

**ORDINANCE NO. 197-23**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CLEVELAND CLINIC FITNESS CENTER AND MEDINA COMMUNITY RECREATION CENTER HEALTH AND FITNESS AGREEMENT.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:**

**SEC. 1:** That the Mayor is hereby authorized and directed to execute a Cleveland Clinic Fitness Center and Medina Community Recreation Center Health and Fitness Agreement.

**SEC. 2:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein, and is subject to the Law Director’s final approval.

**SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

**SEC. 4:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.


**PASSED:** November 27, 2023

**SIGNED:** John M. Coyne, III  
President of Council

**ATTEST:** Kathy Patton  
Clerk of Council

**APPROVED:** November 28, 2023

**SIGNED:** Dennis Hanwell  
Mayor

THE UNDERSIGNED, CLERK OF THE COUNCIL OF THE CITY OF MEDINA, OHIO, HEREBY CERTIFIES THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE-RESOLUTION NO. 197-23 ADOPTED BY THE COUNCIL ON Nov. 27, 2023  
  
CLERK OF COUNCIL

ORD 197-23  
Exh. A

## **Cleveland Clinic Fitness Center and Medina Community Recreation Center Health and Fitness Agreement**

This Health and Fitness Agreement is made and entered into as of January 1, 2024, between the Cleveland Clinic Foundation (CCF) and the City of Medina, on behalf of its Medina Community Recreation Center (MCRC), with its principal place of business at 855 Weymouth Road, Medina Ohio 44256.

WHEREAS, CCF offers eligible CCF employees and spouses/dependents with certain wellness benefits, including access to fitness centers ("EHP Program"); and

WHEREAS, MCRC would like to allow CCF to use the MCRC as one of these fitness centers, in accordance with this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, CCF and MCRC agree as follows:

### **1. Use of MCRC**

- The MCRC agrees to allow all eligible Cleveland Clinic Caregivers and eligible spouses/dependents (must be over the age of 16) access to their facility.
- All program participants (including spouses and dependents) must comply with Employee Healthcare Plan (EHP) program requirements, CCF requirements, and policies and procedures of the MCRC.
- Membership includes access to and use of MCRC facility and equipment.

### **2. Duties and Responsibilities of the CCF**

- Will assist with communication of program to all Cleveland Clinic Caregivers.
- Coordinate installation and maintenance of any equipment, software or online forms needed for the program, at no cost to the MCRC.
- Work with staff at MCRC to provide logistics for members who sign-up and who need to be cancelled or put on hold.

### **3. Duties and Responsibilities of the Medina Community Recreation Center**

- Provide access to facility for all eligible Cleveland Clinic employees and their eligible dependents over the age of 16 at the agreed upon rates, to be paid by CCF. Non eligible family members, who are not on CCF insurance or are under 16, will still qualify for the CCF rates which include the 30% discount, to be billed to the family.
- Provide Fitness Center with monthly membership list and a visit report.
- Provide space for equipment requested by CCF to track participation in the program, e.g., a card reader.
- The MCRC will book a community room as needed for any Hospital screenings, assessments, or meetings that they may require as part of this program. The Hospital already has Rehabilitation Services Rooms on site for those things, but in the event

those rooms are reserved, or inadequate, the MCRC will make every effort to accommodate the Hospital's needs.

**4. Member Rates and Payment Structure**

- MCRC agrees to invoice CCF for the agreed upon membership fee outlined below for the eligible CCF program participants. MCRC will invoice CCF on a monthly basis.
- The membership fee charged to CCF will be 30% less than the current membership rate that is offered to the public. Rates are subject to change when the membership rate ordinance changes. The MCRC will notify the CCF of any upcoming rate changes as soon as possible, but no later than October 31<sup>st</sup> of each year. An annual increase of membership rates is based on the annual Consumer Price index (CPI-W) for urban wage earners and clerical workers, as per the City of Medina's Membership Rate Ordinance's current verbiage, and the increase is not to exceed 3.0%. If a rate change is determined, it may go into effect on January 1, 2025, and upon this effective date, rates will remain fixed for the term of this Agreement, otherwise the rates below will remain fixed for the term of this Agreement.

