RER/CHW
09/06/12
Item No. 19

AN ORDINANCE 2012-09-06-0679

AUTHORIZING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH TRI-STARR PERSONNEL, LLC FOR "AS NEEDED" STAFFING AT THE SAN ANTONIO FIRE DEPARTMENT WELLNESS CENTER FOR A PERIOD BEGINNING UPON CONTRACT EXECUTION THROUGH SEPTEMBER 30, 2015, WITH TWO ONE-YEAR EXTENSIONS.

* * * * * * * * * * * *

WHEREAS, Ordinance 2010-09-09-0785 authorized a professional services agreement with Tri-Starr Personnel, LLC (Tri-Starr) for the provision of medical staffing to perform annual medical physicals and health related education in connection with the San Antonio Fire Department (SAFD) Wellness Program; and

WHEREAS, the parties wish to amend the agreement to create the option for additional medical professionals and to increase the hourly rate for existing medical staffing; and

WHEREAS, the term of the amended agreement will be for the period beginning upon execution of the amendment through September 30, 2015, with two one-year extensions; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee are hereby authorized to execute an amendment to the professional services agreement with Tri-Starr, for the above-described purposes, that contains substantially the same terms and conditions as those contained in **Exhibit I**. Should the parties fail to execute an agreement containing substantially the same terms and conditions as set forth in **Exhibit I** within one hundred and eighty days of the effective date of this Ordinance, subsequent City Council authorization will be required.

SECTION 2. Funding for this ordinance is available in Fund 11001000, Cost Center 2003030002, and General Ledger 5201040, as part of the FY 2012 budget. Future funding for the remaining terms of the contract are contingent upon subsequent fiscal year budgets. If approved by council, payment not to exceed the budgeted amount is authorized to Tri-Starr and should be encumbered with a purchase order.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the

City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts, as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 6th day of September, 2012.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 19

Name:	4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15A, 15B, 15C, 17, 19, 20, 21, 22
Date:	09/06/2012
Time:	09:35:08 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an amendment to the professional services agreement with Tri-Starr Personnel, LLC for "as needed" staffing at the San Antonio Fire Department Wellness Center for a period beginning upon contract execution through September 30, 2015, with two one-year extensions. [Erik J. Walsh, Deputy City Manager; Charles N. Hood, Fire Chief]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x			x	

AMENDED PROFESSIONAL SERVICES CONTRACT FOR STAFFING OF THE SAN ANTONIO FIRE DEPARTMENT WELLNESS CENTER

This Contract is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), acting by and through its City Manager, or her designee, amending the Professional Services Contract adopted pursuant to Ordinance Number 2010-09-09-0785, passed and approved on September 9, 2010, by and through this amendment adopted pursuant to Ordinance Number 2012 - - - , passed and adopted and approved on _____, 2012, and Tri-Starr Personnel, LLC, a Texas corporation, having its principal place of business at 121 Interpark Blvd, Ste. 108, San Antonio, Texas, 78216 (hereinafter referred to as "**VENDOR**", acting by and through Pamela S. Vaught, Vice President and COO.)

I. PURPOSE

The purpose of this contract is to state the terms and conditions under which the **VENDOR** will provide medical staff to the San Antonio Fire Department Wellness Center.

II. SCOPE OF SERVICES

2.1 **VENDOR** shall provide the San Antonio Fire Department (SAFD) Wellness Center with a medical staff. The terms of this contract shall be final and binding where there is a conflict between the terms of the Request of Proposal, the Vendor's Proposal, and the terms of this CONTRACT, and the CONTRACT shall control where it conflicts with the Vendor's Proposal.

2.2 **VENDOR** shall work with the San Antonio Fire Department Chief or Chief's Designee and appropriate City officials to perform any and all related tasks required by the CITY in order to fulfill the purpose of this CONTRACT. All work required as part of this CONTRACT will be done to the Chief's satisfaction.

2.3 **VENDOR** shall perform services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional medical group 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.

