

# SERVICE CONTRACT

## MEND CHILDHOOD OBESITY PROGRAM

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

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

WHEREAS, Contractor has proposed to provide the **MEND CHILDHOOD OBESITY PROGRAM** set out in **Request for Qualifications No. BI-0015-14**;

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 the **MEND CHILDHOOD OBESITY PROGRAM** as described and set out in **Request for Qualifications No. BI-0015-14**, which is incorporated by reference herein as if fully set out in its entirety and which is attached to this Agreement as Exhibit A. Contractor's Qualifications Statement ("Contractor's Response"), which is Exhibit B, submitted for City's consideration, review, and as inducement to enter into this Agreement with the Contractor, is also attached to this Agreement and is incorporated by reference herein as if fully set out in its entirety. Exhibit A also includes any addendums issued by the City prior to the closing date stated in Exhibit A.

2. **Term.** This Agreement commences on January 13, 2015, and terminates September 30, 2015, unless extended by mutual consent of the parties and amended as set out in section 14. This Agreement may also be renewed for an additional term, subject to sufficient appropriations, for the same period of calendar days and under the same terms and conditions upon mutual agreement of the parties in writing and signed by authorized representatives of each.

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 **Director of the Corpus Christi-Nueces County Public Health District**.

4. **Payment to Contractor.** The Contractor shall be paid, on a reimbursement basis, as set out in Exhibit A. Notwithstanding the foregoing, in accordance with Addendum No. 1 of Exhibit A and in consideration of Contractor's request and promise to perform, the Contractor may be advanced an amount of funds not to exceed 30% of the full dollar value of the MEND program 10-week sessions the Contractor has agreed to provide pursuant to this Agreement, in order to assist the Contractor with necessary costs to be incurred for staffing and in preparation for fulfilling the duties and responsibilities required by this Agreement. The exact amount of the advance payment, if any, to be provided to the Contractor will be determined by the Contract Administrator.

The fees to be paid by the City to the Contractor are based on each individual 10-week session basis and are payable upon the Contractor's fulfillment of all session-related requirements and the conclusion of each 10-week session of classes. In the event the Contractor receives an advance payment and does not complete any part of the sessions or program services required by this Agreement, Contractor acknowledges and agrees that all advanced funds will be promptly returned to the City, without setoff and without further demand or notice, and Contractor acknowledges and agrees that it may not withhold repayment of the advanced funds to the City for any reason. Contractor must complete each 10-week program session and fulfill the completion requirements set out in Exhibit A in order to earn any portion of the fee payable by the City for each such session. Furthermore, in the event the Contractor receives an advance payment and is to provide more than one 10-week session, upon completion of each 10-week session and receipt by the City of an invoice for same, any amount paid in advance to the Contractor will first be deducted from the session fee payable to the Contractor for that particular session (or sessions, in the event two or more 10-week sessions are concluded concurrently) in order to determine how much, if any, remains due and payable by the City. In the event the amount advanced by the City exceeds the fees due to the Contractor for any particular 10-week session or sessions, no payment will be due nor made to the Contractor. Payment due by the City to the Contractor for each fully completed 10-week session in accordance with Exhibit A, less any advance payment deduction, will be remitted to the Contractor within 30 days of the date the City receives the Contractor's invoice.

**5. Independent Contractor.** Contractor will perform the services stated in this Agreement 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.

**6. Insurance.** Before activities can begin under this Agreement, Contractor's insurance company (or companies) must deliver a Certificate of Insurance, as proof of the required insurance coverages, required by Exhibit A, to the Contract Administrator. Additionally, the certificate must state that the **Contract Administrator and City's Risk Manager** will be given at least 30 days advance 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 to the Contractor. Insurance requirements included in Exhibit A are incorporated by reference herein as if fully set out in their entirety and may be revised annually by the Risk Manager upon 30 days written notice to the Contractor.

**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 September 30 annually, is subject to budget approval and appropriations providing for such contract item as an expenditure in the next annual fiscal budget. The City does not represent that the budget item for this Agreement will be actually adopted, as that determination is within the sole discretion of the City Council at the time of adoption of each fiscal budget.

