

SERVICES AGREEMENT

This **SERVICES AGREEMENT** (the “**Agreement**”) is entered into as of August 1, 2022 (the “**Effective Date**”), by and between **CITY OF LA CROSSE**, a Wisconsin municipality, located at 400 La Crosse Street, La Crosse, WI 54601 (“**City**”), and **Mayo Clinic Health System – Franciscan Medical Center, Inc.** a Wisconsin nonprofit corporation, located at 700 West Avenue S., LaCrosse, WI 54601 (“**Mayo**”).

WHEREAS, City owns and operates a fire department (“City Fire Department”) and is in need of specialized health-related services for its employees;

WHEREAS, Mayo provides various health care services to the community and is able to provide such specialized health-related services to City Fire Department and agrees to do so under the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Services.** Mayo agrees to perform the services set forth on Exhibit A attached hereto (the “Services”). Mayo shall perform such Services in accordance with the schedule and in the manner described in Exhibit A. Mayo’s obligations under this Agreement will be performed by Mayo and/or by Mayo affiliates.
2. **City’s Responsibilities.** Subject to annual appropriation, City shall provide, at its expense, the services, equipment, supplies, and staff, as applicable, described in Exhibit A and as reasonably required for Mayo and its personnel to perform the Services. City shall maintain an accurate record of all transactions undertaken in connection with this Agreement. If City is unable to provide the items necessary for Mayo to perform the services describe within Exhibit A, Mayo has the ability to terminate the Agreement according to Section 6 (c).
3. **Compensation.** Subject to termination under Section 6, the Services provided hereunder are being provided as a community benefit; and, therefore, the parties agree that no money will be exchanged between the parties during the term of this Agreement. The parties mutually agree to review this Agreement on an annual basis and modify the Agreement as needed to reflect the parties’ obligations under law.
4. **Qualifications.** All Mayo personnel performing the Services shall be fully qualified, experienced and trained before being assigned to perform the Services. To the extent required by law, Mayo personnel performing the Services shall be properly licensed or registered in the State of Wisconsin. Upon request, Mayo will provide City with documentation of personnel qualifications, experience and training.
5. **Term.** Subject to the termination provisions set forth in this Agreement, the term of this

Agreement shall begin on the Effective Date and shall continue for an initial term of one (1) year. Upon the expiration of the initial one-year term and upon each anniversary thereafter, this Agreement shall automatically renew on the same terms and conditions for additional renewal terms of one (1) year each, unless terminated earlier in accordance with the terms of this Agreement.

6. **Termination.** Except as otherwise specifically provided herein, this Agreement may only be terminated upon the occurrence of any of the following events:
- a. By mutual written agreement of the parties;
 - b. By either party, without cause, and upon not less than thirty (30) days' prior written notice to the other party of such termination;
 - c. By the non-defaulting party, upon a material breach of any other provision of this Agreement by the other party, if such breach is not cured within thirty (30) calendar days after written notice is provided to the alleged defaulting party;
 - d. By either party, upon the filing by the other party of a voluntary petition or an answer, or the filing against it of an involuntary petition that is not dismissed within sixty (60) days seeking reorganization, arrangement, readjustment of its debts or any other relief under the United States Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, or any other action of a party to this Agreement indicating its consent to, approval of, or acquiescence in any such petition or proceeding; or
 - e. By either party, upon the dissolution of the other party to this Agreement.

Upon termination, (i) neither party shall have any further obligations under this Agreement except for those accruing prior to the date of termination, and (ii) each party shall cease use of and return to the other all confidential information of the other party. If this Agreement is terminated for any reason during the initial twelve (12) month period, the parties will not enter into another agreement for the same or similar Services during the remainder of such period.

7. **Recordkeeping and Confidentiality of Health Information.** The City understands and acknowledges that Mayo is subject to applicable federal, state, and local laws, rules, regulations, and standards with respect to clinical recordkeeping and maintaining the confidentiality of medical records and the handling, storage, transmission and release of patient information, including but not limited to the Health Insurance Portability and Accountability Act and the regulations thereunder (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act and the regulations thereunder (“HITECH”). As such, the City agrees to make good faith reasonable efforts to assist Mayo in complying with its HIPAA and HITECH requirements, to the extent any are applicable, with the understanding that it is not the intent for either party to exchange any personal health information (“PHI”) in this Agreement. Provided the City makes such good faith reasonable efforts to assist Mayo, the City will have no further liability of any kind under this paragraph. The terms of this Section shall survive the termination of this Agreement.

