

A G R E E M E N T

Between

TOWN OF PALM BEACH

and

HEALTH FITNESS CORPORATION

for

This is an Agreement between the TOWN OF PALM BEACH, a municipal corporation of the State of Florida (hereinafter the "TOWN"), through its TOWN Council;

AND

Health Fitness Corporation successors and assigns, (hereinafter "CONTRACTOR"). This agreement is dated March 1, 2020.

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, TOWN and CONTRACTOR, agree as follows:

ARTICLE I

SCOPE OF SERVICES

CONTRACTOR agrees to provide oversight, management and programming services of the fitness center located in the Morton and Barbara Mandel Recreation Center (340 Seaview Avenue, Palm Beach, FL 33480)

ARTICLE II

TERM

The term of this Agreement shall be for three (3) years beginning March 1, 2020 and ending February 28, 2023.

ARTICLE III

COMPENSATION AND METHOD OF PAYMENT

The sole compensation to be paid to the CONTRACTOR by the TOWN for the routine services rendered hereunder shall be approximately \$181,593.00 per annum.

Payments shall be made by the TOWN on a monthly basis upon receipt of a proper invoice from CONTRACTOR based on each month of completed services. One twelfth of the amount due shall be paid within 30 days of receipt of a proper invoice. Payment for project services shall be based on actual amounts incurred monthly and shall be paid on the same schedule as routine services.

ARTICLE IV

CONTRACTOR RESPONSIBILITIES

CONTRACTOR shall perform the management and programming services of the fitness center for RFP No. 2020-01, Mandel Recreation Center Fitness Center and Wellness Program Contractor. The extent of the services to be rendered and frequency of performance are as stated in these specifications. CONTRACTOR shall provide competent labor as required to perform these services. CONTRACTOR shall respond to correct any deficiencies in performance of the services as identified by the TOWN Contract Coordinator. Deficiencies shall be corrected within forty eight (48) hours unless the TOWN Contract Coordinator allows additional time based on the complexity of the corrective action.

ARTICLE V

MODIFICATION OF CONTRACT TERMS

The terms of this contract may be modified by mutual consent to increase or decrease the scope of work, adjust prices in subsequent contract periods, or for such other purposes as shall become necessary during the conduct of the contract period. Such amendments shall be accomplished in writing as an addendum to the Contract.

ARTICLE VI

MISCELLANEOUS

6.1 TERMINATION

This Agreement may be terminated by either party for cause, or by TOWN for convenience, upon sixty (60) days written notice from the terminating party to other party. In the event of such termination, CONTRACTOR shall be paid its compensation for services performed to termination date. In the event that

CONTRACTOR abandons this Agreement or causes it to be terminated by TOWN, CONTRACTOR shall indemnify TOWN against any loss pertaining to this termination.

For purposes of this Agreement, termination by TOWN for cause includes, but is not limited to, the following:

1. CONTRACTOR'S failure to keep, perform and observe each and every provision of this Agreement and such failure continues for a period of more than seven (7) days after delivery to CONTRACTOR of a written notice of such breach or default; or
2. CONTRACTOR'S abandonment of the work for a period of seven (7) days or more during the course of a year. Such days need not be consecutive.
3. Any material misrepresentation, written or oral, made by the CONTRACTOR to the TOWN;
4. Failure by the CONTRACTOR to timely perform and/or observe any or all of the covenants, rules, regulations, guidelines or terms and conditions of this Agreement; and/or
5. Insolvency, bankruptcy, and/or suggestion of bankruptcy on the part of the CONTRACTOR or the assignment of assets for the benefit of creditors by the CONTRACTOR.

CONTRACTOR recognizes and agrees that in the event of the termination or expiration of this Agreement, it will be necessary to assist the TOWN and/or a selected successor to CONTRACTOR with an orderly transition of work. CONTRACTOR shall be paid in accordance with Article III for all services rendered through the date of termination. All TOWN tools, materials, and supplies provided to CONTRACTOR during the course of the work shall be returned in good condition (except for normal wear and tear) upon termination.

6.2 EQUAL OPPORTUNITY EMPLOYMENT

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

6.3 ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by CONTRACTOR, under any circumstances, without the prior written consent of TOWN.

