solutions described in the Scopes of Work (collectively, the “**Program**”).

NOW THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. References. Except as otherwise specifically indicated, all references to Article, Section, and Subsection numbers refer to Articles, Sections, and Subsections of this Agreement, and all references to exhibits, schedules or appendices refer to the exhibits, schedules or appendices attached hereto. The words “herein,” “hereof,” “hereunder,” “hereinafter,” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or Subsection hereof. Unless expressly stated to the contrary, reference to any Article includes all of the Sections contained therein, and reference to any Section includes the Subsections contained therein. The terms “include” and “including” shall be construed as if followed by the phrase “without being limited to.” The captions or section headings used herein are for convenience only, and are not a part of this Agreement. The same shall not be referred to in construing or interpreting this Agreement. Whenever the context of this Agreement requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural.

Section 2. Interpretation of Agreement. In interpreting this Agreement, each Party expressly agrees that the Parties prepared this Agreement jointly, and no ambiguity shall be resolved against any Party on the basis that it was responsible or primarily responsible for having drafted this Agreement. In addition, each Party hereto expressly represents and warrants to any other Party hereto that (a) before executing this Agreement, said Party has fully informed itself of the terms, contents, conditions, and effects of this Agreement; (b) said Party has relied solely and completely upon its own judgment in executing this Agreement; (c) said Party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) said Party has acted voluntarily and of its own free will in executing this Agreement; (e) said Party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm’s-length negotiations conducted by and among the Parties and their counsel. The Parties are sophisticated and have been represented by attorneys throughout the negotiations of the provisions contained herein. All capitalized terms used herein shall have the

meanings ascribed to them herein or in the Scope of Work.

Section 3. Services Provided. HealthFitness agrees to provide to Client the services described in any Scope of Work as the obligation of HealthFitness (the “**Services**”). Those requirements or conditions for the Program not specifically designated as the obligation of HealthFitness in a Scope of Work shall belong to Client. Each Party shall designate one of its employees to be its “point of contact” under each Scope of Work, who shall act for that Party on all matters under the Scope of Work. Each Party shall notify the other in writing of any replacement of any such point of contact. Each of HealthFitness and Client shall be responsible for providing, at its respective cost and expense, the respective equipment, “Program Supplies” and “Expenditures” of such Party, as such responsibilities are outlined in any Scope of Work.

Section 4. Scopes of Work. All Scopes of Work will be substantially in the form of the Scope of Work attached hereto as Exhibit A and shall be executed by each Party. Upon execution of a Scope of Work, it shall become part of and subject to this Agreement.

Section 5. Term. The Term of this Agreement shall commence on the Effective Date with implementation Services provided until the Program Launch Date and then will continue in effect until the last day of the month that is sixty (60) months after the Program Launch Date (the “**Initial Term**”). Unless otherwise agreed by the Parties in writing, the Program Launch Date will be November 1, 2018. Unless otherwise terminated in accordance with this Agreement, immediately prior to the expiration of the Initial Term or any subsequent renewal Term, this Agreement and any Scope of Work shall automatically renew for additional consecutive two (2) year Terms. The Initial Term and the renewal terms are collectively referred to in this Agreement as the “**Term**.”

Section 6. Termination.

- (a) If any Party fails to cure a material breach of any provision of this Agreement or any applicable Scope of Work to the other Party’s reasonable satisfaction within sixty (60) days after written notice thereof, then, in addition to all other rights and remedies available to the non-breaching Party under this Agreement or applicable law, the non-breaching Party may terminate this Agreement and/or any applicable Scope of Work under which the breach occurred, upon written notice to the breaching Party.
- (b) In the event that either Party (i) becomes insolvent or makes a general assignment for the benefit of creditors, or a petition in bankruptcy shall be filed by or against such Party (and if involuntarily filed, the involuntary petition is not dismissed within sixty (60) days of filing), or any proceeding shall be instituted by or against the Party for any relief under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, compositions or extensions or a receiver shall be appointed of the Party’s property or assets; (ii) takes definitive action to cause its dissolution or liquidation; (iii) ceases to do business as a going concern; or (iv) enters into an agreement for the arrangement, extension or readjustment of substantially all of its obligations, then either Party may terminate this Agreement and any Scope of Work by written notice designating the effective date of such termination
- (c) Beginning one hundred eighty (180) days before the end of the Initial Term, either Party may terminate this Agreement for convenience, without reason, cause or prejudice, upon not less than one hundred eighty (180) days prior written notice to the other Party.
- (d) Upon termination or expiration of this Agreement, whether at the end of the Term or at any other time for whatever reason, Client shall pay HealthFitness in full for all Services performed through the effective date of such termination or expiration, and the Parties shall continue to observe and perform such other obligations herein that survive termination or expiration of this Agreement. In addition, for the sake of clarity, in the event this Agreement is terminated pursuant to this Section 6, all Scopes of Work then in effect shall also terminate as of the effective date of such termination, unless otherwise

agreed by the Parties in writing.

Section 7. Fees; Billing.

- (a) During any Term, Client shall pay HealthFitness all fees for the Services set forth in any Scope of Work, including, all management fees.
- (b) Except to the extent otherwise required by law, HealthFitness shall be responsible for all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Agreement including but not limited to state and local sales and use taxes.
- (c) Client acknowledges that currently, and from time to time, there is uncertainty about regulatory classification and/or treatment of some of the Services HealthFitness provides and consequently, uncertainty about what fees, taxes and surcharges are due from HealthFitness and/or its customers. Client agrees that HealthFitness has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect, invoice and remit them to the relevant governmental authorities, provided, however, that HealthFitness will be solely liable for any liability resulting from such determinations
- (d) Unless otherwise stated, the rates and fees stated in each Scope of Work with a term longer than one (1) year shall be increased (unless such rates and fees are periodically adjusted to reflect HealthFitness' then-current commercial rates and fees), effective as of each anniversary of that Scope of Work's effective date, in an amount agreed to by the parties, but in any event by no more than 3% each year. Should Client request additional Services, sites or locations beyond the Services, sites or locations described in the applicable Scope of Work, the Parties shall execute a new Scope of Work or an amendment to an existing Scope of Work that describes the Services, sites or locations that Client seeks to add and the applicable rates and fees payable to HealthFitness before either Party shall have any obligation with respect to the requested additional Services, sites or locations.
- (e) HealthFitness shall provide Client, on a monthly basis, a detailed report of revenues and expenses for the immediately prior month, describing revenue and expenses on a line item basis, as well as net income or net loss for the month and year to date (based on a July 1 to June 30 fiscal year). HealthFitness shall reconcile with Client for quarterly Services and Program management fees and revenues at the beginning of each quarter for the Services provided or Management fees incurred or accruing and revenues received during the immediately preceding quarter. For purposes of this Agreement, quarters shall be defined as follows: First Quarter (July, August, and September); Second Quarter (October, November, and December); Third Quarter (January, February, and March); Fourth Quarter (April, May, and June). If there is a net amount owed to HealthFitness, Client shall pay HealthFitness within thirty (30) days of Client's receipt of invoices for Services, or Program management, the amount stated in such applicable invoice. Client shall remit payment to HealthFitness via electronic funds transfer to an account designated by HealthFitness in writing. HealthFitness may assess, and Client agrees to pay, a finance charge equal to 0.05% per day for amounts more than thirty (30) days past due.
- (f) Within thirty (30) days after each quarterly reconciliation, HealthFitness shall remit to Client all revenue in excess of expenses for the applicable three (3) month period.
- (g) **Budget Management.** The Parties agree that HealthFitness will be responsible for managing the Client's facility where Services will be performed in Sherwood, Oregon. HealthFitness will manage this facility in accordance with the Pro Forma budget that is attached to the Scope of Work, such that the revenue will, at a minimum, fully cover the operating expenses during each year of the Initial Term such that there will be a one-hundred percent (100%) recovery rate. Notwithstanding the foregoing, the Parties also agree to perform an annual review of expenses and revenues on each anniversary of the Program Launch Date, such that:

- If, after the first year, there is a budget deficit (i.e., the operating expenses are greater than the revenue for the applicable year), then the Client will be responsible for such deficits.
- If, after either the second, third, fourth or fifth years, there is a budget deficit, then HealthFitness will be responsible to the Client for such deficits; provided, however, HealthFitness' liability for such deficits shall not to exceed \$50,000.00 per year.
- If, after the first year, there is a budget surplus (i.e., the revenue is greater than the operating expenses for the applicable year), then Client will be entitled to the full amount of the budget surplus that exists at the end of the applicable year.
- If, after either the second, third, fourth or fifth years, there is a budget surplus (i.e. the revenue is greater than the operating expenses for the applicable year), then the Client will be entitled to the amount of the budget surplus that exists at the end of each applicable year; provided, however, that HealthFitness shall be entitled to, as an additional fee, a payment in the amount of twenty percent (20%) of the surplus that exists for the applicable year (each an "Annual Success Payment"). In no event shall any Annual Success Payment exceed \$50,000.00.
- If, after the first year, during any six-month period during the term of this Agreement, there is a budget deficit (i.e., the operating expenses are greater than the revenue for said period) in excess of \$50,000.00, Client shall so notify HealthFitness, and HealthFitness shall have six months to cure the budget deficit (i.e. bring the deficit to be less than or equal to \$50,000.00 for that six month period), failing which, Client may, in its sole discretion, terminate this Agreement, effective upon written notice to HealthFitness or upon such other date specified in such notice.

Section 8. General Representations and Warranties

- (a) Client hereby represents and warrants to HealthFitness that:
- (i) Client is a corporation duly organized, validly existing and in good standing under the laws of the state of its formation and has the requisite corporate power and authority to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted;
 - (ii) Client has the requisite corporate power and authority to execute and to deliver this Agreement and to perform the transactions contemplated hereunder;
 - (iii) Client has procured and will maintain, at its sole cost and expense during the Term, all business licenses, permits and/or registrations required for the operation of the Client premises where Services will be performed by HealthFitness; and
 - (iv) The execution and delivery by Client of this Agreement and the performance by Client of the transactions contemplated hereunder have been duly authorized by all necessary corporate action on the part of Client and, assuming the due execution and delivery by HealthFitness, this Agreement constitutes a valid and binding agreement of Client, enforceable against Client in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity.
- (b) HealthFitness hereby represents and warrants to Client that:
- (i) HealthFitness is a corporation duly organized, validly existing and in good standing under the laws of the state of Minnesota and has the requisite corporate power and authority to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted;
 - (ii) HealthFitness has the requisite corporate power and authority to execute and to deliver this Agreement and to perform the transactions contemplated hereunder;
 - (iii) The execution and delivery by HealthFitness of this Agreement and the performance by HealthFitness of the transactions contemplated hereunder have been duly authorized by all

necessary corporate action on the part of HealthFitness and, assuming the due execution and delivery by Client, this Agreement constitutes a valid and binding agreement of HealthFitness, enforceable against HealthFitness in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity.

- (iv) HealthFitness will perform the Services in accordance with its reasonable judgment and experience and in compliance with applicable standard industry practices, subject to direction given by Client, and consistent with the requirements of the any Scope of Work.
- (v) EXCEPT FOR THE WARRANTIES SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. HEALTHFITNESS EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OR REPRESENTATION WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR HEALTHFITNESS' BREACH OF ANY WARRANTY SHALL BE HEALTHFITNESS' RE-PERFORMANCE OF THE WARRANTIED SERVICE.

Section 9. Personnel; Subcontractors.

