

HEALTH SERVICES AGREEMENT

between City of Coppell and Marathon Health, Inc.

THIS HEALTH SERVICES AGREEMENT (this "Agreement") is made and entered into to be effective as of August 13, 2013 (the "Effective Date") by and between City of Coppell ("Client"), with principal offices at 255 Parkway Boulevard., Coppell, TX 75019, and Marathon Health, Inc. ("Marathon"), a Delaware Corporation with principal offices at Champlain Mill, 20 Winooski Falls Way, Suite 400, Winooski, VT 05404. Client and Marathon may each be referred to in this Agreement as a "Party" and, collectively, as the "Parties".

WITNESSETH

WHEREAS, as part of its overall healthcare program, Client desires to furnish to its employees certain preventive, wellness, disease management, health consultation, occupational health and/or primary care services;

WHEREAS, Client desires to retain Marathon to furnish such preventive, wellness, disease management, health consultation, occupational health and/or primary care services; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement together with all exhibits, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Client and Marathon hereby agree as follows:

Article I Definitions

- 1.1 "Care Provider" means a staff member or independent contractor of Marathon who provides care or consultation services directly to Participants.
- 1.2 "Collaborating Physician" means an appropriately licensed physician who has a collaborative relationship with a nurse practitioner or physician's assistant as required under the laws of the state in which such nurse practitioner or physician's assistant is providing services.
- 1.3 "Participant" means an individual, age 6 years or more, eligible to participate in the Marathon Services as determined by the eligibility criteria of Client's health plan or as otherwise determined by Client.

Article II
Services; Relationship Between the Parties

- 2.1 Services. Marathon will provide Client with the services described and set forth in **Schedule A** (the “Marathon Services”). Services that do not clearly fall within the description set forth on **Schedule A** shall be outside the scope of this Agreement, and Client shall instruct Participants to seek outside assistance for such matters with an alternate healthcare provider. Marathon may provide some of the Marathon Services by engaging the services of third party contractors, particularly for professional services.
- 2.2 Implementation Timeline. Marathon and Client mutually agree to modify Marathon’s standard implementation timeline as needed to allow Marathon to commence the Marathon Services on the Commencement Date of the Initial Term of this Agreement.
- 2.3 Independent Contractors. Marathon, and each of the third party contractors delivering services hereunder, is an independent contractor with respect to the services provided under this Agreement and is not the agent or employee of Client. Notwithstanding any authority granted to Client herein, Marathon and/or any Care Provider or Collaborating Physician shall retain the authority to direct or control his, her or its medical decisions, acts or judgments.
- 2.4 Employee Benefit Plans. The programs and services provided under this Agreement are not designed or intended to be provided under any Client employee benefit plan or program. Accordingly, neither Marathon, nor any of the third party contractors it may engage, is a fiduciary, trustee, or sponsor with respect to these programs or services. In the event the programs and services become part of a Client employee benefit plan or program, Marathon, and each of the third party contractors it may engage, shall be considered to be acting only as a consultant to Client with respect to such matters and shall not be considered in a fiduciary, trustee or sponsor relationship in such plan.

Article III
Contract Period

- 3.1 Term. The “Initial Term” of this Agreement shall begin on the Effective Date, and shall continue with the Marathon Services for a period of three (3) years, commencing on December 11, 2013 (the “Commencement Date”), unless terminated earlier as provided for in Article VIII, below.
- 3.2 Renewal Terms. This Agreement shall automatically renew for three (3) consecutive additional terms of one (1) year (each a “Renewal Term” and together, the “Renewal Terms”), unless either Party terminates this Agreement by giving written notice not less than three (3) months prior to the expiration of the then current term. Such Renewal Term(s) shall be subject to the termination provisions set forth in Article VIII below. Failure to provide timely written notice shall act as a Party’s intent to automatically renew the Agreement at the end of the then current term. The Parties agree that they shall

begin good faith negotiations regarding any material changes to the terms of this Agreement no later than six (6) months prior to the end of the then current term.

Article IV Payment Terms; Pricing

- 4.1 Fees. Marathon will submit invoices to Client for the fees as set forth in **Schedule B**. With the exception of reimbursement of reasonable expenses as otherwise provided in this Agreement, such fees shall be the only compensation to Marathon under this Agreement. Fees for any Renewal Period shall automatically increase by 5% over the previous period, unless material changes are otherwise agreed to by the Parties in accordance with Section 3.2. Payment is due for all undisputed charges within thirty (30) days of receipt of an invoice. The maximum interest allowed by Section 2251.025 of the Texas Government Code will be charged for payments on undisputed charges not received when due.
- 4.2 Failure to Pay. Failure to pay an invoice when due shall constitute a breach of this Agreement and Marathon reserves the right to terminate this Agreement or suspend services upon a breach by Client that continues more than thirty (30) days after the invoice due date. Marathon reserves the right to refrain from providing services to Client, if full payment is not made when due for undisputed charges, until such time as payment in full has been made. In the event that Marathon continues to provide services during a period of time when Client is in breach, such continuance of services will not operate as a waiver of Marathon's right and ability to utilize any and all remedies available to Marathon under applicable laws.
- 4.3 Tax Obligations. All fees for services purchased or licensed in this Agreement, unless otherwise noted, are exclusive of applicable taxes. Client is exempt from sales or use tax liability and therefore shall not pay all applicable sales, use or service taxes imposed by any state or local tax authority on the services or payments provided hereunder which Marathon may be required to pay or collect. To the extent Marathon has not collected and remitted any applicable tax for Client in reliance upon an erroneous representation of Client as to its tax status, Client shall pay said taxes including any interest and penalties imposed by any taxing authorities. If a certificate of exemption or similar document or proceeding is necessary in order to exempt the sale from sales or use tax liability, Client shall obtain and produce such certificate, document or proceeding, at its sole expense.