2.4 If requested by the CITY, **VENDOR** shall provide a dedicated Physician (hereinafter referred to as Wellness Physician), experienced in occupational medicine, who will determine if an employee has a potentially life threatening medical condition that requires treatment necessary to ensure that activities detrimental to the health and well-being of the employee are altered or ceased.

Exhibit I

The Wellness Physician shall become familiar with the IAFF/IAFC Wellness Fitness Initiative and NFPA 1582.

2.5 If requested by the CITY, **VENDOR** shall provide a Physician's Assistant (PA), a Certified Nurse Practitioner, a Registered Nurse (RN) and/or a Certified Medical Technician (CMT) to assist the Wellness Physician. The individual(s) provided by the VENDOR shall have qualifications and experience compatible with the position being filled as determined by the CITY. Any and all employees provided shall become familiar with the IAFF/IAFC Wellness Fitness Initiative and NFPA 1582.

If requested by the CITY, VENDOR shall provide a Registered Dietician to work on a part-time basis. Days and hours per week will be determined by the CITY.

2.6 In the event an employee provided by the VENDOR is unavailable for any reason, the CITY may request that the **VENDOR** provide another person to assume the role of that employee until employee returns. The alternate employee must possess the same qualifications and requirements of the employee being replaced.

2.7 **CITY** has the right to interview and approve or reject any employee proposed by the **VENDOR**. At any time should the **CITY** become dissatisfied with any employee provided by the VENDOR, the **VENDOR** shall replace employee within 30 days of receiving such request in writing.

2.8 **VENDOR** will provide the requested medical staff during hours of operation. Hours of operation will be from 7:45 AM to 4:30 PM, Monday through Friday except on City-approved holidays.

2.9 Laboratory testing services shall be conducted by a laboratory testing vendor selected by the **CITY**. All laboratory testing and x-rays will be conducted prior to the scheduled appointment.

2.10 Excluding the Registered Dietician, all employees provided by the **VENDOR** must be able to perform, to the extent of their professional licensing and training, the tests listed below and interpret the laboratory testing and x-rays.

Review of Medical Questionnaire/Medical History
Physical Examination to Include:
- Vital Signs
  - Height and Weight
  - Blood Pressure
  - Temperature
  - Heart Rate
  - Respiratory Rate
- HEENT
- Neck

- Cardiovascular
- Pulmonary
- Gastrointestinal
- Genitourinary – At discretion of employee
  - Testicular, penis and hernia evaluations
- Rectal – At discretion of employee
  - Digital Rectal exam
  - Enlarged prostate
  - Fecal occult blood testing
- Lymph Nodes
- Neurological
  - Mental status exam
  - Cranial and Peripheral Nerves
    - Motor
    - Sensory
    - Reflexes
- Musculoskeletal
- Skin

Order and Review labs

Vision Evaluation
- Distance, near, peripheral and color

Hearing
- Baseline and annual audiogram

Pulmonary Evaluation
- Spirometry
- Review of Chest X-ray
  - Initial Baseline
  - Repeat Chest X-ray every five years

Aerobic/Cardiovascular Evaluation
- Aerobic Cardiopulmonary Testing (40 plus)

Follow-up visits

2.11 In accordance with the Health and Wellness guidelines, Fire employees may choose, at their own expense, to have any or all of the mandatory examination components conducted by their primary care physician. The results of the examination will be submitted from the employee's physicians' office to the Wellness Physician as per program guidelines.

2.12 The dedicated Wellness Physician will use information gathered through the medical examination or primary care physician results to determine the employee's duty status. There are three levels of duty status:

a) "Full Duty" shall be defined as medically qualified for current assignment.
b) "Conditional Duty" will allow individuals to remain medically qualified for full duty if they comply with additional monitoring and treatment requirements to ensure that they maintain the capacity to safely perform the essential functions, job duties and requirements of their position. Follow-up appointments will be conducted by the member's personal

physician within the timeframe specified by the program guidelines. Any additional follow-up appointments will be dictated by the Wellness Physician.

c) "Alternate Duty" shall be defined as not medically qualified for current assignment; temporary assignment to an administrative position necessary until medical clearance by the Wellness Physician.

