

**RESOLUTION 59-24**

**RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT BETWEEN THE  
BOROUGH OF CLAYTON AND 3-DIMENSIONAL PHYSICAL THERAPY TO PROVIDE  
FUNCTIONAL STRENGTH/BALANCE CLASSES FOR SENIORS  
AT THE CLAYTON SENIOR CENTER**

**WHEREAS**, the Borough of Clayton has agreed to enter into a Contract with 3-Dimensional Physical Therapy to provide Functional Strength/Balance classes at the Clayton Senior Center; and

**WHEREAS**, a copy of the Contract has been reviewed by all parties and attached hereto.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve and authorize the execution of the attached Contract between the Borough of Clayton and 3-Dimensional Physical Therapy to provide Functional Strength/Balance classes at the Clayton Senior Center.
2. That the Mayor and/or Borough Administrator be and is hereby authorized to execute said Contract on behalf of the Borough of Clayton.

**ADOPTED** at the meeting of the Borough Council of the Borough of Clayton held on February 8, 2024.

**BOROUGH OF CLAYTON**



\_\_\_\_\_  
THOMAS BIANCO, Mayor

**ATTEST:**



\_\_\_\_\_  
Christine Newcomb, Borough Clerk

**CERTIFICATION**

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, in the County of Gloucester, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton held on February 8, 2024.

\_\_\_\_\_  
Christine Newcomb, Borough Clerk

**CONTRACT BETWEEN THE BOROUGH OF CLAYTON AND 3 DIMENSIONAL  
PHYSICAL THERAPY TO PROVIDE A FUNCTIONAL  
STRENGTHENING/BALANCE for Seniors program THE CLAYTON SENIOR  
CENTER**

**THIS CONTRACT** is made on this 8th day of February 2024 by and between the BOROUGH OF CLAYTON, a municipal corporation, with offices located at 125 N. Delsea Drive, Clayton, New Jersey 08312, hereinafter referred to as “the Borough”, and 3 DIMENSIONAL PHYSICAL THERAPY, hereinafter referred to as “the VENDOR”, located at 1155 S Black Horse Pike, Williamstown, NJ 08094.

**RECITALS**

**WHEREAS**, the Vendor desires to provide Functional Strengthening/Balance for Seniors program at the Clayton Senior Center (“Services”); and

**WHEREAS**, the Functional Strengthening/Balance for Seniors program will be held at the Clayton Senior Center on Wednesdays, beginning on February 7, 2024, and ending on March 27, 2024; and

**WHEREAS**, the Vendor is qualified to perform the Services and desires to so perform them pursuant to the terms and conditions proposed by the Borough and incorporated into this contract.

**NOW, THEREFORE**, in consideration of the mutual promises, agreements, and other considerations made by and between the parties, the Borough and the Vendor do hereby agree as follows:

1. **TERM:** The term of this contract shall be for a 2-month period and will include 8 classes, commencing on February 7, 2024 and ending on March 27, 2024.
2. **COMPENSATION:** The Vendor agrees there is no charge for any session the Vendor conducts during the term of this contract. The Vendor shall be responsible for all costs and expenses related to the performance of the services provided for the Borough, including, but not limited to, costs of any fees, fines, licenses, bonds or taxes required of or imposed against the Vendor, and all of the Vendor’s other general costs of doing business. The Borough shall not be responsible for expenses incurred by the Vendor in performing Services for the Borough except as specifically agreed upon in writing by the Borough.
4. **DUTIES OF THE VENDOR:** The specific duties of the Vendor shall be as set forth and agreed to by the Parties and incorporated in its entirety and made a part of this Contract. Should a conflict occur between the description of the scope of work set forth in this Contract and any oral discussions between the Parties, this Contract shall prevail.

The Vendor agrees that it has or will comply with, and where applicable shall continue throughout the period of this Contract to comply with, all of the requirements of this Contract.

**5. FURTHER OBLIGATIONS OF THE VENDOR:** During the performance of this Contract, the Vendor agrees as follows:

- a. The Vendor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Vendor will ensure that equal employment opportunity is afforded to such applicants, recruitment and employment and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth the provisions of this nondiscrimination clause.
- b. The Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- c. The Vendor will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Vendor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Vendor agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as amended and supplemented from time to time and the Americans with Disabilities Act.
- e. The Vendor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2 or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.
- f. The Vendor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

- g. The Vendor agrees to inform in writing its appropriate recruitment agencies, including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- h. The Vendor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal Law and applicable Federal Court decisions.
- i. In conforming with the targeted employment goals, the Vendor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal Law and applicable Federal Court decisions.
- j. The Vendor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:
  - 1) Letter of Federal Affirmative Action Plan Approval
  - 2) Certificate of Employee Information Report
  - 3) Employee Information Report from AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance))
- k. The Vendor shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

**6. DUTIES AND RESPONSIBILITIES OF THE BOROUGH:** During the performance of this Contract, the Borough agrees to:

- a. Provide any and all supervision, direction and control of all Assigned Employees of the Vendor for the duration of the Contract.

