



office memorandum

DATE: March 26, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Kathryn Walker, City Attorney *KW*

RE: DRAFT MOU with Healthy Living & Fitness, Inc. for Operation of the Senior Wellness Center

Background:

Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, which provided a one-half (1/2) percent sales tax dedicated to fund a number of Quality of life projects, including a Senior Wellness Facility (the "Facility"). The City approved a contract with Frankfurt-Short-Bruza Associates ("FSB") in August of 2019 for the design of the Facility. Initially, FSB was developing designs for a facility within the \$7.6 million budget, with proposed additional phases should funding become available in the future. On October 29, 2020, Council allocated an additional \$4.8 million towards the Facility project with funds that were freed up after the City received federal reimbursements for other unrelated previously budgeted expenses.

After the increase in funding, the City approved an amendment to FSB's contract to accommodate the design and construction of the Facility in a single phase on an approximately 4.7 acre site in the southeast corner of the Norman Regional Hospital's Porter Avenue Wellness Village Campus. In November 2020, Staff released a Request for Proposals related to operation of the Facility. Interviews were later conducted and the City proceeded with negotiations with Healthy Living & Fitness, Inc., an operator of one of Oklahoma City's senior wellness centers.

Discussion:

Negotiations have been ongoing with Healthy Living & Fitness, Inc. ("Operator") and have resulted in a Memorandum of Understanding. The attached MOU is just a draft, with terms to be finalized prior to action by City Council. The terms of the draft MOU will be presented to the Norman Forward Citizen's Financial Oversight Board on March 29, 2021. Included in the draft MOU are important terms agreed on by the parties now, as well as reference to future terms that will be determined and included in the final Lease and Management Agreement. The MOU specifies that the Leased Premises will be used as a Senior Wellness Center and be open and available to the public.

Operator will operate, manage and maintain the Property for a five (5) year term, with the possibility of renewal. Because the Senior Wellness Center is not anticipated to be a revenue generator in the same way as the Multi-Sport and Indoor Aquatic Center, a subsidy from the City is anticipated, particularly in the

early years of operation as the Operator builds its membership and fundraising. The subsidy in the first 5-year term will not exceed \$125,000 annually, which represents the current annual Senior Center cost center budget, minus personnel who will be moved to other functions once the Facility opens. The types of assistance anticipated during the first 5 years of operation are as follows:

- Utility Assistance: The City will cover a specified portion of the utility costs at a decreasing rate over the first 3 years of operation. (100% the first year, 60% the second year, 30% the third year).
- Janitorial Services: The City will provide janitorial services during the first 3 years of operation.
- Lawn and Landscaping Services: The City will provide all lawn and landscaping services during the first 5 years of operation.
- Pool Maintenance: The City will provide all pool maintenance during the first 5 years of operation.

Operational subsidies will be reexamined each year in light of the Operator's revenues and expenses which may result in an amendment to the anticipated annual subsidy, subject to approval by Council. The Operator will be responsible for all routine maintenance and general repair costs of the facilities and equipment in or on the Leased Premises provided that the City will be responsible for certain capital items (furniture, fixture or equipment valued at over \$5,000 with an expected life of more than one year). Additional details regarding attached fixtures such as the HVAC, boilers, pumps, etc. that may be valued at less than \$5,000 will be included in the final Lease and management Agreement.

The terms of renewal and termination will be worked out and more specifically set forth in the final Lease and Management Agreement.

During construction, Operator will work closely with the City, its architect, and its Construction Manager to ensure a seamless design and construction process. Operator will attend Council meetings and meetings of other relevant Boards, Commissions, and Committees as necessary.

The City will own all assets, including any additions or modifications that Operator obtains permission to construct that cannot be removed without damage to the premises. If the lease expires or terminates, Operator will provide the City with any data related to users of the facility. The Operator may sublease the Leased Premises only upon written permission of the City Manager and only if any lessee complies with the contract provisions and the Facility maintains its intended purpose and use.

Exhibit A to the MOU sets forth the programming and services that the Operator intends to offer at the facility. The Operator will set forth times, types of classes and services offered within these categories and will work to obtain community and user input to

determine what additional programs and services may be offered. The Operator will determine reasonable user fees, which must include a sliding scale fee schedule based on income levels, available user fee assistances, etc. This fee schedule will be reviewed and approved by the City Manager and the Operator will retain the fees to fund the management and operation of the Facility.

