



CONTRACT APPROVAL ROUTING SLIP

Department: Human Resources

City Staff: Briza Morales, Gabrielle Ressa

Contractor/Consultant Information:

Contract with: American Specialty Health Fitness, Inc.

Name of Signer: George Devries

Email: ashfinalcontract@ashn.com

Name of Signer: _____

Email: _____

Name of Signer: _____

Email: _____

Contract Details

Contract Type: ☒ Original ☐ Amendment ☐ Renewal ☐ Change Order ☐ Grant
☐ Other _____

Total Contract Amount: Per member per month fees (<\$75K)

Amendment/Change Amount: _____

Budgeted: ☒ Yes ☐ No

Line Item Account Number: 60113211-52301

City Council Agenda Date: _____

Staff Report No.: _____

Contract Start Date: 1/1/25

Contract End Date: _____

Have services started? ☐ Yes ☒ No

If yes, when did services begin: _____

Bidding Process: ☐ RFI ☐ RFP ☐ Bids (Public) ☐ Renewal (Amendments Only)

Contract Description/Notes: Fitness membership program

Required Documents (must be included when applicable)

Is W9 on file (MUNIS)? ☒ Yes; Vendor No: _____ ☐ No; W9 attached

Insurance Required?

☒ Yes

☐ No

Insurance Waiver/Modification?

☐ Yes

☐ No

Bonds Required?

☐ Yes

☐ No

Verification of Authority to Sign?

☒ Yes

☐ No

Verification of Corporate Entity?

☒ Yes

☐ No

Business License Required?

☐ Yes

☐ No

If yes, number: _____

Is this a Sole Source Agreement? If yes, must attach justification.

☐ Yes

☒ No

Notary for Management Services Signature Authority?

☐ Yes

☒ No

If yes, which signatures?

☐ City Manager

☐ City Attorney

☐ City Council

Department, Legal, Risk Management, and Purchasing Review (please initial):

Department Manager

^{DS}
WHRD

Department Head

^{DS}
BC

City Clerk's Office

^{DS}
BM

Risk Manager

^{DS}
kl

Purchasing

If City Council approval is required, Clerk's Office must initial after City Attorney signature.

City Clerk's Office

MASTER SERVICE AGREEMENT

This Master Service Agreement (“Agreement”) is made effective as of January 1, 2025 for services commencing on January 1, 2025 (“Effective Date”) by and between City of Manhattan Beach, a public entity, with its principal place of business at 1400 Highland Avenue, Manhattan Beach, CA 90266 (“CMB”) and American Specialty Health Fitness, Inc., a Delaware corporation, with its principal place of business at 12800 North Meridian Street Suite 490, Carmel, IN 46032 (“ASH Fitness”).

WHEREAS, CMB wishes to engage ASH Fitness to provide certain goods and/or services (collectively referred to as “Services”) pursuant to a Statement of Work (as defined below) and ASH Fitness is willing and able to supply such Services on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, ASH Fitness and CMB hereby agree as follows:

1. Definitions

- a. **Affiliate** means, as to ASH Fitness or CMB, any entity that, at any given time, directly or indirectly, controls, is controlled by or is under common control with ASH Fitness or CMB, as applicable, whether through ownership of voting securities, by contract or otherwise.
- b. **Agreement** means this document and any additional documents attached hereto, including, but not limited to, any applicable Statement of Work.
- c. **CMS** means the Centers for Medicare and Medicaid Services in the US Department of Health and Human Services, an administrative agency of the United States Government, responsible for administering the Medicare program.
- d. **Eligible Member** means an individual who is enrolled by CMB in an applicable benefit plan making them eligible to receive Services as that term is defined below in Article I and for which ASH Fitness has received eligibility information pursuant to an applicable SOW.
- e. **Fitness Location** means an entity, including but not limited to, a fitness club, fitness studio, YMCA, organizations that provide group exercise sessions and other like entities providing fitness services that has contracted with ASH Fitness to be part of ASH Fitness’ standard or premium fitness location network and to make its facility available to Enrolled Members as that term is defined in the applicable SOW.
- f. **Fitness Instructor** means individual and/or business which has contracted with ASH Fitness to be part of ASH Fitness’ fitness instructor network (“ActiveOptions”) and to make its group exercise classes, held at independent locations, available to Enrolled Members as that term is defined in the applicable SOW.

