

CLEVELAND PUBLIC LIBRARY

Finance Committee

February 18, 2021

**RESOLUTION AMENDING RESOLUTION AUTHORIZING AGREEMENT FOR
WELLNESS COACH SERVICES**

WHEREAS, On November 19, 2020, the Board of Library Trustees authorized the Library to enter into an agreement with Fitness Integration, LLC and the James B. Oswald Company for wellness coaching services for a period of January 1, 2021 through December 31, 2021, with the cost of such services up to \$70,000 paid by the James B. Oswald Company on behalf of the Cleveland Public Library; and

WHEREAS, Taylor Oswald LLC, the firm from which the Library obtains its benefit consulting services, has notified the Library that the above-described agreement that they furnished to the Library must include Taylor Oswald LLC instead of the James B. Oswald Company, their partner organization, and has requested that the Library execute the agreement in the form attached hereto; and

WHEREAS, The agreement proposed by Taylor Oswald LLC is in all other respects identical to the agreement approved by this Board on November 19, 2020; now therefore be it

RESOLVED, That this Board hereby amends the Resolution it adopted on November 19 2020 to authorize the Executive Director, CEO, or his designee to enter into an agreement with Fitness Integration, LLC and Taylor Oswald LLC, subject to the approval of the Director of Legal Affairs, for wellness coaching services for a period of January 1, 2021 through December 31, 2021, with the cost of such services paid by Taylor Oswald LLC on behalf of the Cleveland Public Library and to expend funds from General Fund No. 11510053-53710 (Professional Services) to cover the Library's portion, if any, of the cost of the contract with Fitness Integration, LLC after Taylor Oswald's contribution.

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (the “Agreement”) is made this __ day of January , 2021 (the “Effective Date”) between The Cleveland Public Library (the “Company” or “CPL”), a body politic and corporate, located at 325 Superior Avenue, Cleveland, Ohio 44114, and Taylor Oswald LLC, an Ohio corporation (the “Broker”) and Fitness Integration, LLC dba Spark360 (the “Contractor”).

RECITALS

WHEREAS, Contractor has developed a proprietary wellness program (the “Program”) and training materials (the “Materials”) for the Cleveland Public Library employees (“Trainees”);

WHEREAS, the Company has engaged the Broker for certain insurance brokerage and risk management services; and

WHEREAS, the Company desires to retain Contractor to develop and deliver wellness programming to its employees using the Program and the Materials, and Contractor is willing to provide this service on the terms and conditions set forth below;

THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein and intending to be legally bound hereby, the parties hereby agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.
2. **Engagement and Term.** Effective as of the date hereof on the terms and subject to the conditions set forth herein, the Company shall engage the Contractor and the Contractor shall be engaged by the Company to develop and deliver the wellness program to employees and contractors identified by the Company, (“Trainees”). The term of this Agreement shall begin immediately and shall terminate as provided in Section 9 hereof.
3. **Duties.** The Contractor will develop a wellness program for the Company’s Trainees in consultation with Company management, and will deliver the Program and Materials to Trainees individually or in groups on a schedule agreed to by the Contractor, Company management and the Trainees. Details of the training program services are outlined in Addendum A attached hereto to the Agreement. Parties agree that Addendum A identifies all of the services that Contractor has agreed to offer to the Company pursuant to this Agreement.
4. **Independent Contractor Status.** Contractor will be independent contractors and not employees of the Company or the Broker and, subject only to the terms of this Agreement, will determine their own methods of operation in providing services or completing their duty. Contractor will be free to engage in other business interests at the same time it is performing the services under this Agreement. Nothing in this Agreement will be construed as creating an employment relationship for purposes of the Internal Revenue Code of 1986, as amended, or any other law. No partnership, joint venture, or any other shared arrangement is created or intended hereby, nor will Contractor, its agents, subcontractors and employees be entitled to participate in

any plan, arrangement, or distribution by the Company or the Broker pertaining to or in connection with any pension, bonus, or other benefit for which an employee might be eligible. The Company will have no responsibility to provide, pay, or withhold salary, wages, payroll taxes, social-security taxes, worker's compensation insurance premiums, or any other employee-related expenses, obligations, or benefits to or on behalf of Contractor or the Broker, neither of whom will not in any way be an employee or agent of the Company. Contractor will be solely responsible for determining days and hours worked, and will be solely responsible for paying self-employment or other income-related taxes.

5. Compensation. Contractor will submit an invoice for agreed upon services and expenses to be reimbursed (see below) on or about the last business day of each month, and upon termination of this Agreement. Payment for the agreed upon schedule of services will be made in advance for the current month and the Broker, on behalf of the Company, will pay the amount of each such invoice to Contractor within thirty (30) business days of receipt of the invoice. For purposes of example only, services for January will be invoiced on January 1st and payment will be due February 1st.

