



Wellness. Rewarded

## Healthy Contributions Provider AGREEMENT

Primary Address: 5502 33<sup>RD</sup> AVE DR W Address #2: \_\_\_\_\_  
 Business Name (DBA): G.T. Bray Recreation Center Primary Contact Number: 941-742-5923  
 Business Name (Legal): Manatee County Government City: BRADENTON State: FL Zip: 34209

### Preamble

This Agreement is entered in on MARCH 6, February 15, 2018, by and between Healthy Contributions, LLC ("HC") and Manatee County, a political subdivision of the state of Florida. This Agreement will confirm the arrangement under which HC is providing payment-processing services for Manatee County's facility, data transfer, and disbursement services for the Optum Fitness Passport Program (Program Provider), all as set out below.

WHEREAS, Manatee County is authorized to provide public recreational facilities for its citizens throughout the County; and

WHEREAS, HC has entered in agreements with health plans and other sponsoring organizations to provide fitness services, benefits, and programs to eligible members with an established network of fitness centers; and

WHEREAS, HC provides payment processing services for participating facilities and data transfer and disbursement services for the Program Provider; and

WHEREAS, the Provider is a fitness program for citizens in the community to utilize the programs and services at G.T. Bray Recreation Center at no cost to them through their medical insurance provider; and

WHEREAS, Manatee County's facility at G.T. Bray Recreation Center offers health, fitness, and recreational programming and services; and

WHEREAS, HC would like to include G.T. Bray Recreation Center, and all amenities thereof, as a member of the network of facilities for HC's eligible members to provide subsidized basic fitness memberships and services, all the terms and conditions as hereinafter set forth.

### AGREEMENT

- Appointment:** Manatee County ("Client, and together with HC, the "Parties"), hereby appoints HC to act as its reimbursement processor for the Program Provider. The duties of HC are as follows: (A) provide a platform for the entry of data; (B) collect and provide specific Program usage data to the Program Provider; (C) return status of this data to Client via web reporting; and (D) If applicable, disburse any monies to the Client based upon instructions from the Program Provider.
- Service:** HC agrees to facilitate the collection and transfer of data and funds for Client as this information is provided to HC. To that end, by the 5th calendar day of each month for the prior month, Client shall provide HC with the member usage information for Client's facility as requested, and in the format required, by HC. Disbursement of funds hereunder by HC to Client shall occur at the times agreed to by HC and the Program Provider, but is contingent upon data and funds received from the associated Program Provider, and upon Client's provision of member usage information in the formats required by HC.
- Management:** HC has agreed to manage the reimbursement portion of the Program Provider. Management and maintenance of Client shall include audits of usage data. Client's staff is subject to record and data review by HC. Instances where HC has reasonable cause for audits or record and data reviews will be initiated with a written notice that specifies the purpose and scope of the record and data review and will be sent to Client by certified mail. If improprieties are found or suspected, a review of participation will be initiated with due process and Program Provider in question and may result in a warning, probation, suspension or Client's permanent removal from the program.
- Fees:** The Program Provider has agreed, via Fitness Passport Service Agreement, to pay all applicable HC fees on behalf of the Client, for services herein. HC will not be liable to Client or be in breach of this Agreement for events directly related to the failure of Client to comply with its reporting obligations to HC or due to the failure of the Program Provider to provide HC with the appropriate information so that HC can perform its obligations hereunder. In the event that the Program Provider fails to pay any HC fees on behalf of the Client as set forth herein, HC can immediately terminate this Agreement upon written notice to Client, and Client will notify all participating members of the program that benefits will cease.
- Termination & Closing club(s):** Unless otherwise terminated pursuant to Section 4, either party may terminate this Agreement by giving the other party (30) days written notice pursuant to Section 6 of this Agreement. If Client is discontinuing its involvement the Program Provider, it will immediately notify all participating members that benefits will cease. It must also immediately notify HC to close out accounts and provide HC with current member status. HC will notify the Program Provider, if necessary.
- Notices:** All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledge upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

For internal use only

If to County:

Manatee County Parks & Naturals  
RESOURCES DEPARTMENT  
5502-33<sup>RD</sup> AVENUE DRIVE WEST  
BRADENTON, FL 34209  
FACSIMILE:

If to Healthy Contributions, LLC

ATTN:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. **HC'S REPRESENTATIVES:** Within thirty (30) days from the date of execution of this Agreement by both Parties, HC shall provide the Client with a list of representatives authorized to act on behalf of the HC.
8. **CLIENT'S REPRESENTATIVE:** Manatee County Parks and Natural Resources Recreation Supervisor shall serve as the County's Representative and is authorized to interpret this Agreement and designate such additional employees as may be required to monitor HC's performance, provide technical assistance, and assume other administrative duties associated with the implementation of this Agreement. Disputes over any provisions not satisfactorily resolved with the Client's Representative shall be referred to the Client's Parks and Natural Resources Director of his designee.
9. **Sale:** If Client sells the facility to a new owner, Client must agree to provide HC the identity and contact information of new ownership. This Agreement will immediately terminate without further obligation from HC or Client. Fees that are owed for the final processing period will be the responsibility of the Program Provider. Any processing that is submitted past the date of sale is still calculated by usage month and the Program Provider is responsible for paying these fees to HC.
10. **Trade Secret:** During the term of this Agreement and at any time after, if Client will keep confidential and not disclose any trade secrets within the meaning set forth in Florida Statute 812.081(f) (c), to the extent identified as such in writing by HC.
11. **Personal Information:** HC acknowledges that Client is a political subdivision that is subject to the Florida Public Records Law set forth as Florida Statutes Chapter 119. Accordingly, HC shall take reasonable steps to avoid sharing "Personal Information" with that could result in a violation of applicable privacy laws.
  - a. "Personal Information" means any information about or concerning an individual including, but not limited to:
    - i. An individual's first name or first initial and his or her last name, or any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person whether or not in combination with any one or more of the following data elements: (A) social security number; (B) driver's license number or state identification card number; (C) checking account number, savings account number or other account number alone if no other information is required to access such account or otherwise commit identity theft or misuse such information; (D) credit or debit card number; (E) account passwords or personal identification numbers, other access codes, or any other accounts or resources; (F) electronic identification number; (G) digital signatures; (H) biometric data, including fingerprints; (I) birth date; (J) parent's legal surname prior to marriage; (K) identification number assigned by an employer; (L) any individually identifiable information, in electronic or physical form, regarding the individual's medical history or medical treatment or diagnosis by a health care professional;
12. **Forms; Programs:** HC shall advise Client that Client's facility has the option to either 1.) Maintain original documents related to the participating member's Program Providers enrollment forms in a secure location consistent with existing record retention policies, 2.) Return documents and forms back to the member after inserting this information into the enrollment website, or 3.) Destroy forms in a secure manner. All options stand unless state law record retention requirements state otherwise. Client is solely responsible for the membership agreement that Client uses. HC will provide Client with a copy of the participating Program Provider's enrollment forms and Client shall make copies for enrollment. Client will not be allowed to make changes to the enrollment forms.
13. **Public Records; HC Shall:**
  - a. Keep and maintain public records required by the County to perform the service.
  - b. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected as authorized by law within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes Chapter 119 or as otherwise provided by law.
  - c. Ensure the public records that are exempt of confidential and exempt from public records disclosure requirements are not except as authorized by law for the duration of the Agreement term and following completion of the Agreement if HC does not transfer the records to the County.
  - d. Upon completion of the Agreement, transfer, at no cost, to the County all public records disclosure records in possession of HC or keep and maintain public records required by the County to perform the service. If HC transfers all public records to the County upon completion of the Agreement, HC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If HC keeps and maintains public records upon completion of the Agreement, HC shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
  - e. IF THE HC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO THE COUNTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 941.742.5845, Debbie.Scaccianoce@mymanatee.org, Attn: Records Manager 1112 Manatee Avenue West, Bradenton FL 34205.