6.4 INDEMNIFICATION OF TOWN

- 6.4.1 CONTRACTOR shall at all times hereafter, indemnify, hold harmless, and defend TOWN, its agents, and employees from and against any claim, demand, or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, or employees in the performance of services under this Agreement.
- 6.4.2 CONTRACTOR further agrees, at all times hereafter, to indemnify, hold harmless and defend TOWN, its agents, and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under this Agreement for which TOWN, its agents, or employees are alleged to be liable.
- 6.4.3 CONTRACTOR acknowledges and agrees that TOWN would not enter into this Agreement without this indemnification of TOWN by CONTRACTOR, and that TOWN'S entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

6.5 INSURANCE

The Service Provider shall provide at its own cost and expense during the life of the contract, the following insurance coverages to Ebix (30) thirty business days' prior to the commencement of any work. All service providers including any independent contractors and subcontractors utilized must comply with these requirements. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance shall be evidenced by certificates.

It shall be an affirmative obligation upon the Service Provider to advise Ebix, the Town's insurance certificate management service provider, at townofpalmbeach@ebix.com; P.O. Box 100085-HM, Duluth, GA 30096 within 24 hours or the next business day of cancellation, non-renewal or modification of any stipulated insurance and failure to do so shall be construed to be a breach of this Agreement/contract.

Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. CONTRACTOR shall specifically protect TOWN by endorsing in the TOWN OF PALM BEACH, as an additional insured under the Comprehensive General Liability Insurance Policy hereinafter described.

If the service provider maintains higher limits than the minimums shown below, the Town requires and shall be entitled to coverage for the higher limits maintained by the service provider.

Comprehensive General Liability Insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be included as an additional insured through the use of a blanket additional insured endorsement under the General Liability coverage. The Service Provider's General Liability coverage shall be primary and non-contributory.

For policies written on a Claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event service provider does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State. Should the scope of work performed by contractor qualify its employee for benefits under federal workers' compensation statute (example, US Longshore & Harbor Workers Act or Merchant Marine act), proof of appropriate federal act coverage must be provided. A waiver of subrogation must be provided.

Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the contract, the amount excess of such claims or any portion thereof may be withheld from any payment due or to become due the Service Provider until such time the Service Provider shall furnish such additional security covering such claims as may be determined by the Town of Palm Beach.

Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do

not meet the minimum limit of liability as required.

All required insurance policies shall provide a waiver of subrogation and rights of recovery against the Town of Palm Beach, including its agents, officers, past and present employees, elected officials and representatives, the insurance policy in effect shall protect both parties and be primary and non-contributory for any and all losses covered by the above described insurance. Insurers have no recourse against the Town of Palm Beach for payment or assessments in any form on any insurance policy.

6.6 PERFORMANCE OF WORK BY CONTRACTOR/SUBCONTRACTORS

6.6.1 It is expressly agreed that CONTRACTOR is and shall be in the performance of all work, services and activities under this Agreement, an independent contractor and not an employee, agent, or servant of the TOWN. All persons engaged in any work, service or activity performed pursuant to this Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision and control. CONTRACTOR shall exercise control over the means and manner in which it and its employees perform and work, and in all manner in which it and its employees perform the work, and in all CONTRACTOR'S relationship and the relationship of its employees to the TOWN, shall be that of an independent contractor and not as employees or agents of the TOWN.

6.6.2 In the event CONTRACTOR, during the term of this Agreement, requires the services of any subcontractors or other professional associates, in connection with services covered under this Agreement, CONTRACTOR must secure the prior written approval of TOWN'S Purchasing Agent. Any subcontractor authorized to perform under this Agreement shall be required to possess the same insurance coverage as enumerated in Paragraph 6.5 herein.

6.7 LAWS AND REGULATIONS

It is further understood by the parties that CONTRACTOR will, in carrying out the duties and responsibilities under this Agreement, abide by all federal, state and local laws.

6.8 CONTRACT COORDINATOR

The TOWN'S Contractor Coordinator during the performance of services pursuant to this Agreement shall be the Program Development and Operations Manager for Morton and Barbara Mandel Recreation Center.