6. Deposit. No deposit is required.

7. Taxes. Contractor is an independent contractor and as such neither the Company nor the Broker has any obligation for employee liability under state and federal laws. The Contractor is liable for all taxes applicable to any fees or expenses paid by the Broker on behalf of the Company to the Contractor under this Agreement. The Contractor shall, upon reasonable request, supply to the Broker or the Company, as applicable, any requested information for the Broker's, or the Company's, tax reporting purposes.

8. Business Expenses. The Company, will reimburse the Contractor for all ordinary and necessary out-of-pocket business expenses incurred and paid by the Contractor in the course and within the scope of the performance of the Contractor's duties under this Agreement, including but not limited to expenses for reproduction and preparation of Materials, and all other expenses of Contractor related to his duties under this Agreement, in accordance with the expense policy of the Company, provided such expenses are agreed to prior to their accrual and supported by appropriate documentation specifying such expenses in reasonable detail. Contractor shall issue the Company an invoice for business expenses on the last day of each month. The Company will pay the amount of each such invoice to Contractor within thirty (30) business days of receipt of the invoice.

9. Termination and Renewal.

(a) Termination. The engagement of the Contractor hereunder shall continue until the 31st day of December, 2021 unless otherwise terminated or extended as set forth in the following paragraphs of this Section 9.

(b) Termination by the Company or the Contractor. Either the Company or the Contractor may terminate this Agreement at any time with fifteen (15) days notice in the event the other party or the Broker breaches a material provision of this Agreement and does not cure the breach within a reasonable time after notice from the non-breaching party. During the notice period, the Contractor will continue to work, if so requested by the

Company, and be compensated in accordance with this Agreement. Notwithstanding the foregoing, the Broker may terminate this Agreement any time with fifteen (15) days notice in the event the Company has breached its obligation to pay the Broker pursuant to the terms of an agreement between the Company and the Broker.

(c) Automatic Renewal and Termination by Either Party. The program will be delivered for an initial term of one (1) year. After expiration of the initial term, the Agreement will automatically renew for successive three (3) year terms. Either party may terminate this Agreement with or without cause upon sixty (60) days' advance written notice to the other party prior to the expiration of the initial or any applicable renewal term

10. Non-Disclosure of Confidential Information. The Company, their officers, directors, employees, and affiliates have and will invest considerable resources in the development of its business, which includes generating and acquiring proprietary and confidential information, both tangible and intangible, all of which is owned by the Company, their officers, directors, employees, and affiliates. Contractor has invested and will continue to invest considerable resources in the development of the Program and Materials, which are owned by Contractor. The Contractor may not appropriate, attempt to appropriate or disclose to anyone the Confidential Information (including, but not limited to, employee personal healthcare information) of the Company their officers, directors, employees, and affiliates except as otherwise provided in this Agreement or as necessary to perform his duties under this Agreement. Neither the Company nor the Broker may appropriate, attempt to appropriate or disclose to anyone the Confidential information of Contractor except as otherwise provided in this Agreement. Specifically, during the term of the Agreement, the Contractor and the Company (i) shall each maintain the Confidential Information of the other in strict confidence; (ii) shall not disclose any Confidential Information of the other to any person or other entity; (iii) shall not use any Confidential Information of the other to the detriment of the other and for the benefit of any other person or entity; and (iv) shall not authorize or permit such use or disclosure and, in the Company's case, shall not permit any Trainee to disclose or use for his or her own purpose any Confidential Information of Contractor, including the Materials.

11. Contractor Insurance Policy Limit Requirements. During the Term of this Agreement, the Contractor will maintain the following insurance coverage with the policy amounts set forth below:

- a. Comprehensive general liability insurance (inclusive of professional liability insurance) with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;
- b. Comprehensive automobile liability (non-owned and hired vehicles) for bodily injury and property damage with limits of no less than One Million Dollars (\$1,000,000) per accident and Two Million Dollars (\$2,000,000) in the aggregate;
- c. Damage to Rented Premises of no less than Two Hundred Fifty Thousand Dollars (\$250,000);

12. Subcontractor Insurance. Contractor shall require each of its subcontractors, if any, to maintain its own insurance of like types.

13. Ownership of Intellectual Property. The Program and Materials and any copyrights or other intellectual property disclosed or contained therein are and shall remain the sole property of Contractor and neither the Company the Broker nor any Trainee shall have any right or interest in or to the Program or the Materials. Copies of the Materials may be retained by Trainees for their use within the scope of their duties with the Company, but shall not be copied, published, disseminated or used for any other purpose.

