

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS                                    §                                    CITY OF SAN ANTONIO  
                                                          §  
COUNTY OF BEXAR                            §                                    PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as "Metro Health"), acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and the Young Men's Christian Association of Greater San Antonio, a Texas non-profit corporation (hereinafter referred to as "CONTRACTOR"), both of which may be referred to herein collectively as the "Parties".

RECITALS

A. YMCA of the USA (as defined herein) is collaborating with United HealthCare Services ("UHCS") to implement the YMCA'S DPP (as defined herein) in conjunction with UHCS Diabetes Prevention and Control Alliance, a subsidiary of UHCS, in order to support a national movement to increase awareness and take measures to prevent diabetes and its complications among individuals who have confirmed diagnoses or indications of pre-diabetes by promoting an effective lifestyle change. YMCA'S DPP is YMCA of the USA's group-based adaptation of the DPP as a lifestyle intervention program designed to delay the onset of Type 2 diabetes. The YMCA's DPP is the exclusive property of YMCA of the USA.

B. UHCS owns the MYnetico system (the "MYnetico system"), which is a proprietary web-based technology application, and all third-party software, hardware or systems accessed or utilized by UHCS (including all updates provided by UHCS in relation thereto) in providing products and services to YMCAs participating the YMCA's DPP, as well as any documentation furnished to any such YMCA for use in connection with therewith. The MYnetico system, including all data contained therein is the exclusive property of UHCS.

C. CONTRACTOR has entered into, or intends to enter into, that certain YMCA's Diabetes Prevention Program Participation Agreement with YMCA of the USA (as amended from time to time, the "YMCA Participation Agreement") pursuant to which, among other things, CONTRACTOR will be entitled to operationalize and deliver the YMCA's DPP in San Antonio and the surrounding metropolitan area.

D. CONTRACTOR has also entered into, or intends to enter into, that certain Agreement with UHCS (as amended from time to time, the "UHCS Agreement") pursuant to which, among other things, CONTRACTOR will have the a non-exclusive, non-transferable license to access and use the MYnetico system solely for the YMCA's DPP implementation, execution, management and tracking. Tracking information will be used by UHCS in the development of a national database through which UHCS will be enabled to determine the effectiveness of the YMCA's DPP.

E. CONTRACTOR also conducts certain health and wellness programs called "Y Living." A component of Y Living is designed to provide wellness activities and education for persons diagnosed with diabetes.

F. City desires to provide diabetes prevention and diabetes self-management programming to residents of San Antonio and Bexar County as proposed through the Delivery System Reform Incentive Payment (DSRIP) arm of the Texas Healthcare Transformation and Quality Improvement Program (Medicaid 1115 Waiver Program).

G. City and CONTRACTOR mutually desire to implement the YMCA's DPP, Y Living and the City's Diabetes Self-Management Program with funding from the Medicaid 1115 Waiver Program (as defined herein) under and pursuant to the terms and conditions of this Agreement.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

## I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Collaborative Parties" means, together, YMCA of the USA and UHCS.

"CONTRACTOR" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director or interim director of City's San Antonio Metropolitan Health District.

"Medicaid 1115 Waiver Program" shall mean the program which funds this agreement.

"Project or Program" shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the City's Medicaid 1115 Waiver Program.

"Self-Management Program" means the City of San Antonio Diabetes Self-Management program to be administered by the San Antonio Metropolitan Health District utilizing funding from the Medicaid 1115 Waiver Program.

"UHCS" means United HealthCare Services, Inc., a Minnesota corporation, and its subsidiaries, affiliates and related entities.

"YMCA of the USA" means the National Council of Young Men's Christian Associations, an Illinois not-for-profit corporation.

## II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2016 and terminate on September 30, 2017. Upon agreement of the parties, this Agreement may be renewed upon the same terms and conditions for one additional one year

term. The renewal shall be in writing and signed by the Director of the San Antonio Metropolitan Health District without further action by the San Antonio City Council.