- (a) HealthFitness may hire or retain such employees and subcontractors as it deems reasonably necessary or appropriate in connection with the Services provided under this Agreement.
- (b) HealthFitness will hire, train, promote, discharge and supervise the work of all HealthFitness employees and subcontractors in connection with the Services.
- (c) HealthFitness shall have sole responsibility for all compensation and benefits for all employees and subcontractors employed or retained by HealthFitness to provide Services.
- (d) With respect to all HealthFitness employees and subcontractors providing Services, HealthFitness has conducted or caused to be conducted a background investigation in accordance with applicable law that includes:
 - 10-panel drug screening;
 - Social security number trace ;
 - County criminal search;
 - Multi-jurisdiction index search
 - A premier database report that searches for occurrences of a person's name in one quick search across the country. It combs through more than *300 million* criminal records from county and state databases, Departments of Corrections records, national and international terrorism sources, banking and financial regulatory sanctions. Going a step further, we include a LIVE search of the National Sex Offender Public Registry—including all 50 states, the District of Columbia, Guam and Puerto Rico. This is not archived information, but a fresh search of the registry for the most accurate and current information available. In addition, knowing that results often yield partial or out-of-date information, we drill down to the county where the record occurred for accurate and verified results.
 - Confirmation of education (highest level earned)
 - Professional license/certification confirmation

For all residence and employment addresses for the past seven (7) years for any such employee or subcontractor and to the extent permitted by federal, state and/or local Law, conducted pre-assignment drug screening upon client request for any such employee to test for unlawful drug use (a "**Background Check**"). All hiring decisions and placement decisions for individuals assigned to provide Services for the Client based on information obtained in the Background Check will be made in accordance with federal, state and local Law.

Section 10. Insurance.

(a) HealthFitness currently has and agrees to maintain, at its sole expense, during the Term of this Agreement the following insurance coverage and shall provide proof of such insurance as Client may from time to time request:

INSURANCE	LIMITS OF LIABILITY
General Liability	\$1,000,000 Occurrence
	\$2,000,000 Aggregate
Professional Liability	\$5,000,000 Occurrence
	\$10,000,000 Aggregate
Auto Liability (Owned, Non-owned and Hired)	\$1,000,000 Occurrence
Worker’s Compensation	
Coverage A	Statutory
Coverage B	\$1,000,000 Each Accident
	\$1,000,000 Disease – Policy Limit
	\$1,000,000 Disease – Each Employee
Excess Liability	\$10,000,000 Occurrence
	\$10,000,000 Aggregate

(b) Such coverage shall be primary and non-contributory for those claims that are subject to HealthFitness’ indemnification obligation set forth in Section 16 below. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to HealthFitness’s operations. HealthFitness agrees to include Client, and its officers, agents, volunteers, and employees, as an additional insured on HealthFitness’ Comprehensive General Liability and Excess Liability Insurance Policy. HealthFitness shall provide Client, upon request, with a Certificate of Insurance evidencing the policy limits, with the additional insured language included as an endorsement.

(c) Notwithstanding the foregoing, HealthFitness, its subcontractors, if any, and all employers providing work, labor, or materials under this Agreement, who are subject employers under the Oregon Workers’ Compensation Law, shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126.

Section 11. Intellectual Property; Proprietary Rights of the Parties.

- (a) Each Party acknowledges that the other Party owns Intellectual Property as of the Effective Date of this Agreement, the possession of which shall not be challenged while this Agreement is in effect nor upon expiration or termination of this Agreement. Each Party agrees that, except as explicitly and specifically provided in this Agreement, it shall acquire no license, right, title or interest in or to the other Party’s Intellectual Property by virtue of this Agreement. For purposes of this Agreement, “**Intellectual Property**” means the collective reference to all rights, title, interest, and privileges in or relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including all creative or proprietary interests, data, tools, business processes, methods, symbols, copyrights, patents, trademarks, service marks, trade names, trade secrets, internet domain names and licenses, whether now or hereafter existing.
- (b) Client shall own and continue to own: (i) all Intellectual Property owned by Client prior to the date of this Agreement, and (ii) all Intellectual Property developed or purchased by Client independent of and apart from this Agreement (collectively, “**Client Intellectual Property**”), and nothing herein grants or transfers to HealthFitness any ownership interest in such Client Intellectual Property.

- (c) HealthFitness (including, for all purposes, HealthFitness' Affiliates, and third party licensors) shall own and continue to own all Intellectual Property owned by HealthFitness prior to the date of this Agreement, including (i) the "Owned Materials" specifically identified attach hereto as Exhibit B, (ii) all registrations worldwide for a family of trademarks incorporating the term *Live for Life*, used for a variety of health-related goods and services and (iii) all programming and operational manuals prepared by HealthFitness for delivery of Services and management of the Program and all systems and methods of delivery for the Services and management of the Program (collectively, "**HealthFitness Pre-Existing Intellectual Property**"), and nothing herein grants or transfers to Client any ownership interest in such HealthFitness Pre-Existing Intellectual Property, even if such Intellectual Property is embodied in any Services or deliverables provided to Client. For purposes of this Agreement, the term "**Affiliate**" shall mean any other entity directly or indirectly controlling, controlled by or under common control with entity. An entity shall be deemed to control another entity if the controlling entity owns fifty-one percent (51%) or more of any class of voting securities (or other ownership interests) of the controlled entity or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled entity, whether through ownership of stock or other ownership interests, by contract or otherwise.

Section 12. Ownership and Use of Collected Personal Information.

- (a) Client shall own all data regarding individuals participating in the Program or receiving Services pursuant to this Agreement and maintained by HealthFitness ("**Personal Information**"). HealthFitness shall use commercially reasonable security procedures to collect, manage and maintain the confidentiality of all Personal Information and to ensure that Personal Information is only used to provide the Services or manage the Program. HealthFitness shall not be responsible for the negligent, willful or illegal acts of any third parties not retained or employed by HealthFitness with respect to the Personal Information. Notwithstanding anything to the contrary herein, HealthFitness may use for its own business purposes, such as improvement of its programs and services, aggregated data that does not identify the Client or any specific individual.
- (b) HealthFitness will provide Client with the reports identified in the Scope of Work in an aggregate, de-identified (non-individually identifiable) format, based on the Personal Information collected as part of the Services provided.

Section 13. Personal Information – Transfer to Successor Vendor.

- (a) Upon termination of this Agreement, and following the written direction of the Client, HealthFitness will provide all Personal Information data, other data related to the Services and other pertinent records related to the Services (but not any HealthFitness Intellectual Property or HealthFitness Confidential information) (collectively, "**Program Information**") to a third party designated by Client in writing (the "**Recipient**"). The transfer of Program Information shall be conducted in accordance with the provisions of this Section 13, HealthFitness' privacy policies and requirements then in effect and all applicable laws and regulations.
- (b) Client shall be responsible for the reasonable costs associated with copying, preparing, delivering and transferring Program Information and other data and records to Recipient.
- (c) Following termination or expiration of this Agreement for any reason, and notwithstanding the transfer of Program Information to the Recipient, HealthFitness shall retain a perpetual, royalty-free right to use and disclose in aggregate and de-identified (non-individually identifiable) formats for business, product and services improvement, research and analysis purposes, all Program Information collected or otherwise received by HealthFitness during the Term of this Agreement.
- (d) Client shall retain copies of all Program Information for a period of not less than six (6) years following expiration or termination of this Agreement and shall allow HealthFitness access to such information upon reasonable notice to the extent required to respond to any legal or governmental action or

proceeding. Client shall provide HealthFitness with no less than thirty (30) days' prior written notice of any planned destruction, transfer or disposal of such Program Information. Client shall require Recipient's cooperation as necessary to ensure HealthFitness' access to Program Information in accordance with this Section 13(c).

- (e) From and after HealthFitness' transfer of Program Information to a Recipient, the Parties hereby agree and acknowledge that HealthFitness shall have no liability with respect to any use of or disclosure of such Program Information by Recipient, its employees, agents, subcontractors or representatives.
- (f) The provisions of this Section 13 shall survive termination or expiration of this Agreement.

Section 14. Independent Contractor Relationship.

- (a) At all times during the term of this Agreement, HealthFitness shall be deemed to be an independent contractor of Client. The personnel or subcontractors hired or retained by HealthFitness to provide Services or manage the Program shall be solely employees, subcontractors or agents of HealthFitness, shall not under any circumstances be deemed to be employees, subcontractors or agents of Client, and shall not be entitled to participate in any employee benefit plans or employee programs of Client. Nothing contained within this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationship of employee/employer, principal/agent, or otherwise to create any liability whatsoever between HealthFitness and Client in any capacity other than as parties to this Agreement. Except as may be otherwise provided in a Scope of Work, in addition to contracts for the employment of personnel or subcontractors necessary to deliver the Services and manage the Program as specifically set forth in this Agreement or any Scope of Work, all other contracts or undertakings necessary for the delivery of the Services or management of the Program shall be in the name of and the obligation of HealthFitness, including contracts for repairs or maintenance services, utilities, supplies and merchandise.
- (b) HealthFitness acknowledges that it has no right to bind Client to any commitment or obligation and Client shall not incur any liability as the result of HealthFitness' actions or the actions of any employee or subcontractor of HealthFitness. HealthFitness' employees and subcontractors shall at all times disclose that they are employees of HealthFitness or independent contractors retained by HealthFitness, as applicable, and shall not represent to any third party that they are employees, agents, co-ventures, or representatives of Client.

Section 15. Confidentiality. Each Party acknowledges that it and its employees or other Representatives may, in the course of the Agreement, be exposed to or acquire Confidential Information of the other Party. Each Party agrees that it will cause its employees and other Representatives to comply with the terms and provisions of this Agreement applicable to such Party, including this Section 15. Each Party agrees to use reasonable measures, no less stringent than those measures used by such Party to protect its own Confidential Information (but not less than reasonable measures), to protect the Confidential Information of the other Party from disclosure to any third party. Each Party agrees to use Confidential Information received from the other Party pursuant to this Agreement solely in connection with the performance of such Party's obligations under this Agreement. Each Party acknowledges and agrees all Confidential Information of a Party is the property of that Party alone. No Party shall make or assert any claim to the Confidential Information of any other Party. Nothing in this Agreement shall be construed as granting any rights, title, interest, or privileges to the Party receiving Confidential Information of another Party, by license or otherwise, of any of the Disclosing Party's Confidential Information. Upon Termination of this Agreement for whatever reason (i) Client shall return to HealthFitness and cease use of all of HealthFitness' Confidential Information and (ii) HealthFitness shall return to Client and cease use of all of Client's Confidential Information. Notwithstanding the foregoing, the Parties acknowledge that Client and/or HealthFitness may be required by law, including but not limited to Oregon Public Records Law, to release certain Confidential Information to a third party, and the Parties agree that (1) releasing Confidential Information as required by law does not constitute a breach of this Agreement, and (2) prior to any such

release of Confidential Information, the party intending to disclose such information will provide written notice to the other party, and the other party may seek to prevent such disclosure by any legal means available to it. For purposes of this Agreement, “**Confidential Information**” means any and all non-public information (including all ideas, discoveries, concepts, know-how, trade secrets, techniques, designs, specifications, drawings, sketches, models, manuals, samples, tools, computer programs, technical information, and other confidential business, customer, member, client or personnel information or data) that is or reasonably could be regarded as confidential by, or proprietary to, the Party (the “**Disclosing Party**”) making the disclosure to the other Party or its Representatives (the “**Receiving Party**”), including information embedded in, contained in or related to other information disclosed by the Disclosing Party to the Receiving Party, whether or not marked as “confidential”, “private” or otherwise, whether disclosed orally or in printed, electronic or other form or manner, whether disclosed in original form, copies or reproductions and whether disclosed by such Disclosing Party or its Representatives. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a breach of this Agreement or any other agreement by the Receiving Party or its Representatives, (ii) was lawfully within the Receiving Party’s possession prior to being furnished by the Disclosing Party or its Representatives, (iii) is or becomes lawfully available to the Receiving Party from a source other than the Disclosing Party, without any breach or violation of any non-disclosure or confidentiality agreement by the party disclosing such information to the Receiving Party or (iv) is independently developed by the Receiving Party without use of any of the Disclosing Party’s Confidential Information. For purposes of this Agreement the term “**Representative**” shall mean a designated representative or agent (whether as independent contractor or a subcontractor) of either Party empowered and authorized by such Party and acting with or on behalf of such Party, including any Affiliate of such Party so empowered and authorized

Section 16. Indemnification.

