

AN ORDINANCE 2009-04-30-0334

AUTHORIZING A 5-YEAR PROFESSIONAL SERVICES AGREEMENT WITH WELLMED MEDICAL MANAGEMENT, INC. FOR HEALTH SERVICES AT SENIOR MULTI-SERVICE CENTERS IN CITY COUNCIL DISTRICTS 4, 5 AND 10 AND ADDITIONAL CENTERS THROUGHOUT THE CITY WITH ANNUAL PAYMENT FROM WELLMED OF \$100,000.00.

* * * * *

WHEREAS, the Department of Community Initiatives (DCI) offers comprehensive services to assist senior citizens to remain in their own homes, to maintain their independence, and to improve their quality of life; and

WHEREAS, DCI also delivers aging programs through public and private partnerships with agencies in the community; and

WHEREAS, many of the supportive services to seniors are offered at senior centers and are designed to promote active civic involvement and overall health; and

WHEREAS, these services include utility assistance, income tax preparation, solid waste credits, health screenings, dance therapy classes, exercise activities and desktop computer classes; and

WHEREAS, through a Request for Proposal (RFP) process, the City requested proposals from respondents qualified to establish and operate health screening services to seniors on a daily basis; and

WHEREAS, WellMed Management, Inc. (WellMed) offered to provide dedicated health-related screening services at no cost to seniors at one-stop senior centers in City Council Districts 4, 5 and 10 beginning June 1, 2009, or as soon as the centers open, and at additional sites that are accessible to seniors located throughout the City; and

WHEREAS, Wellmed will provide free medical and dental daily services for seniors at senior one-stop centers, including health risk assessments and screenings, health education/prevention classes, immunizations, vision and hearing screenings, oral health evaluations provided by a dentist, and preventive oral health services; and

WHEREAS, Wellmed offers to pay \$100,000.00 to the City for each year during the five (5) year term of the contract for the right to market the health care plans for which WellMed is a provider; and

WHEREAS, the funds from Wellmed will be used to enhance the comprehensive social service delivery system offered at senior centers, which will include the addition of wellness activities for seniors; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Department of Community Initiatives (DCI) or his designee is authorized to negotiate and execute a 5-year professional services agreement with WellMed Medical Management, Inc. (WellMed) for the period May 15, 2009 through May 14, 2014 with health services to begin June 1, 2009 at senior multi-service centers in City Council Districts 4, 5 and 10 and additional centers throughout the City, and to accept annual payment from WellMed in the amount of \$100,000.00. A copy of the draft agreement is attached hereto and incorporated herein for all purposes as **Attachment I**. The final agreement shall incorporate the scope of services attached hereto as **Attachment II**.

SECTION 2. Fund 2601238022 entitled "WellMed Health Related Services" and Internal Order 138000000756 are hereby designated for use in the accounting for the fiscal transaction in the acceptance of funds, and the sum of \$100,000.00 per year up to \$500,000.00 from WellMed will be appropriated in said fund. The budget which is attached hereto and incorporated herein for all purposes as **Attachment III** is approved and adopted for entry in the City books.

SECTION 3. The City Manager or her designee, or the Director of the Department of Community Initiatives or his designee is further authorized to execute contracts for professional services to seniors utilizing the funds accepted from WellMed, which contracts shall be in conformity with the form of the professional service contract template attached hereto as **Attachment IV** and shall first be reviewed and approved by the City Attorney's Office. The professional service contracts shall not exceed the total amount authorized in the attached budget. Payment will be authorized according to the executed contracts.

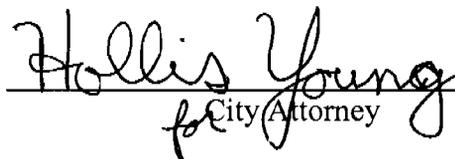
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective on and after May 10, 2009.

PASSED AND APPROVED this 30th day of April, 2009.


M A Y O R

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

Agenda Item:	30						
Date:	04/30/2009						
Time:	04:14:34 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a 5-year professional services agreement with WellMed Medical Management, Inc. for health services at senior multi-service centers in City Council Districts 4, 5 and 10 and additional centers throughout the City with annual payment from WellMed of \$100,000.00. [Sharon De La Garza, Assistant City Manager; Dennis J. Campa, Director, Community Initiatives]						
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			x	
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

**PROFESSIONAL SERVICES CONTRACT
FOR ESTABLISHMENT AND OPERATION OF HEALTH SERVICES
AT SENIOR MULTI-SERVICE CENTERS**

STATE OF TEXAS

§

COUNTY OF BEXAR

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This CONTRACT is made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its Director of the Community Initiatives Department and _____ (hereinafter referred to as "CONSULTANT") as authorized by City Council on _____, pursuant to Ordinance No. _____.