Article V Duties of Marathon

- 5.1 Equipment and Supplies. At its sole cost and expense, Marathon shall provide or arrange for the provision of such equipment, supplies, professional services and such other support services necessary for the performance of its obligations under this Agreement. Marathon shall retain ownership of and/or control over the equipment and/or supplies provided under this Agreement.

5.2 Qualified Care Providers. Marathon shall employ or engage qualified and appropriately licensed or certified (if applicable) Care Providers to provide the services that Marathon is obligated to provide under this Agreement. It shall be Marathon's responsibility to select, contract with and manage any third party contractors, all in accordance with the terms of this Agreement. Such third party contractors may include an affiliated professional corporation to provide the acute and other health care services, for which it will be paid fair market value by Marathon, and may include other contractors, such as those for biometric screenings. Marathon shall retain responsibility for any such delegated and/or subcontracted services and shall monitor performance of such services on an ongoing basis to ensure the compliance with all applicable obligations under this Agreement.

5.3 Independent Contractor. Marathon shall at all times remain an independent contractor. Nothing contained herein shall be construed to create an agency, joint venture, or joint enterprise relationship between the Parties. Marathon and its personnel and contractors are not Client's personnel or agents, and Marathon assumes full responsibility for their actions. Marathon shall comply with all laws governing the services being performed under this Agreement. Marathon, at its sole expense, shall obtain any and all licenses and permits required for the services performed by its personnel and Contractors, including but not limited to any and all visas, work permits, etc. required by applicable law.

Marathon shall be solely responsible for the payment of compensation of Marathon personnel and contractors performing services hereunder, and Marathon's personnel and contractors are not entitled to the provision of any Client employee benefits. Client shall not be responsible for payment of worker's compensation, disability or other similar benefits, unemployment or other similar insurance or for withholding income or other similar taxes or social security for any Marathon personnel and contractors, but such responsibility shall solely be that of Marathon.

5.4 Performance of Client Obligations. Marathon shall not be responsible for any delay or lack of performance of the Marathon Services due to the failure of Client or a Participant to provide information necessary to fulfill its obligations as required under this Agreement.

5.5 Compliance with Law. Marathon shall not direct or encourage Client to act or refrain from acting in any way which, to its knowledge, would violate any applicable law or regulation. Marathon shall not act in any way which, to its knowledge, could implicate or involve Client in a violation of any such law or regulation.

Article VI Duties of Client

6.1 Provision of Location. CLIENT SHALL, AT ITS SOLE COST AND EXPENSE, PROVIDE OR ARRANGE FOR THE PROVISION OF SUCH SPACE NEEDED BY MARATHON FOR THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS

AGREEMENT, INCLUDING FIT-UP OF THE SPACE WITH BASIC INFRASTRUCTURE CONSISTENT WITH MARATHON'S SPECIFICATIONS, INCLUDING BUT NOT LIMITED TO, TELEPHONE SERVICE, UTILITIES AND UNRESTRICTED INTERNET CONNECTIONS. CLIENT IS RESPONSIBLE FOR ROUTINE CLEANING OF THE HEALTH CENTER SPACE, INCLUDING VACUUMING, TRASH REMOVAL AND BATHROOM CLEANING, IF APPLICABLE, ON A DAILY BASIS.

- 6.2 Internet Connections. Client will provide dedicated, unrestricted, business class DSL or business class cable services. Ethernet handoff to be implemented into a Marathon owned and operated firewall/router. Client is responsible for premise wiring to facilitate connectivity from the Marathon firewall to the desktops. Two jacks are required for each employee station. Location of jacks is dependent upon build out of facilities. Minimum requirements include bandwidth requirements of 5 mbps connection (up/down), and 5 publicly addressable IP addresses.
- 6.3 Publicity and Promotion. Client will publicize and provide descriptive information, including those standard marketing materials provided by Marathon as described in **Schedule A2**, about the Marathon Services to all of its employees who may seek services at the location or locations agreed upon by the Parties. Client will provide Marathon with copies of other documents and materials prepared independently by Client describing, publicizing, or significantly affecting the Marathon Services prior to the distribution of such materials. Marathon shall review and comment on such materials within a reasonable time after receipt. Client shall use reasonable efforts to seek Marathon's input prior to publicizing and providing such information to its employees, which input shall not be unreasonably delayed.
- 6.4 Eligibility Files. Client will provide to Marathon on a weekly basis, or other mutually agreed-upon frequency, a Participant eligibility file, which is necessary to enable Marathon to provide the Marathon Services. The Participant eligibility file will contain the entire population of Participants and will adhere to Marathon's file specifications.
- 6.5 Medical Claims Data. To assist in the identification and treatment of Participants with chronic conditions such as diabetes, asthma, heart disease, pulmonary disease and hypertension, Client agrees to make reasonable effort to provide Marathon, through its carrier, third party administrator, or third party vendor for claims data mining, with access to medical claims data for the Participants enrolled in Client's health plan(s), for the 12 months prior to the initiation of onsite services, and minimally at twelve month intervals thereafter through the term of the contract. Marathon will provide Client with the file format defining the specifications for the data.
- 6.6 Availability of Resources. Client agrees to allow Marathon to utilize any internal resources of Client and to assist Marathon in such utilization, including, but not limited to, training, marketing tools and resources, and technical support necessary to maintain the requirements outlined in Section 6.1, as mutually agreed upon by the Parties, in order to enhance the effectiveness and utilization of the Marathon Services. Client will identify a

single primary point of contact for implementation project management and ongoing account management.