**CCF rates, as of January 2024, including the 30% discount:**

Adult - \$175.00

2- Person: \$298.20

Senior: \$91.00

Youth membership: \$121.20

- Eligible CCF program participants will be able to sign up for an adult, 2-person, senior or youth membership whenever they choose, and the MCRC will invoice the CCF monthly, based on date of registration. CCF will pay all undisputed amounts within forty-five (45) days of receiving the invoice.
- For any member who cancels or becomes ineligible during their membership term, MCRC will prorate the remainder of the membership fees and credit the CCF on the monthly invoice for any remaining membership fees after the membership is terminated.
- Upon cancellation and proration of one member of a 2-person membership, the remaining person would be converted to an adult membership with their original contract date, with no additional charges of fees.
- If either party terminates this Agreement, CCF shall be reimbursed by MCRC a prorated amount of the prepaid annual membership fees paid by CCF for each current membership that will be terminated at such time.

**5. Term:** This Agreement is effective as of January 1, 2024, and shall continue in full force and effect until the 31<sup>st</sup> day of December, 2025. Thereafter, the agreement will renew for up to three additional calendar year (each calendar year known as a "Renewal Term").

**6. Termination:** Either party may terminate this agreement for any or no reason with 30 days written notice to the other party.

**7. Independent Contractor Status.** Nothing in this Agreement shall be construed to render MCRC or CCF, or any of its employees, agents, or officers, an employee, joint venture, agent, or partner of the other party.

- 8. Compliance with Laws.** By entering into this Agreement, the parties specifically intend to comply with all applicable state and federal laws, rules and regulations, including (i) the personal services safe harbor of the federal anti-kickback statute (42 U.S.C. 1320a-7(b)) and in particular, that the services performed under the Agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law; (ii) the Limitation on Certain Physician Referrals, also referred to as the "Stark Law" (42 U.S.C. 1395nn) and (iii) federal and state privacy laws. Accordingly, no part of any consideration paid hereunder is a prohibited payment for the recommending or arranging for the referral of business or the ordering of items or services; nor are the payments intended to induce illegal referrals of business. In the event that any part of this Agreement is determined to violate federal, state, or local laws, rules, or regulations, the parties agree to negotiate in good faith revisions to the provision or provisions which are in violation. In the event the parties are unable to agree to new or modified terms as required to bring the entire Agreement into compliance, either party may terminate this Agreement on sixty (60) days written notice to the other party.
- 9. Conflict of Interest.** CCF maintains and adheres to a Conflict of Interest Policy. In that connection MCRC represents that no CCF employees, officers or directors are employees, officers or directors of MCRC or serve on any boards or committees of or in any advisory capacity with MCRC except as disclosed herein: \_\_\_\_\_. Any payments made to such parties listed herein are at fair market value for services rendered.
- 10. Debarment.** MCRC represents that it has not been excluded, disbarred, suspended or otherwise declared ineligible to participate in federal health care programs, nor is CCF deemed an Excluded Contractor by the General Services Administration (collectively, "Debarred" or "Debarment"). MCRC shall not knowingly employ or contract with, any individual or entity that has been Debarred. MCRC shall provide CCF with immediate notice if MCRC receives notice of action or threat of action with respect to its Debarment, or MCRC becomes Debarred. Upon receipt of notice from MCRC related to this clause, CCF may terminate this Agreement immediately upon written notice to MCRC.
- 11. Tax Exempt Status.** The parties recognize that CCF is a non-profit, tax-exempt organization and agree that this Agreement will take into account and be consistent with CCF's tax-exempt status. If any part or all of this Agreement is determined to jeopardize the overall tax-exempt status of CCF and/or any of its exempt affiliates, then CCF will have the right to terminate this Agreement immediately.
- 12. Use of Name.** Except as required for purposes of performing its obligations under this Agreement, MCRC shall not use the name, logo, likeness, trademarks, image or other intellectual property of CCF for any advertising, marketing, endorsement or any other purposes without the specific prior written consent of an authorized representative of CCF as to each such use.
- 13. Compliance Related Changes.** The parties recognize that the law and regulations may change or may be clarified, and that terms of this Agreement may need to be revised, on advice of counsel, in order to remain in compliance with such changes or clarifications, and the parties agree to negotiate in good faith revisions to the term or terms that cause the potential or actual violation or noncompliance. In the event the parties are unable to agree to new or modified terms as

required to bring the entire Agreement into compliance, either party may terminate this Agreement on thirty (30) days written notice to the other party, or earlier if necessary to prevent noncompliance with a deadline or effective date.

