

PROFESSIONAL TRAINING
PROFESSIONAL SERVICES CONTRACT

STATE OF TEXAS

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COUNTY OF BEXAR

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This CONTRACT is made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, and Young Mens' Christian Association of Greater San Antonio, dba YMCA of Greater San Antonio (hereinafter referred to as "VENDOR").

I. PURPOSE

1.1 The purpose of this CONTRACT is to state the terms and conditions under which the VENDOR shall provide the CITY with fitness instruction and training services.

II. SCOPE OF SERVICES

2.1 The terms of this CONTRACT shall control where there is any conflict between the terms of the VENDOR'S Proposal and the terms of this CONTRACT.

2.2 The VENDOR shall work with the City's Director of Human Resources Department, or her designee, and with appropriate CITY officials to perform any and all related tasks required by the CITY in order to fulfill the purposes of this CONTRACT. The VENDOR agrees that Kallie Gower will be VENDOR'S point of contact for the services to be performed under this CONTRACT. The CITY is an Equal Opportunity Employer and does not discriminate. VENDOR shall conduct all activities in accordance with this and all other applicable federal, state and local requirements.

2.3 VENDOR shall provide the following professional instruction or training services:

2.3.1 Certified fitness instructors and trainers to conduct a variety of classes to be offered at the City's Fitness Center in City Tower located at 100 W. Houston St., San Antonio, Texas.

2.3.2 Certified instructors to provide fitness instruction in diverse class format to include Traditional Cardiovascular Endurance, High-Intensity Interval Training, Physical Conditioning, Boot Camp, Circuit Training, Strength and Muscular Endurance, Dance-Exercise, Mind-Body Flexibility, Meditative Relaxation. These classes are not an exhaustive listing and other classes in addition to these are possible.

2.3.3 Ability to instruct up to 3 classes per day, Monday through Friday for a total of 15/week. Classes would take place throughout the workday (i.e. 6:30am, 12:00n

and 5:00pm) and be 1hr in length. Time, frequency, and variety of classes are at the full discretion of the City.

- 2.3.4 Provide online fitness instruction resources to be shared with City employee population.
- 2.3.5 Provide additional wellbeing resources (i.e. education, nutrition, mental health, etc.).
- 2.4 VENDOR shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

III. SUBCONTRACTING

- 3.1 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 Contract. Compliance by subcontractors with this Contract shall be the responsibility of VENDOR. CITY shall in no event be obligated to any third party, including any subcontractor of VENDOR, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the CITY.
- 3.2 Except as otherwise stated herein, VENDOR may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the CITY. As a condition of such consent, if such consent is granted, VENDOR shall remain liable for completion of the services outlined in this Contract in the event of default by the successor VENDOR, assignee, transferee or subcontractor.
- 3.3 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should VENDOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, CITY may, at its option, cancel this Contract and all rights, titles and interest of VENDOR shall thereupon cease and terminate, in accordance with Article XIII. Termination, notwithstanding any other remedy available to CITY under this Contract. The violation of this provision by VENDOR shall in no event release VENDOR from any obligation under the terms of this Contract, nor shall it relieve or release VENDOR from the payment of any damages to CITY, which CITY sustains as a result of such violation.

IV. TERM OF CONTRACT

- 4.1 The term of the contract shall commence July 1, 2023 and will end June 30th, 2026. At the CITY's option, two additional one-year renewals are available contingent upon appropriation of funding.

V. PAYMENT FOR SERVICES

- 5.1 In consideration of the professional services to be rendered by VENDOR, the CITY shall pay a professional fee in an estimated total amount not to exceed \$375,000.00 for the entire term including renewals as follows:

The lesser of \$100 per class or \$1,500.00 per week.

This fee shall constitute full and complete payment by City for all services to be performed by VENDOR under this CONTRACT.

- 5.2 The CITY shall not be obligated or liable under this CONTRACT to any party, other than the VENDOR for payment of any monies or provision for any goods or services.

VI. CONFIDENTIAL WORK

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by the VENDOR under this CONTRACT shall be disclosed or made available to any individual or organization by the VENDOR without the express prior written approval of the CITY.
- 6.2 The VENDOR shall establish a method to secure the confidentiality of records and information that the VENDOR may have access to, in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the CITY'S or it's authorized representatives' right of access to records or other information under this CONTRACT.
- 6.3 If the VENDOR receives inquiries regarding documents within their possession pursuant to this CONTRACT, the VENDOR shall immediately forward such request to the CITY for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 All reports, information and other data given to, prepared or assembled by the VENDOR under this CONTRACT, and any other related documents or items shall become the sole property of the CITY. Such reports, information and other data shall be delivered at no cost to the CITY upon request or termination of this CONTRACT without restriction on

future use. The VENDOR may make copies of any and all documents for its files, at its sole cost and expense.

- 7.2 The VENDOR shall retain all records owned by or to which the CITY has access to, for the retention periods set forth in the Texas Local Government Records Act.

VIII. NON-WAIVER

- 8.1 Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 Contract 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 in writing by the City. 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.