2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from Medicaid 1115 Waiver Program funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

### III. SCOPE OF SERVICES

3.1 CONTRACTOR agrees to use its commercially reasonable efforts to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 The CONTRACTOR will provide the following services throughout the term of this Agreement:

- 3.2.1 CONTRACTOR shall provide a single point of contact to work in conjunction with the City's Metro Health program staff to schedule all courses and provide data for program evaluation purposes;
- 3.2.2 The CONTRACTOR and Metro Health will collaborate on a referral system for all prospective clients to ensure that all participants have access to the full menu of programs available. To that end, the CONTRACTOR shall refer community members to the Metro Health Self-Management Program when appropriate;
- 3.2.3 CONTRACTOR shall provide space on an as needed basis, when available, to allow Metro Health staff access to conduct their Diabetes Self Self-Management Program as necessary;
- 3.2.4 CONTRACTOR shall maintain a license and any necessary staff certifications with the YMCA of the USA to provide the YMCA'S DPP and will comply with all reporting, training and performance standards required of the YMCA of the USA to maintain the YMCA's DPP throughout the term of this agreement.
- 3.2.5 The CONTRACTOR will assure that a minimum total of five hundred fifty five (555) unduplicated participants will be enrolled in either the YDPP or Y Living programs between October 1, 2016 and September 30, 2017.
- 3.2.6 Once 555 unduplicated participants have enrolled in YDPP or Y living programs, CONTRACTOR may begin to invoice the City for unduplicated participants that complete either the YDPP or Y Living programs. "Completion" means a

participant has successfully completed either the YDPP or Y Living Program and has completed the post-assessment survey questions to include the number of visits to a hospital emergency department and the CDC Health Related Quality of Life Survey.

- 3.2.7 CONTRACTOR will provide an updated monthly spreadsheet and progress report on enrollment completed by the 5<sup>th</sup> business day of each month to include at a minimum the following information for each of YDPP and Y Living programs:
  - a. Location of classes and instructors;
  - b. Start Date and Graduation Date for classes;
  - c. Number of participants enrolled per class;
  - d. Number and name of participants who have completed the series of classes for either program;
  - e. Future scheduled classes; and
  - f. Summary of marketing and communications activities for the previous month.
- 3.2.8 CONTRACTOR will provide a comprehensive report of overall project progress biannually in April and October utilizing guidance developed by the Medicaid 1115 Waiver Regional Anchor overseeing the implementation of Medicaid 1115 Waiver Program projects in Bexar County.
- 3.2.9 CONTRACTOR will provide a cumulative report, including back-up documentation, of the number and name of participants who have completed the series of classes for either program that will be included on a submitted invoice.
- 3.2.10 CONTRACTOR will adhere to the Communications Plan developed with the City to include participation in monthly in-person meetings and/or conference calls to discuss project milestones, enrollment, monthly progress reports, timelines and referrals.
- 3.2.11 CONTRACTOR will utilize the agreed upon logo, branding, and shared marketing materials developed in collaboration with Metro Health, and any changes to the shared marketing materials will be done in conjunction with Metro Health staff.
- 3.2.12 CONTRACTOR will identify opportunities to jointly promote the YDPP and Y Living programs in collaboration with Metro Health's Diabetes Self-Management Programs through a variety of outreach activities and media outlets.
- 3.2.13 CONTRACTOR will participate with Metro Health staff and any contracted evaluators to implement a program evaluation plan to include the YDPP, Y Living, and the Metro Health Diabetes Self-Management Program components of this project.
- 3.2.14 CONTRACTOR at the time of enrollment and/or first class for each of the YDPP and Y Living programs, obtain from program participants signed consent forms and participant intake forms and collect the following information as well as any other data elements agreed to in the developed evaluation plan including:
  - a. Frequency of emergency room visits in the prior six months; and

b. CDC Health Related Quality of Life Measures (CDC HRQOL-4).

3.2.15 At the completion of the YDPP and Y Living programs each participant will provide the below information, as well as any other data elements agreed to in the developed evaluation plan:

- a. Frequency of emergency room visits in the prior six months; and
- b. CDC Health Related Quality of Life Measures (CDC HRQOL-4).

3.2.16 CONTRACTOR will participate in any appropriate 1115 Learning Collaborative to be established by the Medicaid 1115 Waiver Regional Anchor and/or Metro Health as requested.

3.2.17 CONTRACTOR will provide participants who complete Metro Health's Diabetes/Chronic Disease Self-Management program with one month of free citywide CONTRACTOR membership.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the reasonable satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in whole or in part, in accordance with Article VII. Termination, should CONTRACTOR's work not be reasonably satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay CONTRACTOR up to the amount of THREE HUNDRED NINETY FIVE THOUSAND NO/100THS DOLLARS (\$395,000.00) for the term of this agreement.

