

# SERVICE CONTRACT

## MEND CHILDHOOD OBESITY PROGRAM

Service Agreement No. \_\_\_\_\_

THIS MEND CHILDHOOD OBESITY PROGRAM CONTRACT (this "Agreement") is entered into by and between \_\_\_\_\_ (the "Contractor") and the City of Corpus Christi, a Texas home-rule municipal corporation (the "City"), by and through its duly authorized City Manager or his designee (the "City Manager"), effective for all purposes upon execution by the City Manager.

WHEREAS Contractor has proposed to provide **MEND CHILDHOOD OBESITY PROGRAM** in response to **Request for Qualifications No. BI-0015-14**, which is incorporated by reference and attached hereto as Exhibit A;

WHEREAS the City has determined Contractor to be a qualified vendor;

NOW, THEREFORE, Contractor and City enter into this Agreement and agree as follows:

1. **Services.** Contractor will provide **MEND CHILDHOOD OBESITY PROGRAM** in accordance with **Request for Qualifications No. BI-0015-14**, which is incorporated by reference and attached hereto as Exhibit A.

2. **Term.** This Agreement is for three (3) years commencing on \_\_\_\_\_ and continuing through \_\_\_\_\_.

3. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement including deductions for nonperformance and authorizations for payment. All of Contractor's notices or communications regarding this Agreement must be directed to the Contract Administrator, who is the **Administrative Research Director**.

4. **Independent Contractor.** Contractor will perform the services hereunder as an independent contractor and will furnish such services in its own manner and method, and under no circumstances or conditions may any agent, servant, or employee of Contractor be considered as an employee of the City.

5. **Insurance.** Before activities can begin under this Agreement, Contractor's insurance company(ies) must deliver a Certificate of Insurance, as proof of the required insurance coverages to the Contract Administrator. Additionally, the certificate must state that the **Contract Administrator** will be given at least 30 days notice of cancellation, material change in the coverages, or intent not to renew any of the policies by certified mail. The City must be

named as an Additional Insured. The City Attorney must be given copies of all insurance policies within 15 days of the City Manager's written request. Insurance requirements are incorporated herein in Request for Qualifications No. BI-0015-14, which is incorporated herein as Exhibit A and may be revised annually by the City Manager upon 30 days written notice to Contractor.

6. **Assignment.** No assignment of this Agreement or any right or interest therein by Contractor is effective unless the City first gives its written consent to such assignment. The performance of this Agreement by Contractor is of the essence of this Agreement and the City's right to withhold consent to such assignment is within the sole discretion of the City on any ground whatsoever.

7. **Fiscal Year.** All parties recognize that the continuation of any contract after the close of any fiscal year of the City, which fiscal year ends on July 31 annually, is subject to appropriations and budget approval providing for such contract item as an expenditure in that budget. The City does not represent that the budget item will be actually adopted, as that determination is within the sole discretion of the City Council at the time of adoption of each budget.

8. **Waiver.** No waiver of any breach of any term or condition of this Agreement or Contractor's offer to **Request for Qualifications No. BI-0015-14** waives any subsequent breach of the same.

9. **Compliance with Laws.** This Agreement is subject to all federal laws and laws of the State of Texas. All duties of the parties will be performed in the City of Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of Texas and the venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.

10. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, Contractor must obtain prior written approval from the **Contract Administrator**. In using subcontractors, Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of Contractor. All requirements set forth as part of this Agreement are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the services.

11. **Amendments.** This Agreement may be amended only by written agreement signed by duly authorized representatives of the parties hereto.

12. **Termination.** The City Manager may terminate this Agreement for Contractor's failure to perform the services specified in **Request for Qualifications No. BI-0015-14**. Failure to keep all insurance policies in force for the entire term of this Agreement is grounds for termination. The Contract Administrator must give Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

Alternatively, City may terminate this Agreement, with or without cause, upon twenty (20) days' written notice to Contractor. However, the City may immediately terminate this Agreement for failure to pay or provide proof of payment of taxes as set out in Section 13.

13. **Taxes.** Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other related taxes according to Circular E Employer's Tax Guide, publication 15, as it may be amended. Contractor must provide proof of payment of these taxes within 30 days after City Manager's written request therefor.

\* 14. **Drug Policy.** Contractor must adopt a Drug Free Workplace and drug testing policy.

\* 15. **Violence Policy.** Contractor must adopt a Violence in the Workplace policy.

16. **Notice.** Notice may be given by fax, hand-delivery or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after deposit, if sent certified mail. Notice shall be sent as follows:

IF TO CITY:

City of Corpus Christi

Attention: Administrative Research Director, Health Department

P.O. Box 9277

Corpus Christi, Texas 78469-9277

Fax No.: (361)826-4526

IF TO CONTRACTOR:

Contractor Name:	<u>Boys &amp; Girls Club of Corpus Christi, <b>GREENWOOD CLUB</b></u>		
Contact Person:	<u><b>Lisa Saenz</b></u>		
Address:	<u>3902 Greenwood Drive</u>		
City, State, Zip:	<u>Corpus Christi</u>	<u>TX</u>	<u>78416-1905</u>
Fax No.:	<u>361-853-1943</u>		

17. **Month-to-Month Extension.** If the City has not completed the qualification process and awarded a new **MEND CHILDHOOD OBESITY PROGRAM** contract upon the expiration of this Agreement, then Contractor must continue to provide services under this Agreement, on a month-to-month basis until a new contract is awarded by Council. This Agreement automatically expires on the effective date of a new contract; the Contract Administrator will provide written notice of the effective date of the new contract to Contractor.

18. **Indemnification.** *CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS,*

**DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.**

19. **Severability.** Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

SIGNED this 25<sup>th</sup>. day of September, 2013.

Contractor: Anne Baker



Signature

Name: Anne Baker

Title: Chief Professional Officer

CITY OF CORPUS CHRISTI

\_\_\_\_\_  
Michael Barrera  
Assistant Director of Financial Services

\_\_\_\_\_  
Date

Incorporated by Reference:

Exhibit A: Request for Qualifications No. BI-0015-14

Exhibit B: Contractor's Qualifications Statement