6.9 NO CONTINGENT FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

6.10 INTELLECTUAL PROPERTY; PROPRIETARY RIGHTS

TOWN acknowledges that CONTRACTOR owns Intellectual Property as of the Effective Date of this Agreement, the possession of which shall not be challenged while this Agreement is in effect nor upon expiration or termination of this Agreement. TOWN agrees that, except as explicitly and specifically provided in this Agreement, it shall acquire no license, right, title or interest in or to CONTRACTOR'S Intellectual Property by virtue of this Agreement. For purposes of this Agreement, "Intellectual Property" means the collective reference to all rights, title, interest, and privileges in or relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including all creative or proprietary interests, data, tools, business processes, methods, symbols, copyrights, patents, trademarks, service marks, trade names, trade secrets, internet domain names and licenses, whether now or hereafter existing. CONTRACTOR (including, for all purposes, CONTRACTOR'S Affiliates, and third party licensors) shall own and continue to own all Intellectual Property owned by CONTRACTOR prior to the date of this Agreement, including (i) the "Owned Materials" specifically identified and attached hereto as Exhibit B, (ii) all registrations worldwide for a family of trademarks incorporating the term Live for Life, used for a variety of health-related goods and services and (iii) all programming and operational manuals prepared by CONTRACTOR for performance of all work, services and activities under this Agreement (collectively, "CONTRACTOR Pre-Existing Intellectual Property"), and nothing herein grants or transfers to TOWN any ownership interest in such CONTRACTOR Pre-Existing Intellectual Property, even if such Intellectual Property is embodied in any services or deliverables provided to TOWN. In the event any documents provided to the Town by Contractor in regard to this agreement are determined to be "public records" pursuant to Florida law, Contractor recognizes the responsibility of the Town to provide said records in the event of a request for same if, indeed, they are determined to be public records. The Town shall not be considered in violation of this paragraph in the event it is required as a matter of law to provide said documents. In the event a request for public records relating to the property defined herein is received, the Town shall advise Contractor of said request and Contractor shall be afforded the opportunity to respond and provide a defense to said request.

6.11 GOVERNING LAW AND VENUE

This agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County, and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other of further exercise thereof.

6.12 ATTORNEY'S FEES

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

6.13 AUTHORITY TO ENGAGE IN BUSINESS

CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the TOWN'S representative upon request.

6.14 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document.

6.15 NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR TOWN OF PALM BEACH:

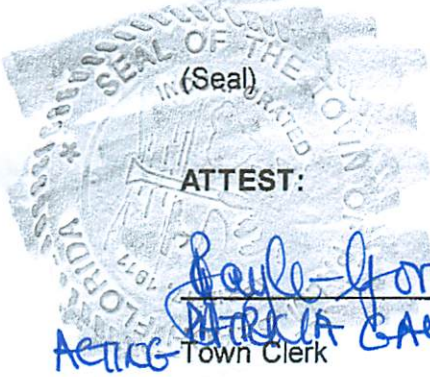
PURCHASING MANAGER
Dean Mealy II, CPPO
TOWN OF PALM BEACH
951 Old Okeechobee Road, Suit "D"

West Palm Beach, FL 33401

FOR CONTRACTOR:

Health Fitness Corporation
400 Field Drive
Lake Forest, IL 60045
Attention: Contract Administration
Associate
Facsimile: 847.615.3872
Email: contracts@hfit.com and
lawcontracts@trustmarkins.com

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals
this ____ th day of _____, 2020.



ATTEST:

Paula Gordon
ACTING Town Clerk

TOWN OF PALM BEACH
A Municipal Corporation of the
State of Florida.

Kirk W. Blouin
Kirk W. Blouin, Town Manager

ENDORSED AS TO FORM
AND SUFFICIENCY:

John Randolph
John Randolph
Town Attorney

CONTRACTOR

HEALTH FITNESS CORPORATION

WITNESSES:

Mark Totts
Mark Totts, VP
Steven A. Alavi
Steven A. Alavi, CFO

By: Sean McManamy
Sean McManamy - CEO + President
Print Name and Title

(Corporate Seal)

SWORN TO and SUBSCRIBED before me this 5 day of March, 2020.

Signature: Hilary Shulman
Notary Public - State of Illinois

(Notary Seal)

Hilary Shulman
Printed Name

Commission No. 718121
Commission Expires: 06/11/21



RFP Items for Mandel Recreation Center Fitness Center and Wellness Program Contractor

SCOPE OF WORK

The Town is seeking a contracted partner to provide oversight, management and programming of the fitness center located in the Morton and Barbara Mandel Recreation Center (340 Seaview Avenue, Palm Beach, FL 33480). In addition to the day-to-day operations of the fitness center, the Town seeks a collaborative partner to create and manage a community – wide wellness program for the residents of the Town of Palm Beach.

