

REDLANDS FIRE DEPARTMENT
WELLNESS/FITNESS PROGRAM SERVICES AGREEMENT

This Agreement ("Agreement") is made and entered into on this 21st day of March, 2006 ("Effective Date") by and between Fitness Appraisal, Inc. ("FAI") and the City of Redlands ("City"). FAI and City are sometimes individually referred to herein as a "Party" and, collectively, as the "Parties."

RECITALS

WHEREAS, City desires to engage the services of FAI to provide a wellness program to City's Fire Department; and

WHEREAS, FAI desires to render professional wellness program services to City and its Fire Department employees;

NOW, THEREFORE, in consideration of the mutual promises contained herein, FAI and City hereby agree as follows:

AGREEMENT

Section 1. Services. FAI shall provide, and/or cause to be provided, the wellness program services described on Exhibit "A" (the "Services") in compliance with this Agreement and the provisions of Exhibit "B," both Exhibits which are attached hereto and incorporated herein by this reference, to City and its Fire Department employees.

Section 2. Compliance with Law. FAI shall comply with all federal, state and local laws governing, or applicable to, FAI's provision of the Services including, but not limited to, the Health Insurance Portability and Accountability Act 42 U.S.C. 1320d et seq.

Section 3. Fees. For the Services provided hereunder, City shall pay FAI the fees identified in Exhibit "A" within thirty (30) days of receipt by City of an invoice from FAI. Any payment not made when due shall be subject to a late charge of the lesser of one and one-half percent (1-1/2 %) per month (eighteen percent (18%) per annum) or the maximum legal rate.

Section 4. Term. The term of this Agreement shall be one (1) year commencing on the Effective Date, unless this Agreement is terminated as provided for herein. This Agreement shall automatically renew for a one (1) year term on each anniversary of the Effective Date, unless terminated as provided herein. The maximum renewal term shall not exceed four years. Thirty (30) days prior to each anniversary the Effective Date, FAI and City shall negotiate rates applicable to the upcoming contract year.

Section 5. Termination. This Agreement may be terminated by either Party by giving thirty (30) days prior written notice to the other Party.

Section 6. Conditions of Service. The Services to be provided under this Agreement are subject to condition that the City understands and agrees to convey to its employees that FAI's wellness program services are designed to augment, but not to replace or be a substitute for, the relationship between each City employee and his or her personal physician.

Section 7. Insurance and Indemnification. All insurance required by this Agreement shall be maintained by FAI for the duration of this Agreement and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. FAI shall not perform any Services pursuant to this Agreement unless and until all required insurance listed below is obtained by FAI. FAI shall provide City with Certificates of Insurance and endorsements evidencing such insurance prior to commencement of the Services. All insurance policies shall include a provision prohibiting cancellation of the policy except upon thirty (30) days prior written notice to City.

A. FAI shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in amounts which meet statutory requirements with an insurance carrier acceptable to City.

B. FAI expressly waives all rights to subrogation against City, its elected officials, employees and volunteers for losses arising from work performed by FAI for City by expressly waiving FAI's immunity for injuries to FAI's employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on behalf of any employee of FAI. This waiver is mutually negotiated by the Parties. This waiver shall not apply to any damage resulting from the negligence of City, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of FAI, its officers, agents and employees.

Section 7.1 FAI shall secure and maintain in force throughout the duration of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. FAI shall obtain an endorsement that City shall be named as an additional insured.

Section 7.2 FAI, shall secure and maintain professional liability insurance throughout the duration of this Agreement in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.

Section 7.3 FAI shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all FAI-owned vehicles used in connection with the Services, hired and non-owned vehicles, and employee non-ownership vehicles. FAI shall obtain an endorsement that City shall be named as an additional insured.

Section 7.4 FAI is expressly prohibited from assigning any of the Services without the express prior written consent of City. In the event of mutual agreement by the Parties to assign a portion of the Services, FAI shall add the assignee as an additional insured and provide City with the insurance endorsements prior to any Services being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.

Section 7.5 FAI shall defend, indemnify and hold harmless City, its elected officials, officers, employees and agents, from and against any and all actions, claims, demands, lawsuits, losses and liability for damages to persons or property, including costs and attorneys' fees, that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with FAI's negligent and/or intentionally wrongful acts or omissions under this Agreement; but excluding such actions, claims, demands, lawsuits and liability for damages to persons or property arising from the negligence or intentionally wrongful acts of City, its officials, employees or agents.

