KC
12/19/13
Item No. 36

AN ORDINANCE 2013-12-19-0924

AUTHORIZING THE EXECUTION OF AN INTEGRATION AGREEMENT WITH DEER OAKS EAP SERVICES TO UTILIZE THE BEXAR COUNTY CONTRACT FOR EMPLOYEE ASSISTANCE PROGRAM SERVICES FOR ALL CIVILIAN CITY EMPLOYEES AND UNIFORM FIRE AND THEIR FAMILIES.

* * * *

WHEREAS, Deer Oaks EAP Services entered into an agreement with Bexar County on or about January 1, 2014 to provide employee assistance services; and

WHEREAS, Deer Oaks EAP Services has agreed to allow the City to utilize the prices, terms and conditions of the County Contract, as may be modified between Contractor and City by this Agreement; and

WHEREAS, the City now wishes to execute an Integration Agreement allowing the City to join the County Contract; **NOW THEREFORE:**

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

SECTION 1. The City Manager, her designee, or the Human Resources Department Director is hereby authorized to execute an Integration Agreement with Deer Oaks to provide Employee Assistance Program services to all civilian and uniform fire employees for a maximum annual expenditure of $95,312.00 for the period of January 1, 2014 through December 31, 2016. A copy of the Integration Agreement is attached hereto and incorporated herein as Exhibit I. Continuation of the contract beyond the first year and for any subsequent renewal periods is subject to the annual appropriation of funding by City Council.

SECTION 2. Funding for this ordinance is available in Fund 75002000, Cost Center 1002050001, General Ledger 5201040, as part of the Fiscal Year 2014 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 allocations to specific cost centers and fund numbers as necessary to carry out the purpose of this ordinance.

SECTION 4. This ordinance shall take effect on January 1, 2014.

PASSED AND APPROVED this 19th day of Decmeber, 2013.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**36 (in consent vote: 6, 7, 8, 9, 10, 1010A, 1010B, 11, 13, 1313A, 1313B, 1313C, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 36, 37)**
Date:	12/19/2013
Time:	10:01:40 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an Integration Agreement with Deer Oaks EAP Services to join the Bexar County contract to provide Employee Assistance Program services to all civilian and uniformed Fire City employees and their families, in an estimated annual amount of $95,000.00 [Ben Gorzell, Chief Financial Officer; Joe Angelo, Chief Human Resources Officer
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				
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

AGREEMENT FOR
EMPLOYEE ASSISTANCE PROGRAM
PROFESSIONAL SERVICES

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") and Deer Oaks EAP Services LLC ("Contractor"), both of whom may be referred to herein collectively as the "Parties".

WHEREAS, Contractor will enter into an agreement with Bexar County to be effective on January 1, 2014 to provide employee assistance services (the "County Contract"); and

WHEREAS, the Contractor has agreed to allow the City to utilize the prices, terms and conditions of the County Contract; and

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

1.1 Original Term. The term of this Agreement shall begin upon January 1, 2014 and terminate on December 31, 2016.

1.2 Renewals. Parties recognize that the County contract includes two additional one-year options to extend the term. City and Contractor may renew this Agreement for two one-year renewals, upon City's sole option even if the County does not renew and all terms and conditions in the original County Contract will remain in full force and effect as well as the Scope of Services outlined in this Integration Agreement. Renewals by City shall be in writing and signed by City's Chief Human Resources Officer ("Director"), or his designee, and Contractor, without additional approval from the San Antonio City Council, so long as funds have been appropriated therefore.

II. SCOPE OF SERVICES

2.1 County Contract. Contractor hereby agrees to provide those services to City as described and specified in the County Contract, under the same terms and conditions stated therein, except to the extent modified by this Agreement. The County Contract is attached hereto and incorporated herein for all purposes as Attachment A. To the extent of a conflict between the

County Contract and this Agreement, this Agreement shall control.

2.2 No modifications or amendments to the County Contract, other than to the term, shall be binding on City, unless expressly agreed to by City by written amendment to this Agreement.