The Operator will be required to provide quarterly and annual reports that provide information about the services that were offered, the utilization of those services, financial reports, etc. The City has the right to audit the programs, services and financial records of the Operator or any tenant, as long as notice is provided at least 5 business days in advance and the audit does not interfere with operations. The Operator is required to follow both Federal law and City ordinances relates to non-discrimination. Policies and procedures in keeping with First Amendment jurisprudence for governmental entities related to viewpoint discrimination must be adopted and implemented.

The Operator will be required to maintain a variety of insurance related to its occupation and operation of the Facility and will be required to name the City of Norman as an additional insured.

If the terms can be finalized between the parties in time, Staff anticipates bringing this agreement forward to City Council for approval on April 13, 2021. Staff will be available for questions and feedback at the Council meeting on March 30, 2021.

Attachments: Contract K-2021-109, DRAFT MOU

MEMORANDUM OF UNDERSTANDING
For the Lease and Management of the Senior Wellness Center

This Memorandum of Understanding ("MOU") is entered into on the ____ day of _____, 2021, by and between the City of Norman, Oklahoma, a municipal corporation, the Norman Municipal Authority, a public trust having the City of Norman as its sole beneficiary, together referred to herein as the "City", and Healthy Living & Fitness, Inc., an Oklahoma not-for-profit corporation, hereinafter referred to as "Operator", for the purpose of developing a contractual relationship related to the lease and management of the City's planned Senior Wellness Center.

WHEREAS, Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, providing a one-half (1/2) percent sales tax dedicated to fund a number of Quality of Life projects, including a Senior Wellness Facility (the "Facility"); and

WHEREAS, the City approved a contract with Frankfurt-Short-Bruza Associates ("FSB") in August 2019 (K-1920-40) for Professional Design Services for the Facility; and

WHEREAS, in addition to \$7.6 million budgeted for construction of the Facility, the City allocated an additional \$4.8 million with the adoption of Resolution R-2021-63 on October 29, 2020; and

WHEREAS, after the increase in allocated funding allowed for larger scope of Facility design and construction, the City approved an amendment to FSB's contract in accommodate the design and construction of the Facility in a single phase, rather than multiple phases over time, on a 4.7 acre site in the southeast corner of the Norman Regional Hospital's Porter Avenue Wellness Village Campus; and

WHEREAS, in November 2020, after soliciting proposals pursuant to a Request for Proposals related to the operation of the Facility, and subsequent interviews, the City opted to enter into negotiations with Operator, for the ultimate lease and management of the Facility.

NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES, that each party as indicated by its signature affixed to this Memorandum of Understanding, do hereby agree to the following terms to be more fully set forth in a final Lease and Management Agreement (the "Agreement") to be negotiated and approved by mutual agreement of the Parties at a future date:

1. Parties to the Agreement: The parties to the Agreement shall include the City of Norman, the Norman Municipal Authority, and Healthy Living & Fitness, Inc.
2. Definitions: The following terms and phrases shall have the meaning provided below:
 - a. "Capital Item" shall mean any furniture, fixture, or equipment that costs \$5,000 or more and has an expected life of more than one year.