The fitness center is within the Mandel Recreation Center, an approximately 17,000 s.f. recreation center on Seaview Avenue within Seaview Park, anticipated to be open to the public in December 2019. The Seaview Park complex features a seven-court Har-Tru tennis center with lights, playground, multi-purpose sports field, and outdoor activity court and the Mandel Recreation Center, which contains a café/snack bar, gymnasium, multi-purpose rooms, and a game room in addition to the fitness center location. The vendor shall provide contractual fitness center services for the Town of Palm Beach. The awarded proposer shall furnish all supplies, labor, equipment, and materials required to complete the work as described and required by this RFP. The fitness center itself is approximately 2,000 square feet and will contain all equipment, machinery, stretch table, registration area and workspace area, (see attached).

The Contractor shall provide all labor, equipment and materials to perform fitness center management services seven (7) days a week at the Morton and Barbara Mandel Recreation Center.

Anticipated Schedule for fitness center management shall be:

Monday - Friday, 6:30 a.m. - 8:30 p.m.

Saturday - 7:00 a.m. - 6:00 p.m.

Sunday - 9:30 a.m. - 6:00 p.m.

Anticipated schedule is subject to change slightly based on seasonality.

All work shall be performed in strict accordance with specifications and performance standards herein. The Director of Business Development and Operations, directly or acting through designated representatives, will decide all questions that may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the Director of Business Development and Operations and/or the Town of Palm Beach, the contractor's performance becomes unsatisfactory, the contractor shall be notified of specific areas(s) requiring corrective actions.

SERVICE PERFORMANCE

The intent of this contract is to provide a cutting-edge wellness environment for the residents of Palm Beach in a clean, well-maintained fitness center. Services/functions of the fitness center operations and wellness programming should, at a minimum, include:

- Development of an overall wellness program that includes, but is not limited to:
 - Certified personal training
 - Identification of classes and programming related to exercise, mindfulness, nutrition, and other fitness trends. The Town and Health Fitness will hire all instructors and process registration and payments of fitness class instructors with the goal of moving towards Health Fitness overseeing management of all fitness related classes by October 1, 2020. The Town will seek recommendations for fitness classes and instructors for these classes from the Fitness Center Contractor so as to provide vibrant and popular curriculum.
 - Health topic speakers series
 - Creating partnerships with area businesses for the promotion of a healthy lifestyle Island-wide
 - Fitness related merchandise sales (i.e. apparel, sundries but not food or drink)

- Contractor and The Town will share in revenue generated through personal training.
 - 60% of personal training revenue will be paid to personal trainer. The remaining 40% will be shared between The Town and Contractor based on the following schedule.

Program Membership	Revenue Sharing Percentage
200 Members	30% to Town – 10% to Contractor
225 Members	27.5% to Town – 12.5% to Contractor
250 Members	25% to Town – 15% to Contractor
275 Members	22.5% to Town – 17.5% to Contractor
300 Members	20% to Town – 20% to Contractor

- Personal Trainers not part of full-time, onsite staff will become part-time Contractor employees in order to process commissions accordingly
 - The above table includes memberships sold of three months or more during a rolling 12 month period. Once 300 memberships of 3 months or more are sold within any 12 month rolling period, the split will remain at 20% to Town and 20% to contractor, unless the memberships sold within any rolling 12 month period drops below 250 memberships of 3 months or more. If that occurs, the split will then be 25% to Town and 15% to contractor until memberships increase back to 300 memberships of 3 months or more within any rolling 12 month period.
- Fitness Classes – When The Town transfers the group exercise program over to Contractor, instructors, other than dedicated full-time professionals, will be compensated based on the following schedule:
 - 50% of revenue collected per class will be paid to instructor
 - 35% of revenue collected per class will be paid to The Town via credit on monthly invoice
 - 15% of revenue collected per class will be paid to Contractor
- Day to day supervision of the fitness center including member check in, new member recruitment, and member registration and/or member renewals
- Total Fitness Center operations including supervision of the facility, maintaining cleanliness and exceptional aesthetic appearance, hiring, orienting and managing staff that is necessary to cover facility schedule and demand of fitness center, hiring and training fitness room attendants, hiring properly credentialed personal trainers.
- Develop comprehensive fitness programming including personal training, fitness classes and

wellness educational opportunities as noted above.

