



## OFFICE OF THE COUNTY ATTORNEY

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## 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

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- 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