

AN ORDINANCE 2008 - 05 - 01 - 0354

AUTHORIZING THE EXECUTION OF A CONTRACT WITH GONZABA MEDICAL GROUP TO PROVIDE ADMINISTRATION AND MANAGEMENT OF THE CITY'S OCCUPATIONAL HEALTH AND WELLNESS CENTER, FOR THE PERIOD FROM MAY 1, 2008 THROUGH APRIL 30, 2011.

* * * * *

WHEREAS, the City issued a Request for Proposals (RFP) for occupational health services; and

WHEREAS, a committee representing various City departments, including the City Manager's Office, Human Resources, Finance, Health, Office of Management and Budget, Fire Department, and Police Department, evaluated the proposals received and recommends Gonzaba Medical Group as the best able to provide the requested services based on the following criteria: experience/qualifications, proposed clinic management, proposed price, and Small Business Economic Development Advocacy Program (SBEDA) participation; financial stability; and

WHEREAS, the Contract with Gonzaba Medical Group provides for an initial three year term, expiring on April 30, 2011, with two (2)- one (1) year options to renew; and

WHEREAS, the cost for the Contract is an estimated annual amount of \$556,370.00; **NOW THEREFORE:**

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

SECTION 1. The Professional Services Contract with Gonzaba Medical Group, to provide administration and management of the City's Occupational Health and Wellness Center for the period from May 1, 2008 through April 30, 2011, for an estimated annual cost of \$556,370.00 is hereby approved. A copy of the Professional Service Contract, in final form, is attached hereto and incorporated herein as Exhibit "A". The terms of the Contract are hereby approved. The City Manager, or her designee, is hereby authorized to execute the Contract.

SECTION 2. Funds in the estimated annual amount of \$556,370.00, and such other funds necessary to carry out the terms of the Contract, are hereby authorized to be encumbered and paid to Gonzaba Medical Group. Funding for this Ordinance is available in Fund 75006000 Employee Wellness Program, Cost Center 1007010001 Occupational Health, General Ledger 5201040, Fees to Professional Contractors, as part of the FY08 Budget.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific Index Codes and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance becomes effective immediately if passed and approved by eight (8) affirmative votes; otherwise this Ordinance shall take effect ten (10) days from the date of passage.

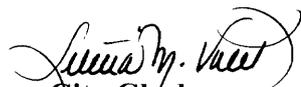
PASSED AND APPROVED this 1st day of May, 2008.



M A Y O R

PHIL HARDBERGER

ATTEST:

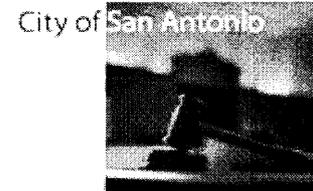

City Clerk

APPROVED AS TO FORM:


City Attorney



Request for
COUNCIL
 ACTION



Agenda Voting Results - 25

Name:	5, 6, 7, 8, 9, 10, 13, 14, 16, 17, 18, 19, 21, 23, 25, 26, 27, 28A, 28B, 28C, 28D, 28E, 28F, 28G						
Date:	05/01/2008						
Time:	09:48:03 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a contract with Gonzaba Medical Group in an estimated annual amount of \$556,370.00 to provide administration and management of the City's Occupational Health and Wellness Center. [Sharon De La Garza, Assistant City Manager; Edward Belmares, Director, Human Resources]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x			x	
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				



CMS or Ordinance Number: CN4600007288

TSLGRS File Code:1000-25

Document Title:
CONT - 4600007288

Commencement Date:
5/1/2008

Expiration Date:
4/30/2011

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its City Manager and Gonzaba Medical Group (hereinafter referred to as "**VENDOR**") with its principal place of business located at 720 Pleasanton Rd. San Antonio, Texas 78214.

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide administration and management of the City's Occupational Health and Wellness Center.

