

WELLNESS SERVICES AGREEMENT

This Wellness Services Agreement (the "Agreement") is effective July 1, 2020 by and between **PINNACLE TRAINING SYSTEMS, LLC** ("PTS"), a company organized and existing under the laws of the state of California, having an office located at 6011 N Fresno St. #120, Fresno, CA 93710 and the City of Fresno (the "CLIENT") located at and/or having a correspondence address of:

2600 Fresno St. Fresno, CA 93721
PTS and the CLIENT are at times herein collectively referred to as the "Parties," or individually, as a "Party."

RECITALS

1. The CLIENT wishes to retain PTS to provide certain worksite wellness services related to and/or described as a "Worksite Wellness Program" on the terms and conditions hereinafter set forth.
2. PTS wishes to provide such services to the CLIENT on such terms and conditions.

NOW THEREFORE in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

- a) PTS agrees to provide to the CLIENT the wellness/fitness services set forth in Schedule "A," which is attached hereto and made a part of this Agreement (the "Services").
- b) PTS agrees and undertakes to perform the Services in a timely fashion with the skill, competence and diligence commensurate with the standards in the wellness industry.

2. COMPENSATION AND INCENTIVES

- a) The CLIENT shall pay PTS for the Services, in accordance with the terms set forth in Schedule "B," which is attached hereto and made a part of this Agreement.
- b) Incentives shall be paid by the CLIENT and/or PTS in accordance with the terms set forth in Schedule "C," which is attached hereto and made a part of this Agreement.

3. TERM AND TERMINATION

- a) The initial term of this Agreement ("Term") shall be for a period of 12 weeks/months [circle one] beginning on July 1, 2020, and ending on June 30, 2021 unless terminated earlier in accordance with the provisions herein. The Term may be extended by written agreement of the Parties.
- b) This Agreement may be terminated by either Party upon the occurrence of an event of default, given five (5) days written notice of the default to the other Party. If the default is not cured within the five-day notice period, this Agreement will terminate and any and all fees owed to PTS, up and through the termination date will be immediately due and payable. Each of the following constitutes an event of default for the purposes of this Agreement:
 - i. breach of this Agreement (including but not limited to non-performance and/or inability to perform), and
 - ii. insolvency of CLIENT or PTS (including but not limited to bankruptcy).

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- c) CLIENT agrees that CLIENT shall not be entitled to terminate this Agreement during the initial term, except in the event of default by PTS as described in paragraph 3.b) above. PTS may terminate this agreement for any reason giving ten (10) days written notice to CLIENT, and CLIENT shall pay PTS for all Services rendered up and through the date of termination, in accordance with the payment terms set forth in Schedule B.
- d) Upon request at the termination of this Agreement, CLIENT shall return to PTS all confidential data embodied or recorded in tangible form, which is in its possession. CLIENT expressly grants PTS permission to use the results of the Worksite Wellness Program for marketing, advertising, research, educational and/or other business purposes, so long as the identity of any individual participating in the program is not disclosed and/or cannot reasonably be determined or associated with the use or PTS obtains the written consent of the individual to disclose his or her identity.

4. STATUS

- a) It is understood and agreed that this is an agreement for the performance of services and that the relationship of the Parties to each other is that of independent contractors. This Agreement shall not be deemed to create a joint venture, partnership, principal-agent, employer-employee, or similar relationship between PTS and CLIENT.
- b) PTS and CLIENT shall comply with all applicable statutes, ordinances and regulations of the State of California and the United States governing the performance of the Services.

5. CONFIDENTIALITY

"Confidential Information" shall mean any proprietary or non-public Confidential Information or materials which are owned or controlled by the Disclosing Party, both of which are disclosed under the following terms and conditions. "Disclosing Party" shall mean the party revealing or disclosing the Confidential Information. "Recipient" shall mean the party receiving the Confidential Information.

- a) The Parties shall not disclose or divulge to any person or entity, except as provided below, any Confidential Information which either Party may reveal under this Agreement and shall not use said Confidential Information in any manner whatsoever, directly or indirectly, except as expressly permitted herein and solely in connection with the Worksite Wellness Program. The parties shall protect the confidentiality of and take all reasonable steps to prevent disclosure or unauthorized use of the Confidential Information.
- b) Each Party shall have the right to disclose the Confidential Information to its officers, directors, employees, agents, subcontractors and consultants for the purposes authorized herein. Each Party shall, prior to disclosing the Confidential Information or portion thereof to any such person, issue appropriate instructions to them to ensure that such persons are aware of their obligation to comply with the confidentiality and use obligations and restrictions contained in this Agreement. Each Party shall have the right to disclose Confidential Information as required by law.
- c) The Recipient shall advise the Disclosing Party in writing in the event the Recipient becomes aware of any unauthorized dissemination, misappropriation, or misuse of Confidential Information by the Recipient and provide assistance to Disclosing Party to mitigate any damages caused thereby and to limit any further dissemination or misuse of the Confidential Information.
- d) Confidential Information shall not include any data or information which:
 - i) is now generally known or readily available to the trade or public or which becomes so known or readily available without fault of Recipient;