2.13 The Wellness Physician must consider the Health and Wellness Program standards as set out in Exhibit B to determine if an employee will be deemed unfit and placed on Conditional or Alternate Duty.

2.13.1 Alternate Duty cases will be managed by the Wellness Physician in accordance with program guidelines as specified by the Fire Department.

2.13.2 In the event that an employee disagrees with the opinion of the Wellness Physician, the employee can seek a second opinion by a physician of their choice at their own expense. The Wellness Physician will review the employee's physician's examination results. If concurrence is not reached, a third medical opinion will be obtained from a physician selected by the Wellness Physician and the employee's physician. The three physicians will confer and a consensus medical opinion will be determined.

2.14 Medical information must be treated as confidential and may be kept in an Electronic Medical Records system provided by the City.

2.15 In accordance with program guidelines, the Wellness Physician will be required to notify the San Antonio Fire Department's (SAFD) Office of Health and Wellness manager of the employee's duty status.

2.16 Within the work hours established by this contract, employees provided by the **VENDOR** may be required to perform additional duties associated with the Health and Wellness program.

III. PERFORMANCE STANDARDS

3.1 **VENDOR** acknowledges and agrees that **VENDOR** shall provide services under this CONTRACT at a certain level with a certain degree of accuracy and timeliness. Therefore, as part of this administrative services agreement with **CITY**, **VENDOR** agrees to the following performance standards:

Performance compliance audits may be conducted at the discretion of **CITY**, but are limited to one (1) per Experience Period and to claims processed in the Experience Period as defined herein regardless of incurred date. If **CITY** conducts a performance audit, either party to this CONTRACT may conduct a

second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. The definition of an error in these audits is subject to a good faith review by the parties to this CONTRACT. The cost of the first audit conducted by the **CITY** in any Experience Period will be paid by **CITY**. Should **VENDOR** fail to meet any performance expectation, **VENDOR** will pay the cost for all subsequent audits until **VENDOR** is meeting expected performance levels.

As an interim measurement, **VENDOR** will share a copy of its monthly internal audit results on City Plans with **CITY**. If **CITY** waives its right to an independent audit in any plan year, it retains the right to audit in all subsequent years.

IV. GENERAL ASSURANCES

4.1 **VENDOR** covenants and agrees to perform all services described in this **CONTRACT** in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **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.

4.2 **VENDOR** agrees to assign a dedicated unit including, but not limited to, a Supervisor/Manager who shall be responsible for the task, administration, and work performance for this **CONTRACT.**

4.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this CONTRACT. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY.** All **VENDOR** personnel engaged in providing services under this CONTRACT shall be fully qualified and shall be authorized or licensed to perform such work as required.

4.4 In the event the CITY requests the services of a Wellness Physician, a Physician's Assistant (PA), a Certified Nurse Practitioner, a Registered Nurse (RN) and/or a Certified Medical Technician (CMT), VENDOR must make an employee available for the CITY's consideration within 30 days of the date a written request is received from the CITY. In the event the employee who was provided within 30 days is not acceptable to the CITY, **VENDOR** must provide an employee acceptable to the CITY within 60 days of the initial written request.

V. CONSIDERATION & BILLING

5.1 In consideration of **VENDOR's** performance hereunder, **CITY** shall pay to **VENDOR** as follows:

5.2 Payments to **VENDOR** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to **CITY'S** approval. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory and which have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this CONTRACT.

5.3 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this CONTRACT or after its termination.