4.2 City will make payment to CONTRACTOR as set out below:

4.2.1 CONTRACTOR will invoice the CITY for \$11,250.00 on a monthly basis, beginning October 2016 up to a total of one hundred thirty five thousand dollars (\$135,000.00).

4.2.2 When five hundred fifty five (555) unduplicated participants total are enrolled in either the YDPP or Y Living programs between October 1<sup>st</sup> through September 30<sup>th</sup>, CONTRACTOR may invoice the City for a payment of four hundred fifty dollars (\$450.00) for each of the five hundred fifty five (555) unduplicated participants who complete either program. Invoices may only be submitted to City on three dates throughout the year: January 31<sup>st</sup>, May 31<sup>st</sup>, and September 30<sup>th</sup>. Up to a total of two hundred forty nine thousand seven hundred and fifty dollars (\$249,750.00)

4.2.3 City will pay CONTRACTOR for a one month citywide CONTRACTOR membership for participants that complete Metro Health's Diabetes/Chronic

Disease Self-Management program at a rate of \$57.00 per one-month membership, up to a cumulative total of ten thousand two hundred fifty dollars (\$10,250.00). YMCA agrees to match the one-month membership with an additional one month of free citywide YMCA membership. The parties agree that neither will have any responsibility for payment for any extension or renewal of any two-month membership initiated through this Agreement.

4.3 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in section 4.1 above. Total payments to CONTRACTOR cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to CONTRACTOR following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services. Payment of all such invoices shall be paid by City to CONTRACTOR within 30 calendar days after the date of each such invoice.

4.5 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR. Invoices will be due no later than 30 calendar days after the dates specified in Section 4.2.2 above. An invoice documenting final expenses associated with the Agreement will be submitted to the City by September 30, 2017.

4.6 CONTRACTOR agrees to provide any and all documentation required by the City for inclusion in any report concerning the Medicaid 1115 Waiver Program. All services required under this Agreement will be performed to City's reasonable satisfaction, and City will not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder will not be paid until required reports, data, and documentation have been received and approved by the City.

## V.

### OWNERSHIP OF DOCUMENTS

5.1 Ownership of Intellectual Property. CONTRACTOR and City agree that any and all writings, documents, maps or information in whatsoever form and character produced by CONTRACTOR pursuant to the provisions of this Agreement (the "Project") shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. CONTRACTOR hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. As owner of the tangible and intangible intellectual property, City shall have the right to reproduce, publish, and authorize others to reproduce or publish, or otherwise use such material. CONTRACTOR agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure

CONTRACTOR's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, CONTRACTOR hereby irrevocably designates and appoints City and its duly authorized officers and agents as CONTRACTOR's agent and attorney-in-fact, to act for and in CONTRACTOR's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by CONTRACTOR. Provided, however, nothing herein contained is intended nor shall it be construed to require CONTRACTOR to transfer any ownership interest in CONTRACTOR's best practice and benchmarking information to the City.

5.2 In the event that CONTRACTOR desires to copyright material or to permit any third-party to do so, CONTRACTOR must obtain City's prior written approval to do so and must appropriately acknowledge City's support in any such materials.

5.3 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Contract shall be the subjects of any copyright or proprietary claim by CONTRACTOR.

CONTRACTOR acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. CONTRACTOR further agrees to turn over to City all such records upon termination of this Contract. CONTRACTOR agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the director, unless required to do so by a court of competent jurisdiction. Metro Health shall be notified of such request as set forth in Article VIII, Section 8.14 of this Contract.