Section 8. Notices. Any and all notices or other communications required or permitted hereunder, or by law, to be served on, or given to, either Party shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class mail, registered or certified, postage prepaid to such Party at such Party's address as set forth below.

Section 9. Assignment. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.

Section 10. Entire Agreement. This Agreement supersedes any and all other agreements, whether verbal or written, between the Parties with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

Section 11. Successors and Assigns. Subject to the section regarding assignment, this Agreement shall be binding on the successors and assigns of the Parties.

Section 12. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or understanding of this Agreement, in addition to such other relief as may be granted, the prevailing Party shall be entitled to recover actual court costs and its reasonable attorneys' fees, including fees for in-house counsel of the Parties at rates prevailing in San Bernardino County, California.

Section 13. Severability. It is agreed that if any terms, conditions or provisions of this Agreement shall be illegal or unenforceable, the remaining Agreement provisions of this remain in full force and effect, if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to either Party.

Section 14. Waiver. The waiver by either Party of any breach of any term, condition or provision of this Agreement shall not be deemed a waiver of such term, condition or provision or any subsequent breach of the same or of any other term, condition or provision of this Agreement.

Section 15. Applicable Law. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement on the day and year first above written.

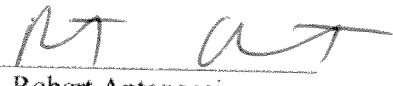
City of Redlands
P.O. Box 2005
Redlands, CA 92373

Fitness Appraisal, Inc.
P.O. Box 250
Vista, CA 92085

By:


Mayor, City of Redlands

By:


Robert Antonacci
President

ATTEST:


City Clerk

EXHIBIT A PROGRAM SERVICES

1. Lifestyle Questionnaire

2. Blood Profile

- | | | |
|-------------------|-----------------|------------------|
| • Glucose | • Calcium | • Alkaline |
| • BUN | • Phosphorus | Phosphates |
| • Creatinine | • Sodium | • LDH |
| • Cholesterol | • Potassium | • SGOT/AST |
| • HDL | • Chloride | • SGPT/ALT |
| • LDL | • Uric Acid | • Globulin |
| • Triglycerides | • Total Protein | • A/G Ratio |
| • Total Bilirubin | • Albumin | • Chol/HDL Ratio |
| | | • GGT |

3. Resting Blood Pressure & Heart Rate

4. Height & Weight

5. Respiratory Assessment (Pulmonary Function)

- FVC
- FEV1

6. EKG Monitored Sub-Maximal Treadmill Exercise Test

7. Body Composition Analysis- (skinfolds & hydrostatic)

8. Lower Back Flexibility Assessment- A series of back flexibility measurements in the lower back, hamstrings and hip flexor (back pain prevention)

9. Grip Strength- Utilizing a grip hand dynamometer

10. Two Minute Abdominal Curls Test

11. Maximum Push-Up Test

12. Vertical Jump

13. Muscular Strength & Muscular Endurance Age, Body Type Age, Flexibility Age, Cardiovascular Age & Overall Physical Fitness Age

14. Physical Performance Standards Score

15. Computerized Reports And Consultation

- Reports on screening parameters
- Heart disease risk reduction profile
- Back injury and pain prevention program
- Exercise program recommendations (strength, cardiovascular & flexibility)
- Nutrition recommendations

16. Corporate Summary Report

- Group summary analysis displaying average scores, number of participants in high risk ranges and overall recommendations.

ADDITIONAL OPTIONAL SERVICES:

1. Medical Questionnaire For Respirator Clearance
2. PSA For Males 40 And Over
3. CRP Blood Profile
4. Hearing And Vision

EXHIBIT B PRICE SCHEDULE

City shall pay FAI \$195.00/participant for services listed in Exhibit A 1-16.

OPTIONAL SERVICES:

If optional services are selected, City shall pay FAI according to the following schedule:

\$55.00 each for PSA screening for males 40 and over.

\$65.00 each for CRP screening.

\$40.00 each for hearing/vision screening.