- 6.7 Compliance with Law. Client shall not direct or encourage Marathon to act or refrain from acting in any way which, to its knowledge, would violate any applicable law or regulation. Client shall not act in any way which, to its knowledge, could implicate or involve Marathon in a violation of any such law or regulation.

Article VII Reports

- 7.1 Marathon Health Reports. Marathon will provide to Client the reports described in **Schedule A**.
- 7.2 Client Reports. Client will provide to Marathon the reports described in Section 6.4.

Article VIII Events of Default, Remedies and Termination

- 8.1 Events of Default. Any one or more of the following shall constitute an event of default under this Agreement (each to be an “Event of Default”):
- (a) Any failure by Client to pay Marathon in accordance with Article IV of this Agreement;
 - (b) Any material failure by either Party to promptly and fully perform its obligations or comply with the terms of this Agreement, and, provided that such default is not a willful violation of applicable law or a threat to Participant health and safety, (which failures must be remedied immediately), the defaulting Party shall have sixty (60) days to remedy such default after written notice of such default by the aggrieved Party to the defaulting Party specifying in detail the nature of the default, and provided further that the defaulting Party shall have up to ninety (90) days to cure such default if it has commenced to cure such breach within thirty (30) days of receipt of such notice and is continuing to diligently pursue a cure of such breach; and
 - (c) A Party appoints a custodian, liquidator, trustee or receiver or a material portion of its assets become subject to custodian, liquidator, trustee or receiver; or if a party files a voluntary petition in U.S. bankruptcy court; or a Party is generally not paying its debts as they become due or makes an assignment for the benefit of creditors; or bankruptcy, reorganization, or insolvency proceedings or other proceedings for relief under any bankruptcy or similar law or laws for relief of debtors are instituted by or against a Party and are not dismissed within sixty (60) days.

8.2 Remedies.

- (a) Subject to the terms and conditions of this Agreement, upon an Event of Default by Client, Marathon may, at its option, (i) suspend further Marathon Services under this Agreement, (ii) pursue any and all remedies that may be available at law or in equity, and/or (iii) terminate this Agreement.
- (b) Subject to the terms and conditions of this Agreement, upon an Event of Default by Marathon, Client may, at its option, (i) suspend further payments to Marathon which are specifically associated with such default, (ii) pursue any and all remedies that may be available at law or in equity, and/or (iii) terminate this Agreement.

8.3 Termination Events.

- (a) This Agreement may be terminated by either Party upon the occurrence of an Event of Default by the other Party.
- (b) This Agreement may be terminated by either Party upon giving the other Party 90 day written notice within 90 days of any annual anniversary of contract Commencement Date.
- (c) Failure to Fund. Marathon agrees that, should the City of Coppell fail to appropriate sufficient funds for any future fiscal year to support the financial operation of the Employee Health Clinic, the Agreement will be terminated immediately without additional cost or penalty.

8.4 Consequences of Termination.

- (a) Termination under any section of this Article VIII shall not cause either Party to waive any rights it may have to exercise any remedies available to it under any other section of this Agreement or under any applicable law.
- (b) In the event this Agreement is terminated by reason of Client's default, Client shall remain liable for all fees due over the remaining Term of the Agreement.
- (c) In the event this Agreement is terminated by either Party in accordance with 8.3(b), Client shall only be liable for the fees due for services provided through the termination date.
- (d) In the event this Agreement is terminated by reason of a Party's default, the defaulting Party shall be liable for all direct costs, fees, expenses and damages and/or other amounts, including reasonable attorneys' fees, which the other Party may incur or sustain which are directly due to such default, including but not limited to, reasonable attorneys' fees. In the event that the other Party claims any additional direct costs, fees, expenses, damages, and/or other amounts, the defaulting Party agrees to provide upon request such additional financial or

accounting records as may be reasonably necessary for the other Party to verify such additional direct costs, fees, expenses, damages, and/or other amounts. In the event this Agreement is terminated by reason of a Party's default, the other Party shall have no continuing obligations or liabilities under this Agreement except as expressly provided under this Agreement.

- (e) Except as expressly provided below in this Section 8.4(d), notwithstanding anything in this Agreement to the contrary, (a) no Party shall be liable to the other party for incidental or consequential damages resulting from any breach of this Agreement, and (b) the maximum liability of either party to the other for any breach or violation of this Agreement or any addendum to this Agreement shall not exceed an amount equal to the total fees payable under this Agreement. Notwithstanding the foregoing, the limitations on liability set forth in this subsection shall not apply to any Event of Default by a party constituting fraud, gross negligence, or willful misconduct in connection with this Agreement, or claims for indemnification under Article XII of this Agreement.
- (f) Provided that Client has satisfied all payment obligations under this Agreement, and any disputes regarding payment have been resolved, or, if an unresolved payment dispute exists, Client shall have deposited in an interest-bearing escrow account with a mutually agreed upon financial institution an amount equal to the disputed payment amount. In all cases of termination, Marathon agrees to work with Client to make an orderly transition of the Marathon Services and Client's property pursuant to the terms and conditions of a mutually agreed upon transition plan. Marathon and Client agree to negotiate in good faith the terms and conditions of any such transition plan.
- (g) Marathon shall maintain Participants' health records beyond termination of this Agreement in accordance with applicable laws.