- b. Properly supervise, control and safeguard Borough premises, processes, or systems, and not permit Assigned Employees of the Vendor to operate any vehicle, mobile equipment, or entrust them with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without the Vendor's express prior written approval or as strictly required by the job description provided to the Vendor.
- c. Provide Assigned Employees of the Vendor with a safe work site and provide appropriate information, training, and safety equipment with respect to any hazardous substance or conditions to which they may be exposed at the work site.
- d. Not change Assigned Employees of the Vendor job duties without Vendor's express written approval; and
- e. Exclude Assigned Employees of Vendor from the Borough's benefit plans, policies, and practices, and not make any offer or promise relating to Assigned Employees' compensation or benefits.

**7. LICENSING:** If the Vendor is required to maintain a license in order to perform the services which are the subject of this Contract, then, prior to the effective date of this Contract and as a condition precedent to its taking effect, Vendor shall provide to the Borough a copy of all current license to operate in the State of New Jersey, which license(s) shall be in good standing and shall not be subject to any current action to revoke or suspend and shall remain so throughout the term of this Contract.

Vendor shall at all times conduct him or herself in compliance with all applicable federal, state and local laws, rules and regulations and canons of professional ethics; and shall carry out their duties in accordance with the professional standard of care adhered to by firms performing services of a like or similar nature under like or similar circumstances. Vendor must comply with all requirements of New Jersey law and regulations applicable to the Borough.

Vendor shall notify the Borough immediately should the Vendor, or such key personnel of the Vendor as determined in the sole and reasonable judgment of the Borough: (i) become the subject of any disciplinary actions, sanctions or other actions as a result of investigative proceedings by a state or federal agency, accrediting body, or professional association; (ii) be indicted or otherwise involved in a state or federal criminal prosecution or names as a party in any litigation that relates in whole or in part to the Vendor's professional ethics; and/or (iii) have its license suspended, revoked or changed in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Vendor.

**8. TERMINATION:** This Contract may be terminated as follows:

- a. If Vendor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by Borough in the event that the appropriate governmental entity with jurisdiction has instituted an

action to have the Vendor's license suspended or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice

b. If, through any cause, the Vendor, where applicable, shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor shall violate any of the covenants, agreements, or stipulations of this Contract, the Borough shall thereupon have the right to terminate this Contract by giving written notice to the Vendor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Vendor under this Contract, shall be forthwith delivered to the Borough.

c. Bankruptcy or insolvency of the Vendor; sale of the business of the Vendor, or death or permanent disability of the Vendor in the event the Vendor is an individual.

d. Should the Borough default in the performance of this Contract or materially breach any of its provisions, which remain uncured after thirty (30) days after notice is given to the Borough, the Vendor may terminate this Contract, subject to the terms of Article 12 hereof.

e. Should the Borough fail to pay Vendor all or any part of the compensation earned for services rendered within sixty (60) days after the date due, the Vendor may at its option, terminate this Contract.

f. The Borough may terminate this Contract any time by a notice in writing from the Borough to the Vendor. If the Contract is terminated by the Borough as provided herein, the Vendor will be paid for the Services rendered to the time of termination.

g. Notwithstanding the above, the Vendor, where applicable, shall not be relieved of liability to the Borough for damages sustained by the Borough by virtue of any breach of the Contract by the Vendor, and the Borough may withhold any payments to the Vendor for the purpose of set – off until such time as the exact amount of damages due to the Borough from the Vendor is determined.

Termination shall not operate to affect the validity of the indemnification provisions of this Contract.

**9. NO ASSIGNMENT OR SUBCONTRACT:** This Contract may not be assigned or subcontracted by the Vendor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the Borough, and no obligation on the Borough's part to the assignee shall arise, unless the Borough shall elect to accept and to consent to such assignment or subcontract.