- g. **Government Agency** means any local, state or federal government agency or entity with regulatory or other authority over CMB, ASH Fitness or this Agreement.
- h. **Initial Term** means the period from the Effective Date through December 31, 2025.
- i. **Intellectual Property Rights** means all rights in any copyrights, trade secrets, patents, patentable inventions, patent applications, trademarks, service marks, concepts, ideas, methodologies, procedures, processes, know-how, techniques or other intellectual property rights.
- j. **Parties** means the entities that execute this Agreement.
- k. **Renewal Term** means each successive calendar year term following the Initial Term, unless terminated earlier pursuant to Article 3, in which case the Renewal Term will be through the date of termination.
- l. **Services** mean the services as described in an applicable Statement of Work.
- m. **Statement of Work (“SOW”)** means the document describing the specific Services, related terms and conditions, Fees, Expenses and Service Standards.
- n. **Subcontractor** means the entity or person with whom a Party contracts to perform core obligations under this Agreement and the applicable SOW and, in the case of CMB, one or more program implementation activities.
 - i. For clarity and by way of example: (i) Fitness Locations, Fitness Instructors, payment gateways and subscription management platforms are not ASH Fitness Subcontractors.
 - ii. Any third party with which CMB directs ASH Fitness to engage with directly in place of CMB is a CMB Subcontractor.

2. **Services.**

- a. The Services to be provided will be described in a Statement of Work (“SOW”). Each SOW and each amendment thereto must be signed by both Parties and must state that it is made pursuant to this Agreement. Each SOW shall constitute a separate Agreement which incorporates the terms and provisions of this Agreement. Where there are conflicting provisions between this Agreement and an applicable SOW, the provisions of the SOW shall control for the purposes of that SOW only.

3. **Term and Termination.**

- a. **Term.** The term of this Agreement shall commence on January 1, 2025, and end on December 31, 2025. If there are any SOWs governed by this Agreement that are still effective when the term of this Agreement ends, this Agreement shall remain in effect solely with respect to any such SOWs until their expiration or termination.
- b. **Termination with Cause.** Either Party may terminate this Agreement or one (1) or more Statements of Work under this Agreement by providing written notice of termination if: (a) a Party materially breaches its obligations under this Agreement or a Statement of Work under this Agreement, and the breach is not cured to the reasonable satisfaction of the non-breaching party within thirty (30) calendar days after written notice of the breach and intent to terminate is provided by the other Party; provided, however, if the breach cannot reasonably be corrected within thirty (30) days, and the defaulting party makes documented substantial and diligent progress toward correction during such period, this Agreement shall remain in full force and effect; or (b) a Party becomes insolvent (i.e. generally unable to pay its debts as they become due) or the subject of a bankruptcy, conservatorship, receivership, reorganization, dissolution, liquidation, or similar proceeding, or makes a general assignment for the benefit of its creditors.
- c. **Termination without Cause.** Either Party may terminate this Agreement without cause upon ninety (90) days written notice to the other Party.
- d. **No Existing SOWs.** This Agreement will immediately terminate upon the expiration or termination of the last applicable SOW under the Agreement.
- e. **Transition of Services.** At termination of this Agreement, ASH Fitness will cooperate with CMB to assist with any transfer of services back to CMB. This may include provisions of necessary reports and CMB member data reasonably requested by CMB as essential to facilitate the transfer of services back to CMB to the extent permitted by state or federal law and excluding information for which ASH Fitness holds a proprietary interest, such as information related to payment of ASH Fitness Subcontractors, Fitness Locations and Fitness Instructors.
- f. **Effect of Termination.** No termination of this Agreement shall affect the rights and obligations of the Parties incurred prior to the effective date of such termination. ASH Fitness shall be responsible for notifying Fitness Locations of the termination of this Agreement and any applicable SOW and CMB shall be responsible for notifying Eligible Members of the termination of this Agreement.

- g. **Survival.** Any provision of this Agreement that imposes continuing obligation upon a Party or, by its nature or terms, would be reasonably understood to impose continuing obligations upon a Party, shall remain in force and effect after the expiration or termination of this Agreement for so long as intended, including, but not limited to, the provisions of Article 8 Trademark, Article 9 Confidentiality, Article 10 Governing Law and Dispute Resolution, Article 11 Indemnification, and Article 13 b. Laws and Regulations.