8. **Limitation on Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS OR LOSS OF BUSINESS OR LOSS OF GOODWILL ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.
9. **Insurance.** Each party agrees to maintain appropriate general liability insurance or self-insurance to cover any liability of the party and/or its employees arising out of any acts its employees may perform in connection with this Agreement, which shall have limits of no less than \$1,000,000 per claim and \$3,000,000 annual aggregate. If such insurance is written on a claims-made basis, each party will obtain, at its expense, an extended reporting endorsement upon termination of this Agreement which provides continuing coverage under such insurance for claims based upon acts or omissions and alleged acts or omissions during the term of this Agreement. Upon request, each party will provide the other party with proof of the insurance or self-insurance required under this Section.
10. **Inducement of Referrals.** It is not the purpose of this Agreement or the intent of the parties to induce or encourage the referral of patients, and there is no requirement under this Agreement or under any other Agreement between the parties that City or its employees refer patients to Mayo for products or services. No payment made under this Agreement is made in return for the referral of patients, or is made in return for the purchasing, leasing, or ordering of any products or services.
11. **Independent Contractors.** It is mutually understood and agreed that the relationship between the parties is that of independent contractors. Neither party is the agent, employee, or servant of the other. Except as specifically set forth herein, neither party shall have nor exercise any control or direction over the methods by which the other party performs work or obligations under this Agreement. Further, nothing in this Agreement is intended to create any partnership, joint venture, lease, or equity relationship, expressly or by implication, between the parties. Each party acknowledges that the other party will not withhold from any amounts paid pursuant to this Agreement any sums for the payment of federal or state income taxes, FICA, FUTA or SUTA. Each party shall have sole responsibility for the reporting and payment of these taxes for its own respective employees. In the event that the Internal Revenue Service or any other party should question the independent contractor status of the parties, each party hereto agrees that the other shall have the right to participate, at its own cost, in any discussions or negotiations regarding such status.
12. **Access to Records.** If applicable, for the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, as amended, and any written regulations thereto, Mayo agrees to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement:

- a. Until the expiration of four (4) years after the furnishing of such services pursuant to this Agreement, Mayo shall make available, upon written request by the Secretary of Health and Human Services, or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, the Agreement, and books, documents and records of such that are necessary to certify the nature and extent of such costs; and
 - b. If Mayo carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of Health and Human Services, or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.
13. **Use of Name.** Neither party shall use the names or trademarks of the other party or any of the other party's affiliated entities in any advertising, publicity, endorsement, or promotion unless the other party has provided prior written consent for the particular use contemplated. With regards to use of Mayo's name, all requests for approval pursuant to this Section must be submitted to the Mayo Clinic Public Affairs Business Relations Group, at the following E-mail address: BusinessRelations@mayo.edu at least ten (10) business days prior to the date on which a response is needed. The terms of this Section shall survive the termination, expiration, non-renewal, or rescission of this Agreement.
 14. **Compliance with Laws and Regulations.** Both parties shall render all services herein in accordance with applicable federal, state and local laws and regulations relative thereto.
 15. **Entire Agreement.** This Agreement together with the exhibits hereto constitutes the entire agreement between the parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understandings, whether oral or written, between the parties.
 16. **Amendments.** This Agreement may not be amended or modified except by a writing signed by both parties.
 17. **No Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party; provided, that Mayo may assign this Agreement without the prior written consent of the other party to any Mayo affiliate or other entity that controls, is controlled by or is under common control with Mayo. Any purported assignment in violation of this clause is void. Such written consent, if given, shall not in any manner relieve the assignor from liability for the performance of this Agreement by its assignee.
 18. **Third Party Beneficiaries.** Except as otherwise expressly stated herein or by separate

written agreement signed by the parties, there shall be no third-party beneficiaries of this Agreement. This Agreement is intended only to benefit the parties hereto, and they have no intention of creating any rights, interests, or benefits for any other parties whatsoever, including any employees of Mayo or employees of City.