Article IX Confidentiality of Participant Records

- 9.1 Access to Participant Information. Marathon acknowledges and agrees that in the course of performing its duties under this Agreement, Marathon, its Care Providers and/or their agents may acquire or obtain access to or knowledge of health records or other personal and confidential information regarding Participants.
- 9.2 Safeguard of Information. Marathon, its Care Providers and their agents will safeguard Participants' health records and other personal and confidential information to ensure that the information is not improperly disclosed and to comply with any applicable law, rule or regulation, including, but not limited to, regulations promulgated by the United States Department of Health and Human Services, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as the same may be amended from time to time (collectively the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health (HITECH) Act, and other federal and state regulations

governing the confidentiality of health information, including without limitation mental health, substance abuse and HIV-related information. Individual electronic medical record information is the property of Marathon, subject to each Participant's rights to his/her individual medical information.

- 9.3 Granting of Access. Marathon will afford access to Participant's health records or personal and confidential information to other persons only as allowed, or required by law. Marathon shall not grant access to patient records, patient information, and other personal and confidential data to any individual or to Client except as provided in this Section 9.3.
- 9.4 Compliance Assistance. To the extent Marathon utilizes space provided by Client in providing services under this Agreement, the Parties shall discuss how Client can assist Marathon in complying with these requirements, including the physical access to such space.

Article X Confidentiality of Business Information

- 10.1 Restriction of Use; Confidentiality. Each of the Parties agrees not to use any Confidential Information (as defined below) for any purpose other than to accomplish the intent of this Agreement or to comply with the law. No other rights, or licenses to trademarks, inventions, copyrights, or patents are implied or granted under this Agreement. Confidential Information supplied shall not be reproduced in any form except as required to accomplish the intent of this Agreement or to comply with the law. Each Party agrees to keep all such Confidential Information confidential and, at a minimum, treat this Confidential Information in the same confidential manner it would treat its own most confidential information, and shall not disclose it to others or use it for any purpose except as required to accomplish the intent of this Agreement or to comply with the law.
- 10.2 Confidential Information. For purposes of this provision, the term "Confidential Information" shall mean any business practices, methods of doing business, or written or electronic materials relating to its business and shall also include without limitation any written material of the type that is proprietary, including, without limitation, software programs, technical information, patent applications, patent disclosures, prototypes, samples, business apparatus, forms of reports, know-how, and other materials marked "confidential", or confidential information disclosed verbally if set forth in a writing which is provided to the recipient within 15 days of verbal disclosure thereof. Confidential Information shall not, however, include information that is governed by the confidentiality provision of Article IX, or any information which recipient can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure to recipient; (ii) becomes publicly known and made generally available after disclosure to recipient through no action or inaction of recipient or its affiliates; or (iii) is in the possession of recipient, without confidentiality restrictions, at the time of disclosure as shown by recipient's files and records immediately prior to the time of

disclosure. Nothing in this Agreement shall be deemed to prohibit recipient from disclosing any Confidential Information that is (i) required by law (provided, however, that in the event of such requirement, prior to disclosing any Confidential Information, recipient will notify the disclosing Party of the scope and source of such legal requirements and shall give the disclosing Party the opportunity to challenge the need to disclose and/or limit the scope of disclosed information) or (ii) pursuant to the written consent of the disclosing Party.

Article XI Non-Solicitation

- 11.1 Non-Solicitation. As consideration for the resources dedicated to the development of the Marathon Services and for Marathon entering into this Agreement, Client agrees that it will not, either during the term of this Agreement or for a period of two (2) years after the termination of this Agreement for any reason whatsoever, directly or indirectly, employ or consult in any way, whether in a paid or unpaid capacity, any entity or individual, including but not limited to Care Providers, medical directors, Collaborating Physicians, employees, and independent contractors, furnished by Marathon in performing services under this Agreement, unless Marathon gives prior written approval.

Article XII Indemnification and Insurance

- 12.1 Indemnification. To the extent allowed by law, each Party shall defend, indemnify and hold harmless the other Party, its subsidiaries and affiliated companies, and their respective directors, officers, employees and agents (the “Indemnified Parties”) from and against all claims, causes of action, suits, losses, damages, reasonable attorneys’ fees and costs (collectively referred to in this Article XII as “Liabilities”) that arise directly from or out of any third party claim asserted against any Indemnified Party alleging negligence by the first Party or its employees or agents in the performance of services and other duties and responsibilities in connection with this Agreement.
- 12.2 Marathon Insurance. Marathon shall maintain and pay for the following insurance coverages during the term of this Agreement and all renewals thereof:
- (a) Professional liability coverage with limits of \$5 million per claim and \$5 million aggregate.
 - (b) General liability coverage with limits of \$5 million per claim and \$5 million aggregate.
 - (c) Umbrella/excess liability insurance covering professional and general liability with limits of \$2 million per claim and \$2 million aggregate.