4. **Compensation and Payment.**

- a. **Fees.** CMB shall pay ASH Fitness for Services provided under this Agreement as set forth in each Statement of Work
- b. **Final Accounting upon Termination.** Within one hundred twenty (120) calendar days of the effective date of termination of this Agreement and any applicable SOW, an accounting shall be made by the Parties of the monies due and owing either Party and payment shall be forthcoming by the appropriate Party to settle such balance within thirty (30) calendar days of such accounting.
- c. **Unauthorized Services and Unanticipated Expenses.** CMB will not pay for any services not specified in the SOW, unless the City Council or the CMB Representative, if applicable, and the ASH Fitness Representative authorize such services in writing prior to ASH Fitness's performance of those services or incurrence of additional expenses. Any additional services authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in the SOW, or, if not specified, at a rate mutually agreed to by the Parties. At the request of the ASH Fitness, the City Council may, in writing, reimburse ASH Fitness for an unanticipated expense at its actual cost. CMB shall make payment for additional services and expenses in accordance with this Article of the Agreement.

5. **Subcontracting.**

- a. **Use of Subcontractors.**
 - i. ASH Fitness may subcontract the performance of some or all of its duties under this Agreement to Subcontractors with notice to CMB. ASH Fitness shall be responsible for the performance of its Subcontractors as if such performance were that of ASH Fitness.

- ii. CMB may subcontract the performance of some or all of its implementation activities and/or obligations under this Agreement or SOW to one or more CMB Subcontractors and shall remain responsible for the performance of its Subcontractors as if such performance were that of CMB. CMB shall ensure through a written Agreement its Subcontractor compliance with all applicable sections of this Agreement and any SOW including, but not limited to, Agreement sections related to intellectual property, trademark, confidentiality, compliance with laws and regulations, and Article 13.g. Advertising and Publicity, and shall ensure it has a Business Associate Agreement with the Subcontractor.

6. Insurance.

- a. **Minimum Scope and Limits of Insurance.** ASH Fitness shall, at its own expense, secure and maintain throughout the term of this Agreement and any SOW, the following insurance. ASH Fitness will use best efforts to notify CMB within thirty (30) days of any policies which have been either cancelled or materially altered.
 - Worker's Compensation Insurance which shall fully comply with the statutory requirements of all applicable state and federal laws.
 - Commercial General Liability Insurance of two million dollars (\$2,000,000 USD) per claim and two million dollars (\$2,000,000 USD) general aggregate.
 - Errors and Omissions Insurance of two million dollars (\$2,000,000 USD) per claim and two million dollars (\$2,000,000 USD) aggregate.
 - Information Security and Privacy Insurance of five million dollars (\$5,000,000 USD) per claim and annual aggregate.
 - Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If ASH Fitness does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, ASH Fitness shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under this Article.

- b. **Evidence of Insurance.** Prior to the performance of Services under this Agreement, ASH Fitness shall furnish CMB's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Article. The endorsements are subject to CMB's approval. ASH Fitness may provide complete, certified copies of all required insurance policies to CMB. ASH Fitness shall maintain current endorsements on file with CMB's Risk Manager. ASH Fitness shall provide proof to CMB's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. ASH Fitness shall furnish such proof at least two weeks prior to the expiration of the coverages.
- c. **Indemnity Requirements not Limiting.** Procurement of insurance by ASH Fitness shall not be construed as a limitation of ASH Fitness's liability or as full performance of ASH Fitness's duty to indemnify CMB this Agreement.

7. **Intellectual Property.**

- a. **Ownership of Deliverables.** Unless otherwise specified in a SOW, no Services provided by ASH Fitness will be deemed a work made for hire and nothing contained in this Agreement hereby grants any ownership to the other Party with respect to the Intellectual Property Rights of the other Party. Each Party reserves all rights in its Intellectual Property Rights and no provision of this Agreement shall be construed to transfer any such Party's rights in such Intellectual Property Rights. Each Party shall still maintain ownership of its pre-existing materials where it has been modified and to the extent applicable, hereby grants to the other Party a perpetual non-exclusive license to use such pre-existing materials for the term of this Agreement and the applicable SOW. The Parties hereby deem any data generated as a result of any services performed by ASH Fitness for delivery to CMB under this Agreement or applicable SOW is hereby CMB's property. If any of ASH Fitness Intellectual Property Rights is integrated into the data, ASH Fitness hereby grants to CMB a perpetual non-exclusive license to use such ASH Fitness Intellectual Property Rights as needed for use of data. In no case will the term "data" include ASH Fitness Intellectual Property Rights in and of itself. ASH Fitness shall be allowed to use data, provided that data is fully de-identified (in accordance with HIPAA standards) and further provided that any reporting or sharing with a third party is made solely on a fully aggregated basis for all members. ASH Fitness shall be able to use the data, in accordance with the Business Associate Agreement, to support ASH Fitness' aggregate reporting. Further, ASH Fitness shall be permitted to include data in its internal aggregate reports for the management or administration of its programs and operations.