- 14. Liability.** Each party is responsible for its own acts and omissions. CCF is not liable for any injuries or harm to anyone at MCRC.
- 15. Insurance.** MCRC will maintain at all times commercial general liability insurance in an amount sufficient to cover its services under this Agreement. Upon request by CCF, MCRC will provide a certificate of insurance evidencing this coverage.
- 16. Confidentiality.** Each party ("Receiving Party") acknowledges that, in the course of the performance of this Agreement, it may learn certain confidential and proprietary information about the other party's ("Disclosing Party") business and operations, including but not limited to, personnel information, financial statements and projections, marketing data, lists of customers and suppliers, procedures, methodologies, techniques, technology and know-how, specifications and designs ("Confidential Information"). Receiving Party agrees that it will keep all such information strictly confidential, and that it will not use it for any other purpose other than to exercise its rights and responsibilities under this Agreement, will not resell, transfer, or otherwise disclose such information to any third party without the Disclosing Party's specific, prior written consent. Receiving Party agrees that Disclosing Party is and shall remain the exclusive owner of Confidential Information disclosed hereunder and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of such rights to Receiving Party is granted or implied under this Agreement. Receiving Party shall, upon the request of Disclosing Party, return to Disclosing Party all drawings, documents and other tangible manifestations of Confidential Information received by Receiving Party pursuant to this Agreement (and all copies and reproductions thereof), provided Receiving Party may retain one copy in a secure location for the purpose of evidencing compliance with this Agreement. The obligations in this provision shall remain in effect in perpetuity. Specifically excepted from this is all information that: (a) was in the Receiving Party's legitimate possession prior to receipt of such information; (b) that is independently developed by personnel of the Receiving Party; or (c) was rightfully received from third parties and, to the best knowledge of the Receiving Party, without an obligation of confidentiality to the Disclosing Party; (d) is in the public domain through means other than by breach of this Agreement by the Receiving Party; or (e) is disclosed pursuant to any judicial or government request, requirement or order, provided that the Receiving Party takes reasonable steps to provide the Disclosing Party the ability to contest such request, requirement or order. The parties acknowledge that Confidential Information has competitive value, and that irreparable damage may result to the Disclosing Party if the Recipient discloses Confidential Information. The parties agree that legal proceedings at law or in equity, including injunctive relief, are appropriate in the event of a breach hereof without the duty of posting bond. MCRC understands and agrees that the terms and conditions of this Agreement are strictly confidential and may not be shared with any third party without CCF's prior written consent.
- 17. Notices.** All notices and other correspondence related to this Agreement shall be in writing and shall be delivered by certified mail, return receipt, or by facsimile transmission or electronic mail if the necessary information for delivery of such is shown below, addressed as follows:

If to CCF:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**With a copy to:**

The Cleveland Clinic Foundation  
Law Department  
3050 Science Park Drive, AC321  
Beachwood, Ohio 44122  
Attention: Chief Legal Officer

If to MCRC:

City of Medina, OH  
P.O. Box 703 Medina, OH 44258  
Attention: Mayer Dennis Harwell

22. **Non-Assignment.** MCRC shall not assign or subcontract any of its obligations under this Agreement without the advance written consent of CCF.
23. **Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Ohio, without regard to conflicts of laws provisions, and any legal action concerning the provisions hereof shall be brought in the courts sitting in the State of Ohio, county of Cuyahoga.
24. **General.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect. Any amendment to this Agreement must be in writing and must be signed by the parties. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
27. **Integration.** This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and warranties, representations and/or agreements between the parties in connection with the subject matter hereof, except as specifically set forth and referred to herein. Other documents referred to in this Agreement are integral parts hereof and by this reference are incorporated herein.

For purposes of this Agreement, the parties intend and agree that a signed copy delivered by facsimile or electronically shall be treated by the parties as an original of this Agreement and shall be given the same force and effect. In witness whereof, the parties hereto have caused this Agreement to be executed by their authorized agents as of the date first above written.

**THE CLEVELAND CLINIC FOUNDATION**

**CITY OF MEDINA**

DocuSigned by:  
By: Kevin Velasquez  
5CDAD6384957406...  
Authorized Signature

Kevin Velasquez  
Name (print or type)

Sourcing Director  
Title

12/19/2023  
Date

By:   
Authorized Signature

Dennis Harwell  
Name (print or type)

Mayer  
Title

12/19/2023  
Date

APPROVED AS TO FORM  
CCF Law Dept Contract ID No. 4282618  
Date: 12/18/2023 By: Jessica Slifko