

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BAYSPORT, INC.

This Agreement is entered into this 13th day of February, 2018, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and BaySport, Inc., hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of administering Wellness Screenings to County employees.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Attachment H—HIPAA Business Associate Requirements
- Attachment I—§ 504 Compliance

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars (\$300,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from February 13, 2018 through December 31, 2018.

5. Termination

This Agreement may be terminated by Contractor or by the Human Resources Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury,

including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of

the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

13. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and

Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

15. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Donna Vaillancourt, Human Resources Director
Address: 455 County Center, Redwood City, CA 94063
Telephone: 363-4321
Facsimile: 363-4822
Email: Dvaillancourt@smcgov.org

In the case of Contractor, to:

Name/Title: Doug Emery
Address: 200 Redwood Shores Parkway
Telephone: 593-2800
Facsimile: 408-395-7350
Email: Doug.Emery@Baysport.com

17. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

18. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

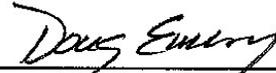
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In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: BaySport, Inc.


Contractor Signature

_____ Date


Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Exhibit A

Part 1

In consideration of the payments set forth in Exhibit B and Exhibit C, Contractor shall provide the following services:

1) Contractor provides trained staff and all necessary equipment and materials to conduct coordinated, cost-effective clinic screening services. The testing protocols and equipment used shall adhere to nationally recognized guidelines and standards. Testing components include but are not limited to determination of an individual's:

- cardiac risk blood profile (total cholesterol, HDL, LDL, glucose and triglycerides)
- hemoglobin A1C (according to criteria as set forth by County)
- body mass index (height, weight)
- body composition (waist & hip measurements)
- resting pulse & blood pressure

1a) Contractor provides individualized health counseling at the conclusion of the clinic screening to ensure participant's understanding of health results, to answer questions, discuss next steps and work with participant to set at least one short-term goal. Contractor will utilize principles of Stages of Change theory and Motivational Interviewing to ensure that each participant is ready to make a healthy change.

1b) At least four weeks prior to first screening date, Contractor will provide a list of standard counseling questions to County for review.

1c) Contractor will keep a tally of participant goals, using broad categories as mutually agreed upon by County and Contractor.

1d) In written communications and on the online scheduling website, Contractor will encourage participants to bring previous test results for comparison and discussion during the health counseling sessions.

2) County provides a conference room or similar space to safely and adequately accommodate the Wellness Screening program at each worksite location which meets the Contractor's requirements. County will provide logistical information about the rooms at least two weeks prior to the first screening date. The Contractor will set-up room and test equipment, assure the accuracy and functions; will assure equipment is in excellent working order and calibrated for accuracy (or test checked) at the beginning of each testing date; and will ensure an acceptable level of privacy for participants.

3) Contractor provides an off-site location for clinical screening services at its offices at Pacific Sports Resort in Redwood City. The time frame for when clinic screening services are offered at this location will be determined by the County. County acknowledges that clinic screening services at this off-site location are conducted during normal business hours.

4) Contractor provides an online registration system for employees to schedule individual appointments, customizing to County's needs and upon mutual agreement. Online registration system will include electronic confirmation and reminders, and text reminders, according to a notification schedule as determined by the County.

6) At County's request, Contractor provides follow-up outreach, educational intervention(s) and/or triage to high-risk County employees as identified by the health-screening program. Intervention may include but is not limited to triage for medical evaluation, problem solving and motivation, resource and referral, and/or recommendation to enroll in the County's health coaching program.

7) Contractor assists in the development and implementation of marketing activities for the clinic screening program, as mutually agreed upon between the County and the Contractor. This may include but is not limited to attendance at department or union meetings, Wellness committee meeting(s) or Benefits Committee meeting(s) and other onsite or offsite outreach.

8) Contract agrees to be responsible for all data collection and management responsibilities associated with clinic information submitted by employees who see their doctor for the Wellness Screening in lieu of going to an onsite clinic. Contractor agrees to assign a dedicated email address and assign a specific fax number for receiving this information. Contractor agrees to confirm receipt of clinic information with employee within 5 business days of receipt. Clinic information is managed the same way as with Wellness Screening results and reported in the same fashion as with Wellness Screening results.

9) Contractor agrees to customize screening forms and documents, (i.e. waiver, registration questions, lifestyle based questions, consent forms, participant results sheets, informational pamphlets) to meet County's needs.

8a) All registration and results documents will include a minimum of two unique identifiers for each participant (Date of Birth and Employee ID) as determined by County.

10) Contractor provides an aggregate report of findings and recommendations to the County within one month of the end of the testing cycle, following criteria as outlined by the County. Contractor provides ad hoc reports to County within one week of request.

10a) County may request ad hoc aggregate reports on clinical information of participants screened during this contract period for a period of ten years beyond the expiration of this contract. Additional costs may apply. A quotation for any additional costs will be submitted to the County for approval.