8. Trademarks.

- a. **Use of Names and Marks.** This Agreement does not grant either Party a license or sublicense, except as provided in this Article 8, to use the names, trademarks, service marks, corporate names, trade names, domain names, or logos owned by or licensed to the other Party (“Marks”). During the Term each Party may use the other Party’s name solely in connection with identifying the relationship as contemplated in this Agreement. Any use of a Party’s Marks is subject to the prior review and written approval of that Party.
- b. **Identification of Marks and Form of Use.** As applicable, CMB may use Silver&Fit, The Silver Slate, Silver&Fit design logo (“Silver&Fit Marks”), Active&Fit Enterprise, Active&Fit ExerciseRewards and Active&Fit Enterprise design logo (“Active&Fit Enterprise Marks”), on its web sites and print media, as described above, as long as such use complies with this Agreement and the “Guidelines for Trademark Use by Third Parties” issued by ASH Fitness from time to time. In addition, CMB shall:
 - i. Indicate its use of the Silver&Fit Marks, and Active&Fit Enterprise Marks with the symbol “®” or “TM” as appropriate;
 - ii. Include the following attribution in reasonably close proximity to its first use of the Marks in any document or on a screen display, or in a location to which users are directed for statements concerning the ownership of intellectual property and licensing rights:
 1. “Silver&Fit®, The Silver Slate®, and Silver&Fit design logo, Active&Fit Enterprise®, Active&Fit ExerciseRewardsTM and the Active&Fit Enterprise design logo are trademarks of American Specialty Health Incorporated.”

CMB may not alter the Silver&Fit Marks or Active&Fit Enterprise Marks in any way, including, but not limited to, skewing, changing the color, rotating, separating logo elements or changing the typeface.

- c. **Approval for Use of Marks.** Any approval contemplated in Section a above and so granted shall be deemed automatically withdrawn upon the expiration or termination of this Agreement, unless sooner withdrawn by written notice of the Party that granted the approval.
- d. **Injunctive Relief.** The Parties agree that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm. Therefore, in addition to any other rights or remedies available at law or in equity, the non-breaching Party is entitled to seek injunctive relief to restrain or enjoin the breach, without any requirement of bond or security.

9. Confidentiality.

- a. **Confidential Information.** Confidential Information is all information in any form that is identified by the Party disclosing the information (“Disclosing Party”) as confidential or proprietary at the time of the disclosure or that, under the circumstances surrounding the disclosure, should reasonably be considered as confidential or proprietary, including, but not limited to trade secrets, internal business practices, business records, processes, plans, goals, strategies, software systems, protocols, policies, procedures, customers, employees, business partners, finances, products, services and pricing. Confidential Information shall also include the content of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information which (a) is generally available to the public at the time of disclosure by the Disclosing Party; (b) was rightfully and legally available to the Party receiving the information (“Receiving Party”) on a non-confidential basis prior to the information’s disclosure by the Disclosing Party; (c) becomes rightfully and legally available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that the source is not bound by a Confidentiality Agreement with the Disclosing Party or otherwise prohibited from transmitting the information to the Receiving Party by a contractual, legal or fiduciary obligation; or (d) is independently developed by the Receiving Party.

ASH Fitness acknowledges that CMB is subject to the requirements of its state’s Public Records Act and that some information which ASH Fitness deems confidential may be disclosed under this Act. In the event that any such proprietary information of ASH Fitness is required to be disclosed by CMB, by law or valid order of a court or other governmental authority, CMB shall, to the extent legally permitted, give notice to ASH Fitness. ASH Fitness shall be responsible for objecting to such disclosure or for obtaining a protective order requiring that the propriety information so disclosed be used only for the purposes for which the order was issued.

- b. **Disclosures Required By Law.** Where Confidential Information is required to be disclosed by court order, subpoena, regulatory agency or otherwise required by law, the Receiving Party shall notify the Disclosing Party as soon as reasonably practical so that they may seek any such protective orders or other confidential protections, in its sole discretion and expense, as it may elect. If disclosure is required, the Receiving Party shall gain reasonable assurances as to the confidentiality of the information being disclosed and shall only disclose such Confidential Information as necessary to comply with the order. The Disclosing Party shall have the right to inspect the information being disclosed by the Receiving Party.