14. Additional References. Company expressly agrees to be bound by Contractor's Terms and Conditions and Privacy Policy, which are located at www.spark360.com/terms and www.spark360.com/privacy.

15. Severability. The covenants, provisions, and sections of this Agreement are severable, and in the event that any portion of this Agreement is held to be unlawful or unenforceable, the same will not affect any other portion of this Agreement, and the remaining terms and conditions or portions thereof will remain in full force and effect. This Agreement will be construed in such case as if such unlawful or unenforceable portion had never been contained in this Agreement, in order to effectuate the intentions of the Company and the Contractor in executing this Agreement.

16. No Waiver. The failure of any of the Company, the Broker or the Contractor to object to any conduct or violation of any of the covenants made by the other under this Agreement will not be deemed a waiver of any rights or remedies. No waiver of any right or remedy arising under this Agreement will be valid unless set forth in any appropriate writing signed by each of the Company, the Broker and the Contractor.

17. Assignment and Survival. This Agreement is binding upon the Company, the Broker and the Contractor and their respective heirs, personal representatives, successors and assigns. The obligations of Sections 10 and 13 of this Agreement will survive the termination of this Agreement. The Contractor may assign or delegate its rights and obligations under this Agreement subject to the approval of the Company, which approval will not be unreasonably withheld. The Company may not assign its rights under this Agreement or delegate its duties and obligations under this Agreement without the prior written consent of the Contractor or to any entity acquiring all or substantially all of the assets of the Company or to any other entity into which the Company may be liquidated, merged or consolidated. The Broker may not assign or delegate its duties or obligations under this Agreement or assign its rights under this Agreement without the prior written consent of each of the Contractor and the Company.

18. Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to the choice of laws principals thereof.

19. No Oral Notifications. No alterations, amendments, changes or additions to this Agreement will be binding upon any of the Company, the Broker or the Contractor unless reduced to writing and signed by each of the Company, the Broker and the Contractor.

20. Injunctive Relief. The covenants made in, and the rights conveyed by, this Agreement are of a unique and special nature. Any violation of Sections 10 and 13 of this Agreement by the

Company or the Broker will result in immediate and irreparable harm to the Contractor. In such event, the Contractor shall be entitled to an injunction or a decree of specific performance from a court of equity in addition to other rights or remedies, which the Contractor may have at law or in equity.

21. Notices. Any written notice called for in this Agreement may be given by personal delivery, first-class mail - return receipt requested, overnight delivery service, or facsimile transmission (telefax). Notices given by personal delivery and telefax will be effective on delivery; by overnight service on the next business day; and by first-class mail on the date acknowledgment of receipt is executed. The address for notices for each party is set forth below.

Company: 325 Superior Avenue, Cleveland, OH 44114

Contractor: 362 Terrace Pl. Oakmont, PA 15139

Broker: Oswald Centre, 1100 Superior Avenue, Suite 1500, Cleveland, OH 44114

22. Headings. The section headings of this Agreement are for convenience of reference only and shall not affect the construction or interpretation of any of the provisions hereof.

23. Entire Agreement. This Agreement constitutes the entire understanding between the Company and the Contractor and supersedes all prior oral or written communications, proposals, representations, warranties, covenants, understandings or agreements between the Company and the Contractor relating to the subject matter of this Agreement.

24. Counterparts. This Agreement may be executed in more than one counterpart, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year above written.

Fitness Integration LLC dba Spark360

By: _____
Name: JORDAN TARADASH
Title: PRESIDENT

Taylor Oswald LLC

By: _____
Name:
Title:

CLEVELAND PUBLIC LIBRARY

By: _____
Name:
Title:

Addendum A

Cleveland Public Library Wellness Program	Level 4
Current State and Needs Assessment	√
Focus Groups at Cleveland Public Library - qualitative data gathering conducted at main location to understand the culture, workday and needs of employees	√
Whole Population Survey – Translate insights gathered at the focus groups into a population-based survey to derive a data driven wellness program	√
Spark360's 3Ct proprietary framework, consisting of Consulting, Coordinating and Coach/Navigation	√
Wellness Coordinator (Program design, communication, implementation)	16 hours/ month
Unlimited Wellness Coaching for All Employees (onsite, virtual and telephonic coaching sessions)	√
Wellness Campaigns	4
SPARK360 web and mobile platform accounts for 450 employees	√
SPARK360 web and mobile platform accounts for family members	√
Incentive Tracking, Management and Reporting	√
High Risk Outreach Consulting (based on data available)	√
High Risk Outreach (based on data available)	√
Annual Fee	\$59,400 (\$11 PEPM)