14. **Visits:** All visits for this Program by Client's members must be performed at Client's facility. Events, programs, classes or other activities hosted by Client outside of Client's physical facility will also be eligible for being counted in the cumulative total number of visits for members if Client has a commercially reasonable method of tracking such activity.
15. **Trademark Usage:** All advertisements or other marketing materials referencing a Program Provider's name, trademark, service mark, logo or other commercial symbol must be approved by that Program Provider's legal department prior to publication by Client. Requests can be facilitated through HC.
16. **Indemnification:** To the extent permitted by law, and in the case of Manatee County, specifically subject to the provisions and dollar limitations set forth in Section 768.28, *Florida Statutes*, each party hereto (hereinafter the "indemnifying party") shall defend, indemnify and save the other, harmless, including its owners and affiliates, and each of them, and their respective officers, directors, employees, shareholders, agents, insurers, and representatives from and against any and all demands, losses, actions, damages, claims, costs, expenses and liability any third party claim, and which arise out of or result from directly or indirectly the negligent or wrongful act or omission or any injury or Damage caused in connection with providing services hereunder of the indemnifying, including officers, agents, or employees, made in connection with the performance of the acts, duties, covenants, and obligation arising out of or imposed to this Agreement. A party agreeing to indemnify the other pursuant to this section shall not be deemed to have admitted liability or fault in any way by agreeing to defend the other under the terms of this section.
17. **Dispute Resolution:** In the event that any dispute, claim, or controversy of any kind or nature relating to this Agreement arises between the Parties, the Parties agree to meet and make a good faith effort to resolve the dispute. If the dispute is not resolved within thirty (30) days after the Parties first met to discuss it, and either Party wishes to further pursue resolution of the dispute, that Party shall refer the dispute to non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). In no event may the mediation be initiated more than one (1) year after the date one Party first gave written notice of the dispute to the other Party. A single mediator engaged in the practice of law, who is knowledgeable as to the subject matter relevant to the dispute, shall conduct the mediation under the then current rules of the AAA. The mediation shall be held within Manatee County. Nothing herein is included to prevent either Party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction.
18. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with laws of the State of Florida, and venue for any acting arising out of or related to this Agreement shall be in the Circuit Court for the Twelfth Judicial Circuit in Manatee County, Florida, or, to the extent any proceeding is removed to federal court, the United States District Court for the Middle district of Florida, Tampa Division. Should either party be required to resort to litigation to enforce the terms of this Agreements, the prevailing party in such litigation including appeals, shall be entitled to receive its fees and costs, including its reasonable attorney's fees, from the non-prevailing party. The parties agree that they shall not sue under this Agreement until they have attempted to resolve their differences through an agreed upon alternative dispute process, which completion of such process is deemed a condition precedent to litigation.
19. **Entire Agreement:** This Agreement, including the documents referenced herein, is the only agreement between the parties concerning the subject matter hereof and supersedes all prior agreements, whether written or oral, relating hereto. No purported amendment, modification or waiver of any provision of this Agreement shall be binding unless set forth in a written document signed by all parties (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers); provided, however, HC may amend the FPR&D and the Policy (all as defined below) at any time. Copies of this Agreement with signatures transmitted by facsimile shall be deemed to be original signed versions of this Agreement.
20. **Additional Documents:** Client acknowledges that it has read and understands this Agreement, the Optum Fitness Passport Program Information Packet Document, and the Cancellation Policy (the "Policy"). In the event of a conflict between the terms of this Agreement and any of the foregoing documents, the terms of this Agreement shall control.
21. **Facility Liability Insurance:** Client will at its own cost and expense, maintain the following insurance coverage in full force: Workers' Compensation Insurance as per Chapter 440, *Florida Statutes*, and Commercial Liability Insurance, with a limit of not less than \$1,000,000. The insured must give HC thirty (30) days' written notice before the insurance is cancelled or altered in a way that no longer satisfies the requirements Client will provide a copy of its current certificate of liability insurance as proof of coverage.
22. **Benefits; Assignment:** This Agreement shall inure to the benefit of and shall bind the successors and permitted times assigns of both Parties to this Agreement. Neither party shall assign this Agreement, its rights or obligations under this Agreement or grant a security interest in or pledge as collateral any interest herein or therein without written consent of the non-assigning party. **Acknowledgments:** Client acknowledges: (A) that HC is not a payer of services, nor an insurer with respect to any services provided by Client and its only obligation with respect to funds received from the Program Provider is to disburse the funds in accordance with the instructions of the Program Provider; (B) that HC shall have no obligation to disburse funds hereunder if a Program Provider fails to provide the funds for reimbursement to HC; and (C) that HC has not made any representation, warranty or guarantee as to any revenue that it may derive from any program.
23. **Acknowledgements:** Clients acknowledges: (A) that HC is not a payer of services, not an insurer with respect to any services provided by Client and its only obligation with respect to funds received from the Program Provider is to disburse the funds in accordance with the instructions of the Program Provider; (B) that HC shall have no obligation to disburse funds hereunder if a Program Provider fails to provide the funds for the reimbursement to HC; and (C) that HC has not made any representation, warranty, or guarantee as to any revenue that it may derive from any program.
24. **Non-exclusivity:** Each party understands and acknowledges that the relationship created hereby is of a non-exclusive nature, meaning that either party may do business with any other party that provides the same or similar services.
25. **Email:** HC may from time to time send emails to the addresses referenced in the Smart login forms to update of program changes, enhancements and other pertinent information. These may include communications from health plans or promotional advertisings in connection with our standard services. Notwithstanding, any formal notifications regarding this Agreement shall be sent to the other party via certified mail for approval and verification that such mailings do not violate privacy laws or opt out notifications by the intended recipient.