- b. "City Manager" shall mean the City Manager of the City of Norman or such other City employee as may be designated by the City Manager to provide oversight and implementation of this agreement.
 - c. "Facility" shall mean the various buildings, facilities, and improvements located on the Land which are used as the Senior Wellness Center.
 - d. "Leased Premises" shall mean the Land, together with all buildings, fixtures, facilities and other improvements located on or affixed to the Land.
 - e. "Parties" shall mean the City of Norman, the Norman Municipal Authority, and the Healthy Living & Fitness, Inc.
 - f. "Partner" shall mean a business or entity that the Operator has contracted with to provide goods or services to benefit the users of the Facility.
 - g. "Project Manager" shall mean the Parks and Recreation Director of the City of Norman or such other City employee as may be designated by the Parks and Recreation Director to manage the construction and operation of the Facility.
 - h. "Subcontractor" shall mean a business or entity that the Operator has contracted with to perform services for the Operator.
 - i. "Sublease" shall mean a lease and/or license granted by the Operator of all or any portion of the Operator's leasehold estate in the Facility or the Leased Premises.
 - j. "Tenant" shall mean a business or entity that has a sublease with the Operator.
 - k. "Utility Costs" shall mean costs related to electric, gas, sanitation, and water usage attributable to the Facility.
3. Term of the Agreement: The initial term of the Agreement shall be for five (5) years, with an option to renew upon written acceptance of the Parties.
 4. Purchase of Land: The City will acquire the Land for the construction of the Facility by separate agreement with the seller.
 5. Purpose and Use of Leased Premises: The Leased Premises are to be used as a Senior Wellness Center and shall be open and available to the public. The City will lease the Leased Premises, together with all buildings, fixtures, facilities, and other improvements located on or affixed to the Land to Operator in exchange for the Operator operating, managing, and maintaining the Property at no cost to the City, except as provided herein. The Parties acknowledge that the City will install signage bearing the name of the Facility pursuant to Paragraph 15 herein. Additionally, the Parties anticipate signage bearing the name of the operator, the details of which will be determined in the Agreement.
 6. Obligations of Operator during Planning and Construction of Facility:
 - a. The Operator will participate in planning and construction meetings when requested by the Project Manager and shall participate in discussions related to the design of the Facility.
 - b. Operator will attend City Council meetings, meetings of the Board of Park Commissioners, meetings of the Norman Senior Center Ad Hoc Advisory Group, and meetings of the Norman Forward Sales Tax Citizen's Financial Oversight Board when requested by the Project Manager.

- c. Operator will use all reasonable efforts to secure and contract with all Subcontractors, Tenants, and Partners, to be engaged by Operator to manage and operate the Facility by the scheduled opening date.
 - d. Operator will use reasonable efforts to hire, coordinate, and train all employees, volunteers, and subcontractors to be engaged by Operator to manage and operate the Facility once opened.
7. Ongoing Operational and Maintenance Costs: The parties anticipate that some financial assistance will be necessary as the Operator builds up its membership and fundraising. Costs and revenue will be reviewed on an annual basis, which may result in an amendment to these terms.
- a. City Subsidy: Subject to the annual review set forth above, the City anticipates funding the following operational and maintenance costs in an amount not to exceed \$125,000 in any given year:
 - i. Operational and Pool Maintenance Costs:
 - 1. Utility Assistance: The City will pay 100% of all utility costs during the first 12 months of operation, 60% of all utility costs during the second 12 months of operation, and 30% of all utility costs during the third 12 months of operation, after which the Operator shall be responsible for all utility costs.
 - 2. Janitorial Services: The City will provide for janitorial services for the Facility during the first 3 years of operation.
 - 3. Lawn and Landscaping Services: The City will provide all lawn and landscaping services during the first five years of operation.
 - 4. Pool Maintenance: The City will provide all pool maintenance during the first five years of operation.
 - ii. Repairs of Capital Items: The City will repair or replace any Capital Item as defined herein. The parties agree to engage in further discussions regarding ongoing repair and replacement of attached fixtures of the Facility such as HVAC, boilers, pumps, etc. when such repair or replacement is of such a value that it is not considered a Capital Item as defined herein, and agree to include a provision in the final Agreement addressing this issue.
 - b. Operator Responsibility: Operator shall be responsible for all routine maintenance and general repair costs of the facilities and equipment in or on the Leased Premises necessary to operate the Facility and shall be responsible for the cost of any and all supplies necessary for the operation and maintenance of the Facility, subject to Paragraph 7(a)(ii) herein.
8. Ownership of Assets: The City will own all assets, including any additions or modifications permitted to be constructed by the Operator that cannot be removed without damage to the Leased Premises, except any data processing programs or other personal property of the Operator. Such data processing program shall not include the data compiled related to users of the Facility, which shall be provided to the City upon the expiration or termination of the Agreement.

9. Subleases: The Operator may sublease the Leased Premises upon written permission of the City Manager so long as Operator and any Tenant of Operator comply with all contract provisions and the Facility maintains its intended purpose and use.