WHEREAS, the CITY has negotiated with the CONSULTANT to establish and operate health services at senior multi-service centers (hereinafter referred to as "the Project"); and

ACCORDINGLY, in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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 accomplishments of the tasks hereinafter described.

I. TERM

- 1.1 This CONTRACT shall commence on May 15, 2009 and shall terminate on May 14, 2014 unless earlier termination or extension shall occur pursuant to any provision hereof. The City shall have the option to renew, with at least sixty (60) days notice prior to the expiration of the CONTRACT, for two (2) additional periods, each not to exceed one (1) year, subject to (a) the CONSULTANT satisfactorily meeting the performance requirements of this CONTRACT, as solely determined by the City and (b) the prior approval by the City Council of San Antonio of such CONTRACT renewal, as evidenced by an ordinance duly passed and approved. The question of satisfactory completion of said work shall be determined by the CITY alone and its decision shall be final.

II. COMPENSATION AND BILLING

- 2.1 CONSULTANT'S performance of services under this CONTRACT shall be offered at no cost to the CITY or seniors, and CITY shall have no responsibility for payment to CONSULTANT for those services.
- 2.2 CITY shall not be obligated or liable under the CONTRACT to any party including any subcontractors, for payment of any monies for provision of any goods or services.

III. SCOPE OF SERVICES AND STANDARD OF CARE

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the Statement of Work and Budget, attached hereto as Attachment "A". Goals, objectives and performance standards for the Project will be established by the CITY's Department of Community Initiatives and CONSULTANT agrees to comply with said goals, objectives and performance standards. The CONSULTANT understands and agrees that Attachment A is a part of the 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 the CONSULTANT as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this CONTRACT.

- 3.2 CONSULTANT 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.

IV. TERMINATION

- 4.1 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.
- 4.2 **TERMINATION BY NOTICE:** The 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 thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party. Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the limitations imposed thereunder regarding transfer of information, 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 at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.
- 4.3 **TERMINATION FOR CAUSE:** Should CONSULTANT default in the performance of any of the terms or conditions of this CONTRACT, the CITY shall deliver to the CONSULTANT written notice thereof specifying the matters on default. The CONSULTANT shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the CONSULTANT fails to cure the default within such ten (10) day period, the CITY shall have the right, without further notice, to terminate this CONTRACT in whole or in part as CITY deems appropriate, and to contract with another consultant to complete the work required under this CONTRACT.
- 4.4 **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.
- 4.5 **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 the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records, to include completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONSULTANT, or funds shall be completed at the CONSULTANT'S sole cost and expense.
- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY, if any, for services performed under this CONTRACT through the effective date of termination. Failure by CONSULTANT, to submit its claims within said thirty (30) calendar days shall negate any liability on the part of the CITY and constitute a waiver by CONSULTANT of any and all right or claims to collect money that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this CONTRACT.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said

audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

- 4.8 The City may terminate the CONTRACT at any time if funds are restricted, withdrawn, not approved or Respondent's service is unsatisfactory; it being understood that funds for each calendar year for continuation of senior programs at the multi-service centers will be requested and, if approved, will be provided as part of the City's budget for each fiscal year. The selected Respondent shall provide the health-related services at no cost to the City and City shall have no responsibility for payment to Respondent for those services.
- 4.9 Termination not sole remedy. In no event shall CITY's action of terminating this CONTRACT, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.

V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, and not an officer, agent, servant or employee of CITY; that CONSULTANT is responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and that the CITY shall in no way be responsible therefor, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto. Additionally, the doctrine of respondeat superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors and subcontractors.
- 5.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT 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 CONSULTANT.
- 5.4 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 CONSULTANT.

VI. CONFIDENTIALITY

- 6.1 CONSULTANT will maintain the confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to an individual's "Patient Health Information" in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of HIPAA, as may be amended from time to time.
- 6.2 CONSULTANT shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.