II. SCOPE OF SERVICES

- 2.1 **VENDOR** shall provide all services as set forth in City's Request for Proposal and Vendor's Proposal, dated February 1, 2008, attached hereto respectively as Exhibits "A" and "B" and incorporated herein. The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of the Request for Proposal, the Vendor's Proposal, and the terms of this CONTRACT, and the City's Request for Proposal shall control where it conflicts with the Vendor's Proposal.
- 2.2 **VENDOR** shall work with the City's Human Resources Director or 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.
- 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 In addition, **VENDOR** shall provide the following services in a manner that reflects the mission, vision and goals of the City Employee Wellness Program:
 - 2.4.1 Perform drug and alcohol screenings to include and as follows:
 - a. specimen collection, reference lab, and result validation for pre-employment, random, reasonable suspicion, return-to-duty, and follow-up screenings;

- b. drug testing for pre-employment, random and reasonable suspicion must be in accordance with Department of Transportation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs 49 CFR, Part 40 and Federal Workplace Drug Testing Programs adopted in Executive Order 12564 and section 503 of Pub. L. 100-71, and all subsequent amendments;
- c. accommodate monthly same day random screenings for alcohol and substance abuse for walk-ins, whose names will be provided 24 hours in advance by Human Resources;
- d. store all specimens collected for a minimum period of one (1) year, or until such time as all administrative and/or legal disputes have been resolved;
- e. ensure that the individual and/or the laboratory responsible for collecting samples conducts and documents background investigations on all personnel involved in the collection or handling of an unsealed specimen;
- f. ensure that no employees participating in the collection or handling of an unsealed specimen have been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs.;
- g. shall document and maintain all records in a confidential manner and must forward all test results to the City's Human Resources Department according to the established performance standards set forth in Section III;
- h. use a laboratory that is experienced and capable of quality control documentation, chain of custody, demonstrated technical expertise and proficiency in urinalysis, and shall comply with all requirements of the Substance Abuse Mental Health Services Administration (SAMHSA) and the College of American Pathologist Forensic, Urine, Drug Testing Program (CAP FUDTP);
- i. ensure that both the preliminary and the confirmation test are performed at a SAMHSA/CAP FUDTP certified laboratory;
- j. shall consider any concentrations of a drug at or higher than the specified levels a positive test on the initial drug-screening test;
 - 1. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending"
 - 2. A positive test result on the initial drug-screening test will automatically require the performance of a confirmation drug test
- k. must provide a Medical Review Officer that is a qualified physician;

1. will provide data collection in accordance with state and federal regulations (e.g. U.S.D.O.T record retention requirements). Minimal data collected must include patient identifier, age, race and assay results. Data is the property of the **CITY** and must be turned over to the **CITY** at the end of the contract. Individual laboratory results are to be kept strictly confidential and any additional use of the information collected must be approved by the **CITY**.

Pre-employment Drug Testing:

1. Pre-employment testing for positions that do not require a Commercial Driver License (CDL) shall at a minimum test for a substance abuse "Panel 10" which includes amphetamines, barbiturates, benzodiazepines, cocaine metabolites, marijuana metabolites, methadone, methaqualone, opiates, phencyclidine, and propoxyphene. The submitted urine specimen will be tested at the listed cutoffs.

Drug Class	Initial Test Level	Confirmatory Test Level	Confirmatory Method
Amphetamines	1000 ng/mL		
Amphetamine		500 ng/mL	GC/MS
Methamphetamine		500 ng/mL	GC/MS
Barbiturates	300 ng/mL		
Amobarbital		200 ng/mL	GC/MS
Butobarbital		200 ng/mL	GC/MS
Butalbital		200 ng/mL	GC/MS
Pentobarbital		200 ng/mL	GC/MS
Phenobarbital		200 ng/mL	GC/MS
Secobarbital		200 ng/mL	GC/MS
Benzodiazepines	300 ng/mL	200 ng/mL	GC/MS
Cocaine metabolite	300 ng/mL	150 ng/mL	GC/MS
Marijuana metabolite	50 ng/mL	15 ng/mL	GC/MS
Methadone	300 ng/mL	200 ng/mL	GC/MS
Methaqualone	300 ng/mL	200 ng/mL	GC/MS
Opiates	2000 ng/mL		
Morphine		2000 ng/mL	GC/MS
Codeine		2000 ng/mL	GC/MS
6-acetylmorphine		10 ng/mL	GC/MS
Phencyclidine	25 ng/mL	25 ng/mL	GC/MS
Propoxyphene	300 ng/mL	200 ng/mL	GC/MS

2. City of San Antonio Transportation Workplace Drug and Alcohol Testing Program (DOT) for positions that require a CDL.

- a. U.S. Department of Transportation (DOT) testing shall at a minimum test for a substance abuse "NIDA 5 drug panel" which include amphetamines, cocaine metabolites, marijuana metabolites, opiates, and phencyclidine.