- Communication and marketing plan that will be used to sell fitness center memberships, advertise classes and programs, and wellness lecture series in conjunction with the Palm Beach Recreation Department marketing materials and comprehensive plan.
- Additionally:
 - Answering of phones.
 - Booking of personal training and group classes.
 - Processing of all fees related to Town or Professional services.
 - Processing sales of fitness center merchandise.
 - Enforcing Town rules and regulations.
 - The onsite Health Fitness professionals shall teach a combined minimum of 8 fitness classes weekly during low season (April 15-November 15) and a minimum of 10 fitness classes weekly during high season (Nov-16-April 14) each year. While these classes are part of the Health Fitness contract and there is no expectation of payment to the instructors for these classes, the Town agrees to a partial split to incentivize the instructors to grow and develop these classes. The Health Fitness professionals teaching these classes should be the Health Fitness Program Manager or one of the two Health Fitness Specialists. The Town will keep 80% of all revenue generated from these classes and the Contractor will receive 20%. Outside of these group fitness classes, the Health Fitness professionals shall not be allowed to teach any other group fitness classes that would compete with the '10' revenue generating ones for the Town.
 - Onsite professional staff to deliver health and wellness seminars in addition to local health and wellness professional resources. Onsite Program Manager to work with and coordinate seminars and health education initiative with local resources. Schedule of events to be discussed and agreed upon with the Town. Standard delivery by onsite team is one health education session per month with the exception of some series classes which could be delivered on a more frequent basis.
 - Other items as necessary to run a quality, high-class fitness center.
 - HealthFitness to provide standard uniform for onsite professional staff.

Failure to meet the management specifications, as set forth in this contract, will result in deductions in payment and possible termination of the contract. Performance and quality of work shall be first-class in hygiene, cleanliness and appearance. Routine services shall be considered not to have been performed when, in the judgment of the Palm Beach Recreation Department Contract Coordinator, any one or more of the following conditions exist:

- Routine services in an area are not performed in strict accordance with performance standards or are not performed at the specified frequency.
- Services are not performed within the scheduled hours.
- Employee(s) performing routine service are not properly trained or carrying out their duties properly.
- Employee(s) performing the services are not uniformed in accordance with the requirements contained herein.

WORK HOURS

Fitness Center management and/or attendants are required to arrive at least 15 minutes prior to the published opening time.

REQUIRED WORK TASK FORCE

The successful contractor shall provide competent supervisory personnel and trained employees required for the performance of services in accordance with the provisions of this RFP. Number of work force employees required to complete assigned duties will be left to the discretion of the Contractor, but must be adequate. Town has the right to ask the successful contractor to remove employees whose conduct or workmanship is unsatisfactory.

EMPLOYEE ABSENTEEISM AND VACATIONS

Employee absenteeism or vacations shall in no way relieve the successful contractor of the requirements of this contract. The contractor shall provide relief personnel and work overtime, as necessary, at no cost to the Town, to ensure that all work is performed as scheduled.

SUPERVISION

The successful contractor shall provide an adequate number of trained and qualified supervisors capable of providing the necessary supervision to satisfy the contract. Each Supervisor, to the satisfaction of the Contract Coordinator, shall be capable of verbal and written communication in the English language, and shall be able to effectively communicate with the service workers.

The Contract Coordinator may request the successful contractor to remove any Supervisor if it is determined that services are not being performed in accordance with the terms and conditions of the contract.

EMPLOYEES

The successful contractor will provide competent personnel to perform services in a satisfactory manner. Successful contractor shall not tolerate any misconduct on the part of its employees, while performing services on Town property, in connection with this RFP.

A. Persons employed by the Contractor in the performance of services pursuant to this bid shall not be considered employees of the Town, shall be independent thereof and shall have no claim against the Town, as to pension, workers compensation, unemployment compensation, insurance, salary, wages or other employee rights or privileges granted by operation of law or by the Town of Palm Beach, and shall be 18 years of age or older.

B. All employees shall be physically able, capable, and qualified in this type of work and must have received training in the methods and use of materials in the performance of their work assignment. Written certification of this shall be provided to the Town of Palm Beach Recreation Department Contract Coordinator.

C. Contractor shall ensure each employee is appropriately credentialed for the service they are providing. The contractor shall ensure each employee is dressed appropriately for their position and is easily identifiable as an employee vs. a patron. Any employee not properly outfitted may be requested to leave Town premises until the appropriate attire acquired.

D. A contract employee list shall be created. Each employee with building access authority shall be listed and filed with the Town's representative prior to performing any work. The contract employee list shall be kept current by the Contractor as changes of employees occur. The Town's representative reserves the right to deny entrance to the building and to remove from the building, any employee of the Contractor for just cause.