- (a) HealthFitness shall indemnify and hold Client, its trustees, affiliates, officers, clients, agents, volunteers, and employees harmless of and from all manner of loss, liability, damage, claims, demands and actions of any nature whatsoever (including reasonable costs of litigation and attorneys’ fees) (each a “**Loss**” or collectively, “**Losses**”), which Client may hereafter incur, become responsible for, or pay out to a third party as a result of (i) the death or bodily injury to any person or destruction or damage to any property to the extent that such Loss was due to any negligent, reckless or willful act or omission by HealthFitness or its agents or employees, or (ii) any claim by a third party that any of the HealthFitness Intellectual Property (so long as it has not been modified and is used as permitted by this Agreement) infringes upon any intellectual property of a third party, subject to Section 16(b) or (iii) HealthFitness’ breach of Section 11 or Section 15 of this Agreement. Notwithstanding anything contained herein to the contrary, HealthFitness shall not have any obligation under this Section 16(a) for any portion of a Loss finally determined by a court of competent jurisdiction to arise from Clients negligence, recklessness or willful misconduct.
- (b) Notwithstanding the foregoing, HealthFitness shall not be required to indemnify Client for any infringement or alleged infringement of HealthFitness Intellectual Property to the extent that the alleged infringement or unlawful use: (i) is based on information, requirements or directives furnished by Client; (ii) is the result of a modification made by a party other than HealthFitness or its third party subcontractors; (iii) arises from use of the Services in a manner inconsistent with any Scope of Work, or use of the Services in a manner not otherwise contemplated by this Agreement; or (iv) arises out of Clients use of software licensed by Client from third parties.
- (c) Client shall indemnify and hold HealthFitness and it agents and employees harmless of and from all manner of Losses, which HealthFitness may hereafter incur, become responsible for, or pay out as a result of (i) the death or bodily injury to any person or destruction or damage to any property to the extent that such Loss was due to any negligent, reckless or willful act or omission by Client or its agents or employees, or (ii) the Client’s Program (excluding those Losses that are subject to the terms of

Section 16(a) above), or (iii) Client's breach of the terms of any Scope of Work and/or this Agreement, including but not limited to, Sections 11 or 15 hereof. Notwithstanding anything contained herein to the contrary, Client shall not have any obligation under this Section 16(c) for any portion of a Loss finally determined by a court of competent jurisdiction to arise from HealthFitness' negligence, recklessness or willful misconduct.

- (d) The indemnified Party shall promptly notify the indemnifying Party in writing of any Loss claim for which it intends to seek indemnification. The indemnifying party shall have the right to undertake, conduct and control, through counsel of its own choosing, the defense and settlement of any such Loss; provided that no such settlement may compromise any rights or interests of the indemnified Party without such Party's express written consent. The indemnified Party shall have the right to be represented by counsel of its own choosing, but, notwithstanding anything herein to the contrary, at its own expense. So long as the indemnifying Party is contesting any such Loss in good faith, the indemnified Party shall not pay or settle such Loss.

Section 17. Remedies; Limitation of Liabilities. Except to the extent expressly limited in this Agreement, each Party's remedies hereunder shall be cumulative and additional to any other or further remedies provided under this Agreement or by applicable law or equity, including the recovery of direct damages and the entry of injunctive relief.

- (a) A delay in notification of a breach or making a claim shall not constitute a waiver of a breach or remedy. No waiver of a breach of any provision of the Agreement by a Party shall constitute a waiver of any other or subsequent breach, or of the breached provision itself. No claim or right of a Party arising under, or related to, this Agreement may be discharged in whole or in part by a waiver or renunciation unless supported by additional consideration and in writing signed by the Party discharging such claim or right.
- (b) IN NO EVENT WILL EITHER PARTY'S LIABILITY UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE FORM OF ACTION, INCLUDE (I) ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LOSS OF BUSINESS OR PROFITS OR COST OF COVER, UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE, OR (II) EXCEED \$5,000,000.00.
- (c) The exercise of any right of Termination or any remedies under this Section 17 shall not prejudice the right of either Party to recover any payment due at the time of such Termination and shall not prejudice any cause of action or claim of either Party accrued, or to be accrued, on account of any breach or default of this Agreement by the other Party.

Section 18. Agreement not to Hire. During the Term of this Agreement and for twelve (12) months thereafter, Client shall not, and shall not cause or knowingly permit any Client subcontractor or vendor to, directly or indirectly solicit or hire any employee or contractor of HealthFitness without HealthFitness' prior written consent; provided that such prior written consent shall not be required upon the payment of a Hiring Fee (as hereinafter defined) to HealthFitness. For purposes of this Agreement, the term "**Hiring Fee**" means twenty five percent (25%) of the annual base salary or fee paid to the applicable employee or subcontractor by HealthFitness in the previous twelve month period. Notwithstanding the foregoing, the Parties agree that this Section 18 shall not prevent (i) Client from advertising employment or consulting opportunities or otherwise soliciting such opportunities to the general public and/or from hiring or employing a HealthFitness employee who has voluntarily responded to such advertising or solicitations or (ii) hiring or employing a HealthFitness employee who has been terminated or ended employment with HealthFitness prior to the commencement of employment discussions with the third party.

Section 19. Notices.

Except as otherwise provided in this Agreement or in an applicable Scope of Work, any and all notices or other communications by either party intended for the other in respect to this Agreement or a Scope of Work shall be deemed to have been duly given if in writing and will be effective either (i) when delivered if delivered in person at the address set forth below or via facsimile or email (in each case, with confirmation of receipt received) as set forth below, or (ii) when received, if sent by an overnight courier delivery service, or sent registered or certified mail in the United States Mail; postage prepaid, return receipt requested, and addressed as set forth below. The addresses to which notices or other communications may be given by either Party may be changed by written notice given by such Party to the other pursuant to this Section.

If to HealthFitness:	If to Client:
Health Fitness Corporation 400 Field Drive Lake Forest, IL 60045 Attention: Contract Administration Associate Facsimile: 847.615.3872 Email: contracts@hfit.com and lawcontracts@trustmarkins.com	City of Sherwood 22560 SW Pine Street Sherwood, Oregon 97140 Attention: Kristen Switzer, Community Services Director Facsimile: (503) 625-5524 Email: switzerk@sherwoodoregon.gov

Section 20. Conformity with Client Policies. If HealthFitness comes upon Client’s premises to perform any Services, HealthFitness will comply with applicable Client security, safety, and standards of conduct policies and rules and will take all reasonable precautions to assure Consultant’s safety and the safety of others. Client shall provide HealthFitness with written copies of such applicable security, safety, and standards of conduct policies and rules prior to HealthFitness having any obligation or liability under this Section 20.

Section 21. Successors and Assigns. Client may not assign its rights and obligations under this Agreement without HealthFitness’ prior written consent. HealthFitness’ consent will not be unreasonably withheld or delayed. HealthFitness may freely assign its rights and obligations under this Agreement (i) upon the merger or consolidation of HealthFitness with another legal entity, (ii) upon the transfer of all or substantially all of the assets of HealthFitness to a third party or (iii) to an Affiliate of HealthFitness. Except as set forth in the immediately preceding sentence, HealthFitness may not, without the prior written consent of Client, assign its rights under this Agreement. Client’s consent will not be unreasonably withheld or delayed.

Section 22. Governing Law; Jurisdiction; Venue. This Agreement shall be construed and enforced under the laws of the State of Oregon, without giving consideration to any conflicts of law provisions. Each Party agrees that claims arising out of or related to this Agreement shall be brought exclusively in the courts of the State of Oregon sitting in Washington County, Oregon or the United States District Court for the District of Oregon and the appellate courts having jurisdiction over appeals from such courts. Each Party hereby irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court and irrevocably waives any objection it may now or hereafter have as to the venue of any such suit, action or proceeding brought in such a court or that such a court is an inconvenient forum

Section 23. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations under this Agreement of Client on the one hand and HealthFitness on the other hand will not be materially and adversely affected thereby, (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal,

invalid, or unenforceable provision had never comprised a part hereof; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement; and (iv) in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

Section 24. Not Exclusive. Notwithstanding any other term or provision of this Agreement, HealthFitness shall not be precluded in any manner from providing services similar to the Services for third parties even where such services may produce similar results, nor from using and disclosing for any purpose any general ideas, concepts or techniques which may result from the performance of Services hereunder so long as the same do not include any of Client's Confidential Information.

Section 25. Force Majeure. Neither Client nor HealthFitness shall be liable for its failure to perform any obligation under this Agreement due to any cause beyond its reasonable control, including, but not limited to, strikes, riots, war, fire, acts of God, acts required in compliance with any law or government regulation.

Section 26. Counterparts; Signature. This Agreement and any Scope of Work may be signed in any number of counterparts all of which together shall constitute one and the same document. A signed copy of this Agreement or any Scope of Work transmitted via facsimile, email or other electronic means shall constitute an originally signed Agreement or Scope of Work, as applicable, and, when together with all other required signed copies of this same Agreement or Scope of Work, as applicable, shall constitute one and the same instrument.

Section 27. Publicity. Neither Party shall use the other Party's (or its respective Affiliates') trademarks, trade names or other Intellectual Property that could, in the other Party's sole judgment, identify a Party or its respective Affiliates or imply endorsement by the other Party, its respective Affiliates or any of their respective employees in any Publicity Matters without the prior written consent of the other Party or its respective Affiliates, as applicable. For purposes of this Agreement, "**Publicity Matters**" means any public statement, publicity, advertising, presentation, brochure, newsletter, book, electronic database or any other matter of whatever nature, form or manner involving a communication with a third party, whether written, electronic or oral. Notwithstanding the foregoing, HealthFitness may use Client's company name, logo or trademark in HealthFitness' promotion, marketing or advertising materials without obtaining Client's prior written consent so long as such use does not create the perception that Client endorses or otherwise sponsors HealthFitness.

Section 28. Costs and Expenses. In the event of any litigation between or among any of the Parties based upon or arising out of this Agreement, the substantially prevailing Party, as determined by a court of competent jurisdiction, shall be entitled to recover all of its reasonable costs and expenses (including attorneys' fees) from any non-prevailing Party. If a Party substantially prevails on some aspects of such litigation, but not others, the court shall apportion any costs and expenses, as it deems equitable.

Section 29. Restricted Persons. Client has not been placed on any list published and maintained by the Government of the United States of America of persons or entities with whom any U.S. person or entity is prohibited from conducting business, including without limitation the Denied Persons List maintained by the Bureau of Industry and Security and the Specially Designated Nationals and Blocked Persons List maintained by the Department of Treasury's Office of Foreign Assets Control.

Section 30. Entire Agreement. This Agreement, including all Exhibits, Scopes of Work and Addenda, sets forth the entire agreement of the Parties hereto and cannot be changed or modified except by an agreement in writing signed by each Party or its duly authorized agent. In the event of any conflict between the terms of this Agreement, any Exhibit, Scope of Work or Addenda, the terms of this Agreement shall control, unless the specific conflicting term in the Exhibit, Scope of Work or Addenda explicitly states that that particular term is intended to control over a specific conflicting term in the Agreement. This Agreement, including all Exhibits, Scopes of Work, and Addenda, supersedes all prior oral and written communications, agreements and understandings of the Parties, if any, with respect to the subject matter hereof.

Section 31. HIPAA; Business Associate Agreement. Except to the extent of a separate business associate agreement between the Parties, Confidential Information includes “Protected Health Information,” as that term is defined in 45 CFR Section 160.103 of the federal privacy regulations and such Confidential Information would be subject to the protections and requirements of the Health Insurance Portability and Accountability Act of 1996 (and the applicable regulations, rules and procedures thereunder, “HIPAA”). In the event that Client will provide, directly or through its subcontractors, Protected Health Information to HealthFitness as part of the Program, prior thereto the Parties will enter into a business associate agreement on such terms a mutually agreeable to the Parties.

