

Public Employees' Retirement System

REQUIRED EXTERNAL DOCUMENT FOR ALL MAGIC CONTRACTS

According to Executive Order 1362, signed by Governor Phil Bryant, each agency awarding, renewing, or amending any professional or personal services contract reported online pursuant to the Mississippi Accountability and Transparency Act of 2008 must also submit by online report describing the reasons for awarding, renewing, or amending such contract. This Executive Order goes into effect September 1, 2015.

Please fill out the following information that will be posted on the Transparency website.

AWARDING RENEWING AMENDING CONTRACT DATE 4/1/2017 – 3/31/2018

VENDOR NAME: The Club

VENDOR CONTACT: Stephanie Strachan, Manager

VENDOR ADDRESS: 511 Lake Harbour Drive, Ridgeland, MS 39157

VENDOR PHONE NUMBER: (601) 605-9886

ANALYSIS DESCRIBING THE REASON FOR AWARD, RENEWAL OR AMENDMENT OF CONTRACT:

Pursuant to Section 41-97-9, of the 1972 Mississippi Code Annotated, as amended, PERS has retained the services of The Club to provide facilities to PERS employees to improve employees' health and wellbeing.

SOLE SOURCE SERVICES/COMMODITIES NEEDED RFB LOW BID
 OTHER COMPETITIVE PROCUREMENT

IF SELECTING "OTHER", PLEASE EXPLAIN: _____

Date: 1/31/17 Preparer's Signature: Stephanie Strachan

Title: Special Projects Officer IV

Deputy Admin/CIO Signature: [Signature] Date: 3/2/17

The Club on Lake Harbour
511 Lake Harbour Drive Ridgeland, MS 39157
TELEPHONE 601.605.9886 FAX 601.6059682



INVOICE 002

1.27.2017

BILL TO	SHIP TO	INSTRUCTIONS
Public Employees Retirement System of Mississippi 429 Mississippi Street Jackson, MS 39201	Shelly Smith	

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	Corporate Membership	\$10,000.00	\$10,000.00

SUBTOTAL	
SALES TAX	
SHIPPING & HANDLING	
TOTAL DUE BY 4.1.2017	\$10,000.00

3100003257

61710000

4000

Thank you for your business!

Shelly P. Smith 1/31/17

apk
Cork
3/2/17



To Whom It May Concern:

The Club agrees to allow PERS employees to add a spouse for \$20 a month or their family for \$35 a month, at the expense of the employee.

These rates are effective April 1, 2017-March 31, 2018.

Thank you,

Stephanie Strachan
General Manager
The Club on Lake Harbour
511 Lake Harbour Drive
Ridgeland, Mississippi 39157

PERSONAL SERVICE CONTRACT

This Personal Service Contract ("Contract") is made by and between the Public Employees' Retirement System of Mississippi ("PERS" or "the Agency") whose address is 429 Mississippi Street, Jackson, Mississippi 39201 and The Club ("Contractor"), whose address is 511 Lake Harbour Drive, Ridgeland, MS 39157 on the 1st day of April, 2017 under the following terms and conditions:

1. **Scope of Services** Under the agreement, Contractor shall provide services as follows: Pursuant to Section 41-97-9, of the 1972 Mississippi Code Annotated, as amended, PERS has retained your services to provide a facility(ies) for its employees to improve their health and wellbeing. As part of this service, PERS employees shall be entitled to join and use the facilities and equipment as well as participate in classes, nutritional instruction, and any other wellness and fitness activities offered to the general public by your facility that are normally included with the membership fee. PERS employees may participate in programs/services normally provided at additional cost by enrolling and paying for said programs/services. This scope shall include all facilities owned, operated, maintained or affiliated with the Contractor, wherever located. Further, the Contractor agrees to suspend any bank draft or any other form of payment for any PERS employee who is currently enrolled at the Contractor's facility(ies) for the duration of this Contract and any renewals or extension thereof.
2. **Contract Term** The contract period shall be from April 1st, 2017 through March 31st 2018.
3. **Consideration** As consideration for the performance of this Contract, Contractor shall be paid a fee not to exceed Ten Thousand Dollars (\$10,000) in accordance with the terms of this Contract. The Contractor shall invoice PERS as outlined under paragraphs 4 and 5 of this contract.
4. **E-Payment** The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The DFA agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode** Payments by state agencies using the State's automated accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
6. **Availability of Funds** It is expressly understood and agreed that the obligation of PERS to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide

funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to PERS, PERS shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to PERS of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. (MCA Section 27-104-25(3)). PERS shall have the sole right to determine whether funds are available for the payments or performances due under this Contract.

7. **Representation Regarding Contingent Fees** The contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the contractor's bid of proposal.
8. **Representation Regarding Gratuities** The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.
9. **Applicable Law** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and venue for resolution of any dispute shall be Jackson, Hinds County, Mississippi. The Contractor shall comply with applicable federal, state, and local laws and regulations. Contractor expressly agrees that under no circumstances shall PERS be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Contract shall affect any statutory rights that PERS may have and such rights cannot be waived or limited by contract.
10. **Assignment** The Contractor shall not assign, subcontract or otherwise transfer in whole or in part, its rights or obligations under this Contract without prior written consent of PERS. Any attempted assignment or transfer without said consent shall be void and of no effect.
11. **Compliance with Laws** The Contractor understands that PERS is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, sex, age, national origin, disability, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
12. **Transparency** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. § 25-61-1 *et seq.*, (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. § 27-104-151, *et seq.* (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be

posted to the Department of Finance and Administration's independent Agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by the Contractor as trade secrets, or other proprietary information including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

13. **Employee Status Verification System** If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§71-11-1, *et seq.* (1972, as amended) The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of which may subject Contractor to the following:

- a. termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b. the loss of any license, permit, certification or other document granted to the Contractor by an Agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c. both.