F. Only authorized contractor's employees are allowed in the fitness center and related areas as they perform their duties. Contractor's employees are not to be accompanied in their work area by acquaintances, family members, assistants, or any other person unless said person is an authorized Contractor employee.

EMPLOYEE IDENTIFICATION AND SECURITY

The successful contractor shall take all measures necessary to comply, and to ensure employees of the Contractor comply, with security rules and regulations, of the Town, Federal, State and local rules, laws and regulations.

The successful contractor shall attest in writing that a background check, to the extent allowed by law, of employment history and references has been conducted on each employee prior to the employee starting work. Contractor employees shall have a current Criminal Records check on each person employed under this contract. This Criminal Records check is to be performed by the Town of Palm Beach at no expense to the successful contractor.

The staff shall annually submit to a National Level 2 VECHS background check by the Town at the Contractor's expense. All individuals employed shall be required to conduct, with results submitted to the Town, a National Level 2 VECHS background check prior to starting work on Town property; and re-conducted annually with the results submitted to the Town. Contractor is required to have a written employment agreement in place with all trainers prior to working on Town property.

Employees shall not use controlled substances (unless prescribed), or illegal substances, and shall not use alcohol on Town's premises. The Town provides its employees with a "Smoke-Free Workplace", and requires the successful contractor and its employees to adhere to that provision as well.

The Town shall have the right to request any additional investigative background information including, but not limited to, the employment record of any personnel assigned to perform the services. The successful contractor shall furnish in writing such information, to the extent allowed by law, within 30 calendar days after receipt of written request from the Contract Coordinator.

Successful contractor shall remove from service on the premises of the Town, any employee (including contractual instructors) of the contractor who, in the opinion of the Town, is not performing the Services in a proper manner, or who is incompetent, disorderly, abusive, dangerous, or disruptive or does not comply with the rules and regulations of the Town. Successful contractor shall in no way interpret such removal to require dismissal or other disciplinary action of the employee.

Successful contractor shall insure that lost, or apparently lost articles, that are found by contractor's employees be turned in immediately to the Contract Coordinator or the Contract Coordinator's designated representative.

Upon termination or transfer of any employee of the successful contractor, the successful contractor shall immediately notify the Contract Coordinator by telephone and in writing of such termination or transfer.

CONDUCT

The Town reserves the right to request the removal of any successful contractor's employee from Town buildings for reasonable cause. Such causes shall include, but are not limited to, the following:

- A. Wearing of inappropriate clothing and/or uniform.
- B. Engaging in loud, boisterous or non-workman-like conduct.
- C. Unauthorized use, disposition and/or misappropriation of Town and/or personal properties.
- D. Engaging in unlawful and unauthorized acts
- E. Misrepresentation of facts.
- F. Failure to meet acceptable standards of personal cleanliness and neatness, bearing or demeanor.
- G. Sexual harassment of employees, residents, or visitors, including inappropriate remarks, whistling, etc.

COMPENSATION SCHEDULE/WAGE RATES

As a mandatory requirement of this RFP, the successful contractor shall pay to employees performing services under this contract, at least the current prevailing minimum wage, according to the federal minimum wage schedule as published by the United States Department of Labor.

DEDUCTIONS FOR NON-PERFORMANCE OF SERVICES

In the event of non-performance of services by the successful contractor, the Contract Coordinator shall have the right to exercise one of the following options:

- A. Notify the Contractor of non-performance, and allow Contractor to correct such item(s) of non-performance within 24 hours. The Town shall make no deductions for such item if it is properly corrected.
- B. The Town shall correct the item of non-performance by any means it deems necessary. Direct costs incurred by the Town for the correction shall be deducted from payments made to the Contractor.
- C. The Town may allow the non-performance to remain uncorrected, but deduct the value of the services from payments to the Contractor.

BUILDING SECURITY

The contractor's employees will have access to the necessary rooms and facilities as deemed appropriate by the Contract Coordinator. The facility will be opened and secured by a member of the Town staff, or on mutual arrangement, a member of the Contractor's staff.