5.4 The rights of Collaborative Entities will be fully observed and complied with by CONTRACTOR, and are not intended to be infringed or limited by the foregoing provisions, and nothing in this Agreement shall be deemed to be an assignment of any of such intellectual property rights to City. CONTRACTOR is solely responsible for the use and security of any third-party intellectual property and understands and agrees that City shall have no liability or responsibility for any claim of infringement by third-parties. The Parties acknowledge that all data and findings produced in connection with the YMCA's DPP will be made available by CONTRACTOR to either or both of the Collaborative Entities for use in their ongoing programs nationally or otherwise and may become part of initiatives in which the Collaborative Entities or either of them maintain proprietary rights or copyrights. Further, it is contemplated that CONTRACTOR will create certain writings, documents, information or other works derived in whole or in part on the YMCA's DPP, and notwithstanding any other provisions of this Agreement, all of such writings, documents, information and other works so derived shall remain the exclusive property of CONTRACTOR subject to CONTRACTOR's agreement that any writings, documents, information or other works derived in whole or in part from this Agreement that rely upon, include or derive from data gathered as part of this Agreement shall be made available to City under a non-exclusive license for the City's use. Nothing contained in this Agreement is intended to be, nor shall be construed as, an assignment of any property rights in and to the YMCA's DPP, which shall remain the exclusive property of YMCA of the USA. Likewise, nothing contained in this Agreement is intended to be, nor shall be construed as, an assignment of any property rights in and to the MYnetico system, including all data contained therein, which shall remain the exclusive property of UHCS.

## VI.

### REQUESTS FOR AND RETENTION OF RECORDS

6.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives. Notwithstanding the preceding, CONTRACTOR may refuse to provide documents to the City if doing so would require CONTRACTOR to violate non-disclosure provisions of HIPAA, ARRA, or agreements with Collaborative Entities, provided that CONTRACTOR gives the Director of Metro Health a written description regarding the relevant non-disclosure provisions, to the fullest extent possible.

6.2 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require CONTRACTOR to return said documents to City prior to or at the conclusion of said retention. Notwithstanding the preceding, CONTRACTOR may refuse to provide documents to the City if doing so would require CONTRACTOR to violate non-disclosure provisions of HIPAA, ARRA, or agreements with Collaborative Entities, provided that CONTRACTOR gives the Director of Metro Health a written description regarding the relevant non-disclosure provisions, to the fullest extent possible.

6.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, the Party receiving such inquiry shall within twenty-four (24) hours of receiving the requests notify the other Party, and CONTRACTOR as a receiving Party shall forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party. CONTRACTOR agrees that it shall be responsible for providing information relating to the request for disclosure of any third-party intellectual property or material to those relevant third parties affected by the request for information.

## VII.

### TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II Term, or earlier termination pursuant to any of



the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days prior written notice, which notice shall be provided in accordance with Article VIII Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement

:

- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
- 7.3.2 Bankruptcy or selling substantially all of company's assets;
- 7.3.3 Failing to perform or failing to comply with any covenant herein required;
- 7.3.4 Performing unsatisfactorily in the reasonable judgment of Director;
- 7.3.5 The failure to meet reporting requirements of the Medicaid 1115 Waiver Program, as set out and determined by City;
- 7.3.6 Refusal to provide records or documents as required by the Medicaid 1115 Waiver Program, or as identified by the City, which results in a failure to meet Program requirements or metrics;
- 7.3.7 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against CONTRACTOR's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
- 7.4.2 Failing to perform or failing to comply with any covenant herein required;
- 7.4.3 Performing unsatisfactorily in the reasonable judgment of Director;
- 7.4.4 The failure to meet reporting requirements of the Medicaid 1115 Waiver Program, as set out and determined by City;

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Certain Effects of Termination. Regardless of how this Agreement is terminated, CONTRACTOR shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services

rendered by CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested.

7.7 Claims Upon Termination. Within sixty (60) calendar days after the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by CONTRACTOR to submit its claims within said sixty (60) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Cessation of Operations. Upon the effective date of expiration or termination of this Agreement, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CONTRACTOR for any default hereunder or other action.

7.10 Limitations Upon Damages. IN NO EVENT WILL EITHER PARTY HERETO BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION INDIRECT LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS), EVEN IF SUCH PARTY HAS BEEN OR WILL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to: \_

City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966332

AND

Director  
City of San Antonio  
San Antonio Metropolitan Health District  
111 Soledad, Suite 1000  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

YMCA OF GREATER SAN ANTONIO  
3233 N. St. Mary's  
San Antonio, Texas 78212-3579  
Attention: Chief Executive Officer

IX.  
RESERVED

X.  
AUDIT

10.1 The CONTRACTOR agrees to cause an independent audit of its financial statements for each of its fiscal years during the term of this Agreement to be performed within a period not to exceed one hundred twenty (120) calendar days following the end of such fiscal year. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed twenty (20) days after its receipt of the report. In addition to the report, a copy of any corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within twenty (20) days upon receipt of said report or upon submission of any such corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of ten (10) business days upon the CONTRACTOR's receipt of the report.

