

**Agreement**

**Between**

**The City of Overland Park, Kansas**

**and**

**CorporateCare Occupational Medicine Network**

**For Services Relating to the  
Employee Wellness Plan**

## AGREEMENT

This AGREEMENT is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter called the "City" and CorporateCare Occupational Medicine Network, hereinafter called "Contractor." It is the intention of the City to secure services relating to the City's Employee Wellness Plan. This Plan is for the benefit of employees, retirees, governing body members, and their families, hereinafter called "Participants."

### SECTION I - CONTRACTOR DUTIES

Contractor shall provide the Health and Fitness Assessment services for Participants as set forth below. Contractor shall keep participant data and test results confidential, and shall only share such participant data and test results with the Participant unless the Participant agrees to release this information to other parties (See Data Collecting and Reporting at D below). Contractor shall report and review data and test results with each Participant and assist the Participant in the development of personalized wellness goals based on these assessments. Contractor shall periodically submit to the City aggregate wellness assessment information, provided no individually identifiable participant data or test results will be made known to the City. This information will be used to determine the success of the program's components. An additional measurement of the program's success will be the number of voluntary Participants and their continued participation in the program. It is essential that the services provided by Contractor are comprehensive and offered at locations convenient for all employees to access.

#### **Scope of services:**

**A. Health and Fitness Assessment:** All Participants who volunteer for the wellness program shall undergo assessments 1-9.

#### **B. Required Assessments:**

1. Physical Exam (medical history, blood pressure, height & weight)
2. Urine (glucose check)
3. Blood work: lipid panel, total cholesterol, high density lipids, low density lipids, triglycerides, complete blood count, thyroid panel, liver enzyme test, and 12 basic chemistries.
4. Vision Check (Eye Chart)
5. Treadmill Stress Test
6. Audiogram
7. Pulmonary Function
8. Body Fat, Flexibility, Strength, and Posture
9. Health Risk Analysis that summarizes all clinical data and other issues such as physical activity, eating practices, stress/coping, safety, and social support and puts them into a comprehensive report

**C. Education** Contractor shall provide the educational materials and discussions with

Participants concerning at a minimum coronary risk profile, goal setting, exercise prescription and health counseling. In addition, Contractor agrees to conduct at least four (4) educational sessions with employees covering topics agreed to by the City.

- D. Data collection and reporting:** Privacy rights of the Participants must be protected. Contractor agrees that it shall not reveal or disclose to third parties the identity of, or any of the information, documents or records related to individuals participating in the wellness assessment process. In addition, Contractor shall not reveal or disclose to the City information, documents or records related to individuals participating in the wellness assessment process, provided, Contractor shall provide the City the names of Participants for billing purposes. When requested in writing by a Participant, the Contractor may provide to third parties, information, documents or records concerning an individual's participation in the wellness process. Contractor agrees to comply with all City, State and Federal laws concerning the confidentiality of medical information and records to specifically include all HIPAA requirements.
- E.** Contractor shall provide a comprehensive incentive or motivation-based program to elicit voluntary participation.

## **SECTION II - COMPENSATION**

The City shall pay Contractor an annual fee of \$300 per Participant in 2004 and should the City opt to extend the term of this Agreement the fee per participant shall remain at \$300 in 2005 and shall increase to \$345 per participant in 2006 for providing the services required by this Agreement. The parties further agree that the City will only pay the annual fee for each full-time employee, part-time class A and B employee, and governing body member, who volunteers to participate in the required wellness assessments to be provided by the Contractor. Contractor is to remit a monthly invoice for services that records the employee's name, social security number, department, cost center, and the date of the assessment. Payment for services rendered by Contractor is due and payable by City within thirty days of receipt of invoice from Contractor.

The parties further agree that family members, retirees, and other employees not covered by the City's health plan are eligible to participate in the wellness assessments set forth in this Agreement; however these individuals will bear the full cost of the required assessments. The City has no responsibility for payment, collection or distribution of monies related to these services.

### **SECTION III - CASH BASIS LAW**

The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties shall be relieved from all obligations, without penalty, under this Agreement.

### **SECTION IV - TERM OF AGREEMENT**

The initial term of this Agreement shall be from January 1, 2004 to December 31, 2004, with the City's option to renew the Agreement for two additional years.