- 6.3 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.4 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to and shall comply with the confidentiality procedures pertaining to records and other information, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the limitations imposed thereunder regarding transfer of information, any and all writings, documents or information in whatsoever form and character produced by CONSULTANT pursuant to the provisions of this CONTRACT is the exclusive property of CITY; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CONSULTANT. CONSULTANT understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, CITY has the right to use all such writings, documents and information as City desires, without restriction.
- 7.2 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.3 The CITY shall own the copyright of whatever nature or extent and in all media whatsoever to any documents and records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. CONSULTANT and its employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY. Provided, however, nothing herein contained is intended nor shall it be construed to require CONSULTANT to transfer any ownership interest in Consultant's best practice and benchmarking information to the CITY.

VIII. INTELLECTUAL PROPERTY

- 8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. CONSULTANT shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly notify the CITY and provide the CITY with all information related to the suspected infringement.

IX. RECORDS

- 9.1 CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the CONTRACT period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 9.2 CONSULTANT shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the CONTRACT. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. CONSULTANT acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. City may, at its election, require Consultant to return said documents to CITY prior to or at the conclusion of said retention.
- 9.3 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated pursuant to this CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such requests.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available to CITY, at CITY's Department of Community Initiatives, 115 Plaza de Armas, San Antonio, Texas, at all reasonable times and as often as CITY may deem necessary during the CONTRACT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

XI. LICENSES AND CERTIFICATIONS

- 11.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, licenses and/or certification to provide said services and that CONSULTANT meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XII. CONFLICT OF INTEREST

- 12.1 CONSULTANT 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 CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a CONTRACT with CITY or in the sale to 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.
- 12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as

defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. INSURANCE

- 13.1 Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Department of Community Initiatives, which shall be clearly labeled "Establish and Operate Health Related Services at Senior Multi-Service Centers" 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 CONTRACT until such certificate and endorsements have been received and approved by the City's Department of Community Initiatives. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 13.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. In no instance will CITY allow modification whereupon CITY may incur increased risk.
- 13.3 A consultant's financial integrity is of interest to the CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, 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	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Professional Liability (Claims Made Form)	\$1,000,000 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.

- 13.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may require the 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). CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Community Initiatives Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 13.5 CONSULTANT 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;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY.
 - 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.
- 13.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT'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 CONTRACT.
- 13.7 In addition to any other remedies the CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- 13.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this CONTRACT.
- 13.9 It is agreed that CONSULTANT'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 operations under this CONTRACT.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT.
- 13.11 CONSULTANT and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNITY

- 14.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 14.2 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.
- 14.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 14.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XV. AMENDMENT

- 15.1 This CONTRACT, together with its authorizing ordinance and exhibits, if any, shall constitute the full and final agreement between the parties hereto.
- 15.2 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the date hereof.

- 15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The CONSULTANT expressly agrees to comply with all applicable federal, state, and local laws.

XVI. NOTICE

- 16.1 Except where the terms of this CONTRACT expressly provide otherwise, any election, notice or communication required or permitted to be given under this CONTRACT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

CITY

City of San Antonio
Attn: Dennis J. Campa, Director
Department of Community Initiatives
115 Plaza de Armas, Suite 210
San Antonio, Texas 78205

CONSULTANT

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

XVIII. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

- 18.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the CITY's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this CONTRACT:

- (A) SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- (B) Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- (C) Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement

between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

- (D) SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with contractor’s bid for this project CONTRACT, attached hereto and incorporated herein as “Attachment _____”.

18.2 For this CONTRACT, the Parties agree that:

- (A) The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this CONTRACT by reference; and
- (B) The failure of CONSULTANT or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this CONTRACT.
- (C) Failure of CONSULTANT or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this CONTRACT.
- (D) During the term of this CONTRACT, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONSULTANT’s SBEDA Plan (“Attachment _____”) shall constitute a material breach of the SBEDA Program and this CONTRACT.
- (E) CONSULTANT shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Attachment _____”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONSULTANT to the CITY’s Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this CONTRACT.

18.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this CONTRACT:

- (A) Failure of CONSULTANT to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this CONTRACT, or failing to allow such SE to perform a Commercially Useful Function; or
- (B) Modification or elimination by CONSULTANT of all or a portion of the scope of work attributable to an SE upon which the CONTRACT was awarded; or
- (C) Termination by CONSULTANT of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the CONTRACT without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- (D) Participation by CONSULTANT in a Conduit relationship with an SE scheduled to perform work that is the subject of this CONTRACT.