- (d) Technology related errors and omissions liability coverage with limits of \$5 million per claim and \$5 million aggregate.
 - (e) Property and casualty coverage for its materials, equipment, furnishings, supplies, and all owned personal and/or business property and improvements located on Client's premises under the standard "Special Form" coverage to its full replacement cost, without depreciation, adjusted yearly.
 - (f) Workers' compensation and other statutory insurances as required.
- 12.3 Client Insurance. Client shall insure, and pay for the following insurance coverages during the term of this Agreement and all renewals thereof:
- (a) General liability insurance covering Client's business operations on the premises in which the Marathon Services will be performed.
 - (b) Property and casualty coverage for all of Client's real and personal property to which Marathon and its employees are granted access or given use, to its full or depreciated value, at Client's option, to include, but not be limited to, insurance on space needed by Marathon for the performance of its obligations under this Agreement and all Client's infrastructure and improvements to such space.
 - (c) Other insurances typically maintained within Client's industry.
- 12.4 Waiver. Notwithstanding any other provisions of this Article XII, to the fullest extent allowable under all policies they hold and under law, Marathon and Client hereby mutually waive (1) all rights of subrogation against one another and their directors, officers, employees, agents and representatives, (2) all rights of indemnification, to the extent Liabilities are covered by insurance of the Party that otherwise would be indemnified under the Agreement and, (3) with regard to real or personal property, the waivers under (1) and (2) of this paragraph apply regardless of whether coverage is for the full replacement cost or a depreciated or lesser value.

Article XIII Miscellaneous

- 13.1 Ancillary Agreements. Client agrees to execute or cause to be executed all ancillary agreements appropriate and reasonably necessary to enable the Marathon Services to be performed.
- 13.2 Force Majeure. Neither Party shall be liable for failure or delay in performance due to any cause beyond the reasonable control of such Party (a "Force Majeure Event"); provided that such Party shall have (i) used its best efforts to avoid such Force Majeure Event and to minimize the impact of same on the other Party and (ii) rendered to the other Party prompt written notice thereof when first discovered, fully describing its probable effect and duration. The term "Force Majeure Event" shall include, but not be

limited to, acts of God or the public enemy; expropriation or confiscation; war, rebellion, civil disturbances, sabotage, and riots; strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party hereunder; inability to obtain any local, state or federal governmental approval due to actions or omissions by any such governmental authority that were not voluntarily induced or promoted by the affected Party hereunder; and floods or unusually severe weather that could not have been reasonably anticipated, fires, explosions, and earthquakes, and other similar occurrences. Force Majeure Event shall not include economic hardship or changes in market conditions.

13.3 Entire Agreement. The Parties acknowledge that this Agreement, including any attachments, schedules and addendum that are attached hereto and incorporated herein by reference, represents the entire agreement and understanding of the Parties with reference to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings, and any other negotiations and discussions, whether oral or written, of the parties and/or subsidiaries of the parties with respect to the same subject matter hereof. Each Party acknowledges that no other promises, representations or agreements, whether written or verbal, have been made by the other Party, its agents, employees or legal representatives as an inducement for the execution of this Agreement. The Agreement replaces all prior understandings and agreements of the Parties, written or oral, with respect to the subject matter covered herein.

13.4 Notices. All notices to be delivered under this Agreement shall be in writing and shall be delivered by hand or deposited in the United States mail, first-class, registered or certified mail, postage prepaid, to the following addresses:

To Client: City of Coppell
Attn: Clay Phillips, City Manager
255 Parkway Boulevard
Coppell, TX 75019
Tel- (972) 304-3618
Fax- (972) 304-7063

To Marathon Health: Marathon Health, Inc.
Champlain Mill
Suite 400
Winooski, VT 05404
Tel - (802) 857-0400
Fax - (802) 857-0498 Fax
Attn: Jerry Ford, CEO

13.5 Severability. If any provision of this Agreement is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the Parties to enforce such provision in another circumstance. Neither does it

affect the rights of the Parties to enforce any other provision of the Agreement at any time.

- 13.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas to the extent not preempted by federal law. Venue for any action concerning this agreement shall be in Dallas County, Texas.
- 13.7 Amendment. This Agreement may be amended by Client and Marathon only by a writing duly executed by an appropriate officer of Marathon and Client. This requirement is not intended to preclude the Parties from making decisions regarding day to day operations.
- 13.8 Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The rights and duties of Marathon and Client under this Agreement shall not be assignable by either Party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.
- 13.9 Third Party Beneficiaries. Nothing contained herein shall be construed to confer any benefit on persons who are not Parties to this Agreement.
- 13.10 Waiver. A failure or delay of either party to this Agreement to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a waiver of such provision of this Agreement or shall not excuse the other party's performance of such, nor affect any rights at a later time to enforce the provision.
- 13.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Client and Marathon have executed this Agreement on this ____ day of _____, 2013.

City of Coppell

Marathon Health, Inc.

By: _____
Clay Phillips
City Manager

By: _____
Jerry Ford
CEO

Schedule A

I. DESCRIPTION OF SERVICES (see detailed schedule of services in Schedule A1)

Onsite health center to be operated at or near 151 W. Church St., Lewisville, Texas, including Marathon Health's integrated Health Engagement Technology Platform for eligible employees [and spouses].