BUILDING ACCESS CONTROL AND KEY CONTROL

Access to each building shall be as directed by the Contract Coordinator or designated representative. The successful contractor shall establish and implement methods of ensuring that all keys issued by the Town are not lost or misplaced, and are not released to unauthorized persons. The successful contractor shall adequately secure the keys, key cards, security access control cards, other entry devices, and codes provided by the Town. Successful contractor shall maintain a record of the keys issued to its employees and shall not duplicate keys nor allow employees to duplicate any keys. Any such item that becomes lost, missing or stolen shall be immediately reported to the Contract Coordinator no later than the beginning of the next day. The successful contractor shall be charged cost plus labor for having any lost keys duplicated. If a change of locks is warranted as a result of the loss of keys, the successful contractor shall be required to defray the cost of having any and all applicable locks changed and/or re-keyed. The charges for duplicating keys, changing and/or re-keying of locks will be deducted from the monthly payments due to contractor for the work performed under this contract.

Access to designated restricted and sensitive areas is forbidden to all but prior approved and/or escorted contractor's employees. In all instances where fitness center management services are to be performed within these areas, the successful contractor shall submit to the Contract Coordinator a list of names, addresses, and dates of birth of personnel to be assigned or authorized to enter these areas for fitness center management services purposes. All such personnel must meet with the approval of the Contract Coordinator, before being allowed access into these areas. Lost of the keys or fobs should be reported immediately to Contract Coordinator.

UTILITIES

The Town shall supply electric power and water without charge to the successful contractor and shall use the Town's utilities as needed, but without waste. The successful contractor shall be responsible for operating under conditions which preclude the waste of utilities.

SAFETY & FIRE PREVENTION

The successful contractor shall be responsible for instructing personnel in appropriate safety measures. All contracted employees who work in the fitness center must have proper training in regards to fitness equipment (including, cardio, free weight and selectorized machines).

Successful contractor will be familiar with and operate within the guidelines set forth by the Occupational Safety Health Act (OSHA) which affect Custodial and Housekeeping Operations and be aware of fire prevention techniques and procedures.

BUILDING REPAIRS

Successful contractor shall promptly notify the Contract Coordinator, or the designated representative, in writing of needed repairs of equipment (both fitness center and office)

PARKING

The Town shall identify locations where parking for the vehicles of the contractor employees is available. Contractor vehicles will be added to the Town's Employee Vehicle Registration Program Form and sign a Parking Acknowledgment Form.

SOLICITING

Successful contractor shall establish, implement, and maintain procedures and controls adequate to prevent the employees from providing any services other than that which is defined in this contract. No employee of the Contractor shall solicit nor accept any gratuities in Town facilities.

FITNESS EQUIPMENT STORAGE CLOSETS

The Town shall provide adequate storage space throughout various locations. Successful contractor shall store the supplies, materials and equipment only in storage spaces designated by the Contract Coordinator. All designated space shall be kept orderly and clean at all times; the floors shall be clean and dry, shelves stocked and in order, proper cleaning and storage of floor machines, mops, brooms, and janitor carts at all times. Closets shall be free from safety hazards.

SUPPLIES AND MATERIALS

Successful contractor shall furnish all equipment and shall supply all materials and supplies necessary to perform this contract.

PERSONNEL

1. **Project Manager:** The successful contractor shall provide a project manager who shall be responsible for the overall management and coordination of this contract, and who shall act as the central point of contact with the Town. This person will be responsible to rectify and report completion of all performance issues.

2. **Other Personnel:** The successful contractor shall provide supervisory personnel essential to accomplish all required work. On-site supervisor must be appropriately trained and possess the necessary competency to make sufficient daily determinations to insure that work has been and is being performed as required by these specifications.
3. Supervisor must possess a working knowledge of basic supervisory, management, and quality control functions related to the fitness industry.
4. The Town reserves the right to require replacement of any person who, in determination of the Director of Business Development and Operations or designated representative, is not qualified to perform assigned tasks.
5. Contractor shall provide the following onsite fitness support staff:
 - Program Manager (1 FTE) - Responsible for daily operations, Budget adherence and providing sound exercise supervision in the fitness area. Employee must have appropriate personal training and group exercise certifications to instruct group exercise classes geared towards all fitness levels, provide one-on-one/small group supervision and fitness testing.
 - Health Fitness Specialist (1 FTE) – Assist program manager in the daily operations, budget adherence and providing sound exercise supervision in the fitness area. Employee must have appropriate personal training and group exercise certifications to instruct group exercise classes geared towards all fitness levels, provide one-on-one/small group supervision and fitness testing.
 - Health Fitness Specialist (.67 FTE) - Assist full-time staff professionals in the daily operations, budget adherence and providing sound exercise supervision in the fitness area. Employee(s) must have appropriate personal training and group exercise certifications to instruct group exercise classes geared towards all fitness levels, provide one-on-one/small group supervision and fitness testing.
 - Group Exercise Instructors (as needed) - Responsible for instructing group exercise classes geared towards all fitness levels.
 - (c) Personal Trainers (as required to provide high level of personal training availability) – Responsible for providing one-on-one/small group exercise supervision and fitness testing.
 - 3.1.4.3 All on-site professional fitness staff must be credentialed in the field of exercise science.
 - There should always be a Fitness Center ‘Manager on Duty’ during Fitness Center hours, this would not include someone providing personal training services.
6. **Online Point of Sale**
 - The Town shall offer an online point of sale payment solution through its online system (the “ePOS Online Website”) for Services, as agreed to by the Town, including, but not limited to membership fees, personal training, group exercise, and other fee for service programming. The Town’s POS will accept various forms of payment including, but not limited to, personal checks, debit cards and credit cards. Fees collected on behalf of Health Fitness will incur bank fees