18.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this CONTRACT for material breach, including

the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONSULTANT materially breaches the requirements of the SBEDA Program:

- (A) Terminate this CONTRACT for default;
 - (B) Suspend this CONTRACT for default;
 - (C) Withhold all payments due to the CONSULTANT under this CONTRACT until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
 - (D) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the CONTRACT, or from any other amounts due to the CONSULTANT under the CONTRACT.
 - (E) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.
- 18.5 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this CONTRACT.
- 18.6 **The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.**
- 18.7 CITY Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a CONSULTANT violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the CITY Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the CONTRACT. If the recommended remedy is to terminate the CONTRACT, then the Managing Department Director or CITY Manager, or her designee, shall bring forward the recommendation to CITY Council for final determination.
- 18.8 Special Provisions for Extension of Contracts. In the event the CITY extends this CONTRACT without a competitive Bid or Proposal process, the CITY Managing Department responsible for monitoring the CONTRACT shall establish the following, subject to review and approval by the SBEDA Program Manager:
- (A) a SBEDA Utilization Goal for the extended period; and
 - (B) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and

(C) the required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the CONTRACT extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

(i) subject CONSULTANT to any of the remedies listed above; and/or

(ii) result in a new bid or proposal request of the CONTRACT that was considered for extension.

XIX. SUBCONTRACTING AND ASSIGNING INTEREST

- 19.1 CONSULTANT shall supply qualified personnel as may be necessary to complete the work to be performed under this CONTRACT. Persons retained to perform work pursuant to this CONTRACT shall be the employees or subcontractors of CONSULTANT. CONSULTANT, its employees or its subcontractors shall perform all necessary work.
- 19.2 It is CONTRACT's understanding and this CONTRACT is made in reliance thereon, that CONSULTANT intends to use the following subcontractors in the performance of this CONTRACT: _____ . Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by CONTRACT of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor. Notwithstanding the foregoing, changes may be made to CONSULTANT's SBEDA Plan with the written approval of Director and City's SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.
- 19.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CONTRACT, shall be subject by its terms to each and every provision of this CONTRACT. Compliance by subcontractors with this CONTRACT shall be the responsibility of CONSULTANT. CONTRACT shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance of services or payment of fees. Any references in this CONTRACT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 19.4 Except as otherwise stated herein, CONSULTANT may not sell, assign, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, CONSULTANT shall remain liable for completion of the services outlined in this CONTRACT in the event of default by the successor CONSULTANT, assignee, transferee or subcontractor.
- 19.5 Any attempt to transfer, pledge or otherwise assign this CONTRACT without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this CONTRACT, CONTRACT may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CONTRACT under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CONTRACT, which CONTRACT sustains as a result of such violation.
- 19.6 If approved, CONSULTANT'S subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with CONSULTANT 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. CONSULTANT shall indicate this limitation in all contracts with approved subcontractors.

- 19.7 CONSULTANT agrees to notify CITY of any changes in CONSULTANT'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.

XX. SUCCESSORS AND ASSIGNS

- 20.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

XXI. NON WAIVER

- 21.1 Unless otherwise specifically provided for in this CONTRACT, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this CONTRACT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this CONTRACT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this CONTRACT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXII. COMPLIANCE

- 22.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 22.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 22.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Additionally, CONSULTANT agrees to abide by all applicable provisions of San Antonio City Code Section 2-8, as amended. Also, CONSULTANT certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing the foregoing laws.

22.4 The funding level of this CONTRACT, if any, is based on the receipt of funds from the General Fund, a budget allocation to the Department of Community Initiatives, and the appropriation for the project related to health services at senior multi-service centers. The budget for this CONTRACT may be adjusted to correspond to the actual award, if this contract is grant funded. In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

XXIII. EXHIBITS

23.1 CONSULTANT 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	Attachment __
CONSULTANT'S Proposal	Attachment __

23.2 CONSULTANT understands and agrees that Attachments _____, and ___ 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 CONSULTANT as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

23.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of CITY'S Request for Proposal, CONSULTANT'S Proposal and the terms of this CONTRACT; CITY'S Request for Proposal shall control where it conflicts with CONSULTANT'S Proposal. However, where CONSULTANT's Proposal offers more or better services than that which is requested in the CITY'S Proposal, CONSULTANT's Proposal shall control with regard to that aspect of the Proposal only.

XXIV. VENUE AND GOVERNING LAW

24.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**

24.2 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

XXV. SEVERABILITY

25.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future laws during the term of this CONTRACT, including any extension and renewal hereof, it is the intention of the parties hereto that the remainder of the CONTRACT shall not be affected thereby, and that in lieu of each clause or provision of the CONTRACT that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the CONTRACT.

