



Legislation Text

File #: K-2021-109, Version: 1

CONTRACT K-2021-109: A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, THE NORMAN MUNICIPAL AUTHORITY, AND HEALTHY LIVING & FITNESS, INC., FOR THE PURPOSE OF DEVELOPING A CONTRACTUAL RELATIONSHIP RELATED TO THE LEASE AND MANAGEMENT OF THE CITY'S SENIOR WELLNESS CENTER.

BACKGROUND: Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015 (NFST), 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 NFST 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 System's Porter Avenue Wellness Village. 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 proposed Memorandum of Understanding. The terms of the MOU were presented to the Norman Forward Citizen's Financial Oversight Board on March 29, 2021 and City Council on March 30, 2021. Included in the MOU are important terms agreed on by the parties now, as well as reference to future terms that will be determined and included in a 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 membership and fundraising at the Facility. The subsidy in the first 5-year term will not exceed \$125,000 annually, which represents the current annual Senior Center cost center budget in the City's General Fund, 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.

During Council's prior discussion of the MOU, Councilmembers asked whether the Operator had received a subsidy from the City of Oklahoma City. Although the Operator did not receive funding from Oklahoma City, they did receive a start-up donation of \$250,000 from the Chickasaw Tribe in exchange for ongoing membership for Chickasaw seniors. They also had a very successful "founding members" campaign, where founding members prepaid multiple year memberships, allowing the Operator to raise additional start-up funds. They intend to engage in a similar campaign in Norman, and are targeting at least 100 founding members to prepay for a 3-year membership, which will raise \$100,000 to assist in startup funding while the membership continues to grow over time.

The facility in Oklahoma City is approximately 40,000 square feet (compared to Norman's 30,000 square feet) and has significantly more members, simply due to population differences, than is expected in Norman. The purpose of the subsidy, capped at \$125,000, is to allow the Operator time to grow its membership and its offerings, with the goal being to simply break even. 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 Heating, Ventilating and Air Conditioning systems, boilers, pumps, etc. that may be valued at less than \$5,000 will be included in the final Lease and management Agreement.

This kind of relationship is not unlike others the City has with other partners. For example, the City provides janitorial service, pays for all utilities, capital items, and landscaping for the Pioneer Library System in Norman. A number of non-profits in town utilize City's facilities for little to no cost and receive non-profit funding from the City. These kinds of relationships help ensure good facilities and quality programs for Norman residents.

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 coordinated 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.

RECOMMENDATION: Staff recommends approval of Contract K-2021-169.