(\$0.45 per check transaction, \$0.35 per credit card transaction and a credit card processing fee of 3.7% of total revenue collected.

- The variable POS transaction fees could be passed on to the member making the purchase or it can be billed to Health Fitness as actually incurred on a monthly basis, with the more typical approach being the member incurring the transaction fee at the time of the purchase.
- Credit card processing fee of 3.7% will only apply to the revenue sharing percentage paid to Health Fitness. For example, if a member is charged \$100 for personal training and Health Fitness receives a 70% cut, then Health Fitness would receive $(\$100 \times .70 \times .963) = \67.41 . Health Fitness will not be charged for the processing fee on the Town's share.
- Other possible POS fees include \$5.25 per returned/declined item (charged to the member/participant) and \$25 per disputed charge. Disputed charge is the fee MC/Visa/Discover/AMEX charges HealthFitness. Each disputed transaction results in a \$25 fee, regardless of the dispute being valid or dropped.

MONITORING

1. Successful contractor's performance evaluation meetings shall be held weekly during the first two (2) months of the contract. Thereafter, the meeting shall be held as often as determined necessary by the Contract Coordinator or designated representative. As a minimum, the Project Manager and the Contract Coordinator or their designated representative(s) shall attend the performance evaluation meetings. During the performance evaluation meeting, a mutual effort will be made to resolve all problems identified. Minutes of the meeting shall be signed by the Project Manager and the designated representative of the Contract Coordinator. Should the contractor not concur with the minutes, contractor shall state, in writing to the Contract Coordinator, any area(s) of non-concurrence.
2. The Town will monitor the contractor's work daily for the first one to two months of the contract. This allows the Town to solve problems early, quickly, making the contractor aware of service deficiencies.

QUALITY CONTROL/QUALITY ASSURANCE & ROUTINE WORK TASKS

1. Successful contractor shall establish a complete, detailed, quality control program. A copy of the contractor's quality control program shall be provided with proposal. An updated copy of plan shall be provided on the contract start date and thereafter as changes occur. The program shall include, but shall not be limited to, the following:
 - An evaluation of the fitness center operation and service provided by attendants and personal trainers.
 - An evaluation of the marketing and communication pieces.
 - An evaluation of target fitness center membership goals.
 - An outline of routine work task for employees to adhere to daily, weekly, monthly, etc. as needed.

QUALITY ASSURANCE

The Director of Business Development and Operations, acting through the Contract Coordinator or designee, will monitor the contractor's performance under this contract through random sampling, periodic inspections, and/or joint inspection.

COMPLAINTS

The Town has the option of staffing any unfilled shifts and deducting the cost from the regular fee for the contractor.

1. When a complaint is made by Town employee(s) concerning the contractor's work, the Town will request, via written note, correction of the problem(s) from the contractor.
2. When a complaint is made by a member or participant, the contractor's staff shall report said complaint in writing to the Assistant Director of Recreation via writing (email) and, if possible, in person.
2. If the problem(s) are not corrected, the documented complaint is placed into the successful contractor's file.
3. Should performance of any required service be inadequate or unsatisfactory and is clearly the fault of the successful contractor, the contractor shall be notified of the defective area and corrective action(s) required. Such notice, when delivered to the contractor or his representative at the site of work, either verbally or in writing, shall be deemed sufficient for this purpose.
5. Upon being notified of the existence of a deficiency, the contractor shall make the needed corrections in a timely manner.