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

5.5 **CITY** will pay the hourly rates monthly as follows:

Wellness Physician - $140.00
Physician Assistant - $87.00
Certified Nurse Practitioner - $87.00
Registered Nurse - $56.00
Certified Medical Technician - $24.00
Registered Dietician - $39.00 as requested by **CITY**

VI. TERM

6.1 This CONTRACT commenced on October 1, 2010, and shall terminate on September 30, 2015. With at least 60 days written notice prior to expiration of the term, **CITY** may, at its sole option and through appropriate action of City Council, have the right to extend the term of this CONTRACT, under the same terms and conditions, for up to two (2) one (1) year extensions, with each one (1) year extension subject to the same notice requirement and appropriate action of its City Council. However, **CITY** may terminate this CONTRACT at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY'S** budget for each fiscal year.

VII. OWNERSHIP OF PRODUCT

7.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this CONTRACT and shall be used as **CITY** desires without restriction. **VENDOR** may utilize the information produced as a result of this CONTRACT for statistical purposes only as allowed by federal or state law.

VIII. RETENTION AND ACCESSIBILITY OF RECORDS

8.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.

8.2 The books and records must be maintained for the term of this CONTRACT to which they relate and for the five (5) year period following the end of this CONTRACT's term.

8.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.

8.4 **CITY**, the Commissioner of the Texas Department of Insurance (TDI), the United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of examination, audit, or inspection as permitted by federal or state law.

8.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.

8.6 **CITY** is entitled to continuing access to these books and records.

8.7 **VENDOR** may, at **CITY'S** option, fulfill the requirements of this Section of this CONTRACT by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

IX. HIPAA COMPLIANCE

9.1 **VENDOR** will maintain the confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.

9.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.

9.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit D and incorporated herein by reference.

X. PUBLICATION

10.1 In order to use any advertising relating to business underwritten and/or developed for **CITY, VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

XI. NOTICE OF VENDOR'S CAPACITY

11.1 **VENDOR** shall give notice to Plan Participants of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

XII. AMENDMENT

12.1 This CONTRACT, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this CONTRACT shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XIII. ASSIGNING INTEREST

13.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, 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.

13.2 If approved, **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this CONTRACT, nor shall any involuntary transfer or

assignment result in a transfer of any rights conferred by this CONTRACT. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.

13.3 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR'S** ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.

13.4 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.

13.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIV. INSURANCE AND BONDING

14.1 Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to **CITY'S** Human Resources Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, or form must have the agent's original signature, including the signer's company affiliation, title and telephone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or to perform under this CONTRACT until such certificate has been delivered to **CITY'S** Human Resources Department and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

14.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

14.3 **VENDOR'S** financial integrity is of interest to **CITY**. Therefore, subject to **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **VENDOR** shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, 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 rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and for an amount not less than the amount listed below:

	TYPE:	***AMOUNT:***
A.	Commercial Crime/Fidelity Bond	$2,000,000 per occurrence
B.	Commercial General (public) Liability Insurance to include coverage for the following:	
	1. Contractual Liability 2. Premises Operations 3. Personal Injury Liability 4. Products and Completed Operations 5. Independent Contractors	Bodily Injury and Property Damage of $5,000,000 per occurrence; or its equivalent in umbrella or excess liability Coverage
C.	Business Automobile Liability	
	Comprehensive Automobile Liability Including: 1. Owned/Leased Vehicles 2. Non-Owned Vehicles 3. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
D.	Workers' Compensation and Employer's Liability	
	Workers' Compensation Employer's Liability	Statutory $1,000,000 per category
E.	Professional Liability	
	Professional Liability (Claims made form)	$5,000,000 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

14.4 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY** and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties

hereto or the underwriter of any such policies). Upon such request by **CITY**, **VENDOR** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

14.5 **VENDOR** agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the **CITY** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this CONTRACT with the **CITY**, with the exception of the workers' compensation and professional liability policies;

- **VENDOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of its operations under this CONTRACT with **CITY**; and

- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

14.6 **VENDOR** shall notify **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notice not less than 30 days prior to the change or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

City of San Antonio
Fire Department
Office of Health and Wellness
115 Auditorium Circle
San Antonio, Texas 78205
*Until September 10, 2012

After September 10, 2012:
315 S. Santa Rosa
San Antonio, Texas 78207

14.7 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 herein required, **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due, to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.