10b) County and Contractor will develop a process for transfer of data to an independent third party, should continuation of the working relationship cease.

11) Contractor and the County will mutually develop program development and implementation timetables for testing cycle. After each testing cycle, Contractor and the County will evaluate program effectiveness and participant satisfaction and modify program elements accordingly.

11a) On a weekly basis, Contractor shall notify County of status of registrations at remaining clinics. Contractor and County can decide to cancel or consolidate a clinic, if registration is below 15 at least one week prior to the clinic screening date, without penalty.

12) Contractor provides a fully-functioning Cholestech machine for the County's Health Coaching Program at no charge to the County. County to provide all necessary supplies, including Cholestech cassettes.

13) Contractor shall assign a Project Coordinator and shall assure that the staff and/or sub-contractors assigned to this project have appropriate professional background and/or training and/or certification to administer health screenings. County reserves the right to reject Contractor staff and/or sub-contractor assignment with cause.

14) Contractor shall assign all identified staff to attend an Employer Wellness Training Program, hosted by County and conducted at a mutually agreed upon location for attendance in person or by phone. The purpose of this training is to update staff about the County's wellness efforts and focus, and to ensure a high level of employee engagement during the wellness screening appointment.

15) Contractor shall comply with all federal, state, and local laws regarding disposal of hazardous waste. Contractor shall comply with all federal, state, and local laws regarding needle safety. Contractor is requested to register clinic screening dates with Health Department.

16) Contractor will perform related tasks and responsibilities as mutually agreed upon by Contractor and the County.

17) Contractor is encouraged but not required to provide pre-packaged healthier snacks and tap water for participants, and may invoice for the costs associated with doing so.

18) County is responsible for all photocopy services and publicity to employees, logistics, securing appropriate rooms, and overall program management activities.

Part 2

In consideration of the payments set forth in Exhibit B and C, Contractor shall provide the following services:

Coordinates all aspects of Exercise Service programs and activities for the San Mateo County Employee Wellness Program. This can include but is not limited to program development and preparation tasks, marketing and targeting recruitment activities, scheduling, registration and employee correspondence, teaching and/or counseling, preparing educational materials, and evaluating outcomes.

Develops, markets, implements and evaluates innovative training programs and interventions to promote increased physical activity of employees and their families. Contractor will monitor participation and progress, evaluate program effectiveness and provide quarterly updates to County. Program activities and services can include but are not limited to:

- coordinating worksite walks and other physical activity during the workday;
- conducting fitness workshops and presentations;
- overseeing/administering online fitness campaigns and/or challenges;
- writing fitness articles for employee newsletters or Yammer.

Develop, train and evaluate 30-60 minute physical activity segments for various health improvement and disease management courses, including but not limited to:

- Diabetes Prevention / Management
- General wellness (Age-banded)
- Healthy aging
- Heart Health
- Prenatal/ Postpartum Care
- Weight Management
- Women's Health Course
- Other health improvement or disease management programs, as mutually agreed upon by County and Contractor

Contractor shall ensure that training rosters are submitted to County within 2 business days of the date of service.

Develop, market, implement and evaluate various physical activity / fitness training programs, including but not limited to

- Back safety & injury prevention
- Core strengthening basics
- Exercise for weight management
- Health club in a bag

- Move More / Sit Less! Tips and Tricks to Get up and Move during your Workday
- Physical activity basics
- Strength training basics
- Winter workouts
- Worksite Walks

Contractor shall develop and implement a coordinated, effective marketing campaigns for fitness trainings and services utilizing website, Yammer, electronic kiosks, flyers, brief meeting announcements and/or electronic communication and wherever possible, targeted outreach to ensure maximum results. Contractor shall ensure that training rosters are submitted to County within 2 business days of the date of service.

On no less than an annual basis, coordinate and evaluate a physical activity challenge, including incentives, and develop and implement an effective marketing campaign to ensure high participation rates.

Provide program oversight for fee-for-service group exercise programs that are coordinated by the Employee Wellness Program. Responsibilities include selecting and supervising exercise instructors, risk management coordinating publicity and promotions, and attendance management. Contractor shall ensure that attendance rosters are submitted to County in a timely fashion.

Provides assistance in supporting organizational and department efforts to create healthier work environments for employees. This can include but is not limited to:

- encouraging stairwell use
- ensuring stretch breaks at meetings
- establishing, marking and publicizing designated walking routes on and near county campuses
- providing orientation on use of fitness equipment at department fitness centers
- offering fitness consultation to department representatives or managers, upon request;
- upon request, assist with setting up group exercise services for departments, assisting with initial marketing/implementation efforts , and periodically checking in to ensure continued satisfaction with services.

Conducts individual fitness counseling in a variety of settings;

On no less than an annual basis, solicit and publicize health club information and membership discount information. Tasks include but are not limited to management of correspondence with local health clubs, preparation of information for e-mail distribution and website posting, and coordination of special promotional campaigns with health clubs.