- c. **Protection of Confidential Information.** During the Term of this Agreement, and at all times thereafter, Receiving Party agrees to receive and maintain Confidential Information in strictest confidence and shall use such Confidential Information solely for the purpose of performing obligations under this Agreement. The Receiving Party shall be permitted to disclose or provide access to the Disclosing Party's Confidential Information to their employees, attorneys, consultants or agents only as necessary for the performance of obligations under this Agreement. Receiving Party shall take sufficient steps to require that its employees or any other third parties to whom Confidential Information is disclosed shall maintain the confidentiality of the Confidential Information. Receiving Party shall not otherwise disclose such information to any third party without the prior written consent of the Disclosing Party.
- d. **Ownership of Confidential Information.** Receiving Party acknowledges and agrees that the Disclosing Party is the exclusive owner of the Confidential Information. Receiving Party acknowledges and agrees that it shall not have any right in the Disclosing Party's Confidential Information.
- e. **Return of Confidential Information.** Upon the Disclosing Party's request, or automatically upon the expiration or termination of this Agreement, the Receiving Party shall promptly return to the Disclosing Party all materials (including any and all copies thereof) containing any of the Disclosing Party's Confidential Information, unless the Disclosing Party otherwise directs the Receiving Party to destroy any of the materials. Upon the return or destruction of the materials the Receiving Party shall promptly certify in writing to the Disclosing Party that all materials have been returned or destroyed. If return or destruction of Confidential Information is infeasible, the Receiving Party will extend the protections of this Confidentiality Section to such information and limit its further use or disclosure to those purposes that make return or destruction infeasible.

10. **Governing Law and Dispute Resolution.**

- a. **Governing Law.** Unless governed by federal law, this Agreement shall be governed by and construed in accordance with the internal laws of the State of California without regard to its choice of law principles.
- b. **Disputes between CMB and ASH Fitness.** CMB and ASH Fitness will work together in good faith to resolve any disputes about their business relationship. Any dispute that arises under or relates to this Agreement shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach, unless federal jurisdiction applies, in which case, the Parties agree to resolve such disputes in a district court with geographic jurisdiction over the City of Manhattan Beach.

11. Indemnity.

- a. **Responsibility for Own Acts.** Each Party shall be responsible for its own acts or omissions and for any and all claims, liabilities, injuries, suits, demands and expenses of all kinds which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that Party or its employees or representatives in the performance or omission of any act or responsibility of that Party under this Agreement.
- b. **Indemnification.** Each Party shall indemnify (“Indemnifying Party”), defend and hold harmless the other Party (“Indemnified Party”), its directors, officers, trustees, employees and agents from and against any and all claims, demands, losses, lawsuits, judgments, settlements, penalties and expenses, including attorneys’ fees resulting from, arising out of or in connection with the negligence or willful misconduct by that party, its officers, agents and employees in connection with its obligations under this Agreement.
- c. **Notification and Procedures.** The indemnified party will notify the indemnifying party in writing of its knowledge or receipt of any notice of a potential demand, claim or legal action (collectively “Legal Claim”) or the commencement a Legal Claim as soon as practicable, provided that the failure to notify the indemnifying party will not relieve the indemnifying party from any liability under this Agreement except to the extent that the indemnifying party’s ability to defend against or avoid Legal Claims has been prejudiced by such delay. The indemnifying party shall promptly (and in no event later than thirty (30) days after receiving notice of a Legal Claim) decide whether to assume control of the defense of a Legal Claim. If the indemnifying party does not elect to control such defense, then indemnified Party shall assume such control of the defense and indemnifying party will remain liable to indemnify for all reasonable attorneys’ fees and costs. In the event that the indemnifying party elects to control the defense of Legal Claims, the indemnifying party’s choice of counsel shall be reasonably satisfactory to the indemnified party, and the indemnified party shall be entitled to participate in such defense and shall cooperate fully in connection therewith, including in determining the validity of any Legal Claim or assertion requiring indemnity hereunder and in defending against third parties with respect to the same. The party that is not controlling the defense of a Legal Claims may have its own counsel present at its own cost to monitor proceedings related to the Legal Claims. The indemnifying party hereby agrees not to settle or compromise any Legal Claims without prior written consent of the indemnified party.
- d. Notwithstanding the above, nothing in this Agreement constitutes a waiver by CMB of any statutory or common law defenses, immunities or limits of liability.