14.8 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this CONTRACT.

14.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

XV. INDEMNITY

15.1 **VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this CONTRACT, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, Contractor 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.**

15.2 **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.**

15.3 **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.**

XVI. INDEPENDENT CONTRACTOR

16.1 **VENDOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all persons performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.

16.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR.**

16.3 No Third Party Beneficiaries: For purposes of this CONTRACT, including its intended operation and effect, the Parties specifically agree and contract that (1) this CONTRACT only affects matters/disputes between the Parties to this CONTRACT and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this CONTRACT; and (2) the terms of this CONTRACT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR.**

XVII. COMPLIANCE WITH SMALL, MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES POLICY, NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

17.1 **VENDOR** is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts (per Ordinance #2007-04-12-0396, as amended; the "SBEDA Policy", incorporated for all purposes as if set out herein). Per Ordinance #69403, **VENDOR** agrees that **VENDOR** will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. **VENDOR** further agrees that **VENDOR** will abide by all applicable terms and provisions of **CITY'S** Non-Discrimination Policy and SBEDA Policy. These policies are available in **CITY'S** Human Resources Department, Economic Development Department and the City Clerk's Office.

17.2 The **VENDOR** agrees that if material deficiencies in any aspect of its SMWBE utilization plan as set out in its proposal are found or if **VENDOR** does not meet the SMWBE goals as specified by the **CITY'S** Human Resources Department, as a result of a review or investigation conducted by **CITY'S** Human Resources_or Economic Development Departments, **VENDOR** will be required to submit a written report to the **CITY'S** Human Resources Department. The **VENDOR** will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If the **CITY'S** Human Resources Department and City Attorney's Office find that material deficiencies exist, then the supplemental GFEP shall be denied and will constitute **VENDOR's** failure to resolve any deficiencies. Failure to obtain an approved GFEP within ninety (90) days of initial denial shall constitute a default and result in penalties prescribed within the SBEDA Policy.

XVIII. NON-WAIVER

18.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **VENDOR** from any other covenants and conditions required in this CONTRACT.

XIX. FRAUD AND ABUSE PREVENTION

19.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.

19.2 **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR'S** claims system's or processors' errors within 30 days of verification of overpayments.

XX. CONFLICT OF INTEREST

20.1 **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.

20.2 **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 it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

20.3 **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.

20.4 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.

XXI. TERMINATION

21.1 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.

21.2 Termination by Notice. This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.

21.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59:59 p.m.,

Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.

21.4 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.

21.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR'S** sole cost and expense. All files are the property of the **CITY** and, at the **CITY'S** request, will be delivered at no cost to the **CITY** or its designated recipient on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within 30 calendar days after the effective termination date.

21.6 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of **VENDOR'S** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

21.7 If **CITY** conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.

21.8 Upon termination of this CONTRACT, in whole or in part, and/or its non-renewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:

21.8.1 Assume all open claims pending for the terminated or non-renewed portion of the CONTRACT, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,

21.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.

21.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the City Council.

21.9 Within 30 calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this CONTRACT through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

XXII. COMPLIANCE WITH LAWS

22.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

XXIII. SUCCESSORS AND ASSIGNS

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

XXIV. NOTICES

24.1 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 **CITY**, or to **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
Fire Department
Office of Health and Wellness
115 Auditorium Circle
San Antonio, TX 78205

VENDOR

Tri-Starr Personnel, LLC
121 Interpark Blvd, Ste. 108,
San Antonio, Texas, 78216

XXV. EXHIBITS

25.1 **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

HIPAA Business Associate Agreement	Exhibit A
San Antonio Fire Department Health and Wellness Program Standards	Exhibit B

25.2 **VENDOR** understands and agrees that Exhibit A and Exhibit B are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

25.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **CITY'S** Prior Request for Proposal, **VENDOR'S** Proposal and the terms of this CONTRACT; **CITY'S** Prior Request for Proposal shall control where it conflicts with **VENDOR'S** Proposal.