XXVI. GENDER

26.1 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.

XXVII. CAPTIONS

27.1 The captions contained in this CONTRACT are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this CONTRACT.

XXVIII. PROHIBITED CONTRIBUTIONS

28.1 CONSULTANT acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. CONSULTANT understands that if the legal signatory entering the contract has made such a contribution, the CITY may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

28.2 CONSULTANT acknowledges that the CITY has identified this CONTRACT as high risk.

28.3 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that the individual signing this CONTRACT has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this CONTRACT. Should the signor of this CONTRACT violate this provision, the City Council may, in its discretion, declare this CONTRACT void.

XXIX. ENTIRE AGREEMENT

29.1 This CONTRACT, together with its authorizing ordinance and exhibits, if any, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary 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 unless same be executed in accordance with Section XV.

EXECUTED this the _____ day of _____, _____.

CITY

CONSULTANT

City of San Antonio, Texas

Dennis J. Campa, Director
Department of Community Initiatives

APPROVED AS TO FORM:

City Attorney

Attachment A

Statement of Work and Budget

Budget

CONSULTANT'S performance of services under this CONTRACT shall be offered at no cost to the CITY or seniors, and CITY shall have no responsibility for payment to CONSULTANT for those services.

II. SCOPE OF SERVICES

In order to maximize efficiency and effectiveness, the City is planning to outsource the provision of health-related services to seniors at the City's one-stop, multi-service centers in San Antonio. The selected Respondent shall provide these services in a method that reflects the mission, vision, and goals of DCI. Respondents are encouraged to identify health-related services and provide a recommended plan most beneficial to the senior population and the City of San Antonio.

Respondents shall be required to demonstrate the capacity to operate at least three (3) dedicated health-related service centers, as specified by the City, preferably by June 1, 2009. The City reserves the option to add additional sites, also as specified by the City. The City anticipates that the selected Respondent(s) shall have the health-related service centers operable June 1, 2009.

The core services listed below utilize current processes and standards followed by the City. The City is interested in providing quality care for its seniors by following industry best practices; therefore, consideration will only be given to proposals which offer comparable, high quality services AT NO COST to the clients.

General Information

1. Service eligibility is seniors age 60 and older.
2. Services identified in the Scope of work shall be implemented and managed AT NO COST to the seniors or the City
 - a. The City shall provide office space, utilities, basic office furniture and phones.
 - b. The selected Respondent shall provide all specialty equipment and computers necessary to perform health-related services.
3. The selected Respondent shall underwrite all expenses (i.e., provide all financial support) for operations associated with and in support of said health-related services.
4. The selected Respondent shall provide City an annual fee for each year of operation, based on the proration of space allocation, utility usage and administration oversight. The annual fee will be used to enhance DCI's supportive service offerings and the centers.
5. The selected Respondent and City shall enter into a contract (attached herein and identified as Attachment I), to include the Scope of Work and other provisions, as first reviewed and approved by the City Attorney's Office.
6. The selected Respondent shall work together with City staff to identify and implement additional services, as needed, AT NO COST to the City.

Medical Service Delivery

DAILY preventive medical service delivery provided shall include, but not be limited to the following:

1. HEALTH RISK ASSESSMENTS and AGE-APPROPRIATE SCREENINGS and services for the following conditions as recommended by the U.S. Preventive Services Task Force Guidelines:
 - a. Alcohol misuse and behavioral counseling interventions
 - b. Aspirin use for the primary prevention of cardiovascular events in adults at increased risk for coronary heart disease
 - c. Breast cancer for women with mammography
 - d. Colorectal cancer for men and women
 - e. Depression with systems to assure accurate diagnoses, effective treatment, and follow-up
 - f. Diabetes mellitus in with hypertension or hyperlipidemia
 - g. High blood pressure
 - h. Lipid disorders, including measurement of total cholesterol, high-density lipoprotein cholesterol (HDL), and low-density lipoprotein cholesterol (LDL)
 - i. Obesity, including the use of Body mass index (BMI) to include intensive counseling and behavioral interventions to promote sustained weight loss for obese adults.
 - j. Osteoporosis in women 65 years and older and women 60 years and older at increased risk for osteoporotic fractures.
 - k. Tobacco use, including tobacco-caused disease counseling and cessation interventions for those who use tobacco.