Section 32. Survival. All terms, conditions, obligations, representations and warranties capable of surviving termination or expiration of this Agreement shall so survive, including, without limitation: Section 6, Section 11, Section 12, Section 13, Section 15, Section 16, Section 17, Section 18, Section 19, Section 27, Section 27, Section 30, Section 31 and Section 32.

Section 33. Access to Records; Audit

(a) HealthFitness shall maintain, and the Client and its duly authorized representatives shall have access during normal business hours to, the books, documents, papers, and records of HealthFitness which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after payment. Copies of applicable records shall be made available upon reasonable request. Payment for cost of copies is reimbursable by the Client.

(b) The Client, either directly or through a designated representative, at the Client's expense except as provided in subsection (c) below, may conduct financial and performance audits of the billings and services specified in this Agreement at any time in the course of the Agreement and during the three (3) year period established by subsection (a) above. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(c) If an audit discloses that payments to HealthFitness were in excess of the amount to which HealthFitness was entitled, then HealthFitness shall repay the amount of the excess to the Client. If the payments to HealthFitness were in excess of the amount to which HealthFitness was entitled by five percent (5%) or more, then HealthFitness shall additionally repay to the Client the reasonable costs of the audit performed under subsection (b) above. If audit discloses that payments to HealthFitness resulted in underpayment, Client will pay balance due to HealthFitness.

Section 34. Miscellaneous Terms and Statutory Provisions.

(a) Identification. HealthFitness shall furnish to the Client HealthFitness' employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, HealthFitness' Social Security number.

(b) Duty to Inform. HealthFitness shall give prompt written notice to the Client if, at any time during the performance of this Agreement, HealthFitness becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the Agreement, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by the Client. Any delay or failure on the part of the Client to provide a written response to HealthFitness shall constitute neither agreement with nor acquiescence in HealthFitness' statement or claim, and shall not constitute a waiver of any of the Client's rights.

(c) Conflict of Interest. Except with the Client's prior written consent, HealthFitness shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise HealthFitness' professional judgment with respect to this Agreement, including, without limitation, concurrent employment on any project in direct competition with the subject of this Agreement.

(d) Statutory Provisions. As provided by ORS 279B.220, HealthFitness shall:

- (i) Make payment promptly, as due, to all persons supplying to HealthFitness labor or material for the performance of the work provided for in this Agreement.
- (ii) Pay all contributions or amounts due the Industrial Accident Fund from HealthFitness or any subcontractor incurred in the performance of this Agreement.
- (iii) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (iv) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- (v) As provided by ORS 279B.230, HealthFitness shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of HealthFitness, of all sums that HealthFitness agrees to pay for the services and all moneys and sums that HealthFitness collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services. It is a condition of this Agreement that all employers working under this Agreement are either subject employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (vi) As provided by ORS 279A.110, HealthFitness may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women, or an emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. If HealthFitness violates this subsection, the Client may

regard the violation as a breach of contract that permits the Client to: (1) terminate this Agreement; or (2) exercise any remedies for breach of contract that are reserved in this Agreement.

- (vii) As provided by ORS 279B.235, HealthFitness' employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. HealthFitness must give notice in writing to employees who work on this Agreement, either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first set forth above.

City of Sherwood, Oregon

Health Fitness Corporation

By: _____

By: _____

Joseph Gall

Title: City Manager

Title: _____

Date: _____

Date: _____

**Scope of Work No. 1
Between
Health Fitness Corporation
And
City of Sherwood**

Health Fitness Corporation ("Operator") and the City of Sherwood ("City") hereby enter into this Scope of Work No. 1. This Scope of Work is governed by the Master Services Agreement between such parties, effective as of **month, date, year** (the "Agreement"). Except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as in the Agreement.

Whereas, under the terms of this SOW, Operator gives City the rights to use the health and fitness management program (the "Program") at the City location below. City may add other sites to this SOW by written agreement of the parties.

Sherwood Recreation and Aquatic Center
23000 SW Pacific Highway
Sherwood, OR 97140

1. **TERM.** This Scope of Work (the "Scope of Work") will commence on the Program Launch Date and will continue in effect until the last day of the month that is sixty (60) months after the Program Launch Date unless earlier terminated or renewed in accordance with the Agreement.
2. **OPERATOR SERVICES and OBLIGATIONS.** Operator will provide the resources described in Attachment A on a time and materials basis during the term of this Scope of Work.
3. **POINT of CONTACT.**
 - (a) City Liaison

Kristen Switzer, Community Services Director
22560 SW Pine Street Sherwood, Oregon 97140
Tel: 503-625-4210
Email Address: switzerk@sherwoodoregon.gov
 - (b) HealthFitness — Account Management

James Aranowski | Senior Director, Program Management & Engagement
Tel: 248.427.8140
Email address: james.aranowski@hfit.com

Chip Boyd | Area Manager, National Accounts – Fitness & Recreation
Tel: 817-734-9934
Email Address: chip.boyd@christushealth.org

Ann Wyatt | Vice President, Program Management & Engagement
Email Address: ann.wyatt@hfit.com
4. **CITY RESPONSIBILITIES.** In addition to its obligations in the Agreement, City will provide a point person and support defined by Attachment A.

- 5. **PAYMENTS**. Please refer to Section 7 of the Master Service Agreement for the fees, billing, and payment terms.

AGREED:

CITY OF SHERWOOD

HEALTH FITNESS CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

ATTACHMENT A – SCOPE OF WORK

1. CONTRACT SERVICES

Operator is only responsible for the contract services detailed in this Scope of Work. City is responsible for the sourcing and/or supplying of any other contract services not detailed in this Scope of Work.

2. SERVICES AND PRODUCTS

Services, Products, and fees will be reviewed annually between the City and Operator and may be amended with approval by both parties.

Operator will provide on-site staffing, program delivery, and account management support.

The Sherwood Recreation and Aquatic Center includes:

- A 25 yard long, 3 lane pool and an additional swim area with zero depth entry.
- Family changing rooms.
- Teen center.
- Child watch area.
- Full-size basketball/volleyball court.
- Rock climbing wall.
- Multiple group class and spin studios.
- Cardiovascular and strength training equipment areas.
- Functional training room.
- Indoor walking/running track (1/14 mile)
- Supporting the activity spaces are male and female locker rooms, a reception counter, several offices, storage rooms, janitor and pool/HVAC equipment rooms.

3. ON-SITE STAFF

Operator will provide all staff salaries, wages, and benefits. Operator will also provide staff replacements during regular staff time off and as needed. A staff summary is provided below. Exhibit 1 – Project Organizational Chart provides an illustration of all staff referenced below.

	Staff Position	Full-Time Equivalency
	Full-Time Staff	
1	General Manager	1.0
2	Program Manager, Recreation and Aquatics	1.0
3	Membership Manager	1.0
4	Marketing and Outreach Coordinator	1.0
5	Administrative Assistant	1.0
6	Fitness Manager	1.0
7	Recreation Manager	1.0
8	Wellness Manager (youth -senior)	1.0
9	Aquatic Supervisor (Senior Lifeguard)	1.0
10	Front Desk Supervisor #1	1.0
11	Front Desk Supervisor #2	1.0
12	Facility Maintenance Manager	1.0
	Full-Time Staff Total	12.0

	Staff Position	Full-Time Equivalency
	Part-Time Staff	
13	Fitness Specialists	2.675
14	Gymnasium Attendants	1.100
15	Senior Lifeguards	1.675
16	Lifeguards	5.350
17	Group Class Instruction	1.125
18	Active Older Adult Group Class Instruction	0.500
19	Water Workout Class Instruction	0.350
20	Swim Lesson Instruction	2.025
21	Personal Trainers	0.000
22	Front Desk Attendants	3.350
23	Child-Care Attendants	3.825
24	Maintenance Attendant	1.575
	Part-Time Staff Total	23.55
	Staff Grand-Total (full and part-time)	35.55

Note: All existing YMCA staff will be included in the interview process when Operator is initially filling the above positions and will be given the first opportunity to be on-boarded to HealthFitness for the moving forward on-site program staff. The only requirement will be that they meet the moving forward on-site staff qualifications as jointly agreed upon by the City and the Operator. Once staff candidates are identified through the interview process the Operator will introduce the candidates to the City Liaison(s) and provide the City Liaison(s) with an opportunity to advise and provide comment. Final staff selections will be solely the responsibility of Operator.

3.1 Staff Resources

Ready Set Go Onboarding Process: Operator will utilize a structured onboarding process to provide on-site staff with tools and knowledge to be successful in their role. The onboarding process that will be utilized for each individual is entitled “Ready Set Go”. This process will include a step-by-step approach to integrating within a client culture and location. The process will also assist each individual with becoming aware of the Operator’s company structure, key contacts and resources, and learning the day-to-day operational aspects of fitness, recreation, and wellness management.

e-Training: Operator’s on-site staff will also be supported by monthly e-Trainings that include trainings focused on Operator’s operational management systems such as point-of-sale, member management platform, budget and expense management, as well as leveraging the Operator’s social media platform, Fuser.

Additional Training Resources: To complement the Ready Set Go and e-Training curriculums, the Operator’s on-site staff will also be offered optional trainings and a webinar series focusing on best practices for developing fitness, recreation, and wellness programs, as well as industry news and trends, and continuing education courses. The on-site general manager and/or regional support will work closely with on-site staff throughout the onboarding process to set expectations, answer questions and keep to a training timeline.

Peer Group Training: Operator will offer the on-site staff a variety of peer group training opportunities including:

- **Staff Exchanges:** On-site staff may spend a day or more at another Operator client site to learn new skills and broaden their perspective.
- **Peer Workshops:** A peer and an outside facilitator train a group of instructors in a specific

area relevant to most or all programs. This approach fosters program consistency, sharing of ideas and a rich learning environment.

- **The Campfire:** A place for on-site staff to connect informally and discuss best practices in program design. Staff share stories of what's worked with their client's program, learn different approaches from others and refocus on program design best practices. Topics include but are not limited to:
 - Aquatics Management
 - Health Fairs/Wellness Fairs/Fitness Fairs
 - Wellness Champions and Wellness Committees
 - Internships for Recreation, Aquatics, Wellness and Fitness
 - Sports and Recreation Programs
 - Charity Themed Events
 - Integration with city vendors and partners, as appropriate
 - Participant Satisfaction Surveys
 - Social Media
- **Manager Meetings and Conferences:** Each region conducts area meetings and conferences for managers, focusing on business updates, team building sessions, leadership training and customer service workshops.
- **IDEA Health & Fitness Association's "Club Connect" Membership:** Operator will provide membership for all on-site staff working ten or more hours per week. The Club Connect program will provide the ability for on-site staff to earn free continuing education credits by taking online courses, building programs, and more.

4. ACCOUNT SUPPORT

4.1 Operator Regional Account Management Team

The Regional Account Management Team will direct the City account and provide overall account management and staff support. This team includes:

- a) James Aranowski | Senior Director, Program Management & Engagement
- b) Chip Boyd | Area Manager, National Accounts – Fitness & Recreation
- a) Ann Wyatt | Vice President, Program Management & Engagement

4.2 Account Management Services Summary

Account management services will include:

- b) Staff transition and recruitment.
- c) Training and development workshops for Operator's on-site staff.
- d) Program supervision to ensure quality control.
- e) Assistance with annual Business Plan development.
- f) Liaison between the City and Operator.
- g) Contract management and renewal.

4.3 Account Management Interaction

Interaction with the Operator's on-site staff and the City Liaison(s) includes:

- a) Confer fully and frequently with the City Liaison(s) regarding program management operations. Interaction and input regarding general direction of programming will be provided by the City of Sherwood Parks and Recreation Advisory Board. The Parks and Recreation Advisory Board will serve as an advocate of the community and provide a voice from the community regarding program operations in general.
- b) The HealthFitness account management team will also receive and respond to feedback from the Parks and Recreation Advisory Board regarding special requests and/or needs (e.g., homeless showers, extended center hours of operation for a specific reason and or event).
- c) Attend City Council Meetings on at least a quarterly basis to provide a qualitative report on the overall financial performance of the facility and performance of planned programs.

