

VILLAGE OF DOWNERS GROVE
Report for the Village
7/9/2019

SUBJECT:	SUBMITTED BY:
Fire Department Physical Fitness Consulting Services	Jeff Pindelski Fire Chief

SYNOPSIS

A resolution has been prepared authorizing execution of a contract with AZ Fitness & Nutrition for Fire Department physical fitness consulting services in the amount of \$17,400.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 includes *Exceptional Municipal Services*.

FISCAL IMPACT

Safety National, the Village's excess insurance carrier for workers' compensation, will be partially funding this service as part of its safety and loss prevention initiative (\$10,000). The remaining \$7,400 will be included in the FY20 Budget in the General Fund.

RECOMMENDATION

Approval on the July 9, 2019 Consent Agenda.

BACKGROUND

In 2018, the Fire Department peer fitness trainers worked with a personal trainer who specializes in firefighter fitness and nutrition. All department members were subjectively evaluated to determine fitness levels as well as future goals and objectives for injury prevention and wellness.

The Peer Fitness Trainers worked with the individuals throughout the year as needed to review and modify their individual fitness programs with the support of the outside trainer.

This program helped to significantly reduce the number of duty related injuries in 2018. This start of this program was funded by Safety National, the Village's excess insurance carrier for workers' compensation as part of its safety and loss prevention initiative.

The Fire Department plans to continue this program and further improve injury prevention, fitness and wellness within the Department.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND
AZ FITNESS & NUTRITION**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of an Agreement (the "Agreement"), between the Village of Downers Grove ("Village") and AZ Fitness & Nutrition ("Consultant"), for Fire Department physical fitness consulting services, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

AGREEMENT

This Agreement is made this ___ day of June 2019 by and between AZ Fitness & Nutrition ("Consultant") and the Village of Downers Grove, Illinois, an Illinois municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, ("Village").

WHEREAS, the Village wishes to retain the services of the Consultant to provide physical fitness consulting services for the Downers Grove Fire Department; and

WHEREAS, the Consultant is willing to perform these services for compensation and in accordance with the terms and conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits that will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

I. Scope of Services

Consultant agrees to provide the services in the proposal, attached hereto and incorporated herein by reference as Exhibit B.

II. Term of Agreement

The term of this Agreement shall begin on the date of execution and terminate three (3) years thereafter.

III. Compensation

A. Basic Fees:

Fees for these services shall not exceed the amount of Seventeen Thousand Four Hundred Dollars (\$17,400) per year. Any additional work performed that will increase the agreement price in excess of this amount must be approved in writing by both parties.

B. Consultant Invoices:

The Consultant shall prepare and submit to the Village equal quarterly invoices in the amount of \$4,350.00 that contain a reference number, and the billing period.

C. Prompt Payment Act:

The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Consultant within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Consultant within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Consultant requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

IV. General Terms and Conditions

A. Relationship Between the Consultant and the Village

The relationship between the Village and the Consultant is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

B. Equal Employment Opportunity

In the event of the Consultant's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, the Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Consultant's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Consultant in its efforts to comply with such Act and Rules and Regulations, the Consultant will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
5. That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

C. Sexual Harassment

Consultant, as a party to a public contract, has a written sexual harassment policy so that it:

1. Notes the illegality of sexual harassment;
2. Sets forth the State law definition of sexual harassment;
3. Describes sexual harassment utilizing examples;
4. Describes the Consultant or supplier's internal complaint process including penalties;
5. Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities, and;
6. Describes the protection against retaliation afforded under the Illinois Human Rights Act.

D. Drug Free Work Place

Consultant, as party to a public contract, certifies and agrees that it will provide a drug free workplace by:

1. Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or Consultant's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: abide by the terms of the statement; and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
2. Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or Consultant's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
3. Providing a copy of the statement required by subparagraph (1) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
4. Notifying the contracting or granting agency within ten (10) days after receiving notice of a criminal drug statute conviction from an employee or otherwise receiving actual notice of such conviction.
5. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by Section 5 of the Drug Free Workplace Act.
6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

E. Non-Discrimination

Consultant and its employees agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the

Federal Rehabilitation Act, and rules applicable to each. The equal opportunity clause of the Department of Human Rights rules is specifically incorporated herein.

The Americans with Disabilities Act (42 U.S.C. 12101) and the regulations thereunder (28 CFR 35.130)(ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this Agreement, the undersigned vendor certifies that services, programs and activities provided under this Agreement are and will continue to be in compliance with the ADA.

F. Campaign Disclosure Certificate

The Consultant shall comply with the Campaign Disclosure Certificate attached hereto and incorporated herein by reference as Exhibit A.

G. Patriot Act Compliance

The Consultant represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Consultant further represents and warrants to the Village that the Consultant and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Consultant hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

H. Cooperation with FOIA Compliance/Confidentiality

Consultant acknowledges that the Freedom of Information Act may apply to public records in possession of the Consultant. Consultant shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 et.seq. The Consultant shall protect the confidentiality of the all Village employees and shall not disclose confidential information without the prior written consent of the Village.

I. Copyright or Patent Infringement

The Consultant agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Consultant that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

J. Standard of Care

Services performed by Consultant under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representations express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinions, and documents or otherwise.