10. Programming and Services to be Provided:

- a. A list of programs and service categories to be provided at the Facility will be attached to the Agreement. A preliminary list is attached hereto as Exhibit A.
- b. Operator will be given discretion to determine the specific times, types of classes, and services offered to meet the categorical requirements.
- c. Operator will be expected to offer additional programs and services based on community and user/participant input.

11. Fees to Users: Operator will be responsible for determining reasonable user fees, which shall include a sliding scale fee schedule based on income levels, available user fee assistance, and other factors, to be reviewed and approved by the City Manager. All user fees shall be retained by the Operator as payment for its management and operation of the Leased Premises.

12. Oversight:

- a. Operator shall provide any policies related to the operation and use of the Leased Premises to the City Manager for his or her approval.
- b. Operator will provide quarterly and annual reports to the City setting forth services offered, data related to utilization of such services, financial reports, etc.
- c. The City maintains the right to audit programs, services and financial records of the Operator and any Tenants of the Operator, upon providing advance notice at least five (5) business days of its intent to conduct any audits. Such audits will not disrupt the operation and management of the Facility.

13. Protection of Rights:

- a. The Operator's employment policies must include non-discriminatory provisions in compliance with federal and state laws, rules and regulations, including Title VII of the Civil Rights Act of 1964, and the City's Civil Rights Ordinance.
- b. Operator agrees that it will not discriminate on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex in furnishing or refusing to furnish, to such person or persons the use of the Leased Premises, including any and all services, privileges, accommodations, and activities thereby. Operator agrees that this non-discrimination requirement will be included in all subcontracts related to the operation of the Facility and to the services provided by the Operator, its employees, agents and tenants.
- c. Operator is required to adopt and implement policies and procedures that prevent and discourage any staff, volunteer, agent, or tenant from discriminating against speech on the basis of viewpoint, including but not limited to proselytizing a

- particular religion, prohibiting advertising based solely upon the content, or only allowing artwork of one political view.
- d. If the Facility, or parts of the Facility, is allowed to be rented or leased for civic, cultural or educational purposes of any kind, the rental policies and procedures will require that the Facility be made available for all kinds of civil, cultural, or educational purposes.
14. Naming Rights: The City retains the naming right to the Facility as a whole. Operator will be included in the naming process, but without any decision making or veto power.
 15. Rental of the Facility: Operator may rent all or any portion of the Facility during or after hours of operation on a first come, first serve basis according to approved Facility Rental/Booking Policies, provided previously scheduled programming or services are not reduced as a result of such rental or booking.
 16. Insurance Requirements: Operator must provide, pay for, and maintain the following types of insurance policies. The City shall be named as additional insureds on all such policies.
 - a. Worker's Compensation and Employer's Liability Insurance
 - b. Commercial General Liability Insurance
 - c. Automobile Liability Insurance, if applicable
 - d. Fidelity and Crime Insurance
 17. Assignment: The Operator may not assign the Agreement without the prior written consent of the City.
 18. Remedies: The Agreement will provide mutually acceptable remedies and applicable damages in the event of default by any Party.
 19. Alteration or Changes to the Facility: Operator will not be allowed to make any changes or alterations to the Facility without the express approval of the City.
 20. Termination of Agreement: The Agreement will provide for mutually acceptable terms related to termination of the Agreement.
 21. Enforceability of MOU: The MOU constitutes the parties understanding of the terms and conditions of the Agreement at this time and shall constitute the agreement of the parties until such time as a final Lease and Management Agreement is adopted by all parties.

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed and effective as of the date set forth above.

HEALTHY LIVING & FITNESS, INC.

BY: _____
Signature

Title

ATTEST: _____
Corporate Secretary

CITY OF NORMAN, OKLAHOMA

BY: _____
Mayor

ATTEST: _____
City Clerk

NORMAN MUNICIPAL AUTHORITY

BY: _____
Chairperson

ATTEST: _____
Secretary

Reviewed for form and legality on this ____ day of _____, 2021.

Kathryn Walker, City Attorney/General Counsel

EXHIBIT A
Preliminary List of Programming and Service Categories

1. Group exercise classes
2. Personal training
3. Art instruction
4. Social programs, including lifelong learning opportunities
5. Physical therapy
6. Massage therapy
7. Health screenings, health education, and immunizations
8. Dietician consultations