The submitted urine specimen will be tested at the listed cutoffs.

Drug Class	Initial Test Level	Confirmatory Test Level	Confirmatory Method
Amphetamines	1000 ng/mL		
Amphetamine		500 ng/mL	GC/MS
Methamphetamine		500 ng/mL	GC/MS
Cocaine metabolite	300 ng/mL	150 ng/mL	GC/MS
Marijuana metabolite	50 ng/mL	15 ng/mL	GC/MS
Opiates	2000 ng/mL		
Morphine		2000 ng/mL	GC/MS
Codeine		2000 ng/mL	GC/MS
6-acetylmorphine		10 ng/mL	GC/MS
Phencyclidine	25 ng/mL	25 ng/mL	GC/MS

b. U.S. Department of Transportation (DOT) testing should test for alcohol concentration by Breathalyzer Test Method. The breathalyzer test will be reported as alcohol concentration (gm alcohol/210 liter of breath).

Drug Class	Initial Test Level	Confirmatory Test Level
Alcohol concentration	0.00 – 0.019	None Required
	0.02 – 0.039	Perform
	0.04 +	Perform

Random and Reasonable Suspicion Drug Testing:

1. There must be 24 hour per day availability of drug and alcohol testing for random and reasonable suspicion testing.
2. **VENDOR** must be capable of providing reasonable suspicion drug testing services within four (4) hours of request/notification by the **CITY**.
3. **VENDOR** must have the ability to allow an employee up to four (4) hours to provide a specimen and document the circumstances surrounding any unwillingness, failure, or inability to provide a specimen.
4. **VENDOR** must have the ability to obtain a urine specimen through direct observation where there is reason to believe an initial specimen has been altered or substituted.
5. **VENDOR** must have the ability to conduct an initial screening (5 panel) urine test for the listed drugs at the levels listed below.
6. **VENDOR** must have the ability to conduct a confirmation (5 panel) urine test for the listed drugs at the levels listed below.

Drug Class	Initial Test Level	Confirmatory Test Level	Confirmatory Method
Amphetamines	1000 ng/mL		
Amphetamine		500 ng/ML	GC/MS
Methamphetamine		500 ng/ML	GC/MS
Cocaine metabolite	300 ng/mL	150 ng/ML	GC/MS
Marijuana metabolite	50 ng/mL	15 ng/mL	GC/MS
Opiates	2000 ng/mL		
Morphine		2000 ng/mL	GC/MS
Codeine		2000 ng/mL	GC/MS
6-acetylmorphine		10 ng/mL	GC/MS
Phencyclidine	25 ng/mL	25 ng/mL	GC/MS

2.4.2 **VENDOR** is required to perform physical examinations and provide all necessary equipment and personnel to conduct the following examinations:

1. Routine Examinations, as defined below
 - Pre-employment physical examinations for civilian non-sedentary positions
 - Return-to-work physical examinations for non-sedentary positions and other Fitness-For-Duty evaluations when requested by **CITY**

2. Special Examinations, as defined below
 - Firefighter Cadet pre-placement examinations
 - Police Cadet pre-placement examinations
 - Hazardous materials (HAZMAT) physical examinations
 - SWAT physical examinations
 - Respirator physical examinations
 - Promotion examinations
 - Firefighter physical examinations