26. **Severability:** In the event that any paragraph of this Agreement is adjudged by a court of competent jurisdiction to be invalid, such adjudication shall not affect or nullify the remaining paragraphs hereof, but shall be confined solely to the paragraphs involved in such decisions.
27. **Construction:** This Agreement represents the full agreement of the parties. Each of the parties hereto has equal input into drafting of this Agreement such that no provisions of this Agreement shall be construed strictly against one party as the drafter thereof.
28. **Headings:** All articles and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction of interpretation hereof.
29. **Force Majeure:** No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by a hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other cause beyond the reasonable control of the party obliged to perform.
30. **Remedies:** Each party hereto shall have such remedies as are available pursuant to applicable law for any breach or non-performance by the other party.
31. **Effective Date:** This Agreement shall take effects of the date set forth above.
32. **Authority to Execute:** Each of the Parties hereto covenants to the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

WHEREFORE, the parties hereto have caused this Agreement to be signed in their names their authorized representative, effective as of the date set forth above.

Healthy Contributions, LLC

By: Sara Varberg  
 Title: Network Specialist  
 Signature: Sara Varberg  
 Date: 2/15/18

Client

Signee Name: Mallory Carcaux  
 Title: Fitness Supervisor  
 Signee Email: mallory.carcaux@mymanatee.org  
 Signature: Mallory Carcaux  
 Date: 2/15/18

MANATEE COUNTY, Florida

A political subdivision of the State of Florida

By: [Signature]  
 County Administrator 3/6/18

Healthy Contributions, LLC.

By: Sara Varberg  
 Print Name Sara Varberg  
 Title Network Specialist  
~~Print Name~~ 2/15/18

## FITNESS PASSPORT SERVICE AGREEMENT

**This Fitness Passport Service Agreement** (this "Agreement") is entered into on January 15, 2018 (the "Effective Date"), by and between OptumHealth Care Solutions, LLC, including its affiliates ("Optum") and Manatee County, a political subdivision of the State of Florida ("County"). For purposes of this Agreement, County and Optum shall collectively be referred to herein as the "Parties" and individually as a "Party".

**WHEREAS**, County wishes to become part of the Optum Fitness Passport Network comprised of facilities that provide services to support the Fitness Passport Program to customers of Optum; and

**WHEREAS**, Optum would like to include G.T. Bray Recreation Center, and all amenities thereof, as a member of the Optum Fitness Passport Network; and

**WHEREAS**, Optum provides its customers and related Members access to the Fitness Passport Program (as further described in Appendix A); and

**WHEREAS**, Optum and County wish to enter into this Agreement so that Optum customers and related Members may access the Fitness Passport Program and its associated benefits.

**NOW THEREFORE**, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

Except as otherwise specifically indicated, the following terms shall have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

**Activation ID:** A unique system-generated number assigned by Optum and used by both Parties to identify a Member who enrolls in the Fitness Passport Program.

**Activation Letter:** A letter, which displays the Activation ID that Members print off and present to a Participating County Facility to enroll in the Fitness Passport Program.

**Fitness Passport Program:** A program sponsored by Optum as described in Appendix A herein.

**Eligible Member:** A benefit holder or a benefit holder's spouse enrolled in a qualifying health plan that may or may not be a member of a Participating County Facility and is not enrolled in the Fitness Passport Program.

**Member:** A benefit holder or a benefit holder's spouse enrolled in a qualifying health plan that is enrolled in the Fitness Passport Program and is a member of a Participating County Facility.

**Participating County Facility:** A County facility including its branches contracted under this Agreement to provide services to Members under the Fitness Passport Program as outlined in Appendix A herein.

**County Facility Reimbursement:** The payment for which Optum has agreed to distribute to County for each Member who meets or exceeds the established Fitness Passport Program visit requirements as defined by Optum in Appendix A.

### ARTICLE 2 TERM AND TERMINATION

**2.1 Term.** The initial term of this Agreement shall begin on the Effective Date and shall continue for a period of twelve (12) months ("Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term"), unless sooner terminated in accordance with Section 2.2 of this Agreement.

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

(a) After the Initial Term, during any Renewal Term thereafter, either Party may terminate this Agreement at any time by giving a minimum one hundred twenty (120) day written notice to the other Party;

(b) By either Party upon mutual written agreement; or

(c) If either Party breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after written notice is given by the non-breaching Party, the Agreement shall terminate at the end of the thirty (30) day period.

Notwithstanding the above, this Agreement shall terminate immediately upon delivery to the other Party of written notice of termination on the occurrence of one of the following:

1) Bankruptcy, insolvency or the dissolution of either Party;

2) Assignment of this Agreement by either Party without the permission of the other Party; or

3) The loss of any license, qualification, authorization, accreditation or certification required for a Party to perform its duties under this Agreement.