- ii) is possessed by Recipient without restriction as to disclosure or use prior to its disclosure hereunder;
 - iii) is received independently from a third party who is free to disclose such information to the Recipient;
 - iv) is required as part of any court order or government regulation (provided that the Disclosing Party has been given sufficient written notice of such order or regulation to contest it); or,
 - v) is developed by Recipient independent of any Confidential Information of Disclosing Party and which can be proven by written records.
- e) The provisions of paragraphs 5.a) and 5.c) above shall survive the termination of this Agreement and shall continue until the Confidential Information is no longer confidential and/or proprietary.

6. INTELLECTUAL PROPERTY

The CLIENT acknowledges that PTS has custom designed the Services based on its education and experience in the wellness industry. The CLIENT agrees that all work produced in the development of the Services and all work product which PTS produces in performing the Services, or any component thereof, including, but not limited to publications, reports and other materials prepared by PTS (whether or not copyrighted or patentable), shall be the property of PTS. The CLIENT acknowledges that all copyright, rights to patents, trade secrets or other intellectual property in all such work and in the Services are the property of PTS.

7. FORCE MAJEURE

If the performance of this agreement or any of the obligations hereunder is interfered with in whole or in part by reason of any circumstances beyond the reasonable control of PTS, including but not limited to fire, explosion, power failure, acts of God, revolution, civil commotion or acts of public enemies, any applicable law, order, regulation, ordinance or requirement of any government or legal body or labor unrest, including without limitation, strikes, slow downs, picketing or boycotts, then PTS shall be excused from such performance to extent of such interference.

8. SUBCONTRACTS

PTS shall have exclusive right and responsibility for the selection of any and all service suppliers required for the performance of the Services hereunder. However, no modifications to the Services, whether to be provided directly by PTS or a subcontractor, shall be made without the prior written consent of both parties (as to any such modification and/or addition), which consent shall not be unreasonably withheld.

9. INDEMNIFICATION

a) To the furthest extent allowed by law, SERVICE PROVIDER, PTS, shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, SERVICE PROVIDER, PTS, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. SERVICE PROVIDER'S, PTS obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures,

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costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If SERVICE PROVIDER, PTS should subcontract all or any portion of the work to be performed under this Agreement, SERVICE PROVIDER, PTS shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

b). Each party will give the other prompt written notice of any claim or suit possibly coming within the purview of any indemnity set forth in this Agreement. Upon the written request of an indemnitee, the indemnitor will assume the defense of any such claim, demand, action, or proceeding. The indemnitee shall also have the right to provide its own defense at its own expense, provided the indemnitee shall not settle any claim without the indemnitor's consent unless it is willing to release the indemnitor from its obligation of indemnity hereunder.

c). PTS shall maintain for the life of this agreement the minimum scope of insurance set forth in schedule "D".

d). The indemnification set forth in this Section 9 shall survive the termination of this Agreement

10. GENERAL TERMS

a). **Complete Agreement:** This Agreement, including Schedules "A," "B" and "C" hereto, constitutes the entire understanding between the parties respecting the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties respecting the subject matter of this Agreement. This Agreement shall not be modified except by a writing duly executed on behalf of the Party against whom such modification is sought to be enforced.

b). **Waiver:** No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly stated by the Party making such waiver.

c). **Assignment:** Neither this Agreement nor any rights or obligations hereunder shall be assignable by any Party without the prior written consent of the other Party. This Agreement shall ensure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

d). **Authority:** Each Party represents and warrants in favor of the other that it has all necessary capacity and authority to enter into this Agreement and to carry out its respective obligations hereunder.

e). **Notices:** Any notice required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered in person during normal business hours of the recipient on a business day or sent by first class mail, postage prepaid, or by facsimile as follows:

In the case of a notice to the PTS to:

Felicia Gomez
6011 N Fresno St., #120
Fresno, CA 93710

In the case of a notice to CLIENT to:

City of Fresno
(Name of Client)

Chief Kerri Donis
(Individual Name)