In the event of such termination/cancellation, the Contractor shall also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

14. **Independent Contractor** The Contractor shall perform all services as an Independent Contractor and shall at no time act as an agent for PERS. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on PERS. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of PERS; and PERS shall no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. It is expressly understood and agreed that PERS enters into this Contract with Contractor based on the procurement of professional services and not based on an employer-employee relationship. For all purposes under this Contract, it is understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by PERS for any purpose from said Contract

sum. Contractor accepts exclusive responsibility for the payment of Federal Income Tax, State tax, Social Security, and any other withholdings that may be required.

Contractor represents that it is qualified to perform the duties to be performed under this Contract and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of PERS. Any person assigned by Contractor to perform the services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. PERS may, however, direct Contractor to replace any of its employees under this Contract. Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises of PERS. Any employee or subcontractor of Contractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All employees and subcontractors of Contractor who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy. Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Contractor nor its employees are entitled to state retirement or leave benefits.

15. **Termination for Convenience**

- a. *Termination:* The Agency may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations:* The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

16. **Termination for Default**

- a. *Default:* If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency may notify the Contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the Agency, the Agency may terminate the Contractor's right to proceed with the contract or such

part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- b. *Contractor's Duties:* Notwithstanding termination of the contract and subject to any directions from the Agency, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- c. *Compensation:* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due the Contractor such sums as the Agency deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d. *Excuse for Nonperformance or Delayed Performance:* Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Agency within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon request of the Contractor, the Agency shall ascertain the facts and extent of such failure, and, if the Agency determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- e. *Erroneous Termination for Default:* If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for

termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

f. *Additional Rights and Remedies:* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

17. **Termination Upon Bankruptcy** This contract may be terminated in whole or in part by the PERS upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
18. **Modification or Renegotiation** This Agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal or state revisions of any applicable laws or regulations make changes in this Contract necessary.
19. **Procurement Regulations** The Contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, MS, for inspection, or downloadable at www.mspb.ms.gov.
20. **Ownership of Documents and Work Papers** PERS shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, whether completed or in progress, created in connection with this Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to PERS upon termination or completion of the Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from PERS and subject to any copyright protections.
21. **Indemnification** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate PERS, its officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, and claims for damage arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this Contract.
22. **Third Party Action Notification** The Contractor shall notify PERS in writing within five (5) business days of its receipt of liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or PERS by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractors performance under this Contract. Failure of the Contractor to provide such written notice to PERS shall be

considered a material breach of this Contract and PERS may, at its sole discretion, pursue its rights as set forth in the Termination clauses herein and any other remedies it may have at law or in equity.

23. **Notices** All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail postage prepaid, return receipt requested, or overnight courier with the signed receipt, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:

Stephanie Strachan
General Manager
The Club
511 Lake Harbour Drive
Ridgeland, MS 39157
(601) 605-9886

For PERS:

Public Employees' Retirement System
Attn: Pat Robertson
Executive Director
429 Mississippi Street
Jackson, MS 39201

24. **Severability** If any term or provision of this Contract is prohibited by the laws of this State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

25. **Change In Scope of Work** PERS may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by PERS and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the Agency in writing of this belief. If PERS believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

26. **Stop Work Order**

- a. *Order to Stop Work:* The Agency, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs

allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Agency shall either:

- i. cancel the stop work order; or,
 - ii. terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of this contract, if applicable.
- b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contractor price, or both, and the contract shall be modified in writing accordingly, if:
- i. the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and,
 - ii. the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- d. *Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

27. **Price Adjustment**

- a. *Price Adjustment Methods:* any adjustments in contract price, pursuant to a clause in the contract, shall be made in one or more of the following ways:
- (i) By agreement on a fixed price adjustment before commencement of the additional performance;
 - (ii) By unit prices specified in the contract;
 - (iii) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- b. *Submission of Cost or Pricing Data:* Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

28. **Failure to Enforce** Failure by PERS, at any time, to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of PERS to enforce any provision at any time in accordance with its terms.

29. **Sovereign Immunity** By entering into this Contract with Contractor, the State of Mississippi does, in no way, waive its sovereign immunities or defenses, as provided by law.
30. **Confidential Information** Contractor shall treat all PERS data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party without specific written consent of PERS. The Contractor shall protect such personal and confidential information against unauthorized use, disclosure, modification or loss. Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless PERS for any damages related to Contractor's unauthorized use of personal information. This provision shall survive termination or completion of this Contract and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of this Contract.
31. **Trade Secrets, Commercial and Financial Information** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
32. **Entire Agreement** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supercedes or replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

This Contract has been entered into and executed by the parties hereto as of the day and year first above written.


PAT ROBERTSON
EXECUTIVE DIRECTOR
PUBLIC EMPLOYEES' RETIREMENT SYSTEM


STEPHANIE STRACHAN
GENERAL MANAGER
THE CLUB