Type of Exam	Description
Routine Physical Examination for civilian pre-employment & return-to-work	<ul style="list-style-type: none"> • Vital signs: height, weight, blood pressure, pulse rate • Medical examination by a physician • Medical history • Urinalysis (lab) • Family and personal medical history • Lipid panel (lab); preferred but not required <ul style="list-style-type: none"> ○ Triglycerides, Cholesterol, High Density Lipoproteins (HDL), HDL/Cholesterol Ratio, Low Density Lipoproteins (LDL) • Fasting glucose (lab) • Visual acuity testing (lab); wall chart only
Uniform pre-employment, specialty, and promotion exams	<p>Fire and Police Pre-employment Examination: Based on the Fire and Police Civil Service Commission Guidelines</p> <ul style="list-style-type: none"> • Nurse spends 35 minutes with applicant; physician spends 10-12 minutes with applicant • Everything included in routine physical, plus: • Clinical chemistry (lab) – Chem 14 • Complete blood count (CBC) • Visual acuity testing (Titmus vision tester) • Color vision testing (Ishihara) • Spirometry • Audiometry <p>Specialty and Promotion Examinations: Based on the National Institute Occupational Safety (NIOSH) & Health and Occupational Safety Health Administration (OSHA) guidelines</p>

All testing and examinations referenced above will remain current with standard practice, governmental requirements, and applicable law and may change accordingly.

2.4.3 Provide equipment and personnel to perform employee immunizations, as required or recommended per employee's job description or City's health plan, to include and as follows:

- Tetanus, Diphtheria/Tetanus, Diphtheria, Pertussis (Td/Tdap)
- Hepatitis A and B
- Measles, Mumps & Rubella (MMR)
- Varicella
- Influenza
- Meningococcal
- Pneumococcal
- Rabies antibody titers for Animal Care Services, laboratory and vector control personnel as per job- required frequency
- Rabies vaccine
- Tuberculosis Screening for employees providing clinical care

* Immunizations subject to change as may be required by law.

2.4.4 Perform Self-Referred Employee Physicals as follows:

- Completion of online or written health risk assessment questionnaire
- Height and weight measurement
- Blood pressure readings performed by a nurse
- Ten (10) minute consultation with physician to review written questionnaire
- Three (3) minute step test
- Medical examination by physician
- Multiphasic lab testing as needed to identify potential health issues such as diabetes, obesity, hypertension, hypercholesterolemia

2.4.5 Provide convenience care, defined as minor medical injuries and illness, to include and as follows:

- Minor lacerations, abrasions, and contusions
- Minor coughs, cold, or other respiratory symptoms
- Musculoskeletal sprains or strains
- Minor skin infections or inflammation
- Minor gastrointestinal or genitourinary symptoms
- Finger stick for cholesterol, glucose, and lipid screens

2.4.6 Provide acute/episodic care for urgent illness or injury that is not life threatening with appropriate emergency room referral when necessary;

2.4.7 **VENDOR** will maintain a dedicated facility for City of San Antonio employees where all services stated herein will be performed;

2.4.8 **VENDOR** will operate the dedicated facility Monday, Wednesday, Friday, 7:00 a.m. to 5:00 p.m.; Tuesday and Thursday 8:00 a.m. to 6:30 p.m.; and evenings and weekends as needed during peak physical exam periods;

2.4.9 City employees will be directed to other vendor medical facilities on weekends and during City holidays;

2.4.10 **VENDOR** will provide priority care to City of San Antonio employees at the other **VENDOR** medical facilities when more efficient or convenient for City employee;

2.4.11 **VENDOR** will hire a physician as Medical Director to oversee dedicated facility within 90 days of the start of the contract period who is Board Certified in Occupational Medicine, or if Board Eligible, will be Board Certified within one year of hire, through the American College of Occupational and Environmental Medicine;