- d) Program updates and reports submitted to the City Liaison(s) on a monthly, quarterly and annual basis.
- e) Ongoing analysis and evaluation of the Business Plan process and program objectives.
- f) Discuss projects, program development, upcoming activities and services.
- g) Review issues and discuss strategies.
- h) Ongoing positive reinforcement, professional support and guidance for on-site staff.
- i) Identify trends in the fitness, recreation, and wellness fields and recommend enhancements to the City programs and facility.
- j) Ensure compliance with all City operational rules and regulations.

4.4 Quality Assurance Services

- a) Perform general administrative functions in accordance with the City Program scope (e.g., records management, report generation).
- b) Evaluate program and service effectiveness through the Operator Quality Assurance Plan.
- c) Participate in regular onsite safety drills. Frequency of safety drills to be identified with the City.
- d) Provide a qualified Account Management Team.
- e) Regularly scheduled meetings and formal communication with the City Liaison(s) and the Operator's on-site staff.
- f) Communication/Interaction between the Operator's Account Management Team and City Liaison(s) regarding national health data, trends, industry findings and new Operator program options available to the City.
- g) Annual client and participant satisfaction surveys.

5. HEALTH AND FITNESS PROGRAM MANAGEMENT

5.1 Hours of Staffed Operation

Monday – Thursday

5:00 am–10:00 pm

Friday

5:00 am–9:00 pm

Saturday

6:00 am–7:00 pm

Sunday

8:00 am–6:00 pm

The facility opening and closing hours can be adjusted but only with the prior written approval of the City Manager. A notice will be posted on site at the facility at least one month in advance of any change so monthly members and pass purchasers are aware.

5.2 Membership Categories and Rates

Type of Membership	Resident Monthly Dues	Non-Resident Monthly Dues	Registration Fee
Youth 3–11	\$20	\$23	\$25
Young Adult 12–20	\$26	\$29	\$25
Adult 21–64	\$35	\$38	\$50
Adult Couple 18+	\$58	\$64	\$75
Senior 65+	\$35	\$38	\$50
Family*	\$70	\$77	\$75
*Up to 5 people on account. \$10 for each additional member. Must show proof of residence.			

Note: Operator agrees to keep the membership categories and rates the same at least for the first year after the Program Launch Date. Operator will work with the Parks and Recreation Advisory Board regarding any future fee adjustments after Year 1. Any such adjustments will need to be reviewed by the City Parks and Recreation Advisory Board and are subject to final approval by Sherwood City Council.

5.3 Program Development and Annual Management Services

Operator will provide comprehensive program development and operational management services on an annual basis. The Operator will work collaboratively with the City Liaison(s) regarding overall program design and content. The City Liaison(s) will provide input and approval of final program scope and processes. Operator will provide program development and operational management services including:

- a) Annual Management Plan to include a strategic plan and integrated program calendar, operating budget, mission statement, and overall program goals and objectives.
- b) Facility management procedures including equipment maintenance and building and grounds maintenance procedures.
- c) Staff training manual with position specific responsibilities.
- d) Marketing and communication plan.
- e) Operating Procedures Manual (operational policies and procedures).
- f) Participant enrollment process according to program design, including risk and liability releases, which are subject to review and approval by the City and must include a release of claims against the City.
- g) Program and facility orientation process according to program design.
- h) Program calendar of events (e.g., fitness, recreation, and wellness for all ages and genders).
- i) Fitness and recreation program scope (e.g., group class programming such as silver sneakers/silver & fit programming, special needs/handicapped programs, instructional swim programs).
- j) Wellness program scope (e.g., mind your health seminars, “What’s What Meet-Up” educational programming).
- k) Member Management Platform.
- l) On-site and up-to-date membership and personnel files.
- m) Quality Assurance Program (QAP) including a reporting schedule and annual compilation of program results in a report format developed in conjunction with the City Liaison(s). The QAP will also include regular account review meetings with the City Liaison(s) along with a member and client survey process.
- n) Management of variable program and facility related supply items and services needed.

- o) Monitor usage of the facility and ensure that users comply with all rules and regulations and ensure that no one is in need of help or assistance.
- p) Maintain the center in a safe, clean and sanitary manner. All administrative and general exercise areas will be kept clean and free of obstacles that may cause accidents/injury.
- q) Provide a program for community members to rent on-site meeting spaces in a manner that does not interfere with other operations. Such rentals shall be limited to uses that are recreational and health and fitness related.
- r) Recommend facility, equipment and operation improvements as necessary and appropriate.
- s) Inspect all equipment periodically for safety purposes and remove from use any equipment that becomes unsafe. Notify the City of damaged or missing equipment and/or components.
- t) Daily preventive equipment maintenance and supervision of third-party maintenance vendors.
- u) Create and maintain a complete inventory of equipment and supplies belonging to or in control of the City. Recommend equipment replacement where replacement would be the most cost-effective option. Develop a 3-5 year equipment replacement plan/strategy.
- v) Written and rehearsed Emergency Action Plans incorporating AED and First Aid Kits.
- w) Development of Incident/Accident reporting systems and regular review/follow up and cataloging for historical reference, pattern identification, and emerging risks.
- x) Compliance with legal requirements regarding the Health Insurance Portability and Accountability Act (HIPAA), and PI data.
- y) Material Safety Data Sheet (MSDS) compliance (inventory, identification/labeling)
- z) Sanitation plans for Aquatic surfaces, Fitness Equipment and proper handling of bio hazard material.
- aa) Consultative assistance as needed on an annual basis regarding facility and or programming related topics (e.g., facility renovation and/or expansion, new programming concepts).

5.4 Direct Participant Program Services

Operator will provide a diverse menu of program offerings on an annual basis. The Operator will work collaboratively with the City Liaison(s) and Park and Recreation Advisory Committee regarding overall program offerings and content. The City Liaison(s) and Park and Recreation Advisory Committee will provide input and approval of the program menu and calendar of events on an annual basis. During the first year after the Program Launch Date, Operator will continue to provide, in all respects, the same level, type, quality, and volume of program offerings as were provided by the YMCA during the period of July 1, 2016 to June 30, 2017. Operator will communicate with the City Liaison(s) regarding program participation rates on a regular basis to identify if adjustments are needed. In years 2-5 of the contract the Operator will collaborate with the City Liaison(s) and Park and Recreation Advisory Committee regarding the moving forward level, type, and volume of program offerings. Any changes to program offerings must be approved by the City Liaison(s) and Park and Recreation Advisory Committee. Without limiting the generality of the foregoing, Operator will be responsible for:

- a) Facilitating all aspects of member engagement (e.g., registration, forms and process development, participant pre-program screenings according to the City Program).
- b) Orientations to facilities and program amenities and options.
- c) General daily activity area and floor supervision and participant guidance throughout the Recreation and Aquatic Center.
- d) Child Watch services including the City approved child care policies, until further input can be given and decisions made regarding any future changes to the program.
- e) Continuation of the Sherwood Dragons Swim Team along with scheduled pool time for the local High School teams.
- f) Continuation of the Silver Sneakers and Silver & Fit Programs. Collaboration with the City Liaison(s) and Park and Recreation Advisory Committee regarding this “program” primarily being dedicated to the Citizens of the City of Sherwood. Silver Sneakers offers

health programs exclusively for seniors. Membership to Silver Sneakers is covered under most Medicare plans, including AARP Medicare & United HealthCare Insurance. The fitness program enables senior citizens to enjoy benefits such as weights, bicycles, and swimming, at a level that they are capable of enjoying. Health plans offer the Silver & Fit program to eligible Medicare Advantage/Supplement beneficiaries and group retirees. The program offers facility-based offerings as well as home-based options.

- g) Develop programming and class offerings for special needs and handicapped children.
- h) Community outreach programs on an annual basis (e.g., fund-raising, community outreach). The Operator will work with the City Liaison(s) and Park and Recreation Advisory Committee to develop a Community Outreach Program Calendar that will include a range of 8-12 events/programs annually.
- i) Continue with a Scholarship Program that provides financial assistance to the City of Sherwood community residents that meet award criteria as approved by the City Liaison(s) and Park and Recreation Advisory Committee. Assist with creation of a “Friends of the Recreation and Aquatic Center” program to assist with scholarships. Sherwood Citizens would get priority in respect to scholarship awards. Work with the City Liaison(s) regarding the development of a non-resident award process.
- j) Personal Training delivered in a fee-for-service approach.
- k) Group class instruction delivered in the current weekly scope (up to 62 classes per week).
- l) Active older adult group class programming delivered in the current weekly scope (up to 26 classes per week).
- m) Water workout classes delivered in the current weekly scope (up to 14 classes per week).
- n) Instructional swim lessons delivered in the current weekly scope (up to 81 classes per week). Operator will require that all swim instructors carry the following American Red Cross certifications:
 - First Aid, CPR/AED for the Professional Rescuer and Water Safety Instructor (WSI).
 - At least one year of experience teaching swimming strongly preferred.
 - Experience in teaching age groups from 0 to 100 including adults, children and special populations preferred.
 - Ability to pass background checks including but not limited to county and multi-jurisdiction and national sex offender registry.
- o) Recreation/Family Programming (e.g., fun runs, open swim, sports leagues/tournaments).
- p) Thematic and seasonal/holiday special events (e.g., Fun Run).
- q) Teen Center events calendar (e.g., dances, sports themed activities).
- r) Mind Your Health Educational Seminars. Operator has a current library of 30 educational topics in a variety of themes to choose from. This library of educational seminars may be considered when developing the moving forward Recreation and Aquatic Center Program Calendar.
- s) Multi-Session Classes. Operator has a current library of 7 multi-session classes with a variety of activity themes to choose from. This library of classes may be considered when developing the moving forward Recreation and Aquatic Center Program Calendar.
- t) What’s What Meet-Up Outreach Sessions. Operator has a current library of 8 outreach sessions in a variety of topics to choose from. This library of educational sessions may be considered when developing the moving forward Recreation and Aquatic Center Program Calendar.
- u) Staff Delivered Challenges. Operator has a current library of 8 challenges in a variety of themes to choose from. This library of challenges may be considered when developing the moving forward Recreation and Aquatic Center Program Calendar.

 **Exhibit 2: Operator’s Value-Added Program Offerings.**

6. MARKETING AND COMMUNICATION PLAN

Operator will develop a marketing and communication plan (the Plan) including community outreach for the facility and program. The Plan will include marketing strategies to generate and sustain participation in the City's Recreation and Aquatic Program throughout the year. The Operator will work collaboratively with the City Liaison(s) towards the development of the Recreation and Aquatic Center's new branding initiatives and then ensure the standards are used accordingly throughout each operational year.

Established Communication Materials: Operator will provide the City with a library of established campaigns that can be customized with the moving forward center and program branding. Current examples of established campaigns include Idioms, which offers oversized, reusable posters as well as a series of 30-second videos. The established campaign library also includes more traditional campaigns, such as "Gain Health", "Make the Moves that Matter" and "Little Things, Big Difference". The established campaigns will provide the City with templates for mediums such as postcards, letters, e-mails, program enrollment packets, group exercise schedules and posters. The Operator will work collaboratively with the City Liaison(s) and Park and Recreation Advisory Committee to utilize the marketing resources in development of the moving forward marketing plan.

As a part of the marketing process, the Operator will develop a program calendar including categorical program areas such as participant engagement and education, community outreach, member engagement, group exercise, member retention, and health improvement programs. The calendar will be geared towards the marketing, recruitment and engagement of the eligible Sherwood population as program members and active participants.