2600 Fresno St
(Address)

Fresno, CA 93721
(City, State, Zip)

and shall be conclusively deemed to have been given and to have been received on the following business day, if so delivered or sent by facsimile, and on the third business day following the mailing thereof, if so mailed (excluding each day during which there exists any interruption of postal services due to strike, lockout or other cause). Addresses for notice may be changed by giving notice in accordance with the foregoing.

a). **Choice of Law:** This Agreement shall be governed by the laws of the State of California, excluding its choice of law rules that may allow governance of the agreement by the laws of another state. Solely for the purposes of enforcing or interpreting this Agreement, the Parties agree to be subject to the personal jurisdiction of any court in the County of Fresno in the State of California with subject matter jurisdiction to enforce or interpret any of the provisions of this Agreement.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at Fresno CA on the date indicated above.

PINNACLE TRAINING SYSTEMS, LLC

CLIENT

Felicia Gomez
Authorized Signature

Authorized Signature

Felicia Gomez, Ph.D. Owner
Print Name and Title

Kerri Donis
Print Name and Title

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: *[Signature]*
CITY ATTORNEY

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SCHEDULE "A"
WORKSITE WELLNESS PROGRAM SERVICES

PTS shall provide the Services to the CLIENT as set forth below, upon the terms and conditions set forth in this Agreement. The CLIENT and PTS may amend this Schedule, by written agreement between the Parties, from time to time during the Term of the Agreement and/or any renewal period.

Worksite Wellness Services (initial all that apply):	PTS	CLIENT
a) Employee questionnaire	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Height, weight screening	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Body composition testing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Blood pressure screening	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Cardiovascular risk panel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) A1C testing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Individual employee consultation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Other (describe below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

seminars/challenges (time/details TBD)

drill school

consultations

skin cancer screenings (time/details TBD)

Fecal Occult Kits

Function Movement Screening and health screening including:

- cardiovascular aerobic test with resting and exercise EKG monitoring;
- exercise blood pressure
- LpPLA2
- CrP
- PSA Total
- CA-125
- NMR

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SCHEDULE "B"
PAYMENT

In consideration of the Services provided by PTS, the CLIENT shall pay PTS in accordance with the terms set forth below. The CLIENT and PTS may amend this Schedule, by written agreement between the Parties, from time to time during the Term and/or any renewal period.

- a.) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to the agreement shall be a fix fee of \$478.80 per person and \$275 for fire fighters electing to only complete blood draws and #375 for fire fighters electing only to complete the health screening/fitness testing. Compensation for consultations will be \$65/hour. Skin cancer screenings will be compensated at \$120/hr. Fecal occult kits will be compensated at \$42/person.
- b.) The City will be billed monthly for services rendered. The monthly balance due shall be paid within 30 days after the City has accepted the described services. Seminars; Challenges and other services will be billed once the services have been completed.
- c.) Any balance of fees is due and payable at the end of the Term of this Agreement (as set forth in paragraph 3.a) above, unless terminated earlier pursuant to paragraphs 3.b)-c). In any case, CLIENT shall pay PTS all fees due hereunder not later than seven (7) days after (i) the end of the Term, or (ii) in the case of termination pursuant to paragraphs 3.b)-c), the termination date, whichever is sooner.

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SCHEDULE "C"
WORKSITE WELLNESS INCENTIVES

Worksite wellness incentives shall be paid by CLIENT and/or PTS according to the terms set forth below. The CLIENT and PTS may amend this Schedule, by written agreement between the Parties, from time to time during the Term and/or any renewal period.

Incentive Amount: _____ TBD _____

Paid by: _____ Client- City will pay for any incentives _____

Additional Terms:

P. V. ...
...

Schedule "D"

Insurance Requirements for Professional Services

PTS shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

(Not required if consultant provides written verification it has no employees)

1. **Professional Liability (Errors and Omissions)** Insurance appropriate to the PTS profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate.

If PTS maintains higher limits than the minimums shown above, the Client requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Fresno, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to PTS's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, PTS's insurance coverage shall be primary insurance as respects the City of Fresno, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(Faint, illegible text)

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity.**

Waiver of Subrogation

PTS hereby grants to the City of Fresno a waiver of any right to subrogation which any insurer of said PTS may acquire against the City of Fresno by virtue of the payment of any loss under such insurance. PTS agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Fresno has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Fresno. The City of Fresno may require PTS to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

Verification of Coverage

PTS shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

PTS shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and PTS shall ensure that City of Fresno is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

The City of Fresno reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.