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

**2.3 Effect of Termination:** Upon termination of this Agreement, each Party shall immediately cease using the other Party's name, symbol or logo ("Mark"), including but not limited to uses of the Mark authorized by this Agreement. Notwithstanding, the obligation to pay County Facility Reimbursement to County by Optum shall survive Termination for one hundred twenty (120) days after the termination date.

**2.4 Ongoing Obligations.** Termination shall not affect either Party's liability for any obligations incurred by such Party prior to the effective date of termination.

### ARTICLE 3 OBLIGATIONS OF COUNTY

**3.1 Access to, Fulfillment of, and Membership Fees for the Fitness Passport Program.** Each Participating County Facility shall provide all Members with access to the Participating County Facility and all regular County services, during the hours of operation as advertised by the Participating County Facility to include, if applicable, an orientation to the Participating County Facility and the equipment. In connection with participating in the Fitness Passport Program, each Participating County Facility will provide Members with membership to their facility at the rate set forth in Appendix A.

**3.2 Acknowledgement.** County acknowledges that Optum is not a payer of services nor an insurer with respect to any services provided by the County as part of this Agreement.

**3.3 Compliance with Applicable Laws.** Both Parties shall comply with all applicable local, state and federal laws. County shall also obtain and maintain any and all licenses required to fulfill its duties and obligations under this Agreement.

**3.4 Cooperation with Optum.** Both Parties agree County shall be the first point of contact for Members and Eligible Members and shall assume all service responsibility with respect to Member participation in the Fitness Passport Program, unless the Member contacts Optum first, in which case that Member will be re-directed to the County. In the event of an escalated issue whereby Optum's assistance is required for resolution, Optum agrees to cooperate with County in handling any complaints or inquiries from Members or Eligible Members regarding the Fitness Passport Program.

**3.5 Account Management.** County will assign an account management team to support Optum with implementation of the Fitness Passport Program.

#### **ARTICLE 4 OBLIGATIONS OF OPTUM**

**4.1 Payment to County.** Optum shall pay County the County Facility Reimbursement set forth in Appendix A for each eligible Member that meets or exceeds the Fitness Passport Program's monthly visit requirement. Payment details for the County Facility Reimbursement are set forth in Appendix A.

**4.2 Hold Harmless.** County understands that Members are responsible for paying Participating County Facilities the membership dues and/or associated fees. Optum shall not be responsible or liable for any membership dues and/or associated fees that a Member fails to pay to a Participating County Facility.

**4.3 Promotion of Services.** Optum shall promote the Fitness Passport Program to Eligible Members through the Optum website, marketing and sales brochures, and other distribution channels designated by Optum, including but not limited to telephone and email communications. Optum shall be responsible for the design and production of any such materials and the design and maintenance of the Optum website.

#### **ARTICLE 5 CONFIDENTIALITY**

**5.1 Information.** Each Party acknowledges that in the course of performing under this Agreement, it may learn confidential, trade secret, or proprietary information concerning the other Party or third parties to whom the other Party has an obligation of confidentiality. Each Party shall protect and shall not disclose the other's trade secrets within the meaning set forth in Florida Statutes Section 812.081(1)(c), lists of Activation IDs and Participating County Facilities, Member information, reimbursement amounts, and patented, trademarked, trade-named, service-marked, and copyrighted material or other property belonging to it or to a third party to whom it has an obligation of confidentiality ("Confidential Information").

**5.2 Protection of Confidential Information.** Optum acknowledges that County is a political subdivision of the State of Florida that is subject to the Florida Public Records Law set forth in Florida Statutes Chapter 119. Accordingly, each party shall take reasonable steps to avoid sharing Confidential Information. Each Party agrees that during the term of this Agreement:

(a) It will use such Confidential Information only as permitted by this Agreement or as otherwise permitted in writing; and

(b) It will not disclose such Confidential Information orally or in writing to any third party without the prior written consent of the other Party; and

(c) It will take at least those precautions to protect the other's Confidential Information as it takes to protect its own similar information; and

(d) It will not otherwise use such Confidential Information for its own purposes or that of any other person or entity. A Party may disclose Confidential Information if required by law, legal process, or court order, in which case the disclosing Party shall notify the other Party sufficiently in advance of the disclosure, as allowed by law, to permit intervention at its option. The obligations stated in this Section shall survive termination of this Agreement for so long either Party has access to the other's Confidential Information.

**5.3 Privacy.** Each Party agrees to be bound by any applicable state and federal rules and regulations concerning the privacy and security of Member information.

**5.4 Trademarks, Logos and Copyrighted Materials.** County hereby acknowledges that Optum and its affiliates may, from time to time during the term of this Agreement, provide County with marketing, promotional or other advertising materials intended for use in connection with the promotion of the Program (such materials together with all content, trademarks, trade names, and/or logos of Optum and its affiliates, the "Optum Marketing Materials"). Optum hereby grants to County a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display the Optum Marketing Materials during the term of this Agreement without modification solely in connection with the promotion of the Program. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect and County shall immediately cease its use and display of the Optum Marketing Materials. All uses of the Optum Marketing Materials shall be subject to Optum's prior approval. Optum hereby represents and warrants to County that it has the right to grant the license as set forth in this paragraph. Except as expressly set forth in this Agreement, County obtains no other rights in or to the Optum Marketing Materials and Optum and its respective affiliates reserve all rights. County hereby grants to Optum and its affiliates a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display all names, trademarks, trade names, service marks and logos of County and its affiliates (collectively, the "County Marks") during the term of this Agreement solely in connection with the administration and promotion of the Program. Optum shall submit a written request detailing the use of such County Mark to County for approval prior to use or publication. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect. County hereby represents and warrants to Optum that it has the right to grant the license as set forth in this paragraph.

**5.5 Public Records.**

Optum Shall:

(a) Keep and maintain public records required by the County to perform the service.

(b) Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes Chapter 119 or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Optum does not transfer the records to the County.