10.4 [RESERVED]

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City under this Agreement.

10.6 The City reserves the right to conduct, or cause to be conducted, an audit or review of all funds received under this Agreement at any and all times deemed reasonably necessary by City, not to exceed two times per 12 month period. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit to the extent any such audit relates to this Agreement and the receipt and expenditure of funds provided to CONTRACTOR by City. In accordance herewith, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine.

CONTRACTOR shall during normal business hours, and not to exceed two times per twelve month period by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by

this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the CONTRACTOR shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by CONTRACTOR in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel (to the extent permitted by applicable law), conditions of employment and other data relating to matters covered by this Agreement.

The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters reasonably relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

10.7 When an audit or examination determines that the CONTRACTOR has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the CONTRACTOR shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than twenty (20) business days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than twenty (20) business days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by check, cashier's check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

CONTRACTOR agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by CONTRACTOR shall be the sole responsibility of the CONTRACTOR and shall not be paid from any Project funds received by the CONTRACTOR under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

10.8 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay the reasonable costs of such audit from non-City resources.

## XI. ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS

11.1 The CONTRACTOR agrees to comply in all material respects with all the terms and conditions that the City must comply with in its participation in the Medicaid 1115 Waiver Program.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto

pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Medicaid 1115 Waiver Program and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Within a period not to exceed sixty (60) calendar days after the expiration, or early termination, of this Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, and after receipt of all amounts then owing by City to CONTRACTOR hereunder, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R. §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all agreement and all grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures regarding the Project covered by this Agreement as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, CONTRACTOR agrees to permit City and/or State to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be reasonably required by Metro Health, the CONTRACTOR shall furnish to Metro Health and the Grantor of the Funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by Metro Health and shall permit the City and Grantor of the Funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management

and service delivery.

11.9 City agrees that it will present the findings of any such review to the CONTRACTOR in a timely manner and will attempt to convey information of Program strengths and weaknesses and assist with Program improvement.

11.10 [RESERVED]

11.11 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by Metro Health shall be submitted by CONTRACTOR to City within five (5) working days of the request or as soon thereafter as practicable. The parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. In the event that CONTRACTOR fails to deliver the required reports or information or delivers incomplete information within the prescribed time period, the City may, upon reasonable notice, suspend reimbursements to CONTRACTOR until such reports are delivered to City. Furthermore, the CONTRACTOR ensures that all information contained in all required reports or information submitted to City is accurate.

11.12 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. CONTRACTOR shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. The Parties agree that CONTRACTOR may provide information regarding its programs and their participants as necessary to comply with CONTRACTOR's agreements with Collaborative Entities. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Section, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR's employees and subcontractors prior to any disclosure of the Confidential Information. This Section shall not be construed to limit the State's or the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

11.13 Prohibited Political Activity. CONTRACTOR agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

11.14 CONTRACTOR agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

11.15 The prohibitions set forth in Sections 11.13 and 11.14 above include, but are not limited to, the following: any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

- (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
- (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
- (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

11.16 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

11.17 CONTRACTOR agrees that in any instance where an investigation of the above is ongoing or has been confirmed, salaries paid to the CONTRACTOR under this Agreement may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the CONTRACTOR's personnel is terminated.

11.18 Sections 11.13 through 11.17 shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, CONTRACTOR and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

11.19 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,

- (A) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity; and
- (B) The CONTRACTOR, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

XII.  
INSURANCE

12.1 A) Prior to the commencement of any work under this Agreement, CONTRACTOR shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "Medicaid 1115 Waiver Program" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by Metro Health. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A CONTRACTOR's financial integrity is of interest to the City; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the City, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory Limits
2. Employers' Liability	\$5,000,000/\$5,000,000/\$5,000,000
3. Broad Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

D) CONTRACTOR agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of CONTRACTOR herein, and provide a certificate of insurance and endorsement that names the CONTRACTOR and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.