2. Health education/prevention classes, to address conditions including but not be limited to the following:
 - a. Diabetes
 - b. Hypertension
 - c. Heart disease
 - d. Tobacco use
 - e. Medication (prescriptions & consumption)
 - f. Nutrition
 - g. Exercise
 - h. Fall prevention/Frailty
 - i. Chronic disease management
 - j. Medicare/Medicaid programs (benefits & eligibility)

3. Immunizations – Selected Respondent will be required to provide seniors with the age-appropriate immunizations as recommended by the Centers for Disease Control and Prevention (CDC), including but not limited to pneumococcal vaccine and annual influenza immunization. The selected Respondent will be

required to provide necessary vaccine supply, medical equipment, and personnel for administration.

4. Other potential types of screening services to include vision screening for glaucoma and hearing screening.
5. Health and wellness materials and information to seniors who visit the senior one-stop, multi-service centers.
6. Promotional and outreach materials to inform seniors about available services.

Dental Service Delivery

DAILY service delivery provided shall include, but not be limited to:

1. Oral health evaluations for seniors provided by a dentist
2. Appropriate referral and case management by a dental health professional
3. Preventive oral health services including but not limited to: dental prophylaxis, fluoride application, oral hygiene instruction and nutritional counseling
4. Dental education/disease prevention classes including but not limited to the following topics:
 - o Daily oral hygiene for geriatric patients
 - o Tobacco cessation
 - o Diabetes and oral health

Optional Additional Services

The City is interested in expanding available services to include optional medical services in the areas of diagnosis, screening, treatment, referral, and prevention services relevant to the City's senior population. The selected Respondent's staff should have significant training and experience in any area(s) the Respondent recommends in the proposal.

Capacity and Customer Service

Customer service is a high priority for the City. The selected Respondent will schedule each appointment with ample time to visit with each patient to determine immediate needs, as well as discuss other potential health risks. The Respondent must be able to accommodate the occasional influx of walk-ins who require services. Hours of operation will be Monday through Friday, 7:45 AM to 4:30 PM; but may occasionally include weekends or evenings during peak seasonal times, such as immunizations.

Integration and Coordination

Referring patients for further diagnostic or treatment services, as appropriate, will be an important function of services. Integration and coordination with other medical care providers and institutions in the area to ensure comprehensive care will be essential. It is expected that the selected Respondent will provide initial diagnostic services and not ongoing medical care to the seniors. Respondents would have to demonstrate assurance that ALL seniors that are screened for the conditions identified in this RFP or other conditions at the senior one-stop, multi-service centers shall be appropriately referred to

receive medical services for further evaluation, treatment and follow-up of health conditions that were identified.

Other

1. The City reserves the right to interview selected Respondent's staff, personnel and applicants to positions associated with this scope of work.
2. No subcontractor or other service providers will be hired by the selected Respondent in relation to its Contract with the City, without specific written approval from the City.
3. At any time while the Contract between selected Respondent and the City is in effect, should assigned personnel become unavailable so as to unfavorably impact administration of said Contract, a competent replacement will be provided immediately.
4. The selected Respondent will provide adequate internal control procedures to protect the City from financial loss, resulting from any aspect of administering the Contract.
5. The selected Respondent shall be available to attend meetings and make presentations as requested by the City, such as senior health fairs or presentations to City Staff.
6. The selected Respondent shall provide all housekeeping and maintenance of equipment for the services referenced in this RFP.

WellMed Health Related Services

June 1, 2009 - May 31, 2014

BUDGET

REVENUES:

4502200	Contributions Foundations - Unrestricted	\$	500,000
	TOTAL REVENUES	\$	500,000

APPROPRIATIONS:

	138000000756 WellMed Health Related Services		
5201040	Fees to Professional Contractors	\$	475,000
5302010	Office Supplies		25,000
	TOTAL APPROPRIATIONS	\$	500,000

PROFESSIONAL SERVICES CONTRACT

STATE OF TEXAS §
COUNTY OF BEXAR §

This CONTRACT is made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its Director of the Community Initiatives Department and _____ (hereinafter referred to as "CONSULTANT") as authorized by City Council on April 12, 2001, pursuant to Ordinance No. 93760.

WHEREAS, the CITY has negotiated with the CONSULTANT to provide _____ services in relation to the _____ (hereinafter referred to as "the Project"); and

ACCORDINGLY, in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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 accomplishments of the tasks hereinafter described.