XXVI. LEGAL AUTHORITY

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

XXVII. VENUE AND GOVERNING LAW

27.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. 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 to be performed in Bexar County, Texas.

XXVIII. GENDER

28.1 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 to include the plural, unless the context otherwise requires.

XXIX. CAPTIONS

29.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

XXX. ENTIRE AGREEMENT

30.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between 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, oral 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 hereto, and duly executed by the parties hereto.

XXXI. SEVERABILITY

31.1 If any clause or provision of this CONTRACT is illegal, invalid 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 to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXXII. ACKNOWLEDGMENT

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

EXECUTED this the _____ day of _____, 2012.

CITY OF SAN ANTONIO

_____

Sheryl Sculley
City Manager

Tri-Starr Personnel, LLC

Pamela S. Vaught

Pamela S. Vaught
Vice President and COO

APPROVED AS TO FORM:

_____

Robert E. Reyna
Assistant City Attorney

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and Kennmark Group Medical Staffing, LLC, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract to provide medical staff for the San Antonio Fire Department Wellness program ("Service Contract"), executed on September 2, 2010, whereby BA provides health care management services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

(11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of January 1, 2011, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. ***INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***

M. **Waiver**. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

N. **Assignment**. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

O. **Entire Agreement**. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third

party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

P. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2010, by the **City of San Antonio,** signing by and through its program manager.

COVERED ENTITY
By City of San Antonio

By: _____

Print Name: Charles N. Hood

Print Title: Fire Chief

BUSINESS ASSOCIATE:

By: Anita Asher

Print Name: Anita Asher

Print Title: President and CEO

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney

EXHIBIT A
HIPAA BUSINESS ASSOCIATE AGREEMENT

EXHIBIT B
SAN ANTONIO FIRE DEPARTMENT HEALTH AND WELLNESS PROGRAM STANDARDS

CITY OF SAN ANTONIO

FIRE DEPARTMENT

General Order

TO: All Uniformed Personnel Sequence # G12001

FROM: Charles N. Hood, Fire Chief

COPIES: File

SUBJECT: S.A.F.D. Wellness Program - Revised

DATE: March 12, 2012

.01 BACKGROUND

The San Antonio Fire Department (SAFD) recognizes that the health, safety, and wellness of its firefighters are of the utmost importance to the organization. The SAFD Wellness Program has been established to monitor the health and wellness of our uniformed employees throughout their careers. This program is designed to provide early detection of serious medical conditions and encourage better health, thereby allowing our employees to do their job more safely and effectively. These goals will allow employees to enjoy healthy and productive careers and retirements. The program is modeled after the International Association of Fire Fighters/International Association of Fire Chiefs (IAFF/IAFC) Wellness-Fitness Initiative and in accordance with National Fire Protection Association (NFPA) Standards 1582.

.02 PURPOSE

The purpose of this document is to address the goals, guidelines, parameters and procedures the San Antonio Fire Department will use in implementing the Wellness Program.

.03 SCOPE

The SAFD Wellness Program applies to all uniformed employees of the San Antonio Fire Department. This program is a medical surveillance program which considers the special circumstances associated with the firefighting profession. Through a series of tests and procedures, the Wellness Physician will diagnose medical problems that may exist and make a determination of how that condition may affect the employee's ability to perform on duty. When a medical condition is discovered that could impair the employee's ability to safely and successfully complete his/her assigned duties, the employee will be required to seek treatment for that condition from his/her personal physician. The Wellness Physician shall be responsible for making the recommendation for duty status of the employee; however, the Fire Chief will make the final determination on said duty status.

.04 WELLNESS PHYSICIAN

The Wellness Physician shall be that physician designated by the Fire Department to oversee the medical testing. This physician will determine through evaluation and testing whether the member is

medically certified to perform the essential functions, job duties and requirements of his/her assigned position.

.05 MANDATORY

Participation in this program is mandatory for all uniformed employees of the San Antonio Fire Department.