 **Exhibit 3: Operator's Marketing Campaign Resources.**

7. MEMBER MANAGEMENT SYSTEM

Technology Solution: Operator has included a line-item in the budget for a technology solution that will allow for the efficient management of program operations — for both direct participant-facing interaction as well as the back-office operational management tasks. Operator assumes all City-owned current program information including any available membership data, financial information, historical reports and all other information relating to running the Sherwood Recreation and Aquatic Center will be transferred and/or a copy provided to HealthFitness as of September 30, 2018.

See below for a summary of the proposed approach to the moving forward technology solution for the Sherwood's Recreation and Aquatic Center.

Our recommended approach is to first work with the City Liaison(s) to better understand the current operating system and what data can be migrated, we then can recommend a software system that best meets the City's moving forward system needs (e.g., CSI, MINDBODY, etc.). We have extensive experience utilizing a variety of industry technology solutions and are confident we can work with the City Liaison(s) to identify a system that will best fit the Recreation and Aquatic Center's needs moving forward. Our intent is to implement technology that supports operational best practices, but also offers new solutions that enrich management tools that ultimately lead to an enhanced participant experience.

Overview of System Features:

- Accounting:
 - Point of Sale
 - Billing and Accounts Receivable
 - Inventory Management

- Series Sales (packaging and managing of services sold in a series format, e.g., personal training)
- Management:
 - Check-In
 - Event Management
 - Member Management (member data intelligence)
 - Event Management (plan, build, and scheduler for events)
 - Equipment Checkout
 - Locker Management
- Online Services: (automated online service features)
 - New Member Enrollment
 - Registration in Programs and Classes
 - Scheduling (classes, programs, leagues, special events)
 - Secure Dues Payment and Paperless Billing
- Scheduling:
 - Group Classes
 - League and Tournament Management
 - Program Enrollment (outreach, wellness, etc.)
 - Scheduler for Management of Appointments and Bookings (e.g., personal training)
- Reports:
 - Data Integration and Custom Report Generation
- Business intelligence system to assist with data analytics (e.g., Tableau).
 - Data Visualization: Connect and Visualize Data from Varied Sources
 - Analytics: Spreadsheets, Dashboards, Multiple View Capability, Live and/or Automated Updates
 - Sharing: Publish Dashboards to Share Live Online

Further interaction will be needed with the City Liaison(s) to confirm the strategy regarding selection of the moving forward system. The Operator's objective will be to collaborate with the City Liaison(s) at the appropriate point during the transition phase to identify and implement the solution in a time-efficient approach.

8. ADDITIONAL INFORMATION

8.1 Independent Contractors

Operator is not responsible for providing any independent contractors other than those specifically outlined in this Attachment A.

8.2 Recruiting

Operator is responsible and will incur all expenses related to on-site staff transition and/or recruitment (i.e., newspaper and magazine classifieds as needed, internet postings, etc.).

8.3 Recruiting Travel

Operator is responsible for all recruiting travel expenses, including travel by Operator's senior staff to interview candidates, travel related expenses for out-of-area candidates to interview for positions (if applicable), and relocation expenses for out-of-area candidates (if applicable).

8.4 Travel and Entertainment

Beginning on the Program Launch Date, the Operator's Senior Director and/or Area Manager is responsible for meeting with the City Liaison(s) on a regular basis, not less often than monthly, to assure quality control and assess Program effectiveness. Operator is responsible for Travel and Entertainment expenses incurred during on-site visits including air or ground transportation (at the prevailing IRS-designated rate per mile), meals, lodging, tolls, and parking.

9. CLIENT RESPONSIBILITIES

9.1 Management Commitment and Support

The City will designate at least one (1) Liaison (City Liaison) for the Operator. On an ongoing basis, each of the City Liaison(s) will devote an adequate amount of his or her time for engagement with the Operator regarding overall program operations.

9.2 Office Space

The City will provide, not to exceed City site guidelines, the following for the on-site program management staff:

- a) Enclosed staff office or cubicle work space (note, participant related health and fitness counseling sessions must be held in an enclosed area to ensure privacy/confidentiality).
- b) Telephone with conferencing capability with long distance service.
- c) Computer workstations with software equivalent to City's standard software systems and email access for program communications as applicable.
- d) Laptop computer and docking station, if required, with software equivalent to City 'standard' software systems and e-mail access; the laptop ensures encryption following Operator client-owned mobile device (COMD) standards.
- e) Color Printer.
- f) Access to copier/fax – color copier access preferred for materials.
- g) Internet access.
- h) Lockable cabinets for supplies storage.
- i) Operator designated lockable file cabinet for participant files and individual health information storage.
- j) If cell phone access is a requirement by the Client, the Client provides the hardware and maintains the monthly fees and ensures encryption following client-owned mobile device (COMD) standard. If Operator purchases the cell phones and service on the Client's behalf and manages each month's ongoing fees, fees are agreed upon and are invoiced at a fixed rate each month.

9.3 Capital Purchases

City is responsible for making capital expenditures for the Centers and Programs not defined under the Operator responsibilities (herein "Capital Expenditures"). Capital Expenditures include all items for the Centers and Programs including, but not limited to, office equipment and furniture, computer hardware and connectivity, and audio/visual equipment.

9.4 Facility Maintenance, Repairs and Utility Services

The City is responsible for the following facility related services and or supplies:

- a) Making or installing, at the City expense and in the name of the City, of such alterations, repairs or decorations to the facilities as the City deems reasonable or necessary.

9.5 Other Insurance

City will be responsible for providing insurance for the items it is responsible for in this Scope of Work and Agreement. Operator liability insurance covers the hours that programs and services are being delivered including the hours applied to the supervision of the Recreation and Aquatic Center. Hours outside the defined program and service delivery are the responsibility of the City.

ATTACHMENT B – PRO FORMA

Operator has developed a projected 5 Year Pro Forma. The Pro Forma includes the following revenue and expense summary categories and net outcome over the 5 Year term:

Category	Fiscal 2019	Fiscal 2020	Fiscal 2021	Fiscal 2022	Fiscal 2023	5 Year Total
Revenue	\$2,725,030.00	\$2,862,510.00	\$3,006,589.50	\$3,159,871.88	\$3,323,368.97	\$15,077,370.34
Core Expenses	(\$2,530,485.29)	(\$2,608,539.39)	(\$2,689,399.40)	(\$2,773,179.14)	(\$2,859,997.46)	(\$13,461,600.67)
Management Fee¹	(\$192,000.00)	(\$197,760.00)	(\$203,692.80)	(\$209,803.58)	(\$216,097.69)	(\$1,019,354.08)
Expense Total	(\$2,722,485.29)	(\$2,806,299.39)	(\$2,893,092.20)	(\$2,982,982.72)	(\$3,076,095.15)	(\$14,480,954.75)
Net²	\$2,544.71	\$56,210.61	\$113,497.30	\$176,889.15	\$ 247,273.82	\$596,415.60
Recovery	100%	102%	104%	106%	108%	104%

¹ Assumes cost for the Operator’s fixed management fee. The fixed management fee assumes a 3% increase in years 2 through 5 of the contract term. This fee includes annual account management support; staff training and development; access to the Operator’s marketing resource library; and to the staff delivered programming menu including motivational challenges, multi-session class programming, and the Mind Your Health Seminar Series, and Operator Profit.

² The Operator’s Pro Forma does not show a negative net and/or deficit in any operational year that the City would have to absorb. Additionally, 100% of the positive net revenue over the 5 Year term (\$596,415.60) will go to the City.

BILLING

Please refer to Section 7 of the Master Service Agreement for the fees, billing, and payment terms.

City of Sherwood Liaison

HealthFitness Corporate Team

- TONY DEACY
Director, Business Development
- ARCH HASLER
Vice President, Consulting & Design Services
- BRIAN HARRIGAN
Senior Vice President, Sales & Development
- ANN WYATT
Vice President, Program Management & Engagement
- JEN SMITH
Vice President, Client Strategy & Growth
- MJ CHAIKEN
Director, Training and Development
- CANDACE JONES
Director, Marketing
- TINA LOSKOTA
Vice President, Human Resources

HealthFitness Program Management & Engagement Team

JAMES ARANOWSKI
Senior Director, Program Management & Engagement

CHIP BOYD
Area Manager, Program Management & Engagement

On-site Staff

General Manager
1.00 FTE

Administrative Assistant
1.00 FTE

Program Manager
Recreation & Aquatics
1.00 FTE

Recreation Manager
1.00 FTE
Aquatic Supervisor
1.00 FTE

Senior Lifeguards
Lifeguards
Water Workout Class Instructors
Swim Instructors
Active Older Aquatics
9.400 FTE

Membership Manager
1.00 FTE

Front Desk Supervisor #1
1.00 FTE
Front Desk Supervisor #2
1.00 FTE

Front Desk Attendants
Child Care Attendants
7.175 FTE

Coordinator
Marketing & Outreach
1.00 FTE

Wellness Manager
1.00 FTE

Active Older Adult Group Class
0.50 FTE

Fitness Manager
1.00 FTE

Fitness Specialists
Gym Attendants
Group Class Instructors
Personal Training
4.9 FTE

Facility Maintenance Manager
1.00 FTE

Facility Maintenance Attendant / Custodians
1.575 FTE

Mind Your Health

Help your participants reduce health risks

MIND YOUR HEALTH educational seminars provide engaging, practical, science-based information in a group setting to help raise awareness of healthy choices and reduce health risks.

Client Benefits



- **Science-based and professionally developed.** HealthFitness' seminars apply current behavior change theories and insights, and are developed by health educators, registered dietitians, licensed psychologists and exercise physiologists.
- **Broad appeal.** The diverse topics available through *Mind Your Health* seminars are designed to appeal across an entire population, including a range of participant demographics and those interested in improving their health and lifestyle.
- **Flexible.** Seminars can be delivered on-site or via live webinar.

Participant Benefits



- **Awareness and education.** *Mind Your Health* educational seminars are designed to raise awareness, educate and provide useful strategies for making positive lifestyle changes.
- **Group setting.** Participants connect with peers interested in learning actionable health tips in a fun, social environment.
- **Resources.** *Mind Your Health* participants receive an information-packed handout that reinforces new knowledge acquired during the seminar.

What you need to know

Mind Your Health educational seminars are one-hour seminars provided by a HealthFitness professional, designed to help participants improve their health and lifestyle. This corporate wellness program includes customizable marketing materials for promotion.

Help build healthy behaviors

With *Mind Your Health* seminars, you offer participants the tools they need to improve their health and lifestyle. Contact your HealthFitness representative to learn more about including educational seminars in your corporate wellness programming.

Available seminars

- **Back Health**—*Preventing Pain and Strain*
Learn the importance of back health, back pain triggers and preventive tips.
- **Blood Pressure**—*A Vital Force for Life*
Discover what your blood pressure should be, risk factors for high blood pressure and how to take control of risks.
- **Building Strength**—*A Cornerstone for Good Health*
Learn the benefits of strength training, safety guidelines and basic steps for getting started at any age.
- **Delicious Vegetables**—*Adding Nutrients the Tasty Way*
Gain an understanding of the health benefits of vegetables (and fruits) and simple tips for eating more, even on a budget.
- **Diabetes**—*Awareness and Prevention*
Learn about the symptoms of diabetes, risk factors for pre-diabetes and diabetes, and tips for reducing risks.
- **Family Health**—*Solving the Family Health Puzzle*
Explore tips for building a safe, healthy and strong family. Learn the power of prevention and options for healthy food choices, staying active, supporting healthy teens and more.