Individuals eligible to participate as of the Commencement Date:

Employees	342
Spouses & Retirees.....	66
Children.....	241

SERVICES INCLUDED IN BASE FEE

Primary care:

- Urgent care (Infections, gastrointestinal symptoms, rashes, common illnesses)
- Routine annual exams and screenings
- Lab draws
- Immunizations
- Allergies
- Pregnancy support & education
- Prescription management

Occupational Health Services:

- Work-related injuries – First treatment
- Orthopedic injury treatment – sprains, strains

Onsite Pre-Packaged Pharmaceutical Dispensing

Health Maintenance and Prevention:

- *Biometric Screening* (individual in-house follow-up and new hire screenings only; see optional mass screenings below)
 - Finger-stick blood test for lipids (HDL cholesterol, LDL cholesterol and triglycerides) and glucose
 - Blood pressure, height, weight, body mass index and body fat composition.
- *Health Risk Assessment* - Administered online or in paper version screens for:
 - General health and well-being
 - Health history including symptoms, conditions and family history
 - Tobacco use, alcohol use and stress levels
- *Comprehensive Health Review (CHR)* - For high risk individuals and individuals with chronic disease a CHR utilizing:
 - Online access to complete the Problem Knowledge Coupler (PKC) Health History and Risk Assessment (HHRA) – a computerized clinical decision support system
 - 1:1 consultation with the onsite clinician to review assessment results, health history and risk appraisal, set goals and recommend strategies to achieve goals
- *Lifestyle Risk Reduction* - For high risk individuals agreeing to follow-up with the Marathon Health Care provider as their personal health coach:
 - Work 1:1 with individuals to change behaviors putting them at risk for certain conditions, addressing lifestyle habits such as physical activity, smoking, diet, stress, weight control, cholesterol and blood pressure.
 - Marathon Health Providers incorporate Transtheoretical Model, Model for Improvement and Motivational Interviewing behavioral change methodologies
 - Individualized change management plans
 - Proactive support

Disease Management – For individuals with chronic diseases (Diabetes, COPD, Asthma, CHF, CAD, HTN, Depression, Low Back Pain):

- Work 1:1 with individuals to empower and educate them to improve their health and quality of life through self-management practices and adherence to a treatment plan that aligns with national clinical guidelines for their disease.
- Coaching, symptom monitoring, and disease education
- Use of Problem Knowledge Couplers

Integrated Health Engagement Technology Platform -- For up to 110% of the employees and spouses eligible to participate:

- Personal Health Record with risk profile, wellness score, interactive nutrition and activity trackers, and medical content
- Online scheduling system and secure messaging
- Electronic Medical Record

Management Reporting and Analysis:

- Population stratification
- Monthly, quarterly & annual reports on health center activity, population health status and return on investment
- Health data warehouse

Participant Communications and Promotions

- Pre-launch communication program
 - Multi-media campaign with site posters, events, digital communication, and mailings to the home
- Annual Health Promotions Calendar
 - Monthly health promotion programs, both group and individual, including program materials (presentations, educational hand outs, email promotions) as well as communication materials such as posters, postcards and website awareness.

OPTIONAL SERVICES NOT INCLUDED IN BASE FEE

Mass Biometric Screenings

Cost of onsite Pre-Packaged Pharmaceuticals

Cost of other drugs and vaccinations

Cost of health center furnishings

ALSO INCLUDED IN THE FEES OF THIS HEALTH SERVICES AGREEMENT:

- Labor costs
- Medical & office supplies
- Medical liability insurance, worker’s compensation insurance, general liability insurance and all other insurance policies
- One annual onsite stewardship meeting with Marathon’s account manager
- Implementation fee covers the cost of equipment, computers, initial recruitment & training of staff, initial supplies, technology user setup, travel costs for up to three onsite visits by the project manager, signage and décor, initial roll-out communications materials for participants and programming for a participant eligibility file interface.

NOT INCLUDED IN THE FEES OF THIS HEALTH SERVICES AGREEMENT:

- Non CLIA waived tests
- External lab processing for physicals, annual exams and screenings
- Travel costs for clinicians and health screeners to visit participants at offsite locations
- Fit-up health center space for private consultations with Participants
- Health center furnishings
- Internet connectivity and telephone service for Marathon Health staff

- Excess and custom communications costs to promote the Marathon Health services, such as customer-only branded or additional materials, consultation travel, excess consultation time and postage costs for mailing communication materials to participants' homes.
- Excess software programming costs, such as for custom interfaces for Marathon Health uploads of prior provider data, or more than 3 activity reports (data extractions in standard format) of encounter, lab or HRA data.

II. LOCATION AND TIME OF SERVICES

- A. The services provided under this Agreement will be provided at a site to be located at or near 151 W. Church St., Lewisville, Texas.
- B. Hours of operation will be 40 hours per week during Client's normal business days of operation.
- C. Notwithstanding the hours of operation described above, the health center shall be closed for 8 holidays and for 4 professional development days per year.
- D. In the event of an unexpected clinician absence due to illness, the health center shall remain open for services to be continued, to the extent possible, by the other regular health center staff member(s). Up to 5 days of such absences that result in no direct care services being provided shall be allowed per year.

III. STAFFING

Staffing will include one (0.5 FTE) physicians, one (1.0 FTE) nurse practitioners and one (1.0 FTE) medical assistants. The Marathon Health staffing model also assumes that each mid-level practitioner will have a physician preceptor who provides medical supervision, consultation, chart review, and quality assurance activities.