If the Consultant fails to meet the foregoing standard, Consultant will perform at its

own cost, and without reimbursement from the Village, the professional services necessary to correct errors and omissions caused by Consultant's failure to comply with the above standard and reported to Consultant within one (1) year from the completion of Consultant's services for the Project.

V. Insurance and Indemnification of the Village

A. **Insurance**

The Consultant shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance which, at a minimum, will protect the Consultant from the types of claims set forth below which may arise out of or result from the Consultant's operations under this Contract and for which the Consultant may legally liable:

Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operation to be performed;

Claims for damages resulting from bodily injury, occupational sickness or disease, or death of the Consultant's employees;

Claims for damages resulting from bodily injury, sickness or disease, or death of any person other than the Consultant's employees;

Claims for damages insured by the usual personal injury liability coverage which are sustained: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Consultant, or (2) by another person;

Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

Claims for damages as a result of professional or any other type of negligent action by the Consultant or failure to properly perform services under the scope of the agreement between the Consultant and the Village.

The Consultant shall demonstrate having insurance coverage for professional liability (errors and omissions).

As evidence of said coverages, Consultant shall provide the Village with certificates of insurance naming the Village of Downers Grove as an additional insured and include a provision for cancellation only upon at least 30 days prior notice to the Village.

B. **Indemnification**

The Consultant will indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the Consultant under this Agreement. This indemnification does not apply to liability caused by the Village's own negligence. This provision shall survive termination of this Agreement.

VI. Miscellaneous Provisions

A. Termination

In the event of the Consultant's nonperformance, breach of the terms of the Agreement, or for any other reason, including that sufficient funds to complete this Agreement are not appropriated by the Village, the Agreement may be canceled, in whole or in part, upon the Village's written notice to the Consultant. The Village will pay the Consultant's costs actually incurred as of the date of receipt of notice of termination. Upon termination, the Consultant will deliver all documents and products of whatever kind, and their reproducible originals related to the project, which have been produced to the date of the notice of termination.

B. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage.

C. Successors and Assigns

The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other.

D. Waiver of Contract Breach

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

E. Amendment

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

F. Severability of Invalid Provisions

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

G. Assignment

The Consultant will not assign or subcontract any portion of this Agreement, unless the Village agrees to the assignment or subcontract in writing. Any assignment will not relieve the Consultant from its obligations or change the terms of this Agreement.

H. Notice

Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to designated representatives of both parties as follows:

**Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515**

**Annette Zapp
AZ Fitness & Nutrition
3041 Iron Leige Lane
Montgomery, IL 60538**

I. Village Ordinances

The Consultant will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

J. Use of Village's Name

The Consultant is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

AZ Fitness & Nutrition

Village of Downers Grove

By: *A Zapp*

By: _____

Title: *owner*

Title: _____

Date: *6-27-19*

Date: _____

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**Exhibit A
Campaign Disclosure Certificate**


The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing this Agreement, Consultant agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

- Consultant has not contributed to any elected Village position within the last five (5) years.



 Signature

Annette Ezpp

 Print Name

- Consultant has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
 (company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

 Signature

 Print Name

EXHIBIT B



FITNESS & NUTRITION

A to Z Fitness and Nutrition Service Proposal
Prepared exclusively for the Downers Grove Fire Department
and the Village of Downers Grove
Dated 6-18-2019

Component 1:

Develop and deliver a three (3) year fitness program for the Downers Grove Fire Department Annual wellness testing for 76 members, including:

- IAFF/Fire Chiefs Wellness and Fitness Initiative (WFI)
- Functional Movement Screening (FMS)
- Circumference measurements and skinfold measurements for body composition calculation
- Data collection and management; blinding and interpretation

A to Z Fitness and Nutrition will administer comprehensive WFI fitness testing protocols with the added components of FMS, circumference, skinfold body composition determination and personal interviews/history/goal setting for each member. A to Z Fitness and Nutrition will administer WFI testing protocols with the assistance of the DGFDPFTs.

Component 2:

Develop custom fitness program for individuals based upon their WFI data and other screening

processes

Ongoing communication with individuals on custom fitness programs and updates as needed
A to Z Fitness and Nutrition will work closely with each FD member to support their health and wellness. Programs will be designed based on WFI and additional testing as well as the member's personal injury history and goals. All programs are delivered via Train Heroic, a smart-phone based application. Programs are updated on an as-needed and ongoing basis.

Component 3:

Develop and deliver up to six (6) fitness/wellness/nutrition lectures for all Village of Downers Grove employees.

A to Z Fitness and Nutrition will design 2 unique lectures to be presented across all three FD shifts. All Downers Grove Village Employees are invited to attend. Lecture topics will be chosen based on timely fitness research as well as pertinent questions and topics of curiosity from personnel.

Component 4:

Coordinate and deliver Continuing Education for 6 DGFD Peer Fitness Trainers (PFTs)
DGFD PFTs will be tasked with assisting with WFI testing administration. PFTs will receive a 2-hour refresher course in August prior to WFI testing commencement. Thereafter, bi-monthly 2-hour PFT education sessions will be presented on alternating shifts. These sessions are not approved for American Council on Exercise PFT continuing education credits.

Total:

\$17,400 yearly for three years.