2.3 The City contact for this Contract is Patricia Atkins, Employee Benefits Administrator, or her designee.

2.4 The following services are agreed to amendments to the County Contract as it applies to the City:

2.4.1 The covered City employees include Civilian and Uniformed Fire and may include in future and at City's discretion other uniformed personnel, and any household member residing full- time with an eligible employee;
2.4.2 Deer Oaks will provide separate quarterly utilization reports for the City;
2.4.3 All Critical Incident Sessions will be conducted by experienced, licensed professional counselors (LPC; LMFT) or psychologists;
2.4.4 Deer Oaks will provide Critical Incident Sessions within two hours of the City's request with follow-up at 24 -48 hours;
2.4.5 Deer Oaks will provide representation at annual Open Enrollment and New Hire Orientation as part of this Contract at no additional cost;
2.4.6 Deer Oaks will provide Executive Leadership Training on the EAP process and issues covered at no additional cost;
2.4.7 Deer Oaks will include clinical staff in the quarterly EAP and Health plan utilization review meetings as necessary and will participate in COSA led discussions including the health carrier and occupational medicine provider to develop future strategic integrated solutions to bridge existing gaps between the City's EAP, health, wellness and occupational medicine programs;
2.4.8 Deer Oaks will include the Take the High Road cab reimbursement service to all covered City participants for the life of the City agreement.

IIII. INSURANCE

3.1 The insurance provisions of the County Contract are hereby modified as follows:

Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Human Resources Department, which shall be clearly labeled "*Employee Assistance Program*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or

perform under this Agreement until such certificate and endorsements have been received and approved by the City's Human Resources Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

3.2 The City reserves the right to review the insurance requirements of this section during the effective period of the CONTRACT, including any extension or renewal hereof, and to modify insurance coverage(s) and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, the claims history of the industry and/or circumstances surrounding this CONTRACT, but in no instance will the City allow modification whereupon the City may incur increased risk.

3.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, except for Professional Liability which shall be on a Claims Made Form, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNT
A. Commercial Crime/Fidelity Bond City of SA as Loss Payee	$250,000.00 per occurrence
B. Commercial General (Public) Liability Insurance to include coverage for the following:	
1. Contractual Liability 2. Premises Operations 3 Personal Injury 4. Products/ Completed Operations	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000.00 per Occurrence; $2,000,000.00 General Aggregate or its equivalent in Umbrella or Excess Liability Coverage
5. Independent Contractors 6. Sexual Abuse and Molestation	
C. Business Automobile Liability	
1. Owned/Leased Vehicles 2. Non-Owned Vehicles 3. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000.00 per occurrence or its equivalent

D. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employers' Liability	$1,000,000/$1,000,000/ $1,000,000

E. Professional Liability

(Claims made form)	$1,000,000.00 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

3.4 The certificate(s) or form must be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the address below:

City of San Antonio
Attn: Human Resources Department
Employee Benefits Administrator
P.O. Box 839966
San Antonio, Texas 78283-3966

3.5 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

3.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

VI. ACKNOWLEDGEMENT

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

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

CITY OF SAN ANTONIO:

By: Ben Gorzell
Title: Chief Financial Officer
Date:

DEER OAKS EAP SERVICES, LLC:

By: Laura Davies
Title: Chief Financial Officer
Date: 11-12-13

Approved as to Form:

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 Deer Oaks, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on December 5, 2013, whereby BA provides employee assistance 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. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.

(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 a business associate agreement is in place with 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 48 hours 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.

(12) Comply with all HIPAA Security Rule requirements.

(13) Comply with the provisions of HIPAA Privacy Rule for any obligation Covered Entity delegates to BA.

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, 2014, 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 written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.

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. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. **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.

O. **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.

P. **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.

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

EXECUTED to be effective December 5, 2013, by the **City of San Antonio,** signing by and through its program manager.

COVERED ENTITY
By City of San Antonio

By: _____

Print Name: Ben Gorzell

Print Title: Chief Financial Officer

BUSINESS ASSOCIATE:

By: _____

Print Name: Laura Davies

Print Title: Chief Financial Officer

APPROVED AS TO FORM:

_____
Krista Cover
Assistant City Attorney