Available seminars

(continued)

- **Fiber**—*Making it Fit*
Learn the benefits of eating a fiber-rich diet, food sources and tips for choosing more fiber.
- **Financial Well-being**—*Small Steps to Fiscal Fitness*
Learn how financial wellness connects to overall well-being and what simple steps you can take to lay the foundation for a healthy financial future.
- **Fitting in Fitness**—*Exercise Options for Busy People*
Review the guidelines for a balanced fitness program, tips to fit in fitness and five keys to success for healthy behaviors.
- **Gluten Awareness**—*Insight into the Gluten-Free Trend*
Get the facts about gluten to help make the right decisions for you and your family.
- **Healthy Eating**—*Step Up to the Plate*
Let us show you tools to personalize your eating plan, healthy eating tips and how to eat healthy without breaking your budget.
- **Healthy Lunches**—*At Home or on the Go*
Find out what makes a healthy lunch, creative lunch ideas and how to make your lunch break healthy and enjoyable.
- **Healthy Weight**—*Set Yourself Up for Success*
Learn how to develop a lifetime eating plan to improve your eating behaviors, increase your activity level and lose weight safely.
- **Heart Healthy Living**—*The Beat Goes On*
Learn about the controllable and uncontrollable risks for coronary artery disease, including how you can reduce your risk.
- **Manage Stress**—*Before it Manages You*
Learn to identify stress-related symptoms, how to categorize stressors, when to take action or use coping skills and quick relaxation techniques.
- **Men's Health**—*Operating at Peak Performance*
Explore tips for heart health, cancer prevention and a healthy lifestyle.

Available seminars

(continued)

- **Metabolic Syndrome**—*Are You at Risk?*
When certain risk factors come together, metabolic syndrome can mean higher risk. Find out what it is, who is at risk and how to reduce risks.
- **Quitting Tobacco**—*Set Yourself Up for Success*
Ready to quit? Increase your chance of success through proper preparation, planning, support tools and commitment.
- **Sleep**—*Wake Up to Good Health*
Learn the impact of sleep loss and tips for getting a good night's sleep.
- **Sugar Savvy**—*Get the Scoop*
Gain an understanding of the impact of sugar, as well as tips for choosing foods and beverages with less sugar.
- **The Art of Meditation and Yoga**—*Connecting Body and Mind*
Meditation and yoga are popular techniques that connect the body and mind to help move toward overall wellness. Learn about their potential health benefits and resources to help you get started.
- **The Balancing Act**—*Work, Life and Technology*
Learn simple time management strategies and mindfulness techniques to help make the most of your time.
- **Train for a Healthy Brain**—*The Lifestyle Connection*
Learn about common threats to brain health such as memory loss and stroke, and the lifestyle steps you can take to keep your brain in shape.
- **Understanding Cholesterol**—*Your Key to Heart Health*
Get a breakdown of cholesterol and blood lipids, lifestyle factors that impact cholesterol levels and simple tips to keep cholesterol in a healthy range.
- **Vitamins and Supplements**—*What You Need to Know*
Learn the facts about vitamins, minerals and dietary supplements, including safety tips and questions to ask before taking a dietary supplement.
- **Well-being**—*The Many Ways to Look at Health*
Learn about the many components of well-being, how they are connected and strategies to improve your overall well-being.

Mind Your Health

Available seminars

(continued)

- **Women's Health**—*Taking Care of You*
Gain tips for a healthy lifestyle with a focus on heart, breast and bone health, as well as tips for how to manage menopause symptoms.
- **Your Environment**—*A Powerful Influence on Choice*
Your surroundings at home, work and in the community can have a big impact on the choices you make. Learn how small changes in your environment can help support overall well-being.
- **Your Health Action Plan**—*Small Steps to Big Changes*
Want to make a change but not sure where to start? Begin here with simple and small steps that will set you down the path to long-lasting changes.
- **Your Health**—*It's a Numbers Game*
Which numbers do you need to know for good health? Find out during this seminar plus learn about lifestyle behaviors to keep them in check.

About HealthFitness

HealthFitness, a Trustmark company, is an award-winning, URAC- and NCQA-accredited provider of health management, corporate fitness and condition management solutions. With nearly 40 years of experience, HealthFitness is a proven leader and partner for infusing a culture of health. We maximize client results through personalized interaction and a science-based approach to on-site program management, engagement and prevention. Parent company Trustmark provides a full spectrum of employee benefits to improve well-being through better health and greater financial security. For more information on HealthFitness, visit www.healthfitness.com.





Multi-session Classes

Designed to appeal across an entire population

MULTI-SESSION CLASSES provide engaging, practical, science-based information to help improve health and well-being. Each class includes a series of sessions, providing useful strategies for progressing toward small goals in a supportive group setting.

Client Benefits



- **Science-based content.** Classes use up-to-date health industry guidelines and sessions are offered sequentially, providing a cohesive learning experience that fosters behavior change.
- **On-site delivery.** Classes are delivered by on-site staff, which boosts engagement and interaction.
- **Reporting and promotional support.** Class summaries provide aggregate participant satisfaction results, and configurable marketing materials (flyers, posters and emails) help support and promote programs and participation.

Participant Benefits



- **Actionable and informative.** Participants receive actionable health tips—designed to educate and raise awareness—in a fun, social environment.
- **Progressive learning.** Classes and handouts for each session build on knowledge from previous sessions, reinforcing key concepts and opportunities for action.
- **Supportive connections.** Participants have the opportunity to connect with peers who are also interested in making positive lifestyle changes.

Multi-session Classes

Available classes

Beyond Balance (4 weeks)

Participants learn to identify the symptoms and causes of stress, including how to take action through acceptance, coping skills, quick relaxation tips and finding a healthy balance.

Beyond Weight—Creating a Healthy Body and Mind (4 weeks)

A non-dieting approach to a healthy body and weight. Participants learn strategies for integrating wholesome eating and intentional movement into their lifestyle, along with elements of mindfulness and resiliency.

Get Moving (4 weeks)

The benefits of exercise, including tips for making physical activity a life-long, enjoyable habit, are the focus of this class. Participants learn strategies to overcome their personal barriers, while creating a plan to increase their physical activity.

Getting Ready to Give Up Tobacco (4 weeks)

Designed for individuals who are not ready to quit, this class explores a variety of topics related to tobacco cessation to help them make decisions about a future quit attempt.

Healthy Food, Healthy Body (6 weeks)

Participants learn to make healthier food choices for themselves and their families through developing plans, strategies and resources for healthy meals and snacks.

Mindfulness Matters (4 weeks)

By focusing on different aspects of mindfulness—the act of being aware of and experiencing the present moment—participants learn how to integrate this meditative practice into everyday life.

The Power of Well-being (4 weeks)

Participants focus on the inter-connectedness of multiple components of well-being, including physical, social, emotional and financial well-being, plus the impact of the environment.

Note: Classes are available for a minimum of 10 participants and a maximum of 25.

Help members make positive health changes

Educate your members on reducing health risks, while helping them work toward small health goals —through multi-session classes. Contact your Account Management representative to get started.

About HealthFitness

HealthFitness, a Trustmark company, is an award-winning, URAC- and NCQA-accredited provider of health management, corporate fitness and condition management solutions. For more information on HealthFitness, visit www.healthfitness.com.



What's What

Give participants the facts to help make smart choices about their health.

WHAT'S WHAT meet ups are short and filled with tips and action steps to help participants improve their health and well-being.

Client Benefits



- **Boosts engagement.** Reach more of your population with short, 10-minute meet ups that deliver timely health and well-being topics, wherever participants can gather.
- **Preventive.** Gives participants an opportunity to learn the facts on health and wellness topics, helping them to make better decisions on how to improve their health.
- **Supports the social aspect of well-being.** Provides an opportunity for participants to connect with peers in a casual/informal way to learn about topics of interest together.

Participant Benefits



- **Convenient.** Anytime, anywhere means we reach more people at times and places that are convenient for them.
- **Informative.** Participants receive key messages about a health topic of interest in a streamlined way, delivered in 10 minutes or less.
- **Actionable.** Each participant walks away with suggestions for small action steps that can be implemented quickly and easily.

What's What

What you need to know

What's What meet up topics include:

- **Financial Savings.** Learn to save for financial goals by planning ahead; includes simple tips to make it happen.
- **Finding Time.** Learn how time management can help you seize the day—without feeling like the clock is ticking.
- **Flu.** Separate fact from fiction when it comes to the flu and the flu vaccine; designed to keep participants healthy during the flu season.
- **Mindfulness.** What exactly does it mean to be mindful and what are the health benefits? We'll cover the facts, including a simple mindfulness exercise.
- **Sleep.** How much sleep do you really need? We'll put the myths to rest and share the truth behind a good night's sleep.
- **Sugar.** What's the impact of sugar and how much is too much? We'll separate the sweet truth from the sugary fiction.

Help participants separate the healthy facts from fiction

Contact your HealthFitness representative to learn how you can add What's What meet ups to your health and wellness programming.

About HealthFitness

HealthFitness, a Trustmark company, is an award-winning, URAC- and NCQA-accredited provider of health management, corporate fitness and condition management solutions. With nearly 40 years of experience, HealthFitness is a proven leader and partner for infusing a culture of health. We maximize client results through personalized interaction and a science-based approach to on-site program management, engagement and prevention. Parent company Trustmark provides a full spectrum of employee benefits to improve well-being through better health and greater financial security. For more information on HealthFitness, visit www.healthfitness.com.



On-Site Challenges and Programs



ON-SITE CHALLENGES

HealthFitness has a growing library of on-site challenges designed to engage participants on-site in new, fun, and sometimes team-based programs. All of the offerings listed in this section are available to clients with dedicated on-site staff. Access to these proprietary HealthFitness programs along with program set-up, marketing templates, delivery management, and outcome evaluation will be provided by HealthFitness on-site staff within the core scope of service at no additional cost unless otherwise noted (hard copy print production costs not included).

CARDIO ROYALE: OPERATION FITNESS

Cardio Royale is designed to encourage and assist participants to become more physically active, with a goal to achieve 150 minutes of cardiovascular exercise each week. This eight-week program encourages exercise by incorporating a spy theme with optional missions, objectives, assignments and challenges. Participants receive communications from “Command Center” in the form of “mission briefings.”

MYPLATE NUTRITION CHALLENGE

MyPlate Nutrition is a 10-week program based on the USDA’s MyPlate initiative to improve the nutrition and well-being of Americans through research, analysis and dietary guidance (ChooseMyPlate.gov). This challenge encourages participants to see their plate as prime real estate for creating a colorful, tasty dish of wholesome, nutritious foods that support a healthy lifestyle. By highlighting each food group, this program helps participants understand the benefits of a healthy-proportioned plate and making room for fruits and vegetables; nutritious grains; hearty lean protein; and delicious low-fat dairy foods at every meal. Participants utilize a tracker tool to compile their weekly program participation.

HEALTHY W8 CHALLENGE

Healthy W8 Challenge is an eight-week program designed to encourage participants to eat well, be physically active and achieve a healthy weight. The program helps participants understand the keys to successful weight loss, and provides guidance through weekly emails, trackers, and point accumulation, with a goal of losing a pound a week over the 8-week program period (or maintaining for those already at a healthy weight). Participants utilize a weekly tracker tool where they earn points for achieving simple daily goals. There are also points earned for weigh-ins and bonus goals each week.

WALK-TO-RUN CLUB

The *Walk-to-Run Club* is geared towards walkers, runners, and anyone interested in increasing their cardiovascular fitness or running endurance. This 10-week program offers different levels of workouts based on the participant's experience. Interaction with a fitness expert occurs weekly through email engagement that includes program information such as weight training guides, cross training workouts, core workouts, and information on stretching, injuries, nutrition and hydration. Related activities may include encouraging group runs or having participants sign up for a 5k walk or run in connection or parallel with their participation in the *Walk-to-Run Club* program. Program materials reinforce the benefits of weekly physical activity and its relation to cardiovascular fitness.

TAKE FIVE: CALM YOUR BUSY MIND

This five-week motivational challenge is designed to help employees relieve stress and focus on the positive things in life. They receive five weekly assignments via email designed to take five minutes to complete to help them be mindful in the moment. Participants complete their assignments in their *Take Five* portfolio. At the end of the challenge, their portfolio is complete. Participants take a stress-scale survey before and after the program to measure the change in their stress levels.