(d) Upon completion of the Agreement, transfer, at no cost to the County all public records in possession of Optum or keep and maintain public records required by the County to perform the service. If Optum transfers all public records to the County upon completion of the Agreement, Optum shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Optum



keeps and maintains public records upon completion of the Agreement, Optum shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

**E. IF OPTUM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR THE COUNTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 941.742.5845, Debbie.Scaccianoce@mymanatee.org, Attn: Records Manager 1112 Manatee Avenue West, Bradenton FL 34205**

## **ARTICLE 6 DISPUTE RESOLUTION**

In the event that any dispute, claim, or controversy of any kind or nature relating to this Agreement arises between the Parties, the Parties agree to meet and make a good faith effort to resolve the dispute. If the dispute is not resolved within thirty (30) days after the Parties first met to discuss it, and either Party wishes to further pursue resolution of the dispute, that Party shall refer the dispute to non-binding mediation. In no event may the mediation be initiated more than one (1) year after the date one Party first gave written notice of the dispute to the other Party. A single mediator engaged in the practice of law, who is knowledgeable as to the subject matter relevant to the dispute, shall conduct the mediation. The mediation shall be held within Manatee County, Florida. Nothing herein is intended to prevent either Party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction.

## **ARTICLE 7 RESPONSIBILITY FOR DAMAGES AND INDEMNIFICATION**

**7.1 Responsibility for Damages.** Each Party shall be responsible for any and all damages, claims, liabilities, or judgments it incurs that arise as a result of its own acts or omissions. Any costs for damages, claims, liabilities, or judgments incurred at any time by one Party as a result of the other Party's negligence or intentional wrongdoing shall be paid for or reimbursed by the other Party.

Except for claims indemnified hereunder, or breaches of provisions related to confidentiality of information provided, in no event shall either Party be liable to the other for incidental, consequential, economic, special, or lost profit damages, even if such Party has been advised of the possibility of such damages. Consequential damages include, but are not limited to, lost profits, lost revenues, and lost business opportunities, whether or not the other Party was or should have been aware of the possibility of these damages.

**7.2 Indemnification.** To the extent permitted by law, and in the case of the County, specifically subject to the provisions and dollar limitations set forth in Section 768.28, Florida Statutes, each Party hereto (hereinafter the "indemnifying party") shall defend, indemnify and hold the other harmless, including its owners and affiliates, and each of them, and their respective officers, directors, employees, shareholders, agents, insurers, and representatives from and against any and all demands, losses, liabilities, penalties, fines, costs, damages, and expenses the other incurs, including reasonable attorneys' fees ("Damages"), which arise out of the indemnifying Party's: (i) breach of this Agreement or (ii) negligence or willful act or omission. County shall also indemnify Optum for (i) any damages arising from a claim by a third party as a result of services performed by a Participating County Facility; (ii) any damages incurred by Optum that result from County's failure to comply with requirements of Section 3.3 Compliance with Applicable Laws; and (iii) for any claim brought by a Member for the failure to deliver services by Participating County Facility, or membership dues and/or associated fee disputes.

**7.3 Indemnification Procedures.** Promptly, upon becoming aware of any matter which is subject to the provisions of Article 7 (a "Claim"), the Party seeking indemnification (the "Indemnified Party") must give notice of the Claim to the other Party (the "Indemnifying Party"), accompanied by a copy of any written documentation regarding the Claim received by the Indemnified Party.

The Indemnifying Party will, at its option, settle or defend, at its own expense and with its own counsel, the Claim. The Indemnified Party will have the right, at its option, to participate in the settlement or defense of the Claim, with its own counsel and at its own expense; but the Indemnifying Party will have the right to control the settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. A party agreeing to indemnify the other pursuant to this section shall not be deemed to have admitted liability or fault in any way by agreeing to defend the other under the terms of this section. The Parties will cooperate in the settlement or defense and give each other full access to all relevant information.

If the Indemnifying Party: (i) fails to notify the Indemnified Party of the Indemnifying Party's intent to take any action within 30 days after receipt of a notice of a Claim; or (ii) fails to proceed in good faith with the prompt resolution of the Claim, the Indemnified Party, with prior written notice to the Indemnifying Party and without waiving any rights to indemnification, including reimbursement of reasonable attorney's fees and legal costs, may defend or settle the Claim without the prior written consent of the Indemnifying Party. The Indemnifying Party will reimburse the Indemnified Party on demand for all Damages incurred by the Indemnified Party in defending or settling the Claim.

**7.4 No Waiver of Sovereign Immunity.** Nothing herein shall be interpreted as a waiver by County of its rights, including the limitations on the waiver of sovereign immunity, as set forth in Section 768.28, Florida Statutes, or any other statutes, and County expressly reserves these rights to the full extent allowed by the law.

The indulgence of either Party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision of any portion of this Agreement, either at the time the breach or failure occurs, or at any time throughout the term of this Agreement.

## ARTICLE 8 MISCELLANEOUS

**8.1 Entire Agreement.** This Agreement, exhibits and attachments constitute the entire understanding between the Parties and supersedes all proposals, communications, and agreements between the Parties relating to its subject matter.

**8.2 Independent Contractors.** The Parties' relationship to each other is that of independent contractors. No Party shall be deemed to be, or hold itself out as, a partner, agent, employee or joint venture partner of any other Party. No Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, or to represent any other Party as an agent, employee or in any other capacity.

**8.3 Insurance.** Each Party, at its sole cost and expense, shall procure and maintain in full force and effect for the term of this Agreement and after its termination for so long as the services are provided to Members pursuant to this Agreement, adequate commercial general liability insurance coverage, including but not limited to contractual liability insurance coverage, with limits that are reasonable and customary for its business to cover liabilities and claims which may arise in relation to or in connection with providing such Party's respective services under this Agreement, but in no event less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate. The County is a self-insured entity and shall maintain its self-insured status for the term of this

Agreement. The County will maintain a separate reserve or trust for any self-insurance liability it assumes under this Agreement and warrants that such assets are sufficient to cover such assumed self-insured liability.

**8.4 Certificate of Insurance.** County and Optum agree to 1) provide the other, within ten (10) business days of a written request, with a Certificate of Insurance with respect to all liability insurance required under this Agreement, and 2) maintain the foregoing policy or policies of insurance without material change or cancellation except upon thirty (30) days written notice to the other Party.