- 2.4.12 **VENDOR** will assist, participate with information table and representative present during City of San Antonio Employee Health Fair (s), and provide a representative to be included on the planning committee for the fair with 30 days notice provided by **CITY**;
- 2.4.13 **VENDOR** will provide lab results within timely manner and as agreed upon;
- 2.4.14 **VENDOR** will provide standard monthly reports based on Physician Quality Report Initiative (PQRI) indicators for identified medical measures by the 10th day of the following month;
- 2.4.15 **VENDOR** will prepare and provide special reports as requested within 30 days;
- 2.4.16 **VENDOR** will participate in monthly meetings with **CITY**;
- 2.4.17 **VENDOR** and **CITY** will effectively communicate regarding services to be provided per the **CONTRACT**;
- 2.4.18 **VENDOR** will provide flyers, as requested by **CITY**, reflecting a map with dedicated facility and other vendor medical facilities locations and hours;
- 2.4.19 **VENDOR** will provide 12 health and wellness presentations per year for each year of the contract to include back care and injury prevention as well as other topics for City employees and will coordinate with **CITY** as to dates and times;
- 2.4.20 **VENDOR** will conduct Well-Woman events on three Saturdays per each year of contract for City employees;
- 2.4.21 **VENDOR** will maintain a wellness resource library at the dedicated facility which will be open and accessible to City employees;
- 2.4.22 **VENDOR** will provide a computer in dedicated facility with limited internet access for city employees to access personal and educational health information;
- 2.4.23 **VENDOR** will process Workers' Compensation documentation, including Workers' Compensation Status Report, per law for all on- the-job injuries and notify designated City employee;
- 2.4.24 **VENDOR** will make necessary medical referrals to medical specialists to include substance abuse professionals, as needed, utilizing network available through employee's health plan and Employee Assistance Program (EAP) and provide follow-up after such referrals consisting of a phone call to employee in timely manner;
- 2.4.25 **VENDOR** will utilize X-ray equipment on patients when necessary;

- 2.4.26 **VENDOR** will have a Spanish speaking employee at the dedicated facility capable of translation during all operating hours
- 2.4.27 **VENDOR** will provide two hours (2) free parking for City employees at its dedicated facility as well as unlimited free parking at its other medical facilities.
- 2.4.28 **VENDOR** will provide a dedicated facility with a minimum 4,000 square footage;
- 2.4.29 **VENDOR** will accommodate daily groups of City-referred employees and applicants for physical examinations, drug screenings and immunizations;
- 2.4.30 **VENDOR** will accommodate employees with on-the-job injuries on a walk-in basis, and be given priority based on level of injury;
- 2.4.31 **VENDOR** will accommodate voluntary, non-City referred employee walk-ins on a daily basis.
- 2.4.32 **VENDOR** will maintain a minimum staffing level of two (2) nurses per one (1) full time employee (FTE) physician;
- 2.4.33 **VENDOR** will utilize nurses to include medical assistants, Licensed Vocational Nurses, and a Registered Nurse to assist physician and in compliance with all state and federal law;
- 2.4.34 **VENDOR** will make physician available to see employee rather than nurse or medical assistant when employee requests;
- 2.4.35 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this CONTRACT. 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.
- 2.5 **VENDOR** acknowledges that the services listed below are identified as contingent additional services that **CITY** may request **VENDOR** to provide. If requested, **VENDOR** shall provide said service(s) under the same terms and conditions of this CONTRACT without the need for further Council action.

CITY will effect such a request for contingent additional services, subject to and contingent upon appropriation of funds, by forwarding a written request, executed by the Director of Human Resources or his designee, to the **VENDOR** at its respective address provided herein. Within said request, the Director of Human Resources shall state the scope of services **VENDOR** is to provide; the period of time within which said services are to be completed; and the consideration to be paid as agreed upon by **CITY** for the services provided, as agreed upon with **VENDOR**.

The following services are herein designated as contingent additional services:

- Limited pharmacy dispensary maintained in compliance with all applicable federal and state laws
- Disease management for patients with chronic medical conditions or multiple medical problems
- Diabetes Self Management
- Nutritional counseling
- Bone density screenings
- Any additional desired immunizations
- Clinic for San Antonio International Airport located on airport property
- Additional dedicated City clinic

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 and administrative fee adjustments:

Performance compliance audits may be conducted at the discretion of **CITY**, but are limited to one (1) per Experience Period, defined as May 1 – April 30 of each contract year. 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. Performance-related fee adjustments will then be based on the combined results. 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.

VENDOR will share a copy of its monthly internal performance results 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.