Schedule A2

MARKETING SERVICES TO BE INCLUDED IN BASE FEE

Standard Communication Package	Deliverables (exact media to be determined)
Introductory Announcement Text	Copy provided by Marathon. Client will distribute.
Introductory Manager's Presentation	Marathon to present introductory presentations within first ninety days of the Implementation Date to members of Client management as identified by Client.
Welcome Package	Marathon to provide Welcome Packages as of the Implementation Date to be distributed by Client. Additional Welcome Packages will be prepared for new employees of the Firm on an as-needed basis thereafter.
Welcome Package will include:	
-Letter	Co-branded and personalized from Client On-site Care Provider.
-Portal Log on	Imprinted with user name and password.
-Brochure	Co-branded to reflect incentive structure, service mix, and Client logo and program name.
Biometric Screening Flyer	Marathon will provide Biometric Screening Flyers annually. All such flyers shall be co-branded.
Biometric Screening Announcement Poster	Marathon will provide posters, co-branded for scheduled screening events.
Teachable Moment Handouts	Marathon will provide Teachable Moments brochures on an as needed basis based on Participant population.
MHQ HRA	Marathon will provide MHQ HRA brochures annually.
Health Center Opening Postcard	Marathon will provide Health Center Opening Postcards as of the Implementation Date. The postcards will be co-branded with Client and program name.
Site Posters	Marathon will provide site posters for the Live Date and annually thereafter. The posters will be co-branded.
Associate Presentation / Group meeting	Marathon will provide presentations annually to Participant population at times and dates to be mutually agreed upon by Client and Marathon.
DM Brochure	Marathon will provide DM brochures on an as-needed basis, based on Participant population.
Med Risk Handouts	Marathon will provide Med Risk brochures on an as-needed basis, based on Participant population.

Additional Communication Support Available for Additional Fees	
Contest design and promotion	
Wellness seminar publicity	
Health fair planning and promotion	
Monthly health newsletter	
Table top tent cards	
Web copy and design	
Mailing of materials to participants' homes	

- **Standard Communication Package includes all production and printing costs.**

Schedule B

FEES AND PAYMENT SCHEDULE

Service fees:**

The fees for the initial three year term of this agreement are as follows:

Annual base service fee*	\$192,617
One-time implementation fee	\$23,633
Mass biometric screening fee (optional)*	\$50 per participant
<i>Actual fee is dependent on number of individuals screened and the number of locations. Individual in-house biometric screenings and all health risk assessments are included in the annual service fee.</i>	
Onsite Pre-Packaged Pharmaceuticals (optional)	At cost
<i>For drugs paid for directly by the Client. No additional fees are charged for drugs paid for by patients or through health plan claims.</i>	

* First-year fee only; fee increases by 5% in subsequent years.

** All pricing is contingent and dependent upon execution of similar Health Services Agreement by the City of Lewisville, TX within the month of August, 2013.

Payment schedule:

Service fees are due as follows:

- Implementation fee at contract signing
- 1/12 of annual base service fees at beginning of each month of service
- Biometric screening fees on a per participant basis as incurred.
- Dispensed pharmaceutical charges, billable travel costs, excess communications or software programming costs, and other unexpected costs incurred as a result of service modifications requested by Client are due as incurred.

At Risk Fees and Pay for Performance

10% of the annual base service fees for the initial three year term of this agreement are “at-risk” to Marathon Health and are subject to achieving the performance metrics outlined in the Marathon Health Pay for Performance Plan summarized below. The following conditions also apply:

- A bonus equal to one-half the downside risk on the outcomes component shall apply to achieving 8 or more performance metrics related to outcomes as described in the plan.
- 40% of the eligible employee population will have a biometric screenings within 2 months of the beginning and end of each annual term.
- 50% of the eligible employee population will visit the health center during each annual term.
- Fees are only at-risk to Marathon if the medical claims data referred to in section 6.5 is received as scheduled.
- Any refund of at-risk fees will be credited against the subsequent year’s service fees.

**Schedule B1
PAY FOR PERFORMANCE PLAN
Triple Aim**

The Marathon Health Pay for Performance Plan is based on achievement of key metrics covering the three dimensions relating to optimizing healthcare delivery and overall health of a population. The three dimensions are:

- **Improving the Patient Experience**
- **Improving the Health of the Population**
- **Reducing the Per Capita Cost**

The 10% of the annual base service fees for the initial three year term of this agreement that are “at-risk” will be attributed to these three dimensions in the following manner:

	Year 1	Year 2	Year 3
Improving the Patient Experience	2.5%	2.5%	2.5%
Improving the Health of the Population	5.0%	5.0%	5.0%
Reducing the Per Capita Cost	2.5%	2.5%	2.5%
Total	10%	10%	10%

Marathon’s performance, requirements of the Client and fee credits for each of the three dimensions are detailed below. If the Client has not fulfilled all of its requirements for any dimension during a given year, then no fee credit will be due the client for that dimension for that year.

Improving the Patient Experience – Patient Satisfaction

Marathon’s Performance

Employees will rate that they are satisfied or very satisfied with their overall experience with Marathon Health on an annual satisfaction survey (Likert Scale).