**8. 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, and all requirements set forth as part of this Agreement are made applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the services.

9. **Drug Policy.** Contractor must adopt and enforce a Drug Free Workplace and drug testing policy.

10. **Violence Policy.** Contractor must adopt and enforce a Violence in the Workplace policy.

11. **Assignment.** No assignment of this Agreement or any right or interest herein held by the Contractor is effective unless the City gives its advance written consent to such assignment. The performance of this Agreement by the 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 Manager on any ground whatsoever.

12. **Waiver.** No waiver of any breach of any term or condition of this Agreement, including Exhibit A, waives any subsequent breach of the same by either party.

13. **Compliance with Laws.** This Agreement and Contractor's performance hereunder are subject to all applicable federal, state, and local laws. All duties to be performed by the parties will be performed in the city of Corpus Christi, Texas, or within the State of Texas, if Contractor is authorized in advance by the City to perform them outside of the City. 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.

14. **Amendments.** This Agreement may be amended only in writing and signed by authorized representatives of the parties to this Agreement. Exhibit C, which is an addendum to this Agreement, is incorporated here by reference as if set out in its entirety.

15. **Termination.** The City Manager may terminate this Agreement for Contractor's failure to perform the services specified in Exhibit A. Failure to keep all insurance policies of the types and coverages specified and in force for the entire term of this Agreement is also grounds for termination. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period stated, the City Manager may immediately terminate this Agreement.

Alternatively, the City Manager or the Contractor may terminate this Agreement without cause, upon thirty (30) days' advance written notice to the other party. Notwithstanding the foregoing, the City may immediately terminate this Agreement for Contractor's failure to pay or to provide proof of payment of taxes as set out in section 17 of this Agreement.

17. **Taxes.** Contractor covenants to pay all payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and any other related taxes according to Circular E "Employer's Tax Guide", Publication 15, as it may be amended. If requested, Contractor must provide adequate proof of payment of any specified taxes to the City Manager within 10 days after receipt of a written request to provide such proof.

18. **Notice.** Any notice required or provided for under this Agreement must be given by fax, personal delivery, or certified mail, postage prepaid, return receipt requested, and is deemed received on the day faxed or personally delivered or on the third day after deposit with the United States Postal Service if sent by certified mail. Notice shall be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attention: Director, CCNCPHD  
1702 Home Rd., 78416  
P. O. Box 9277  
Corpus Christi, TX 78469-9277  
Fax: (361) 826-4526

**IF TO CONTRACTOR:**

Contractor Name:	Catholic Charities of Corpus Christi, Inc.		
Contact Person:	Attn: Linda McKamie		
Address (physical):	1322 Comanche St.		
Address (P. O. Box):			
City, State, Zip:	Corpus Christi	TX	78401-2621
Fax Number:	361-884-3956		

19. **Indemnification.** **CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, EXPENSES, LAWSUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES INCLUDING, WITHOUT LIMITATION, WORKERS' COMPENSATION AND THOSE RESULTING IN DEATH; PROPERTY LOSS OR DAMAGE; OR ANY OTHER KIND OF DAMAGE AND 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 BY CONTRACTOR, REGARDLESS OF WHETHER THE INJURIES, DEATH, PROPERTY LOSS OR DAMAGES, OR OTHER DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OF INDEMNITEES, BUT NOT IF 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, LOSS, CLAIMS, DEMANDS, EXPENSES, LAWSUITES, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.**

20. **Severability.** Each provision of this Agreement is 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.

CITY OF CORPUS CHRISTI

\_\_\_\_\_  
Susan Thorpe, Assistant City Manager

\_\_\_\_\_  
Date

Approved as to legal form:

\_\_\_\_\_  
Elizabeth Hundley, Assistant City Attorney  
for the City Attorney

\_\_\_\_\_  
Date

CONTRACTOR: Catholic Charities of Corpus Christi, Inc.

  
Signature

12-11-14  
Date

Name: Linda McKamie  
Title: Executive Director

Attached and Incorporated by Reference:

Exhibit A: Request for Qualifications No. BI-0015-14 (includes issued addendums)

Exhibit B: Contractor's Qualifications Statement

Exhibit C: Addendum to Contract