- 3.2 **CITY** shall monitor, review and evaluate **VENDOR'S** performance in accordance with the Performance Standards established in this CONTRACT. Should **VENDOR** fall below the established Performance Standards, **VENDOR** agrees to the administrative fee adjustments as outlined below:

PERFORMANCE GUARANTEES

VENDOR will place 10% of Gonzaba Medical Group administration fee* at risk as outlined below. Percentages noted equal total amount of administration fee at risk. While performance is monitored monthly, penalties, if any, will be based on annual performance results and paid annually. Measurement will begin the month after **CONTRACT** start date for services

VENDOR is committed to the highest level of service and is dedicated to consistently meeting or exceeding **CITY'S** expectations in the following areas:

Performance Requirement	Expected Standards/Results	% of Admin. Fee at Risk
Telephone Service And Abandonment Rate	<p>The VENDOR agrees that the average telephone queue time for at least eighty percent (80%) will not exceed thirty (30) seconds for the Customer Service line and that the abandonment rate will not exceed five percent (5%).</p> <p>Whether the average telephone queue time exceeds thirty (30) seconds and whether the abandonment rate exceeds five percent (5%) will be determined based on the average of written reports provided to the VENDOR by the telephone Vendor's report package.</p> <p>The VENDOR will calculate and report to the CITY the telephone service on a quarterly basis. Statistics will be based on the Vendor's total call volume.</p>	<p>6% for queue time</p> <p>6% for abandonment rate</p>
Scheduling Of Office Visits	<p>VENDOR must schedule voluntary, non-City referred appointments for City employees scheduling a physical examination or preventive screening within 5 business days. (90%)</p> <p>VENDOR must schedule voluntary, non-City referred appointments for City employees scheduling a medical visit within 48 hours. (90%)</p>	<p>5%</p> <p>5%</p>
Wait Time In Clinic To Be Seen	<p>City employees who have scheduled appointments at the dedicated health and wellness center should wait no more than 45 minutes past their scheduled appointment time to be seen by a physician, and no more than one hour at VENDOR'S other medical facilities. (90%)</p> <p>City employee walk-ins at the dedicated health and wellness center should wait no more than one hour to be seen, and no more than ninety (90) minutes at VENDOR'S satellite clinics. (90%)</p> <p>Patients with urgent, non-life threatening injuries or sickness should be seen immediately and be sent to an appropriate medical facility. (95%)</p> <p>Pre-employment candidates should wait no more than one hour to be seen. (90%)</p>	<p>5%</p> <p>5%</p> <p>5%</p> <p>5%</p>

Performance Requirement	Expected Standards/Results	% of Admin. Fee at Risk
Turnaround Time For Results	VENDOR must provide immediate results via phone and same-day written results for random or reasonable suspicion alcohol testing to the Human Resources Department or designated City representative. (100%)	12%
	VENDOR must provide results for civilian pre-employment and random drug screenings for online accessibility within 24 hours for negative results and within 72 business hours after Medical Board review for positive results. (90%)	12%
	VENDOR must provide results for pre-employment civilian physicals to Human Resources within 3 business days for candidates who meet the physical requirements of the job. Results for candidates who require medical follow-up must be provided in a reasonable amount of time necessary within 5 business days. (90%)	12%
	VENDOR must provide results of Fire and Police pre-employment, special, and promotional physical exams, including drug screening results to Human Resources and designated Police or Fire representatives within five business days of exam. (90%)	12%
	VENDOR must provide results of fitness for duty physical exams to Human Resources within three business days. (90%)	10%
Quality Assurance	Breach in chain of custody for drug testing	\$200 per occurrence

* Administration fee is defined as total cost of contract, including monthly fee and established rates for core services provided.

3.3 **VENDOR** shall not be liable to **CITY** or be deemed to be in breach of these Performance Guarantees for any failure or delay in performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes are strictly limited to include acts of God or a public enemy, explosion, fires or unusually severe weather. Dates and times of performance shall be extended to the extent of the delays excused by this paragraph, provided **VENDOR** notifies **CITY** promptly of the existence and nature of the delay.

Performance Measures reflect the expectations of the CoSA Dedicated Facility and the satellite clinics, unless otherwise stated.

Performance Measures will be based on Doctor's Office Quality Information Technology (DOQ-IT) reports and City's applicant processing staff reports.

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.