Fee Credits

The portion of at-risk fees attributable to Improving the Patient Experience will be credited back to the Client in accordance with the following scale:

% of Employees Satisfied or Very Satisfied	
95+%	50% bonus paid to Marathon
90+%	0% credited to Client
85+%	50% credited to Client
80+%	75% credited to Client
< 80%	100% credited to Client

Improving the Health of the Population – HeALTH OUTCOMES

Marathon’s Performance

Patients with the following risk conditions will achieve health improvements as follows:

% of Participants with the Condition that Achieve the Results
--

	Eligible Participants with the Following Conditions	Will Achieve the Following Results	Minimum target for Year 1	Minimum target for Year 2	Minimum Target for Year 3
1	Systolic BP > 140	Reduce by 12 mmHg or normal	30.0%	35.0%	40.0%
2	Diastolic BP > 90	Reduce by 5 mmHg or normal	30.0%	35.0%	40.0%
3	Glucose > 100	Reduce 15% or normal	10.0%	12.5%	15.0%
4	Tot. Cholesterol > 200	Reduce 10% or normal	10.0%	12.5%	15.0%
5	LDL Cholesterol > 160	Reduce 10% or normal	10.0%	12.5%	15.0%
6	HDL Cholesterol < 40	Increase 10% or normal	10.0%	12.5%	15.0%
7	Triglycerides > 200	Reduce 20% or normal range	10.0%	12.5%	15.0%
8	Overweight / Obesity	Reduce weight 5% or BMI normal	3.0%	4.0%	5.0%
9	Smokers	Quit for at least 90 days	3.0%	4.0%	5.0%

	Participants Under our Care with the Following conditions	Will Achieve the Following Results	Minimum target for Year 1	Minimum target for Year 2	Minimum Target for Year 3
10	Diabetics	Maintain average Hemoglobin A1C <= 7.5	10.0%	12.5%	15.0%
11	Diabetics	At the standard of care (or not applicable) for 4 out of 5: <ul style="list-style-type: none"> • Annual Foot Exam • Annual Eye Exam • Annual Influenza • Pneumococcal at least once • Self Glucose Monitoring 	75.0%	75.0%	75.0%

12	Asthmatics	At the standard of care (or not applicable) for 4 out of 5: <ul style="list-style-type: none"> • Annual Influenza • Pneumococcal at least once for those at risk • Use of inhaled corticosteroid for those with persistent Asthma • Asthma Action Plan • Use of a short acting bronchodilator 	75.0%	75.0%	75.0%
----	-------------------	---	-------	-------	-------

The look-back period is 12 months in Year 1 and 18 months in subsequent years.

Fee Credits

The portion of at-risk fees attributable to Improving the Health of the Population will be credited back to the Client in accordance with the following scale:

# of Categories from the Above Table in Which the Minimum Target was Reached	
10-12	50% bonus paid to Marathon
7-10	0% credited to Client
4-6	50% credited to Client
2-4	75% credited to Client
< 2	100% credited to Client

Reducing the Per Capita Cost – Reduce PMPM COST trend

Marathon’s Performance

Client’s expected PMPM medical claims cost for the eligible population, net of fees paid to Marathon, will be reduced as follows:

	Year 1	Year 2	Year 3
Approximate Gross Reduction	7%	11%	13%
Net Reduction Target	0%	4%	6%

This is computed as follows:

- Client’s expected year 1 PMPM medical claims costs for the eligible population, excluding large cost claimants of \$50,000 or above, are agreed upon between Marathon & Client.

- Expected year 2 PMPM costs are computed by increasing expected year 1 costs by 9% for medical inflation. Expected year 3 PMPM costs are computed by increasing expected year 2 costs by 9% for medical inflation.
- Actual PMPM medical claims costs for each year, excluding large cost claimants of \$50,000 or above, are obtained and compared to the expected costs to arrive at the Actual Gross Reduction in PMPM Cost.
- The Actual Gross Reduction in PMPM Cost is decreased by the PMPM fee paid to Marathon to arrive at the Actual Net Reduction in PMPM Cost. The Actual Net Reduction in PMPM Cost is divided by the expected PMPM cost for the year to determine the Actual Net Reduction Percentage.

Fee Credits

The portion of at-risk fees attributable to Reducing the Per Capital Cost will be credited back to the Client in accordance with the following scale:

Variance of Actual Net Reduction Percentage from the Net Reduction Target	
1+% over (e.g. 7+% reduction vs. a 6% target)	50% bonus paid to Marathon
+/-1% (e.g. 5%-7% reduction vs. a 6% target)	0% credited to Client
1%-3% under (e.g. 3%-5% reduction vs. a 6% target)	50% credited to Client
3%-5% under (e.g. 1%-3% reduction vs. a 6% target)	75% credited to Client
5+% under (e.g. 1-% reduction vs. a 6% target)	100% credited to Client

Requirements of Client

For Marathon’s fees to be at-risk under this plan, the following requirements of the Client apply:

- Facilitate an annual electronic satisfaction survey of employees within 60 days (+/-) of the end of each contract year.
- A minimum of 40% of the eligible employee population must have a health screening, including biometrics and health risk assessment, within 3 months (+/-) of the Commencement Date, and annually thereafter.
- For use of the health center, if the Client requires high co-payments from participants, requires employees to “punch out”, locates the health center offsite, or has other significant restrictions on its use, then a minimum of 50% of the eligible population must have at least one acute care or health coaching visit in the clinic during each contract year.

- Provide information on PMPM medical claims cost and large cost claimants of \$50,000 or above for at least the 2 years immediately preceding year 1 of the Agreement.
- Provide the expected PMPM medical claims cost, net of and large cost claimants of \$50,000 or above, for year 1, reflective of the impact of any health plan design changes for that year.
- Provide information on PMPM medical claims cost and large cost claimants of \$50,000 or above within 60 days of the end of each contract year.
- The medical claims data referred to in section 6.4 must be received as scheduled.