The Fire Department will provide, at no cost, the initial comprehensive job-related medical evaluation to the employee. Employees may, however, elect to use their own physician for all or part of the medical evaluation. The Wellness Physician will review the information and make a recommendation on duty status to the Fire Chief. Results of the exam will then be placed in the employee's confidential medical file.

If an employee exercises the option of using his/her own physician, he/she is responsible for the cost of the medical evaluation by his/her own physician. If an employee chooses to use his/her own physician, such evaluation must be conducted by a licensed physician within forty-five (45) calendar days of the employee's scheduled exam with the Wellness Physician. The exam must conform in all aspects to the medical evaluation described in this policy. A form will be provided that must be completed and signed by the physician. The completed form will indicate whether the employee meets the minimum thresholds necessary to continue performing their regular duties (same thresholds that are applied to employees seeing the Wellness Physician). Instructions on what documentation is needed and how best to submit the required paperwork will be provided at the Health and Wellness Center.

.06 WELLNESS PROGRAM MANAGEMENT

The SAFD Wellness Manager shall be responsible for overall program management.

.07 SCHEDULING

The SAFD Office of Health and Wellness will coordinate scheduling with each employee's chain of command for laboratory tests, x-rays and physical exam (Division Heads may specify specific points of contact for scheduling purposes). If an employee is absent when their unit is sent for labs, x-rays or physical exams, the employee's chain of command or other specified individual will work with the Office of Health and Wellness to reschedule the employee. If the chain of command feels that employee is intentionally avoiding their exam, the matter will be forwarded, through the Office of Health and Wellness, to the Chief of Support Services. An employee's failure or refusal to comply with the requirements of this program may result in disciplinary action.

.08 EMPLOYEE RESPONSIBILITIES

Employees shall:

A. Cooperate, participate and comply with the medical evaluation process;
B. Provide complete and accurate information to the Wellness Physician and other authorized medical care provider(s);
C. Report any occupational exposure such as exposure to hazardous materials or toxic substances and exposure to infectious or contagious diseases;
D. Report to the Wellness Physician any medical condition that could interfere with the ability of the individual to safely perform essential job functions, and responsibilities of the position he/she holds, including but not limited to illness or injury, use of prescription or nonprescription drugs.

.09 CONFIDENTIALITY

An important element of this program is confidentiality. Medical information obtained through the medical physical exam will be maintained by the Wellness Center according to physician-patient confidentiality standards and HIPAA Guidelines. Following the medical exam, the Department will receive a confirmation signed by the Wellness Physician verifying that the employee either is or is not medically certified to perform the essential job functions, duties, and responsibilities of their assigned position. The Department will not receive information concerning the specific medical condition affecting the employee without the written permission of that employee.

The only information received by the Department from the Wellness Center Staff on each employee will be the confirmation signed by the Wellness Physician certifying the member's duty status. Aggregate data will be collected which shows trends and overall statistics, not information on each individual employee.

.10 MEDICAL EVALUATION

The annual medical exam will include the following:

- a medical history
- complete physical examination
- blood tests
- urinalysis
- vision test
- audiogram – hearing test
- spirometry – lung capacity test
- chest x-ray every five years
- stress electrocardiogram every third year
- PSA (Prostate-Specific Antigen) testing for males over age 40, or males with positive family history.

Blood will be drawn far enough in advance of the physical exam for the results to be available to the employee on the day of the exam. Other tests or elements may be added to the annual medical exam, as determined by the Wellness Physician.

The criteria used to determine duty status shall be as follows:

	Alternate Duty	Conditional Full
Blood Pressure	>180/100	>150/90
FEV/FVC (Pulmonary Function)	<59%	<65%
METS (Cardiac Stress Test)	≤10.0	≤12.0
Blood Sugar	>300	200-299
HbA1c blood sugar	>8.0	>7.0

.11 GENETIC INFORMATION NON DISCRIMINATION ACT

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or

family member of the individual, except as specifically allowed by this law. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Any family medical history provided to the San Antonio Fire Department's Wellness Center is at the discretion of the employee and completely voluntary.