19. **Force Majeure.** Neither party shall be responsible for the non-performance of its obligations under this Agreement if such non-performance is caused directly or indirectly by acts of God, acts of civil or military authority, civil disturbance, war, terrorism, fires, or strikes. The party so affected shall give notice to the other party and shall do everything reasonably possible to resume performance.
20. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, legal representatives, successors and assigns.
21. **Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Wisconsin, except that no Wisconsin conflicts-of-law or choice-of-law provisions shall apply to this Agreement.
22. **Non-Exclusivity.** No part of this Agreement shall be construed as limiting either party from contracting with another person(s) or entity for the same or similar services covered under this Agreement.
23. **Notices.** All notices and other business communications between the parties related to this Agreement shall be in writing and either personally delivered, sent by certified or registered mail, overnight courier, or by facsimile (with a copy to follow by certified or registered mail or overnight courier) addressed as follows:

If to Company: City of La Crosse Fire Department
400 La Crosse Street
La Crosse, WI 54601
Attn: Fire Chief Jeff Murphy and
the City Clerk Nikki Elsen

If to Mayo: Mayo Clinic Health System – Franciscan
Medical Center, Inc.
700 West Ave S.
La Crosse, WI 54601
Attn: Sports Medicine Christine Feller

Notices sent by facsimile shall be deemed delivered upon receipt of machine confirmation by sender. Notices sent by overnight courier shall be deemed delivered upon receipt. Notices sent by certified or registered mail shall be deemed delivered on the third day following the date of mailing. Notices personally delivered are considered

effective upon the date of delivery. Either party may change its address or facsimile number by giving written notice in compliance with this Section.

24. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect as if the invalid or unenforceable provision had never been a part of the Agreement, to the extent that the absence of the invalid or unenforceable provision does not materially affect the purpose of the Agreement.
25. **Waiver.** The failure of either party to complain of any default by the other party or to enforce any of such party's rights, no matter how long such failure may continue, will not constitute a waiver of the party's rights under this Agreement. The waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other provision. No part of this Agreement may be waived except by the further written agreement of the parties.
26. **Counterparts.** This Agreement may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.
27. **Survival.** The rights and obligations of parties relating to confidentiality, indemnification, insurance, non-solicitation, use of name, and availability of medical and business records, along with any other rights and obligations that expressly or by operation of law extend beyond this Agreement, shall survive the termination, expiration, non-renewal, or rescission of this Agreement.
28. **Public Records Law.** Mayo understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, Mayo agrees to make good faith reasonable efforts to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. During such seven-year period, Mayo agrees to make good faith reasonable efforts to assist City in complying with any public records request that City receives pertaining to this Agreement. In the event that Mayo decides not to retain its records applicable to this Agreement for a period of seven (7) years, then it shall make reasonable efforts to provide written notice to City whereupon City shall take custody of said records assuming such records are not already maintained by City. Regardless of whether City takes custody of such records following Mayo's notice, Mayo will have no further liability of any kind under this paragraph following Mayo's provision of such notice to City. This provision shall survive the termination of this Agreement.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

**MAYO CLINIC HEALTH SYSTEM-
FRANCISCAN MEDICAL CENTER, INC.**

CITY OF LA CROSSE

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Exhibit A Services

Mayo's Responsibilities

During the term of this Agreement, Mayo shall perform the following services for Company:

Classroom-based presentations of program

Mayo will provide up to three (3), 2-hour classroom sessions for all firefighters to introduce the program, rationale, and explain the process to implement across all fire stations and firefighters.

Development of fitness program blocks:

Utilizing data from previous injury reports, ride along observations, Fusionetics data, job demands and desires of the fire fighters, Mayo will design comprehensive programming that improves mobility, strength, speed and endurance while decreasing injury risk that translates to the job. This will be a tactical fitness-based programming keeping all of the above information in mind.

Initial onsite demonstration of workout blocks

Company's Responsibilities

During the term of this Agreement, Company shall be responsible for the following:

Company will provide gymnasium equipment and workout space at each fire station.

Schedule

The parties shall mutually agree on the schedule for performing the Services and the location(s) at which the Services will be provided.