12. Information Safeguards.

- a. **Privacy of Member Personal Information.** ASH Fitness will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of member personal information received from CMB. The safeguards will reasonably protect members' personal information from intentional or unintentional use or disclosure in violation of the HIPAA Privacy Rules; and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
- b. **Security of Member Personal Information.** ASH Fitness will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of member personal information that ASH Fitness creates, receives, maintains, or transmits as required by the HIPAA Security Rules or other applicable laws, as of the compliance date for such obligations as applied to ASH Fitness.
- c. **Validation of Privacy and Security Controls.** On an annual basis, upon request, ASH Fitness shall select one of the two options to demonstrate the maturity of the information security program in relation to securing confidential information, including personal information.

Option 1: Submit evidence of HITRUST CSF certification letter and report including Interim Assessment letter and/or Bridge Assessment letter as applicable.

Option 2: Comprehensive security risk assessment report issued by a qualified third-party.

13. General Provisions.

- a. **Amendments.** Except as provided in this section, this Agreement may only be amended by the mutual written consent of the Party's duly authorized representatives.
- b. **Laws and Regulations.** Each Party shall comply with all applicable State and Federal Laws in connection with its activities pursuant to this Agreement. Some compensation payable to ASH Fitness pursuant to this Agreement may consist of federal funds; in which case, ASH Fitness acknowledges that it will be required to comply with certain laws applicable to entities and individuals receiving federal funds.

- c. **Background Investigations.** ASH Fitness will require that each applicant for employment complete a form authorizing ASH Fitness to conduct a background check from an outside consumer reporting agency. The background check will include, where applicable: 1) Employment History; 2) Criminal Records; 3) Professional References; 4) Social Security Trace; 5) Education Verification (Highest Degree/Diploma Attained); and 6) Applicable lists maintained by federal or state agencies, such as but not limited to, HHS Office of Inspector General (OIG) and the Government Services Administration (GSA), excluding persons from participation in federally or state funded health care programs.
- d. **Non-Discrimination.** ASH Fitness shall not discriminate against an Eligible Member or Enrolled Member for any reason, including but not limited to age, sex, marital status, religion, ethnic background, national origin, ancestry, race, sexual orientation, gender, gender identity, gender expression, mental or physical disability, health status, genetic information, payment experience, medical history, evidence of insurability, veteran status or geographic location within the CMB Service Area or source or amount of compensation, or other basis prohibited by law.
- e. **Audits.** CMB may elect to conduct audits of ASH Fitness at ASH Fitness' office on an annual basis to ensure that ASH Fitness meets applicable State and Federal Laws and regulatory requirements. However, if an audit determines deficiencies exist and these deficiencies are not corrected in accordance with the Corrective Action Plan ("CAP") within the allotted time frame as specified below, CMB is allowed follow-up audits to confirm that these deficiencies have been resolved. CMB shall provide ASH Fitness with fifteen (15) business days advance notice of such audit unless such shorter timeframe is required by the request of a regulatory agency. Upon completion of the audit, CMB shall provide ASH Fitness, within a reasonable period of time, preliminary observations ("Preliminary Observation Process") regarding the audit completed and allow ASH Fitness to provide additional information and/or documentation within fourteen (14) calendar days to respond to CMB's preliminary observations. CMB shall provide ASH Fitness a final summary of its findings, taking into account any observations already resolved during the Preliminary Observation Process and any request for corrective action plans within thirty (30) calendar days of audit completion. In the event CMB identifies deficiencies in ASH Fitness' performance under this Agreement, ASH Fitness shall submit a Corrective Action Plan (a "CAP") to CMB within thirty (30) calendar days of receipt of CMB's findings. Such CAP must be acceptable to CMB. All identified deficiencies shall be corrected as soon as possible but no later than the timeframe mutually agreed upon in the CAP. ASH Fitness shall cooperate with any state or federal audits and shall provide any and all information reasonably requested by CMB in connection with such audits.