Collaborative Entities shall not be deemed to be subcontractors for purposes of the Section.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONTRACTOR shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. CONTRACTOR shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: San Antonio Metropolitan Health District  
P.O. Box 839966  
San Antonio, Texas 78283-3966

F) CONTRACTOR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend CONTRACTOR's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that CONTRACTOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability

arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L) CONTRACTOR and any Subcontractors are responsible for all damage to their own equipment and/or property.

### XIII. INDEMNIFICATION

13.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

13.2 Defense Counsel - CONTRACTOR shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall reimburse City for all costs related to retaining defense counsel until such time as CONTRACTOR retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.3 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XIV.

SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

14.1 CONTRACTOR is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees that it will adhere to its established policies regarding small, minority, or women-owned business policy regarding procurement, construction and professional service contracts.

In the event that the CONTRACTOR utilizes subcontractors to perform any part of this agreement the CONTRACTOR will ensure that each subcontractor is aware that they must comply with the City of San Antonio's Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City.

XV.

ASSIGNMENT AND SUBCONTRACTING

15.1 CONTRACTOR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work. Collaborative Entities shall not be deemed to be employees or subcontractors of CONTRACTOR under this Article XV.

15.2 It is City's understanding that CONTRACTOR does not intend to use subcontractors in the performance of this Agreement; however, in the event subcontractors are actually used by CONTRACTOR, any such subcontractor shall be approved by City prior to the provision of any services by said subcontractor.

15.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

15.4 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City,

which City sustains as a result of such violation.

XVI.  
INDEPENDENT CONTRACTOR

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, collaborators or joint venturers between City and CONTRACTOR. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

XVII.  
NONDISCRIMINATION POLICY

17.1 CONTRACTOR hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small, women, African American, and minority-owned business enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. CONTRACTOR agrees that CONTRACTOR will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. CONTRACTOR further agrees that CONTRACTOR will abide by all applicable terms and provisions of City's Non-Discrimination Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

17.2 The CONTRACTOR shall comply in all material respects with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, CONTRACTOR agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VII of the Civil Rights Act of 1964, as amended;
- b) Section 504 of the Rehabilitation Act of 1973, as amended;
- c) The Age Discrimination Act of 1975, as amended;
- d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
- e) Fair Labor Standards Act of 1938, as amended;
- f) Equal Pay Act of 1963, P.L. 88-38; and
- g) All applicable regulations implementing the above laws.

XVIII.  
CONFLICT OF INTEREST

18.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a collaborator or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, CONTRACTOR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX.  
AMENDMENTS

19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be effected by amendment, in writing, executed by both City and CONTRACTOR. The Director of Metro Health may execute contract amendments on behalf of City in the following circumstances: a) no cost extensions up to two years, b) budget adjustments authorized by the funding agency so long as the total dollar amount of the budget remains unchanged, c) modifications to the performance measures listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and d) changes in state or federal regulations mandated by the funding agency.

XX.  
SEVERABILITY

20.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI.  
LICENSES/CERTIFICATIONS

21.1 CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII.  
COMPLIANCE

22.1 CONTRACTOR shall provide and perform all services required under this Agreement in compliance in all material respects with all applicable federal, state and local laws, rules and regulations.

22.2 Notwithstanding any other provisions contained in this Agreement, the Parties shall comply in all material respects with the applicable provisions, if any, of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA"), and agree to enter into any such other agreements between the Parties as may be required in order to evidence such compliance with HIPAA.

XXIII.  
NONWAIVER OF PERFORMANCE

23.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIV.  
LAW APPLICABLE

24.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

24.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXV.  
LEGAL AUTHORITY

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that such signer has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all of the terms, conditions, provisions and obligations herein contained.

XXVI.  
PARTIES BOUND

26.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as

otherwise expressly provided for herein.

**XXVII.  
CAPTIONS**

27.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

**XXVIII.  
DEBARMENT**

28.1 CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

28.2 CONTRACTOR shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

**XXIX.  
ENTIRE AGREEMENT**

29.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIX. Amendments.

EXECUTED and AGREED to this the \_\_\_\_ day of \_\_\_\_\_.

CITY OF SAN ANTONIO

YOUNG MEN'S CHRISTIAN  
ASSOCIATION OF GREATER SAN  
ANTONIO

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Vincent R. Nathan, Ph.D., M.P.H.  
Interim Health Director  
San Antonio Metropolitan Health District  
Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved As to form:

\_\_\_\_\_  
City Attorney