**10. INDEMNIFICATION:** The Vendor, where applicable, shall be responsible for, shall keep, save and hold the Borough harmless from, and shall indemnify the Borough against any claim,

loss, liability, expense (specifically including, but not limited to costs, counsel fees and/or expert fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Vendor's services or to any other persons, or from any damage to any property sustained in connection with this Contract to the extent caused by any acts or omissions attributable to the negligence or malpractice of any of its officers, directors, employees, agents, servants or independent Vendors, or from the Vendor's failure to perform pursuant to the terms of this Contract. The Vendor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

**11. INSURANCE:** Vendor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builders and Workers' Compensation insurance in amounts and with companies deemed reasonably satisfactory by the Borough. Said policies shall be in compliance with any applicable requirements of the State of New Jersey and of the United States.

If Vendor is a member of a profession which is subject to suit for professional malpractice, then Vendor shall maintain and continue in full force and effect an insurance policy for professional liability / malpractice with a minimum limit of \$1,000,000 per claim and in the aggregate. Vendor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to Borough a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the terms of this Contract. The Borough shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Vendor also hereby agrees to continue said policy in full force and effect for a period of two years following the termination of this Contract and shall provide the Borough with copies of certificates of insurance as the certificates may be renewed during that period of time.

**12. SET-OFF:** Should Vendor either refuse or neglect to perform the service which Vendor is required to perform in accordance with the terms of this Contract, and if expense is incurred by the Borough by reason of Vendor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Vendor. Exercise of such set-off shall not operate to prevent the Borough from pursuing any other remedy to which it may be entitled.

**13. PREVENTION OF PERFORMANCE BY THE BOROUGH:** In the event that the Borough is prevented from performing this Contract by circumstances beyond its control, then any obligations (other than any to pay Vendor for services performed prior to any suspension of services for which the Vendor has not been paid) owing by the Borough to the Vendor shall be suspended without liability for the period during which the Borough is so prevented.

**14. NON-WAIVER:** The failure of either party hereto insist in any one or more instances upon strict compliance with the performance of this Contract or to take advantage of any respective rights hereunder shall not be construed to be a waiver of such provisions or the relinquishments of such rights in other instances, but the same shall continue and remain in full force and effect.

**15. PARTIAL INVALIDITY:** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

**16. NOTICES:** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the Borough, Attn: Sue Miller, Administrator, 125 N. Delsea Drive, Clayton, New Jersey 08312, or the Vendor at 905 Bayberry Court, Williamstown, New Jersey 08094, or by personal service, or, if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

**17. COMPLIANCE WITH APPLICABLE LAW:** Vendor shall at all times during the course of the effective period of this Contract comply with and be subject to all applicable laws, rules and regulations of the State of New Jersey and of the United States and or any other entity having jurisdiction pertaining to the performance of Vendor's services.

**18. INDEPENDENT CONTRACTOR STATUS:** It is the express intention and understanding of the parties that Vendor is an independent contractor and not an employee, agent, joint venture or partner of the Borough. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between Borough and Vendor and/or any employee or agent of Vendor.

**19. TAXES AND BENEFITS:** Both parties acknowledge and agree that Vendor is not an employee of the Borough for state or federal tax purposes, and that Borough has no obligation to provide to Vendor or Vendor's agents and employees any benefits including, but not limited to Workers' Compensation, Social Security, Federal and State withholding taxes, group insurance, retirement benefits or other contributing benefits and sick leave or vacation pay, customarily provided by an employer with respect to an employee.

**20. CONFLICT OF INTEREST:** Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. Vendor further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

**21. CONFIDENTIALITY:** Vendor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorize Borough personnel or upon prior approval of the Borough.

**22. BINDING EFFECT:** This Contract shall be binding on the undersigned and their successors and assigns.

**23. CONTRACT PARTS:** This Contract consists of this Contract document and any other items specifically agreed to by the Parties, which are referred to and incorporated herein.

**THIS CONTRACT** is dated this 28th day of December, 2023. The parties of this contract agree to incorporate into this Agreement mandatory language of Section 5.3 of the Regulations promulgated by the Treasurer of the State of New Jersey pursuant to P.L. 1975, c.127, as amended




and supplemented from time to time and Attorney agrees to comply fully with the terms, provisions and obligations of said Section 5.3.

**IN WITNESS WHEREOF**, the Borough has caused this instrument to be signed by its Mayor, attested by its Borough Clerk, and its corporate seal affixed hereunto, pursuant to a Resolution of the said party of the first passed for that purpose, and Vendor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

**BOROUGH OF CLAYTON**

BY:   
THOMAS BIANCO, Mayor

ATTEST:

  
CHRISTINE NEWCOMB, Borough Clerk

**3 DIMENSIONAL PHYSICAL THERAPY**

BY: \_\_\_\_\_  
KYLE MCDERMOTT, Owner  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_