IX. INSURANCE REQUIREMENTS

- 9.1 No later than 30 days before the scheduled event, VENDOR must provide a completed Certificate(s) of Insurance to CITY'S Human Resource's Department. The certificate must be:
- clearly labeled with the legal name of the event in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number,
- 9.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Human Resource's Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 9.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, VENDOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

9.4 The City’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

9.5 VENDOR shall obtain and maintain in full force and effect for the duration of this Agreement, at VENDOR’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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 and for an amount not less than the amount listed below. If the VENDOR claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000 /\$500,000 /\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
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 \$250,000 per occurrence
5. Professional Liability (Claims-made basis)	\$500,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

9.6 VENDOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of VENDOR and provide a certificate of insurance and endorsement that names VENDOR and CITY as additional insureds. VENDOR shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

9.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. VENDOR must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Human Resources Department
100 W. Houston St.
San Antonio, Texas 78205

- 9.8 VENDOR's insurance policies must contain or be endorsed to contain the following provisions:
- Name CITY and 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 CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
 - VENDOR shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
 - Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 9.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, VENDOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend VENDOR performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 9.10 In addition to any other remedies CITY may have upon VENDOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order VENDOR to stop work and/or withhold any payment(s) which become due to VENDOR under this Agreement until VENDOR demonstrates compliance with requirements.
- 9.11 Nothing contained in this Agreement shall be construed as limiting the extent to which VENDOR may be held responsible for payments of damages to persons or property resulting from VENDOR or its subcontractors' performance of the work covered under this Agreement.
- 9.12 VENDOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

- 9.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 9.14 VENDOR and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

X. INDEMNITY

- 10.1 VENDOR covenants and agrees to FULLY INDEMNIFY 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 VENDOR'S activities under this CONTRACT, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, VENDOR or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY arising out of or related to its activities under this CONTRACT, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR 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.
- 10.2 The provisions of this INDEMNIFICATION 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.
- 10.3 VENDOR shall advise the CITY in writing within 10 days of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR'S activities under this contract.

XI. INDEPENDENT CONTRACTOR

- 11.1 VENDOR covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that VENDOR 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 VENDORS; that the doctrine of respondent superior shall not apply as between City and VENDOR, its officers, agents, employees, contractors, subcontractors and VENDORS, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and VENDOR. 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 VENDOR under this Contract and that the VENDOR has no authority to bind the City.

XII. TERMINATION

- 12.1 For purposes of this CONTRACT, “termination” of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 12.2 This CONTRACT may be terminated by either: (1) written agreement of both parties; (2) by unilateral written notice of termination at least 120 days prior to the beginning of the scheduled event; or (3) immediately upon the material breach of this CONTRACT. A material breach of this CONTRACT includes, but is not limited to, a violation of the policies and rules of CITY or its agents(s) by misrepresentations or false statements by VENDOR, or non-performance of services as established in Section II, Scope of Services, or upon the occurrence of a conflict of interest between the VENDOR and CITY or its agent(s).
- 12.3 **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 CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 12.4 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from the VENDOR to the CITY or to any person or entity that the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the VENDOR’S sole cost and expense.
- 12.5 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the VENDOR shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.

XIII. CONFLICT OF INTEREST

- 13.1 VENDOR 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 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 partner or a parent or subsidiary business entity.

- 13.2 VENDOR warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. VENDOR further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.
- 13.3 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by VENDOR for the purpose of securing business. For breach or violation of this warranty, CITY shall have the right to rescind this CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 13.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at CITY'S option, and VENDOR shall be liable to CITY for all loss or damage that CITY may suffer thereby.

XIV. NOTICE

- 14.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by Certified Mail, return receipt requested, postage prepaid to the CITY or to the VENDOR at the addresses set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Human Resources Department
100 W. Houston St.
San Antonio, Texas 78205

VENDOR

YMCA of Greater San Antonio
16103 Henderson Pass
San Antonio, Texas 78232

XV. CAPTIONS

- 15.1 The captions to the various clauses of this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the substance of the terms and conditions of this CONTRACT.

XVI. SUCCESSORS AND ASSIGNS

- 16.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

XVII. VENUE, GOVERNING LAW AND NON-DISCRIMINATION

- 17.1 THIS CONTRACT 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.
- 17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 17.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.
- 17.4 Non-Discrimination. As a party to this contract, VENDOR understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XVIII. ENTIRE AGREEMENT AND AMENDMENT

- 18.1 This CONTRACT, including the Exhibits, embodies the final and entire agreement of the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, verbal or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.
- 18.2 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 VENDOR. The Director of Human Resources, or her designee, shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XIX. LEGAL AUTHORITY

- 19.1 The signer of this CONTRACT for the VENDOR represents, warrants, assures, and guarantees full legal authority to execute this CONTRACT on behalf of the VENDOR and to bind the VENDOR to all the terms, conditions, provisions and obligations herein contained.

XX. GENDER

- 20.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include plural, unless the context otherwise requires.

XXI. SEVERABILITY

- 21.1 If any clause or provision of this CONTRACT 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 CONTRACT 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 CONTRACT that is invalid, illegal or unenforceable, there be added as part of the CONTRACT, 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.

XXII. ACKNOWLEDGEMENT


- 22.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED by the CITY and by the VENDOR, acting through their duly authorized officials, as of the dates indicated below.

CITY OF SAN ANTONIO, TEXAS

YMCA of GREATER SAN
ANTONIO

Ben A. Gorzell, Jr., CPA
Chief Financial Officer



Louis Lopez
President/CEO

Approved as to form:

Krista Cover
Assistant City Attorney