Assists with County-wide and department special events, such as employee health fairs and staff appreciation days; Attends monthly wellness program staff meetings either in person or by phone; Assists with routine Program Administration activities, upon request; Perform related tasks and responsibilities as mutually agreed upon by Contractor and County.

Optional services that are permitted under this contract, provided that there is a current fee schedule on file with the County:

- Individual or Group Fitness Training (fee for service)
- Teach exercise classes (fee for service)
- Conduct fitness counseling / coaching and personal fitness training services (fee for service)
- Event day coordination of recreational weekend tournaments (fee for service, flat rate).

Exhibit B

In consideration of the services provided by Contractor in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Contractor may bill on the 30th of each month for services rendered and expenses incurred during that month, according to the current Fee Schedule on file with the Human Resources Department (Exhibit C). Invoices should be itemized and submitted in writing. Contractor shall submit a complete listing of program participants with each invoice.

For the purposes of this contract, the primary work location is designated to be the County Government Center in Redwood City. Contractor acknowledges receipt of one County Government Center parking garage pass, and agrees to pay County the prevailing charge if it is lost or not returned at the end of the contract period.

Reasonable and necessary expenses for items related to the completion of this contract will be reimbursed with an appropriate receipt. Any expenses totaling more than \$50 should receive prior approval from County. The Contractor shall not bill for telephone expenses, mileage or travel time provided under this contract.

Awarding of this contract does not ensure that County will spend the total amount of the agreement. The County is not obligated to purchase any specific amount of services.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.

Exhibit C

Part 1

Health Screening Service Fees for San Mateo County (effective February 13, 2018- December 31, 2018)

1. Health Screening Services

Tests will include Height/Weight for Body Mass Index (BMI); Waist and Hip measurements for Waist/Hip ratio; Blood Pressure check; fingerstick blood test using the Cholestech units for either a fasting or a non-fasting lipid profile; and an individual consultation reviewing the clinical results.

Fasting Lipid Profile	\$46.00
Non-Fasting Profile	\$43.00

If a clinic has less than 11 participants, there is a flat \$500 fee.

2. HbA1c Testing. **\$19.00 - \$22.00**

BaySport provides HbA1c testing for participants who meet the testing criteria as established by BaySport and San Mateo County representatives. Cost is determined by actual cost of necessary clinic supplies and Contractor agrees to provide supporting documentation upon request if the price associated with necessary clinic supplies increases during the contract period.

3. Follow-Up Counseling **\$37.00pp**

These follow-up counseling sessions will be an average of 10 minutes in length and will be performed via telephone. The pricing information is per person and based upon 20 minutes of BaySport staff physiologist time at \$111/hr: 5 minutes for preparation; 10 minutes for the consultation; and 5 minutes for summary notes and a follow-up email to the participant after the discussion.

4. Screening Data Management (Physician Option)

This data entry function supports the new option that employees can see their personal doctor instead of attending the Wellness Screening, then report their Wellness Screening results to BaySport

1- 50 employees:	\$10pp
51-99 employees:	\$8pp
100+ employees:	\$7pp

5. Additional expenses in support of Clinic Screening Services

Development and customization of online appointment system	\$300.00
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Fully-functioning Cholestech machine for Health Coaching Program	no charge
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End of Program Standard Aggregate Reporting	no charge
Custom, Ad hoc reports will be provided upon request	\$120/hour
Standard format data feeds	no charge
Additional consulting support and other project related tasks as defined by the County	\$120/hour
--Identification of high risk participants for further counseling, intervention and follow-up	
--Participant interactions (telephonic or email)	
--High Risk Health Coaching (telephonic or in person)	
--Incentive reward management	
--Site visits and discussions (first three visits, no charge)	

BaySport will provide a written invoice to the County of San Mateo for services provided as part of this contract on the 30th of each month during which services were provided in support of this contract. Baysport will attach the list of employees who participated by date of service.

This Exhibit will be valid from February 13, 2018 through December 31, 2018. It is agreed that any subsequent exhibits will not measurably change the scope of work or the amount and method of payment for this contract period.

Part 2

Exercise Coordinator

Fee Schedule:

Exercise Services Coordinator services	\$44/hour
Speaker Fee	\$165/hour, minimum one hour

For topics requiring special credentials or expertise beyond that of the Exercise Services Coordinator.

Group Exercise Fee	\$75-120/class
Individual Fitness Training / Coaching	\$80/session
Group Fitness Training / Coaching	\$100/session
Recreation Event Coordination (per diem)	\$43/hour

Attachment H

Health Insurance Portability and Accountability Act (HIPAA)

Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is

limited to the information created or received by Business Associate from or on behalf of County.

- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
 - 1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 - 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 - 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 - 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.

- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.

- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.