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**. Payments will be made within fifteen days of receipt of invoice. 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 **VENDOR** will bill **CITY** directly on 10th of each month for prior month's services on a "per use" basis for the following **CITY** referred core services: drug testing (pre-employment and random and reasonable suspicion), pre-employment physical exams, return to work/fitness for duty exams, specialty exams and designated immunizations according to the fee schedule in Exhibit C.
- 5.6 Workers' Compensation on-the-job injuries will be billed through Workers' Compensation.
- 5.7 Self-referrals for preventive screenings, consultation fees, self-referred immunizations, self-referred laboratory testing, self-referred physical exams and other specialty referrals will be billed through the employee's health plan unless otherwise directed by the **CITY**.
- 5.8 **CITY** will pay monthly fee of \$7,000.00 per month to **VENDOR** beginning August 1, 2008 maintain a dedicated health and wellness center for City employees.

[SEE EXHIBIT C]

- 5.9 Immunizations will be billed as follows:

City-referred Employee Immunizations billed directly to **CITY**:

1. Tetanus, Diphtheria/Tetanus, Diphtheria, Pertussis (Td/Tdap) for all employees every 10 years
2. Hepatitis B for employees at risk of exposure to blood borne pathogens: most found in Health Department, Fire Department, and Police Department
3. Rabies immunization for Animal Care Services, Laboratory, and Vector Control personnel
4. Annual rabies antibody titers for Animal Care Services, Laboratory and Vector Control Personnel for those who have been immunized
5. Tuberculosis Screening for employees providing clinical care

Self-referred Employee Immunizations billed through employee's health plan unless directed otherwise by **CITY**:

1. Hepatitis A
2. Measles, Mumps & Rubella (MMR)
3. Varicella
4. Meningococcal
5. Pneumococcal
6. Influenza

VI. TERM

- 6.1 This CONTRACT shall commence on May 1, 2008, for drug screening and August 1, 2008 for all other services outlined and shall terminate on April 30, 2011. 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 and in house quality assurance 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 Texas Department of Insurance (TDI) Commissioner, 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 either 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 employees of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY**. 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:

	<i>TYPE:</i>	<i>AMOUNT:</i>
A.	<u>Commercial Crime/Fidelity Bond</u>	\$2,000,000 per occurrence
B.	<u>Commercial General (public) Liability Insurance to include coverage for the Following:</u>	
	1. Contractual Liability	Bodily Injury and Property Damage
	2. Premises Operations	of \$5,000,000 per occurrence;
	3. Personal Injury Liability	or its equivalent in umbrella or excess
	4. Products and Completed Operations	Liability Coverage
	5. Independent Contractors	
C.	<u>Business Automobile Liability</u>	
	Comprehensive Automobile Liability Including:	Combined Single Limit for Bodily Injury and Property Damage
	1. Owned/Leased Vehicles	of \$1,000,000 per occurrence
	2. Non-Owned Vehicles	

3. Hired Vehicles

D. Workers' Compensation and Employer's Liability

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 per category

E. Professional Liability

Professional Liability (Claims made form)	\$3,000,000 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
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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
Human Resources Department
111 Plaza De Armas
San Antonio, Texas 78205**

- 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 The VENDOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors and representatives of the CITY, individually or 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 or death and property damage, made upon the CITY, directly or indirectly, arising out of, resulting from or related to the VENDOR'S activities under this CONTRACT, including any acts or omissions of the VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of the VENDOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this CONTRACT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR

SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT.

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

- 15.2 It is the INTENT of the parties to this CONTRACT that the INDEMNITY provided for herein is also an INDEMNITY extended to the CITY by the VENDOR to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. The VENDOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above. CITY agrees to cooperate with VENDOR and VENDOR'S counsel of choice in any claim brought under and or arising from this CONTRACT as long as at no additional cost to CITY.

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 person 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
Human Resources Department
Employee Benefits Division
111 Plaza De Armas
San Antonio, TX 78205

VENDOR

Gonzaba Medical Group
720 Pleasanton Rd.
San Antonio, Texas 78214

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:

City's Request for Proposal	Exhibit A
Vendor's Proposal	Exhibit B
Rates	Exhibit C
HIPAA Business Associate Agreement	Exhibit D

25.2 **VENDOR** understands and agrees that Exhibits A,B, C and D 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 Request for Proposal, Vendor's Proposal and the terms of this CONTRACT; City's 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.