**8.5 Right to Audit.** Optum shall have the right to review or to appoint an independent third party auditor to review the files and materials used by County for the purpose of auditing compliance by County with the Access & Performance Minimums set forth in Section 1 of Appendix B. Optum may exercise such right of audit during normal business hours upon five (5) business days prior written notice to County. County shall cooperate with Optum's auditor in the performance of any audit. Optum shall be solely responsible for the cost of the audit, providing however, if such audit reveals reporting discrepancies to Optum, County shall bear the costs of such audit.

**8.6 Assignment.** Except as provided in this Section, neither Party may assign any of its rights and responsibilities under this Agreement to any person or entity without the prior written consent of the other party, which shall not be unreasonably withheld. County and Optum acknowledge that persons and entities under contract with or affiliated with them may perform certain services under this Agreement. County acknowledges that assignment by Optum of all or any of its rights and responsibilities under this Agreement to any affiliate shall not require County's prior written consent.

**8.7 Successors.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heir(s), personal representatives, executors, administrators, successors, and assigns.

**8.8 Governing Law.** This Agreement shall be governed by and construed in accordance with laws of the State of Florida, and venue for any action arising out of or related to this Agreement shall be in the Circuit Court for the Twelfth Judicial Circuit in Manatee County, Florida, or, to the extent any proceeding is removed to federal court, the United States District Court for the Middle District of Florida, Tampa Division. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party in such litigation, including appeals, shall be entitled to receive its fees and costs, including its reasonable attorneys' fees, from the non-prevailing party. The parties agree that they shall not sue under this Agreement until they have attempted to resolve their differences through an agreed upon alternative dispute process, which completion of such process is deemed a condition precedent to litigation.

**8.9 Amendments.** No amendments, modifications, or additions to this Agreement shall be valid unless made in writing and signed by both the County and Optum.

**8.10 Invalidity of Sections of Agreement.** If any portions of this Agreement shall, for any reason, be invalid or unenforceable such portions shall be ineffective only to the extent of such invalidity or unenforceability and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect.

**8.11 Survival.** The terms and conditions of this Agreement, which by their express or implied terms, survive the termination of this Agreement, shall survive the termination of this Agreement.

**8.12 Notices.** Any notice, demand, or communication required under this Agreement shall be in writing and shall be deemed given in the following circumstances: hand delivered or sent by commercial overnight delivery service, or if mailed, by pre-paid, first class mail to the addresses below. The addresses to which notices are sent may be changed by proper notice.

Notice to Optum:  
OptumHealth Care Solutions, LLC  
Attn: Contracts Administration  
11000 Optum Circle  
Eden Prairie, MN 55344

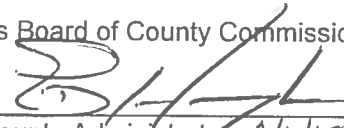
Notice to County:  
Manatee County Parks & Natural Resources Department  
Attn: \_\_\_\_\_  
5502-33rd Avenue Drive West  
Bradenton, FL 34209

**IN WITNESS WHEREOF**, this Agreement is executed by the parties' authorized officers or representatives and shall be effective as of the Effective Date.

**OptumHealth Care Solutions, LLC**  
  
11000 Optum Circle  
Eden Prairie, MN 55344

**MANATEE COUNTY, a political subdivision of  
the State of Florida**  
5502 33rd Ave. Dr. W.  
Bradenton, FL 34209

Signature: DocuSigned by:  
Joel Costa  
9CE2139884E4446 \_\_\_\_\_  
Print Name: Joel Costa  
Print Title: CFO  
Date: 2/15/2018

By: its Board of County Commissioners  
  
By:  \_\_\_\_\_  
County Administrator 3/6/18

Internal Control No.: 00370370.0

**Appendix A**

**Fitness Passport Program  
Fees and Description of Services**

- I. **Fitness Passport Program Description:** The Optum Fitness Passport Program provides eligible Members with pre-determined monthly membership rates to the Participating County when they enroll in the Fitness Passport Program. The Optum Fitness Passport Program also reimburses Participating County a pre-determined amount when Members meet the established program criteria as defined by Optum.
- II. **County Reimbursement Fees:** In connection with participating in the Fitness Passport Program, Optum will reimburse County for each participating Member a pre-determined amount each calendar month, when the Member meets the program criteria as defined by Optum below:

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

III. **Description of Services:**

1. **County Responsibilities.**

County shall be responsible for:

- a) **Participating County Facility Membership Fees:** In connection with participating in the Fitness Passport Program, Participating County Facilities shall waive any and all enrollment and membership fees for those Members that enroll in the Fitness Passport Program. Members who have existing memberships with Participating County Facilities or other gyms, either directly or through a third party, do not need to terminate their existing membership contract. County will need to enroll the eligible Member in the Fitness Passport Program in order to be eligible for reimbursement.
- b) County will reasonably cooperate with Optum to create Fitness Passport Program communication and promotional materials for Optum to send to Optum's clients, Members or Eligible Members.
- c) Maintaining a web site that provides Participating County Facilities locations including County branches by zip code as well as a list of amenities and services, hours of operation and other information for each Participating County Facility including branches. County shall allow Optum to link to this site for purposes of providing information to Eligible Members and Members.

- d) By the seventh day of each month or the next business day if the seventh day of the month falls on a weekend or holiday, the County or Optum's designated third party will deliver to Optum, in a mutually agreed upon file format, a file containing the usage data for the prior month for every Member in the Fitness Passport Program, regardless of how many times they visited the County each month (from zero visits to 12 or more visits per month). County is responsible for ensuring the submitted usage data is accurate. A maximum of one (1) visit per calendar day can be counted towards a Member's monthly visit total to County. Only those records that have been reported within two (2) months from the end of the reported month will be evaluated for possible County Facility Reimbursement. For example, at the conclusion of the month of April, the County has two calendar months to report a Member's April visit count for purposes of calculating a possible County Facility Reimbursement.
- e) Upon receipt of Fitness Passport Program utilization information on a monthly basis from Optum, on or before the first day of the month following the data submission or the next business day if the first day of the month falls on a weekend or holiday, Optum or Optum's designated third party will direct the County Facility Reimbursement into County's designated account via EFT.  
In the event that data processing errors are found, these errors can be corrected in the next month's payment cycle.
- f) Assisting to resolve questions, complaints or grievances related to a Member's participation in the Fitness Passport Program and to notify Optum via e-mail correspondence of all unresolved Member disputes and/or grievances that require the involvement of Optum.
- g) Additional administrative and support services as described herein.