- f. **Independent Contractor Relationship.** The relationship between the Parties is an independent contractor relationship. Neither Party nor their employees or agents are employees, partners, or agents of the other Party. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the Parties other than that of independent parties contracting solely for the purpose of effectuating this Agreement. Nothing contained in this Agreement shall cause either Party to be liable or responsible for any debt, liability or obligation of the other Party or any third party unless such liability or responsibility is expressly assumed by the Party sought to be charged therewith.
- g. **Advertising or Publicity.** Neither party shall use the name of the other party or refer to the existence of the Agreement or Statement of Work in publicity releases or advertising without the other party's prior written permission.
- h. **Severability.** Neither the invalidity nor unenforceability of any term or provision in this Agreement shall affect the validity, enforceability or approval of any other term or provision of this Agreement.
- i. **No Third-Party Beneficiaries.** Except for the Parties no other individuals or entities are intended to be or are in fact beneficiaries of this Agreement, and this Agreement's existence shall in no way whatsoever create any right on behalf of any third party vis-à-vis either of the Parties. For the avoidance of doubt, Subcontractors are not beneficiaries under this Agreement.
- j. **Assignment.** This Agreement and the rights, interests and benefits hereunder shall not be assigned, transferred or pledged in any way by ASH Fitness or CMB and shall not be subject to execution, attachment or similar process without the prior written consent of the non-assigning Party. However, either Party may assign this Agreement and its rights, interests and benefits hereunder to any entity which is a corporate Affiliate of that Party.
- k. **Notice.** All notices required or permitted by this Agreement shall be in writing and may be delivered in person or may be sent by registered or certified mail or nationally recognized overnight couriers that guarantees next day delivery, or by facsimile transmission, and shall be deemed sufficiently given if served in the manner specified in this Section. The addresses below shall be the particular Party's address for delivery or mailing of notice purposes:

If to CMB:

Attn: Briza Morales
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5257
Email: bmorales@manhattanbeach.gov

With a courtesy copy to:
Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@rwglaw.com

If to ASH Fitness:

American Specialty Health Fitness, Inc.
10221 Wateridge Circle
San Diego, CA 92121
Facsimile: 888-720-2746
Attention: Chairman, CEO & President

With a Copy to:

American Specialty Health Fitness, Inc.
10221 Wateridge Circle
San Diego, CA 92121
Attention: Chief Legal Officer

The Parties may change the names and addresses noted above through written notice in compliance with this Section. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark date. Notices delivered by nationally recognized overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the notice to a nationally recognized overnight courier. If any notice is transmitted by facsimile transmission or similar means, the notice shall be deemed served or delivered upon telephone confirmation of receipt of the transmission, provided a copy is also delivered via mail or overnight courier.

- l. **Force Majeure.** Neither party will be liable for delay in delivery or nonperformance in whole or in part, nor will the other party have the right to terminate this Agreement where delivery or performance has been affected by a Force Majeure Event, except as otherwise specifically provided in this Section or in any Termination provisions of this Agreement. "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that prevents a nonperforming party, in whole or in part, from performing its obligations under this Agreement, or satisfying any conditions to the obligations of the performing party under this Agreement where: (i) the act or event is beyond reasonable control of and not the fault of the nonperforming party, e.g. war, terrorism, riot or insurrections, strike, flood, fire, explosion, pandemic, epidemic, quarantine or other similar event; (ii) the nonperforming party has been unable to avoid or overcome the act or event by the exercise of best efforts; and (iii) the nonperforming party gives notice to the performing party as soon as is practicable after the act or event (or commencement of the act or event if the Force Majeure event lasts more than three (3) calendar days) stating the nature of the act or event, its anticipated duration, and any action the nonperforming party is taking to avoid or minimize its effect.

The suspension of performance will be of no greater scope and no longer duration than is reasonably required and the nonperforming party must use commercially reasonable efforts to remedy its inability to perform. In the event the suspension of performance continues for one (1) month after the initial occurrence of the Force Majeure Event, and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the performing party may terminate this Agreement immediately by providing written notice to the nonperforming party.

- m. **Entire Agreement.** This Agreement, including all exhibits and attachments hereto, represents the entire agreement between the Parties concerning the subject matter hereof and supersedes all previous Agreements and understandings, oral or written, between the Parties regarding the subject matter for this Agreement. The Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. Any authorized officer may execute the Agreement with an electronic signature in lieu of a manual signature. Each of the Parties understand and agree that the Agreement may be delivered to the other Party either in the form of an executed hard copy original or an executed original sent by electronic transmission, and that receipt of an electronic transmitted Agreement purportedly bearing the signature of the other party shall bind the Parties with the same force and effect as the delivery of a hard copy original.

