

GENERAL CONTRACT FOR SERVICES

This Contract for Services is effective upon signing (this "Contract"), by and between Wheaton Park District

and Club Marketing and Management Services, Inc. of 5730 S 1050 E, Ogden, Utah 84405. In this Contract, the party who is contracting to receive services will be referred to as "Client" and the party who will be providing the services will be referred to as "CMS."

1. DESCRIPTION OF SERVICES. CMS will provide to Client the following services (collectively, the "Services"):

CMS will provide a business evaluation of the existing fitness and recreation center operations along with recommendations for improvement. The review will include the following elements:

1. Review of target market
2. Review of competition
3. Strength, Weaknesses, Opportunities and Threats review
4. Facility and equipment review with recommendations
5. Recommendations for improvement
6. Pre-sale setup and training
7. Marketing, sales and staff training for pre-sale, Grand Opening and ongoing facility operations

We will rely on information provided by management along with our own observations, inquiries and research to assess the operations and facilities. A questionnaire and list of materials and documents are listed in Appendix A to help us in our assessment. We anticipate that we will deliver a Summary Report of our observations and recommendations within 15 days of our review.

Following our initial review, you will be enrolled in our monthly Client Program which includes the following services:

24/7 TELEPHONE SUPPORT- The answers to your operations questions and solutions to your problems are just a phone call away. Email or call us for same day service on most Issues,

COMPREHENSIVE SALES TRAINING AND SYSTEMS- we will train your staff using a combination of eBooks, online video training seminars and live zoom conference training to maximize your marketing and sales investment.

MARKETING- Planning and implementation support along with graphic design templates and design help.

FINANCIAL CONSULTATIONS- our training and experience includes accounting, computer operations and financial counseling.

CLIENT ONLY WEBSITE- You will receive a password protected website that gives you access to our extensive library of books, articles and white papers, management tools and software, financial management tools, advertising campaigns including print ads, flyers, door hangers, posters, etc. along with our complete online training program.

INDUSTRY RESOURCE- CMS will serve as a resource and contact between your facility and industry vendors, helping you get the best products and prices

2. PAYMENT FOR SERVICES. In exchange for the Services, Client will pay CMS per the following schedule:

Total cost of the project is \$650 setup fee, payable in advance plus \$650 per month payable on the 10th of each month thereafter. Onsite visits can be arranged for a fee of \$650 per day plus expenses as mutually agreed by both parties.

3. TERM. This Contract will continue monthly until canceled in writing by either party upon 60 days written notice and acknowledged by both parties.

4. CONFIDENTIALITY. CMS, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of CMS, or divulge, disclose, or communicate in any manner, any information that is proprietary to Client. CMS and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract.

5. WARRANTY. CMS represents and warrants that it has the necessary knowledge, experience, abilities, skills and resources to perform its obligations under the Agreement, and agrees to perform its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices. All work performed shall be in accordance with applicable local and federal laws.

6. REMEDIES. In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 10 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract.

7. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

8. SEVERABILITY. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

9. AMENDMENT. This Contract may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

10. GOVERNING LAW. This Contract shall be construed in accordance with the laws of the State of Illinois.

11. NOTICE. Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

12. ASSIGNMENT. Neither party may assign or transfer this Contract without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

Service Recipient:
Wheaton Park District

By: Date: 10/31/23

Principal

Service Provider:
Club Marketing and Management Services, Inc.

By: Date:

Mark Davis
President

10/26/23

ADDENDUM TO GENERAL CONTRACT FOR SERVICES

This Addendum ("Addendum") is made to that certain General Contract for Services ("Contract") by and between Club Marketing and Management Services ("CMS") and Wheaton Park District ("Client"). This Addendum modifies and supplements the Contract. In the event of any conflict between a provision of the Contract and this Addendum, the provision of this Addendum shall control. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Contract.

1. Reference to the phrase "Parks Plus Fitness Center" on lines one and two is stricken and replaced with "Wheaton Park District."

2. Section 2. **PAYMENT FOR SERVICES** is revised by adding the following to the end of the section:

"Notwithstanding the foregoing, all payments required under this Contract, and any late payment penalties or interest payments related thereto, shall be made in accordance with, and governed by, the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*)."

3. Section 10. **GOVERNING LAW** is revised by striking the first sentence in its entirety and replacing it with the following:

"This Contract is governed by the laws of the State of Illinois without regard to any conflict of law principles. The Parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy, or disagreement (each a "Dispute") between the Parties under or related to this Contract. Any Dispute arising under this Contract shall be commenced in the Circuit Court of DuPage County, Illinois or the United States District Court for the Northern District of Illinois. In any Dispute arising under this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation.

4. Insert new Section 13. **INDEMNIFICATION.**

To the fullest extent permitted by law, CMS shall defend, indemnify and hold harmless the Client, and its respective, officers, officials, employees, and agents (the "Client's Indemnified Parties"), from and against all claims, damages, losses and expenses, including, but not limited to legal fees (reasonable attorney and paralegal fees and court costs) arising from or in any way connected with, whether in whole or in part, (i) any act and/or omission of CMS or any of its officers, trustees, employees and members or partners. In no event shall CMS be liable to indemnify and/or hold harmless the Client's Indemnified Parties to the extent of any negligent, willful or wanton act(s) and/or omission(s) of the Client, its officers, agents, program participants, employees, volunteers, contractors, invitees, and guests. This indemnity is separate from CMS' insurance obligations under this Contract.