### **SECTION V - TERMINATION**

1. Termination for Convenience. The City may without reason or without cause and solely for the City's convenience terminate this Agreement at any time by providing the Contractor notice in writing at least thirty (30) days prior to the effective date of such termination for convenience.
2. If the City terminates for its convenience as herein provided, the City shall compensate Contractor for all services completed to date of its receipt of the termination notice and any additional services requested by the City to complete any necessary work. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
3. Termination for Cause. Without in any manner limiting the right of the City to terminate this Agreement or declare the Contractor in default thereof for any reason set forth herein, if the work to be done under this Agreement shall be abandoned by Contractor, or if this Agreement shall be assigned by Contractor otherwise than as herein provided; or if the Contractor should be judged as bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a receiver should be appointed for the Contractor or any of its property; or if at any time the City determines that the performance of the work under this Agreement is being unnecessarily delayed, that the Contractor is violating any of the conditions or covenants of this Agreement, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; then, in addition to other rights the City may choose to exercise, the City may, at its option, serve written notice upon the Contractor of the City's intention to terminate this Agreement, and, unless within ten (10) days after the serving of such notice upon the Contractor a satisfactory arrangement be made for the continuance

thereof, this Agreement shall cease and terminate unless the City otherwise agrees to continue the Agreement. In the event of such termination, the City shall immediately serve notice thereof upon the Contractor and the City may take over the work and prosecute same to completion by contract with another contractor or otherwise and in such event the City may take possession of and utilize in completing the work any and all documents and other materials as may be necessary therefore. When Contractor's services have been so terminated, such termination shall not affect any rights or remedies of the City against Contractor then existing or which may later accrue. Similarly, any retention or payment of monies due Contractor shall not release Contractor from liability.

If the City terminates for cause or default on the part of Contractor, the City shall compensate Contractor for the reasonable cost of services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

#### **SECTION VI - HOLD HARMLESS AND LIABILITY**

Contractor agrees to defend, indemnify and hold harmless the City, the City's agents, employees and assigns from any and all lawsuits, claims, settlements, and judgments for personal injury, bodily injury, property damage and/or death or any other basis, arising solely out of Contractor's or any of its agents, servants and/or employees' negligent or purposeful acts, and or failure to act in the performance of this Agreement.

Contractor shall not be responsible for claims, expenses, damages, or liability for personal injury or damage to property, directly or indirectly arising from the negligent or wrongful act of City, its officers, employees, agents and volunteers and/or failure to act in the performance of this Agreement.

#### **SECTION VII - INSURANCE**

Contractor shall maintain throughout the duration of this Agreement, insurance in, at a minimum, the amounts specified below. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City.

1. Professional Liability: Contractor shall maintain throughout the duration of this Agreement, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000), each claim/aggregate, and shall provide the City with certification thereof.
  
2. Commercial General Liability:

Each Occurrence	\$500,000
Personal & Advertising Injury	\$500,000
Products/Completed Operations	
Aggregate	\$500,000
General Aggregate	\$500,000

3. Automobile Liability Insurance: Policy shall protect the Contractor against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either:

A) Any Auto

**OR**

B) All Owned Autos;  
Hired Autos; and  
Non-Owned Autos

**Limits**

Each Accident, Combined Single  
Limits, Bodily Injury and  
Property Damage: \$500,000

4. Workers' Compensation and Employers' Liability: This insurance shall protect the Contractor against all claims under applicable state Workers' Compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy limits shall include "all States" insurance, and the liability limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

5. Industry Ratings: The City will only accept coverage from an insurance carrier which offers proof that the carrier:

- A) Is licensed to do business in the State of Kansas;
- B) Carries a Best's Policyholder rating of A or better; and
- C) Carries at least a Class X financial rating;

or

D) Is a company mutually agreed upon by the City and Contractor.

Certification of insurance coverage in Sections (2), (3) and (4) above shall be on the City's Standard Certificate of Insurance Form or standard Acord form acceptable to City. Certification of professional liability insurance shall be provided on a separate form provided by the Contractor's insurance carrier.

### **SECTION VIII - ASSIGNMENT**

Parties hereto agree that neither shall assign, sublet or transfer their interest in this Agreement without the written consent of the other and further agree that this CONTRACT binds the parties, their successors, City's assignees and legal representatives.

### **SECTION IX - PROHIBITION AGAINST CONTINGENT FEES**

1. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor warrants that it will not accept any fee, commission, percentage, gift, or other consideration from any third party for the performance of any work under the Agreement.

### **SECTION X - APPLICABLE LAW**

The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

### **SECTION XI - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING**

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Contractor and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written contract.

### **SECTION XII - INDEPENDENT CONTRACTOR**

Contractor is an independent Contractor and as such is not an employee of the City. Contractor is responsible for any and all federal, state and local taxes.

### **SECTION XIII - COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS AND RULES AND OTHER LAWS**

- A. The Contractor agrees that:

1. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin, ancestry or age;
  2. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
  3. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
  4. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
  5. The Contractor shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- B. The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.



**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

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Notary Public

My Appointment Expires:

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(If the Agreement is not executed by the president of the corporation or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation or partnership.)