I. TERM

1.1 This CONTRACT shall commence on _____ and shall terminate on _____ unless earlier termination or extension shall occur pursuant to any provision hereof.

II. CONTRACT PRICING AND BILLING

2.1 The total of all payments and obligations made and incurred by CITY under this CONTRACT, in consideration for CONSULTANT's performance of services under this CONTRACT, shall not exceed the total amount of \$_____.

2.2 Unless otherwise provided for in the Statement of Work and Budget attached hereto and incorporated herein as Attachment A, an initial invoice, based on the payment terms set forth in Section 2.1 of this CONTRACT and consistent with the number of hours actually worked by CONSULTANT, will be billed to the CITY thirty (30) days after the execution date of the CONTRACT and, after initial billing, invoices consistent with the above will be submitted every thirty (30) days thereafter until the completion of the CONTRACT. The information contained in such invoices shall be in such detail as may be required by CITY. CITY shall pay CONSULTANT upon the delivery by CONSULTANT to CITY of an invoice and the approval of said invoice by the Director of Community Initiatives. Upon approval of the invoice by CITY, CITY shall pay CONSULTANT no later than thirty (30) days after the date of such approval, provided however that such approval shall be based upon satisfactory completion of the work described in Attachment A. The question of satisfactory completion of said work shall be determined by the CITY alone and its decision shall be final.

2.3 Final Payment due under the CONTRACT will not be paid until all the work, reports, data, documents and any other unfinished services necessary to complete performance under the CONTRACT have been received, performed and are approved by the CITY, as meeting all the tasks required hereunder in Section 3.1. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.

- 2.4 CITY shall not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.5 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, shall be included in the total costs of the CONTRACT referenced in Section 2.1 of the CONTRACT.

III. SCOPE OF SERVICES

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the Statement of Work and Budget, attached hereto as Attachment "A". Goals, objectives and performance standards for the Project will be established by the CITY's Department of Community Initiatives and CONSULTANT agrees to comply with said goals, objectives and performance standards. The CONSULTANT understands and agrees that Attachment A is a part of the 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 the CONSULTANT as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this CONTRACT.

IV. TERMINATION

- 4.1 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.
- 4.2 **TERMINATION BY NOTICE:** The 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 thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party. 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 at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.
- 4.3 **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 on 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 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 4.4 **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.
- 4.5 **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 the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.

- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.8 In the event that through action or no action initiated by the City of San Antonio, the CITY's legislative body does not appropriate funds for the continuation of a contract and has no funds to do so from other sources, this CONTRACT may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.

V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefor, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 5.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT 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 CONSULTANT.

VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.
- 6.3 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal laws, State laws, the San Antonio City Charter, City ordinance, rules and regulations.
- 6.4 If the CONSULTANT receives inquiries regarding documents within their possession pursuant to the CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.2 The CITY shall own the copyright of whatever nature or extent and in all media whatsoever to any documents and records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. CONSULTANT and its employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY. Provided, however, nothing herein contained is intended nor shall it be construed to require CONSULTANT to transfer any ownership interest in Consultant's best practice and benchmarking information to the CITY.

VIII. INTELLECTUAL PROPERTY

- 8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. CONSULTANT shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly notify the CITY and provide the CITY with all information related to the suspected infringement.

- 8.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, CONSULTANT will immediately:

8.2.1 Either:

- a) obtain, at CONSULTANT's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c) reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

8.2.2 CONSULTANT further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this CONTRACT,
- b) assume the expense of such defense, including costs of investigations, attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided:

- CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONSULTANT agrees to consult with the City Attorney of the CITY during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the CITY,
- that the Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the CITY's negligent act or omission, and
- that the CITY promptly provides CONSULTANT with written notice within 15 days following the formal assertion of any claim with respect to which the CITY asserts that CONSULTANT assumes responsibility under this section.