## 2. Optum Responsibilities.

Optum shall be responsible for:

- a) Communicating program overview to Members pursuant to Section 4.3 of the Agreement.
- b) Making reasonable efforts to notify Optum's Eligible Members of Fitness Passport Program enrollment guidelines and processes.
- c) Posting updated facilities as a Participating County Facility directory on the Optum web site pursuant to Section 4.3 of the Agreement when available.
- d) Upon receipt of Member Fitness Passport Program utilization information on a monthly basis from County or Optum's designed third party, Optum will verify the eligibility of Members listed on the monthly Member usage file and indicate which Activation IDs meet eligibility requirements for County Facility Reimbursement to County. Optum will designate with an error code any records which are ineligible for any such payments.
- e) By the twenty-third day of each month or the next business day if the twenty-third day of the month falls on a weekend or holiday, Optum will upload to the specified FTP site the eligibility verification file containing the payment amount of County Facility Reimbursement to be reimbursed to County. In addition, by the twenty-third day of the month Optum will send a payment via electronic funds transfer ("EFT") to Optum's designated third party equal to the

total amount of County Facility Reimbursement to County for the prior month.

f) Additional administrative and support services as described herein.

3. Additional Fitness Passport Program Guidelines.

- a) Details of Fitness Passport Program Member benefits are available upon request and may be changed from time to time at the sole discretion of Optum. Optum shall use reasonable commercial efforts to notify Participating County Facilities thirty (30) days prior to such changes.
- b) The County Facility Reimbursement period for County is for each calendar month, not the fifteenth of the month to the fifteenth of the following month or based upon the date when the individual joins the Fitness Passport Program. A Member who signs up for the Fitness Passport Program will enable County to be eligible to earn a County Facility Reimbursement payment from Optum in the month he or she enrolls. For example, if the Member enrolls in the Fitness Passport Program on January 5, County may earn the County Facility Reimbursement if the Member meets their monthly attendance requirement at a County on or after January 1 through the end of January.

**Appendix B**  
**Fitness Passport**  
**Program Performance**  
**Standards**

County and Optum accept the minimum performance standards set forth below.

**Section 1**  
**Minimum Standards**

**1.1 Customer Service:** Participating County Facilities and Optum shall work together to resolve all Member complaints and grievances in a timely manner. County will make best efforts to achieve the Customer Service Deliverables listed in Table 1 below:

<b>TABLE 1 - Customer Service</b>	
<b>Service Level Deliverables</b>	<b>Timeframe</b>
E-mails and written inquiries to and from Participating County Facilities and Optum	Response within two (2) business days
Member complaint and/or grievance resolution	County must notify Optum in a timely manner of any disputes or other grievances involving Members and work to resolve ninety-five percent (95%) of such disputes within seven (7) business days.

**1.2 Data and Payment Processing Schedule:** County, Optum and Optum's designated third parties, if applicable will use the following schedule set forth in Table 2 below for processing data and sending payment:

<b>TABLE 2 - Data and Payment Processing (per Appendix A)</b>		
<b>County or Optum's designated third party to upload usage file to Optum's FTP site *</b>	<b>Optum to upload eligibility verification file to Optum's third party designated FTP site</b>	<b>Optum or Optum's designated third party to transmit the County Facility Reimbursement to County's designated account</b>
By the seventh day of the month or the next business day if the seventh day of the month falls on a weekend or holiday, following the month of usage	By the twenty-third day of the month or the next business day if the twenty-third day of the month falls on a weekend or holiday, following the month of usage	By the first day of the month or the next business day if the first day of the month falls on a weekend or holiday, following the exchange of data
Example: February 7 for January usage	Example: February 23 for January usage	Example: March 1 for January usage and February data exchange



\* Member's monthly usage reports are to be reported to Optum's designated third party by the fifth day of the month.

March 6, 2018 - Regular Meeting  
Agenda Item #24

Approved in Open Session 3/6/18,  
Manatee County  
Board of County Commissioners

Subject

Optum Fitness Advantage Program at G.T. Bray Recreation Center

Briefings

None

Contact and/or Presenter Information

Danny Hopkins, Recreation Division Manager, x6005  
Debbie Voorhees, Contract Manager, x6013

Action Requested

Authorization for the County Administrator to execute agreements from Healthy Contributions and Optum Fitness Advantage so that the G.T. Bray Recreation Center can offer the Optum Fitness Advantage program to members. This program allows seniors with supplemental insurance to utilize the facility at no cost to them.

Enabling/Regulating Authority

FS 125

Background Discussion

The Fitness Passport Program is a fitness program similar to the Silver Sneakers program that the Board approved for the G.T. Bray Recreation Center to offer in 2013. It is an opportunity for residents in the community to utilize the programs and services at G.T. Bray at no cost to them through their medical insurance provider.

Membership with this organization will enable the Parks and Natural Resources Department to generate revenue through membership fees. Offering the Optum Fitness Passport Program is an incentive to bring new members to the G.T. Bray Recreation Center and Optum pays the facility up to a maximum of \$32 per month per member.