- n. **Non-Appropriation of Funds.** Payments to be made to ASH Fitness by CMB for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that CMB does not appropriate sufficient funds for payment of ASH Fitness's services beyond the current fiscal year, this Agreement shall cover payment for ASH Fitness's services only to the conclusion of the last fiscal year in which CMB appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.
- o. **Attorneys' Fees.** In the event that either Party brings legal action relating to this Agreement pursuant to Article 10 herein, each Party shall be responsible for its own attorneys' fees, costs and expenses incurred in such action.
- p. **Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.
- q. **Conflicts of Interest.** ASH Fitness affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services contemplated by this Agreement. ASH Fitness and its officers, employees, associates and subcontractors, if any, shall comply with all conflict-of-interest statutes of the State of California applicable to ASH Fitness's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, ASH Fitness may perform similar Services for other Clients.

[SIGNATURES ON FOLLOWING PAGE]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

ASH Fitness

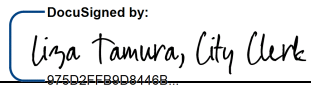
City of Manhattan Beach,
a California Municipal Corporation

American Specialty Health Fitness, Inc.,
a Delaware Corporation

By: 
Name: Talya Mirzakhanian
Title: City Manager
Date: 12/30/2024

By: 
Name: George Devries
Title: Chairman, CEO & President
Date: 12/20/2024

ATTEST:

By: 
Name: Liza Tamura
Title: City Clerk
Date: 12/30/2024

APPROVED AS TO FORM:

By: 
Name: Quinn M. Barrow
Title: City Attorney
Date: 12/30/2024

APPROVED AS TO FISCAL IMPACT:

By: 
Name: Onyx Jones
Title: Interim Finance Director
Date: 12/20/2024

APPROVED AS TO CONTENT:

By: 
Name: Lisa Jenkins
Title: Human Resources Director
Date: 12/20/2024

Certificate Of Completion

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City of Manhattan Beach - Human Resources

1400 Highland Ave

Manhattan Beach, CA 90266

hrjobrequest@manhattanbeach.gov

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Record Tracking

Status: Original

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Holder: City of Manhattan Beach - Human

Resources

hrjobrequest@manhattanbeach.gov

Location: DocuSign

Signer Events

Lisa Jenkins, Human Resources Director

ljenkins@manhattanbeach.gov

Human Resources Director

City of Manhattan Beach

Security Level: Email, Account Authentication
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Signature



Signature Adoption: Uploaded Signature Image
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Breana Contreras

contracts@manhattanbeach.gov

City of Manhattan Beach

Security Level: Email, Account Authentication
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Briza Morales

bmorales@manhattanbeach.gov

Risk Manager

City of Manhattan Beach

Security Level: Email, Account Authentication
(None)



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Signed using mobile

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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

George Devries

ashfinalcontract@ashn.com

Chairman, President and CEO

American Specialty Health

Security Level: Email, Account Authentication
(None)



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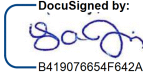
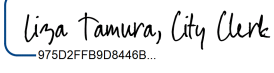
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Electronic Record and Signature Disclosure:

Accepted: 12/20/2024 1:05:21 PM

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Onyx Jones, Interim Finance Director ojones@manhattanbeach.gov Interim Finance Director City of Manhattan Beach Security Level: Email, Account Authentication (None)	 DocuSigned by: 2E7A73EAFD77469... Signature Adoption: Pre-selected Style Using IP Address: 104.172.233.170	Sent: 12/20/2024 1:08:59 PM Viewed: 12/20/2024 1:51:19 PM Signed: 12/20/2024 1:58:30 PM
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Talyn Mirzakhanian, City Manager tmirzakhanian@manhattanbeach.gov Acting City Manager City of Manhattan Beach Security Level: Email, Account Authentication (None)	 Signed by: E8FEFD107389443... Signature Adoption: Pre-selected Style Using IP Address: 47.176.8.47	Sent: 12/30/2024 8:42:08 AM Viewed: 12/30/2024 10:26:16 AM Signed: 12/30/2024 10:26:24 AM
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Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
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Copy of Contract ashfinalcontract@ashn.com Chairman, President and CEO American Specialty Health Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 12/20/2024 1:05:21 PM ID: 6896df02-941d-404c-bdec-1f70a657c494	COPIED	Sent: 12/30/2024 10:51:55 AM Viewed: 12/30/2024 11:04:13 AM
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Matthew Vock MatthewV@ashn.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/30/2024 10:51:55 AM
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Notary Events	Signature	Timestamp
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Electronic Record and Signature Disclosure		