5. Insert new Section 14. **INSURANCE.**

CMS shall, at its sole cost and expense, keep in full force and effect at all times during the term of this Contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with this Contract. CMS shall provide coverage that is at least as broad as:

- A. Comprehensive general public liability insurance, including contractual liability coverages, in an amount not less than \$1,000,000 per occurrence. Such insurance shall be evidenced by annually providing to the Client certificates of insurance and policy endorsements. Said insurance shall name the Client as an additional insured.
- B. CMS shall keep and maintain Workers' Compensation Insurance and Employer's Liability Insurance covering all costs, statutory benefits and liabilities under State Workers' Compensation and similar laws for their employees.
- C. If any automobiles are used by CMS in connection with this Contract, it will carry automobile insurance coverage with a minimum \$1,000,000 combined single limit.
- D. The minimum insurance coverages specified herein may be provided by a combination of self-insurance, participation in a risk management pool, or commercial policies of insurance.
- E. All insurance maintained by CMS shall be primary and any insurance or self-insurance maintained by the Client shall not contribute to it.

6. Insert new Section 15. **CONFLICT OF INTEREST.**

CMS represents and certifies that, to the best of its knowledge, (1) no Client employee or agent is interested in the business of CMS or this Contract; (2) as of the date of this Contract neither CMS nor any person employed or associated with CMS has any interest that would conflict in any manner or degree with the performance of the obligations under this Contract; and (3) neither CMS nor any person employed by or associated with CMS shall at any time during the term of this Contract obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Contract.

7. Insert new Section 16. **NO COLLUSION.**

CMS represents and certifies that (1) CMS is not barred from contracting with a unit of state or local government as a result of (a) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless CMS is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax; or (b) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Illinois Criminal Code of 1961, 720 ILCS 5/33E-1 et seq.; (2) only persons, firms, or corporations interested in this Contract as principals have been those disclosed to Client prior to the execution of this Contract; and (3) this Contract is made by CMS without collusion with any other person, firm, or corporation. If at any time it shall be found that CMS has, in procuring this Contract, colluded with any other person, firm, or corporation, then CMS shall be liable to Client for all loss or damage that Client may suffer, and this Contract shall, at Client's option, be null and void.

8. Insert new Section 17. **SEXUAL HARASSMENT POLICY.**

CMS certifies that it has a written Sexual Harassment Policy in full compliance with 775 ILCS 5/2-105(A)(4).

9. Insert new Section 18. **NON-DISCRIMINATION.**

In all hiring or employment by CMS pursuant to this Contract, there shall be no discrimination against any employee or applicant for employment because of age, race, gender, creed, national origin, marital status, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. CMS agrees that no person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by, or resulting from, this Contract.

0. Insert new Section 19. **NO WAIVER OF TORT IMMUNITY.**

Nothing contained in this Contract shall constitute a waiver by Client of any right, privilege or defense available to Client under statutory or common law, including, but not limited to, the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., as amended.

All other terms and conditions contained in the Contract remain unchanged. The Contract and this Addendum contain all of the terms and conditions agreed on by the Parties with respect to the subject matter hereof, and no other alleged communications or Contracts between the Parties, written or otherwise, shall vary the terms hereof. Any modification of the Contract or this Addendum must be in writing and signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the dates set forth below.

WHEATON PARK DISTRICT

By: 

Its: Executive Director

ATTEST: _____

Its: _____

Date: 10/31/23

CLUB MARKETING AND MANAGEMENT SERVICES

By: 

Its: PRESIDENT

ATTEST: 

Its: VICE PRESIDENT

Date: 10/26/23

APPENDIX A



Fitness Center Evaluation Questionnaire and Document Checklist

1. Please answer all questions, if unknown please indicate.
2. If you don't have some of the materials, please make note on the master sheet.
3. In order to make the best use of everyone's time, please provide as many items as possible before the site visit. We will be using this material throughout the day.
4. The facility manager should be available throughout our visit.

Contact Person _____

Cell Phone _____

Email _____

Market Review

How many people live or work within 10 minutes of your fitness center? _____ (Please

include any demographic reports if available)

The major economic base of your community is:

Please list the fitness centers/gyms who you would consider your main competition:

Is there anything that distinguishes your market area or makes it different from other communities?

MATERIALS AND DOCUMENTS FOR OUR REVIEW

Please provide the following items or reports for our review. It's okay if you do not have all of these items.

- Business plan and mission statement (if one exists)
- Demographic reports of the Park District
- Complete fitness center financial statements for last 2 years plus current year-to-date,
- Membership Fee Structure, brochures, rate sheets, applications, membership flyers
- Organizational chart
- Membership unit sales by month for the last two years
- Membership totals by Type
- Resignation reports by month for last year
- New member onboarding package
- Sales and prospecting forms and reports currently in use
- Copy of advertising that has been used during the last year
- List of fitness areas with square footage
- Fitness equipment inventory

Addendum to CMS and Wheaton Park District Agreement

10/4/2023

All services referred to in the agreement will be available, but the following specific services will be performed.

Create a Grand Opening marketing plan that will begin upon execution of the agreement.

Train all appropriate staff in the areas of marketing, sales of membership and ancillary services, front reception and any others as deemed necessary by management.

Set up and train staff on pre-opening sales process and sales process after Grand Opening.

Train Marketing Department of general Marketing System after Grand Opening.

The training will be a combination of live zoom, website videos and onsite if approved. We recommend at least one on site visit.

Wheaton will have 24/7 access to CMS by phone and client only website.

Review all policies and procedures currently in place and advise management.

Review all financial information and advise management.

If Wheaton deems necessary, Mark Davis will come to the facility as soon as possible to start the process. Wheaton would be responsible for economy air travel from Salt Lake City, hotel, meals, and ground transportation.

Wheaton employees will have access to the CMS Clients Only website.

Wheaton will also have all the services described in the original agreement.