.12 DUTY STATUS

The Wellness Physician can designate three categories of duty status:

A. Full-Duty: Employees are deemed medically qualified to perform the essential duties and functions of their assigned position.
B. Conditional Full-Duty: Employees remain medically qualified for full duty if they comply with additional monitoring and treatment requirements to ensure that they maintain the capacity to safely perform the essential functions, job duties and requirements of their position (See Section .14).
C. Alternate Duty: Employees will be temporarily assigned to a non-operations position while further medical evaluation is conducted to determine duty status (See Section.13).

Individuals assigned to Alternate Duty will report to the SAFD Personnel Officer for assignment. Any request for leave while on Alternate Duty will be handled in accordance with existing Department policies.

.13 ALTERNATE DUTY

An employee will be placed on Alternate Duty status by the Fire Chief when the Wellness Physician determines that a medical condition, as described in Section .10, exists that prevents the employee from being able to safely perform the essential duties and functions of their assigned position. The primary purpose of Alternate Duty is to protect the employee from potentially adverse health-related events (i.e., stroke, heart attack, injury, etc.). The SAFD Office of Health and Wellness will work closely with the employee and the Wellness Physician to expedite a return to full duty status. The Fire Chief, or his designated representative, has ultimate authority to determine Alternate Duty assignments.

Employees will retain their eligibility for F.L.S.A. overtime for the first sixty (60) calendar days on Alternate Duty. Beginning the 61st day, employees will no longer qualify for F.L.S.A. overtime.

An employee may be placed on Alternate Duty for a period not to exceed one (1) calendar year from the date of said assignment. The Chief will, in coordination with the Wellness Physician, review the employees' duty status and may extend the duration of an employee's Alternate Duty status beyond one year.

In situations where the Wellness Physician recommends an employee for Alternate Duty status, the following procedures will be followed:

A. The employee will contact his/her chain of command immediately to inform them of the change in their duty status;
B. The Wellness Physician will notify the SAFD Wellness Manager;
C. The SAFD Wellness Manager will notify the Chief of Support Services;
D. The member will not be allowed to participate in any emergency activities until cleared by the Wellness Physician;
E. The employee will contact the Chief of Support Services to determine temporary assignment.

Assignment to an Alternate Duty position does not create a permanent position within the Department. Employees may use sick leave in lieu of Alternate Duty status. In those instances, all current Department regulations for sick leave usage will apply.

.14 CONDITIONAL FULL DUTY

In some instances, the physician may discover a medical condition that does not preclude the employee from Full Duty, but requires further monitoring, testing and/or treatment. In this case, the employee will be referred to his/her private physician for follow-up. As long as the employee is medically certified by the Wellness Physician to continue on full duty, no other information regarding the individual's medical condition will be provided to the Department. The employee will have forty-five (45) calendar days to consult his/her personal physician and return the results to the Wellness Physician by utilizing the SAFD Form 002 (Confirmation of Medical Treatment) via fax or in a sealed envelope from the treating physician. If the Wellness Physician does not receive a Form 002 within forty-five (45) calendar days, the Wellness Manager will be notified. Failure to provide the Form 002 to the Wellness Physician within the specified time limit may result in an Alternate Duty assignment. The Wellness Physician may schedule follow-up visits to ensure compliance with the program and to facilitate the employee's return to full duty status.

.15 MEDICAL APPEAL PROCESS

In the event that an employee disagrees with the opinion of the Wellness Physician, the employee can seek a second opinion by a physician of their choice, at their own expense. The Wellness Physician will review the employee's physician's examination results. If concurrence is not reached, a third medical opinion will be obtained from a physician selected by the Wellness Physician and the employee's physician, at the City's expense. The three physicians will confer and a consensus medical opinion will be determined.

.16 REVISION

This General Order may be revised as necessary to ensure efficient and effective management of the San Antonio Fire Department Wellness Program.

Charles N. Hood, Fire Chief
San Antonio Fire Department