Two agreements are attached. The Fitness Passport Service Agreement is for the G.T. Bray Recreation Center to become part of the Optum Fitness Passport Network. The Healthy Contributions Provider Agreement provides the payment-processing services for Manatee County's facility, data transfer, and disbursement services for the Optum Fitness Passport Program.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney  
Nicodemi

Instructions to Board Records

Please return one original agreement and an approved e-agenda to Cynthia Gray, Parks and Natural Resources Department. Forward approved copy of agenda to [cynthia.gray@mymanatee.org](mailto:cynthia.gray@mymanatee.org) and [luz.mcquiston@mymanatee.org](mailto:luz.mcquiston@mymanatee.org)

**Distributed 3/8/18, RT**

Cost and Funds Source Account Number and Name  
106.0013000 - Recreation Operations / Fitness Center

Amount and Frequency of Recurring Costs  
None

Attachment: [CAO Memo Opinion \(Nicodemi\)- Fitness Passport Service Agreement.pdf](#)  
Attachment: [CAO Email Opinion \(Clague\)- Healthy Contributions Provider Agreement.pdf](#)  
Attachment: [Fitness Passport Service Agreement.pdf](#)  
Attachment: [Healthy Contributions Agreement- GT Bray Recreation Center.pdf](#)



## OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY\*  
William E. Clague, Assistant County Attorney  
Sarah A. Schenk, Assistant County Attorney\*\*  
Christopher M. De Carlo, Assistant County Attorney  
Geoffrey K. Nichols, Assistant County Attorney  
Pamela J. D'Agostino, Assistant County Attorney  
Anne M. Morris, Assistant County Attorney  
Katharine M. Zamboni, Assistant County Attorney  
Alexandria C. Nicodemi, Assistant County Attorney

## MEMORANDUM

DATE: November 29, 2017

TO: Mallory Carteaux, Recreation Supervisor, Parks and Natural Resources Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 11-30-17*

FROM: Alexandria C. Nicodemi, Assistant County Attorney *ACN*

RE: **Optum Fitness Passport Service Agreement;  
CAO Matter No. 2017-0533**

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This memorandum is in response to the above referenced Request for Legal Services in which you asked this Office to review the Fitness Passport Service Agreement ("Agreement"). This Agreement stands in conjunction with the Healthy Contributions Provider Agreement that this Office reviewed and closed September 2017 under Request for Legal Service No. 2017-0402. Per your request, I have reviewed the proposed terms of the Agreement.

My comments are as follows:

- 1) Attached is a red-lined revision to the Agreement reflecting the suggested changes.
- 2) The majority of suggested changes are intended to provide clarity and to conform the document to the practices and standard contract provisions of the County.
- 3) Section 5.1 "Information" has been amended. This is to ensure consistency with Section 812.081(1)(c), Florida Statutes.

\* Board Certified in Construction Law

\*\* Board Certified in City, County, & Local Government Law

- 4) Please note comment in the margin of Section 5.4 “Trademarks, Logos and Copyrighted Materials.”
- 5) Section 5.2 “Protection of Confidential Information” has been amended. Public Records obligations are required under Chapter 119, Florida Statutes.
- 6) Section 5.5 “Public Records” has been added. Public Records obligations are required under Florida law.
- 7) I have made revisions to Article 6 “Dispute Resolution” and Section 8.8 “Governing Law”. These changes are necessary in order for OptumHealth Care Solutions, LLC (“OptumHealth”) to contract with Manatee County.
- 8) The additional language added in Section 7.2 “Indemnification” protects the County from liabilities caused, to any extent, by OptumHealth. This language is in compliance with Section 768.28, Florida Statutes.
- 9) Section 7.4 “No Waiver of Sovereign Immunity” has been added. This Section is in compliance with Section 768.28, Florida Statutes.
- 10) Section 8.3 “Insurance” has been revised to clarify that the County is a self-insured entity.
- 11) Please note Section 8.12 needs a designated County official to receive Notice.
- 12) I have revised the signature block for the County Administrator’s signature.
- 13) Please be aware of the “Network Responsibilities” in Appendix A.
- 14) In addition to the aforementioned substantive changes, minor revisions and comments as to grammar, formatting, and style are included in the red-line draft Agreement.

Based on my review, I have made the appropriate edits so that it is in legally sufficient form. (*See, Attached.*) I express no opinion as to the business judgment of entering into the Agreement. This completes my response to your Request for Legal Services. If you have any further questions, comments, or concerns, please feel free to contact me.

ACN

Copies to:

Ed Hunzeker, County Administrator  
Dan Schlandt, Deputy County Administrator  
Charlie Hunsicker, Director, Parks and Natural Resources Department  
Debbie Voorhees, Contracts Manager, Parks and Natural Resources Department

## Mallory Carteaux

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**From:** William Clague  
**Sent:** Friday, September 01, 2017 4:20 PM  
**To:** Mallory Carteaux  
**Cc:** Mitchell Palmer; Alex Nicodemi; Ed Hunzeker; Dan Schlandt; Charlie Hunsicker; Danny Hopkins; Debbie Voorhees; Juliet Shepard  
**Subject:** Optum Fitness Advantage Program; RLS-2017-0402  
**Attachments:** Optum Fitness Advantage Program\_Program Agreement (CAO Comments v1).docx

Mallory:

Pursuant to the above Request for Legal Services you have asked this office to review a Health Contributions Provider Agreement ("Agreement") to establish a fitness program at the G.T. Bray Recreation Center for which participants may receive health insurance reimbursements. I provide the following advice in response:

1. Attached is a redlined revision of the Agreement reflecting the comments of this office, prepared with substantial effort by Alex Nicodemi.
2. The majority of suggested changes are intended provide clarity, and to conform the document to the practices and standard contract provisions of the County.
3. We have included comments in the margins on Pages 1 and 6 that request additional information from the contractor. (These will probably be easier to read if you deactivate "formatting" in the "show markup" function of track changes.)
4. We have added substantive provisions in Sections 7 and 8 to identify individuals to represent the parties.
5. We have made substantive revisions to sections 10 and 11 regarding "trade secrets" and "personal information" (formerly "confidential information" and "privacy"). These changes are necessary to comply with Florida Statutes Chapter 119, which provides for only very narrow exceptions to the County's obligation to allow access and inspection of public records.
6. We have added Section 13 regarding the public records obligations of the contractor, which is required by statute.
7. The RLS indicates your department is seeking authorization from the Board for your department director to execute the Agreement. As we have advised in the past, signatory authority for County agreements is reserved to the County Administrator. We have revised the Agreement accordingly.

Subject to inclusion of our suggested changes, we have no objection from a legal standpoint to the Agreement being scheduled for consideration by the Board. We express no opinion as to the business judgment of entering into the Agreement.

This concludes our response to the RLS. Please let us know if you have any additional questions or concerns.

Bill Clague  
Assistant County Attorney  
Manatee County, Florida  
ph. 941-745-3750