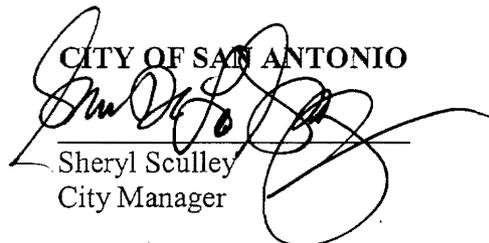
XXXI. SEVERABILITY

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.

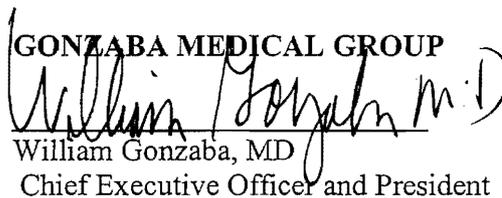
XXXII. ACKNOWLEDGMENT

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 _____, 2008.

CITY OF SAN ANTONIO


Sheryl Sculley
City Manager

GONZABA MEDICAL GROUP


William Gonzaba, MD
Chief Executive Officer and President

APPROVED AS TO FORM:



Krista Cover
Assistant City Attorney

**EXHIBIT C
PRICING SCHEDULE**

Monthly Fee

\$7,000 per month to maintain a dedicated health and wellness center for City employees

Core Services

1. Drug Testing

a.	Cost per 10-Panel Initial Screening Test	\$35
b.	Cost per 10-Panel Confirmation Test	\$0
c.	Cost per 5-Panel Initial Screening Test	\$35
d.	Cost per 5-Panel Confirmation Test	\$0
e.	Cost per Breathalyzer Test	\$25
f.	Medical Review Officer	\$150 (hourly)

2. Physical Examinations

(Price shall be inclusive of all lab testing required by each type of physical examination)

a.	Cost per Routine Physical Examination	
▪	Civilian Pre-Employment Exam	\$60
▪	Return to Work / Fitness for Duty Exam	\$60
b.	Cost per Special Examination	
▪	Uniform pre-employment and promotion exams	\$176
▪	HAZMAT Annual Examination	\$206
▪	HAZMAT Entry / SWAT Examination	\$241
▪	Park and Airport Police Examination	\$96
▪	Respirator Physical Examination	\$261

3. Employee Immunizations

a.	Cost per Tetanus, Diphtheria/Tetanus, Diphtheria, Pertusis (Td/Tdap) immunization	\$55
b.	Cost per Hepatitis A immunization	\$80
c.	Cost per Hepatitis B immunization	\$65
d.	Cost per Measles, Mumps & Rubella (MMR) Immunization	\$65

e. Cost per Varicella immunization	\$110
f. Cost per Influenza immunization	\$25
g. Cost per Meningococcal immunization	\$149
h. Cost per Pneumococcal immunization	\$50
i. Cost per Rabies Antibody Titers	\$200
j. Cost per Tuberculosis Screening	\$18
k. Cost per Rabies Immunization	\$71

4. Laboratory Testing

a. Cost per Complete Blood Count (CBC) test	\$8
b. Cost per Clinical Chemistries test	\$8
c. Cost per Fasting Glucose test	\$6
d. Cost per HbA1C test	\$15
e. Cost per Total Cholesterol test	\$6
f. Cost per High Density Lipoproteins (HDL) test	\$9
g. Cost per Low Density Lipoproteins (LDL) test	\$6
h. Cost per Triglycerides test	\$6

5. Other Services

- Employee self-referred physical, as defined in the contract \$55
- Any additional desired immunizations 100% Medicare Fee Schedule

Contingent Additional Services

- Disease management Usual and customary fee schedule
- Diabetes Self Management Usual and customary fee schedule
- Nutritional counseling Usual and customary fee schedule
- Bone density screenings (Axial & Appendicular) 100% Medicare Fee Schedule
- Clinic for San Antonio International Airport located at or near airport
- Additional clinic on any City property
- Limited pharmacy dispensary maintained in compliance with all applicable federal and state laws



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