IX. RECORDS

- 9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONSULTANT.
- 9.2 CONSULTANT shall deliver all CONTRACT related documents and reports to the CITY, upon termination of the CONTRACT, in a timely and expeditious manner, at CONSULTANT's sole cost and expense.
- 9.3 The CONSULTANT shall retain all records owned by or to which the CITY has access to, for the retention periods set forth in the Texas Local Government Records Act.
- 9.4 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated pursuant to this CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such requests.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available to CITY, at CITY's Department of Community Initiatives, 115 Plaza de Armas, San Antonio, Texas, at all reasonable times and as often as CITY may deem necessary during the CONTRACT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

XI. LICENSES AND CERTIFICATIONS

- 11.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and that CONSULTANT meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XII. CONFLICT OF INTEREST

- 12.1 CONSULTANT 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 CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a CONTRACT with CITY or in the sale to 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.
- 12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. INSURANCE

- 13.1 Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Community Initiatives Department, which shall be clearly labeled "Consulting Services – _____" 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 CONTRACT until such certificate and endorsements have been received and approved by the CITY's Community Initiatives Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- 13.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. In no instance will CITY allow modification whereupon CITY may incur increased risk.
- 13.3 A CONSULTANT's financial integrity is of interest to the CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by

the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, 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:

TYPE	AMOUNTS
1. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability *g. Broad form property damage, to include fire legal liability 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. Professional Liability	\$500,000 per occurrence;

13.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may require the 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). CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Community Initiatives Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

13.5 CONSULTANT 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 insureds 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;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY.
- 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.

13.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT'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 CONTRACT.

- 13.7 In addition to any other remedies the CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- 13.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this CONTRACT.
- 13.9 It is agreed that CONSULTANT's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this CONTRACT.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT.

XIV. INDEMNITY

- 14.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this CONTRACT including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 14.2 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

- 14.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by City in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that City is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 14.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XV. AMENDMENT

- 15.1 This CONTRACT, together with its authorizing ordinance and exhibits, if any, shall constitute the full and final agreement between the parties hereto.
- 15.2 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the date hereof.
- 15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The CONSULTANT expressly agrees to comply with all applicable federal, state, and local laws.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
 Attn: Dennis J. Campa, Director
 Department of Community Initiatives
 115 Plaza de Armas, Suite 210
 San Antonio, Texas 78205

CONSULTANT

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

- 18.1 Any subcontracts or assignments on interests entered into by CONSULTANT concerning work tasks for this CONTRACT shall be communicated in writing to CITY prior to the effective date of this CONTRACT and prior to commencement of any work subsequent to this CONTRACT's effective date. CONSULTANT 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. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should CONSULTANT 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 CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.
- 18.2 CONSULTANT's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with CONSULTANT 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. CONSULTANT shall indicate this limitation in all contracts with approved subcontractors.
- 18.3 CONSULTANT agrees to notify CITY of any changes in 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.
- 18.4 In no event shall such written consent, if obtained, relieve CONSULTANT from any and all obligations hereunder or change the terms of this CONTRACT.
- 18.5 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.

XIX. SUCCESSORS AND ASSIGNS

- 19.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

XX. NON WAIVER

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the CONSULTANT from any covenants and conditions required in this CONTRACT.

XXI. COMPLIANCE

- 21.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.

- 21.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 21.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Additionally, CONSULTANT agrees to abide by all applicable provisions of San Antonio City Code Section 2-8, as amended. Also, CONSULTANT certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing the foregoing laws.
- 21.4 The funding level of this CONTRACT is based on the receipt of funds from the General Fund [and the GRANTOR, IF GRANT FUNDED, for the GRANT PROGRAM], a budget allocation to the Department of Community Initiatives, and the appropriation for the [PROJECT NAME]. The budget for this CONTRACT may be adjusted to correspond to the actual award, if this contract is grant funded. In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio [and ENTER GRANTOR, IF GRANT FUNDED] rules and regulations, shall have the final authority to render or secure an interpretation.

XXII. VENUE AND GOVERNING LAW

- 22.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

XXIII. SEVERABILITY

- 23.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future laws during the term of this CONTRACT, including any extension and renewal hereof, it is the intention of the parties hereto that the remainder of the CONTRACT shall not be affected thereby, and that in lieu of each clause or provision of the CONTRACT that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the CONTRACT.

XXIV. GENDER

- 24.1 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.

XXV. CAPTIONS

25.1 The captions contained in this CONTRACT are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this CONTRACT.

XXVI. ENTIRE AGREEMENT

26.1 This CONTRACT, together with its authorizing ordinance and exhibits, if any, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary 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 unless same be executed in accordance with Section XV.

EXECUTED this the _____ day of _____, _____.

CITY

CONSULTANT

City of San Antonio, Texas

Dennis J. Campa, Director
Department of Community Initiatives

APPROVED AS TO FORM:

City Attorney

Attachment A

Statement of Work and Budget

Budget

CITY shall reimburse CONSULTANT for work performed based upon deliverables above and as invoiced in a total budget amount not to exceed \$_____.