\$10.00 each for Medical Questionnaire For Respirator Usage Administration.

EXHIBIT "B"

Except as otherwise provided in this Agreement, FAI may use or disclose Protected Health Information to perform functions, activities, or services for or on behalf of the City of Redlands ("City"), as specified in this Agreement and in the attached Wellness/Fitness Program Services Agreement, provided such use or disclosure does not violate the Health Insurance Portability And Accountability Act (HIPAA), 42 U.S.C. 1320d et seq., and its implementing regulations, including but not limited to, 45 Code of Regulations Parts 160, 162 and 164, hereinafter referred to as the Privacy Rule.

I. Obligations and Activities of FAI.

- A. FAI shall not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- B. FAI shall implement administrative, physical and technical safeguards to:
 - 1. Prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
 - 2. Reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the City.
- C. FAI shall mitigate, to the extent practicable, any harmful effect that is known to FAI of a use or disclosure of Protected Health Information by FAI in violation of the requirements of this Agreement.
- D. FAI shall report to the City any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- E. FAI shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by FAI on behalf of the City, shall comply with the same restrictions and conditions that apply through this Agreement to FAI with respect to such information.
- F. FAI shall provide access to Protected Health Information in a Designated Record Set to the City or to an Individual, at the request or direction of the City and in the time and manner designated by the City, in order to meet the requirements of 45 CFR 164.524.
- G. FAI shall make any amendment(s) to Protected Health Information in a Designated Record Set that the City directs or agrees to pursuant to 45 CFR 164.526, in the time and manner designated by the City.

- H. FAI shall make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by FAI on behalf of, the City available to the City, and/or to the Secretary for the U.S. Department of Health and Human Services, in a time and manner designated by the City or the Secretary, for purposes of the Secretary determining the City's compliance with the Privacy Rule.
 - I. FAI shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for the City to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
 - J. FAI shall provide to the City or an Individual, in time and manner designated by the City, information collected in accordance with provision (I), above, to permit the City to respond to a request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
 - K. Upon termination of this Agreement, FAI shall return all Protected Health Information required to be retained (and return or destroy all other Protected Health Information) received from the City, or created or received by the FAI on behalf of the City. In the event the FAI determines that returning the Protected Health Information is not feasible, FAI shall provide the City with notification of the conditions that make return not feasible.
- II. Specific Use and Disclosure Provisions.
- A. Except as otherwise limited in this Agreement, FAI may use Protected Health Information for the proper management and administration of FAI or to carry out the legal responsibilities of FAI.
 - B. Except as otherwise limited in this Agreement, FAI may disclose Protected Health Information for the proper management and administration of the FAI, provided that disclosures are required by law, or FAI obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law for the purpose for which it was disclosed to the person, and the person notifies FAI of any instances of which it is aware in which the confidentiality of the information has been breached.
 - C. Except as otherwise limited in this Agreement, FAI may use Protected Health Information to provide Data Aggregation services to the City as permitted by 42 CFR 164.504 (e)(2)(i)(B).

- D. FAI may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR 164.502(j)(1).

III. Obligations of the City.

- A. The City shall notify FAI of any limitation(s) in its notice of privacy practices of the City in accordance with 45 CFR 164.520 to the extent that such limitation may affect FAI's use or disclosure of Protected Health Information.
- B. The City shall notify FAI of any changes in, or revocation of, permission by individual to use or disclosure Protected Health Information, to the extent that such changes may affect FAI's use or disclosure of Protected Health Information.
- C. The City shall notify FAI of any restriction to the use or disclosure of Protected Health Information that the City has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect FAI's use or disclosure of Protected Health Information.

IV. General Provisions.

- A. Remedies. FAI agrees that the City shall be entitled to seek immediate injunctive relief as well as exercise all other rights and remedies which the City may have at law or equity in the event of an unauthorized use or disclosure of Protected Health Information by FAI or any agent or subcontractor of FAI that received Protected Health Information from FAI.
- B. Ownership. The Protected Health Information shall be and remain the property of the City. FAI agrees that it acquires no title or rights to the Protected Health Information.
- C. Regulatory References. A reference in this Agreement to a section in the privacy Rule means the section as in effect or as amended.
- D. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the City to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- E. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the City to comply with the Privacy Rule.