MAINTAIN, DON'T GAIN

This eight-week motivational challenge is designed to help employees enjoy the holidays while maintaining their weight. Tracking eight weekly challenges around nutrition, exercise and more helps participants take small steps to changing behaviors needed to avoid weight gain. Participants submit their pre-holiday weight, weekly tracking sheet and post-holiday weight by the end of the program. Those who complete the challenge by not gaining more than two pounds will have successfully completed the challenge.

WHOLLY CHOW

Good nutrition can make you feel like you can leap tall buildings in a single bound—fuel your inner superhero with the eight-week *Wholly Chow* challenge! A fun, superhero-themed nutrition challenge, *Wholly Chow* is focused on simple strategies to make healthy eating a regular routine. This challenge is designed to help participants learn more about their current eating habits and how to make healthier food choices.

FITNESS MANAGEMENT PROMOTIONAL CAMPAIGNS

To assist our clients in encouraging their eligible population to take advantage of available programs and facility amenities, we continually focus on the development of several marketing campaigns that promote membership and encourage regular participation. The underlying message of these campaigns links varied elements of fun to participation. We focus on positive member experiences through the delivery of a very talented staff, offering a variety of amazing programs and services.

"Admit One" — Marketing Campaign

Going for a workout can be just as much fun as getting a "ticket" to a popular movie, concert, amusement park or sporting event. Our newly developed marketing campaign entitled "Admit One" plays on the idea that a fitness program and center membership is like having an all-access pass to participate in some of the most enjoyable, health-promoting activities around with all sorts of people who are there to enjoy the whole experience — right along with you!

Messaging uses event-and entertainment-related language and visuals to engage prospective members and transform attitudes about exercise from boring to exciting.



"Motivational Words" — Marketing Campaign

They say a picture is worth a thousand words but sometimes, a few well-crafted words can be worth a thousand pictures. Add to that some colorful graphics and you have the stopping power of our newly developed marketing campaign entitled "Motivational Words".

This headline-driven campaign uses words that are motivational, thought-provoking, inspirational and at times even humorous. All designed to catch the eye of each and every prospective member, and spur them to participate.



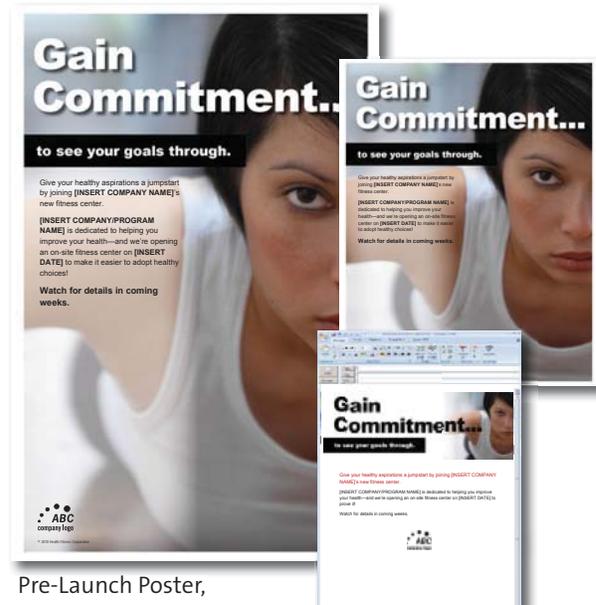
Promotional Campaigns
Health and Fitness Program/Center Pre-Launch and Grand Opening



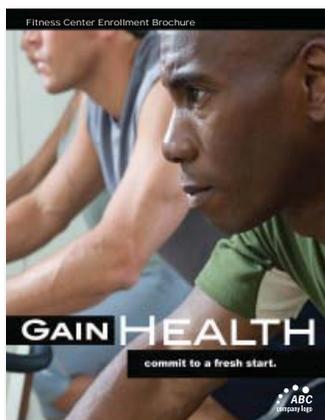
“Gain Health”



Grand Opening Poster, Flyer and Email



Pre-Launch Poster, Flyer and Email



Enrollment Brochure



Promotional Campaigns
Health and Fitness Program/Center Pre-Launch and Grand Opening



“Make the Moves that Matter”

Make the Moves that Matter
...and fit in a new routine

[INSERT COMPANY NAME/PROGRAM NAME] is now open and ready to help you easily fit fitness into your daily schedule.

Our new fitness center features:

- Exercise equipment
- Strength-training equipment
- Group classes
- Personal training
- Massage

Start making the moves that matter get fit, boost your energy and improve your health today! Visit [COMPANY NAME] today for membership information!

Start making the moves that matter get fit, boost your energy and improve your health today! Visit [COMPANY NAME] today for membership information!

Start making the moves that matter get fit, boost your energy and improve your health today! Visit [COMPANY NAME] today for membership information!

Grand Opening Poster, Flyer and Email

Make the Moves that Matter
...commit to be fit

Fitting in time for fitness can make a big difference in your health.

[INSERT COMPANY/PROGRAM NAME] is dedicated to helping you improve your health—and we're opening an on-site fitness center on [INSERT DATE] to make it easier to adopt healthy choices.

Watch for details in coming weeks.

Fitting in time for fitness can make a big difference in your health.

[INSERT COMPANY/PROGRAM NAME] is dedicated to helping you improve your health—and we're opening an on-site fitness center on [INSERT DATE] to make it easier to adopt healthy choices.

Watch for details in coming weeks.

Pre-Launch Poster, Flyer and Email

Make the Moves that Matter
...put your health in motion

Fitness/Wellness Center Name

Enrollment procedure

Step 1: Program registration
Complete a Personal Registration form to add to Informed Consent, Release of Liability and a Risk Form. If you have indicated "yes" to any of the questions on the Risk Form, you will require blood pressure measurements above 160/95. A Medical Consultation form must be completed by your personal physician and returned to the fitness center.

Step 2: Fitness assessment
The Company named Fitness Center staff will contact you to schedule your fitness assessment. This step is done between a qualified fitness professional and you.

Step 3: Program orientation
The Company named Fitness Center staff will contact you to schedule a personal appointment to receive your individualized fitness program, available a facility and equipment orientation, and answer the questions and procedures of the fitness center.

That's the first little step toward getting in shape.
Go to [www.abc.com] for more information, or contact [Person name at phone and/or email address].

Advantages of membership
Cardiac, respiratory and fitness goals and personal interests. These professionals can provide a personalized exercise program, periodically reassess your fitness program and provide direction for your individual treatment needs.

Group classes: Regularly scheduled classes may include Pilates, yoga, tai-chi and more. These are fitness center staff for a limited class schedule.

Make-off-the-routine and wellness program: Help to help back pain for a stretch.

Specialty services: Massage therapy is a great way to relieve stress. This service is available at an additional fee.

Relaxation amenities: Locker rooms, towel service and showers with changing facilities are available to make your fitness time more enjoyable and convenient.

Membership
Fitness center membership is open to all Company named employees (include spouses, contractors, and visitors if applicable).

Fitness center hours
Monday through Friday [08:00 a.m. - 06:00 p.m.],
Closed weekends and company recognized holidays. Schedule updated hours if applicable.

Facilities

- 1000 sq. ft. [08:00 a.m. - 06:00 p.m.]
- Monthly membership fee: \$100
- Annual membership fee: \$1000
- Group classes (yoga, Pilates, etc.)
- Personal training (one-on-one)
- Massage therapy (one-on-one)
- Locker rooms
- Towel service
- Showers

Fitness center equipment

- Elliptical trainer
- Treadmill
- Stationary bike
- Free weights
- Dumbbells
- Resistance bands
- Cardio equipment
- Personal training equipment
- Massage table
- Locker room
- Towel service
- Showers

For more information
[Person name]
[Phone number]
[Email address]
[Website address]

ABC company logo

Enrollment Brochure

Promotional Campaigns
Health and Fitness Program/Center Pre-Launch and Grand Opening



"Idioms"

a leopard can't change its spots
...you're no leopard

a leopard can't change its spots
...you're no leopard

a leopard can't change its spots
...you're no leopard

Grand Opening Poster, Flyer and Email

absence makes the heart grow fonder
...your muscles miss you

absence makes the heart grow fonder
...your muscles miss you

Pre-Launch Poster, Flyer and Email

all talk no action
stop the chitchat

You've talked about your health goals many times before. Maybe you'd like to lose a few pounds. Gain some muscle. Eat more veggies. Live healthier.

Actions speak louder than words. Get moving.

Build your course of action.

Get moving with these four steps

Enrollment Brochure

Exhibit B - Owned Materials and Systems

HealthFitness' Owned Material, which is owned, copyrighted, leased or uses proprietary forms, systems, techniques, materials, manuals and documents includes, without limitation, the following material to be used in conjunction with Agreement.

- HealthFitness List of Client Addresses and Phone Numbers
- Health History/Medical Consultation, Informed Consent/Release of Liability Form, Privacy Policies, Referral Forms, Health Advisor Inventory System
- Systematic Year Calendar Planning and Participant Tracking process
- Program Start-Up Manual and Timelines
- Business Planning Template
- Program Plans and Management Tools
- Program Promotion Handbook
- Operations Manual
- Standards Manual
- Policies and Procedures Manual
- Preferred Purchasing Program and Manual
- Training Guide for Health and Fitness Professionals
- HealthFitness Quality Assurance Program
- Performance Evaluation Form
- HealthFitness Resource Library
- Fitness Center Clearance Process and Forms
- Outreach Program booklets, screening techniques, forms
- HealthFitness Hiring and Recruiting Guide
- HealthFitness Strategic Assessment Audit forms, Visioning Session Framework, Stakeholder Interview Tools, Benchmarking Process and overall System
- Client Satisfaction Tools and Measurement Systems
- HealthFitness' Club Performance eTraining Usage License
- HealthFitness Screening and Health Risk Assessment Process and Procedures Manual
- Health Advising Process including Forms
- HealthFitness Reporting Templates and Tools
- Results Calculator and Predictor Tools, System and Processes
- Targeted Behavior Modification Process
- Health Management Manuals
- HealthFitness Occupational Health Processes, Systems, Tools, Participant Materials and promotions including JOBFIT®
- Participant Survey Tool, Systems and Processes
- Health Screening Participant Materials
- Health Coaching Materials for Participants
- Health Coaching Training and Management Systems
- Health Action Guides for Participants
- Program Value Analysis (PVA) forms and process
- Group Exercise Class Guidelines
- Specialty Class (Yoga, Pilates, etc.) Program Administration Guidelines
- Personal Training Program Administration Guidelines
- Intern Handbook
- Free Weight Manual
- CompuFit or Outreach Program booklets, screening techniques, forms
- Sports and Recreation Guide
- HealthFitness Facility Planning Manual and Guidelines, forms, techniques, systems

- Fitness Assessment and Exercise Prescription Systems
- HealthFitness Fitness Maintenance Request form
- Fitness Software usage license
- IDEA ClubConnect usage license
- HealthFitness Platform and all related tools (e.g. Tip of the Day) and resources (all versions)
- HealthFitness INSIGHT International Platform (all versions) and all resources
- HealthFitness Health Improvement Programs (HIP's) - Programs, Materials, Processes and Participant Materials
- Incentive Solutions and Tools
- All Policies, Tools and Resources documented on eCentral and SharePoint Platforms
- LEAP and Be Your Better Self Program
- All Programs Reporting and ROI Report templates, processes and systems
- All implementation processes, tools and systems specific to the health management HealthFitness business
- Adapted HERO Scorecard tools and resources
- HealthFitness Health Advocacy, Condition Management, and Nurseline Tools, Systems, Processes and Manuals
- Established Marketing Campaigns
- All Programs - HealthFitness Participant Communications and Promotions

THIRD-PARTY OWNERSHIP RIGHTS - CONFIDENTIAL

- Healthwise Content on Platform
- Health Enhancement Systems Program Content and Systems
- SelfHelpWorks Program Content and Systems
- MindBody Program Content and Systems
- WELLBEATS Program Content and Systems
- Fusionetics Program Content and Systems
- GlobalFit Program Content and Systems
- Welltok Program Content and Systems