

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PUBLIC WORKS DEPARTMENT**

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer, Assistant City Manager; Peter Zaroni, Acting Director of Office of Management and Budget; Rebecca Waldman, Director of Asset Management; Milo D. Nitschke, Director of Finance; Andrew Martin, City Attorney; Jason Cosby, P.E., Assistant Director of Public Works, File

SUBJECT: Renewal and Extension Agreement with the Nix Health Care System, for the use of 400 parking spaces at the Mid-City Parking Garage.

DATE: February 12, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a Renewal and Extension of a License Agreement with the Nix Health Care System for a period of five (5) years for the use of 400 parking spaces at the Mid-City Parking Garage. The 400 parking spaces consist of 362 spaces in the above ground levels and 38 spaces in the basement level. For the first year of the Renewal Agreement a monthly fee of \$67.00 will be charged for each of the above-ground spaces and \$88.00 per month for each space in the basement level.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The City of San Antonio entered into a License Agreement with the Nix Health Care System for the use of 400 parking spaces in the Mid-City Parking Garage, which was approved by Ordinance 87741, dated April 30, 1998. The Initial Term was for a period of five (5) years with the right to renew for three (3) additional five (5) year periods. This is the first renewal period granted in the original License Agreement and will expire on April 30, 2008. All renewals are subject to approval by the City Council.

POLICY ANALYSIS

FISCAL IMPACT

Revenues generated by this Renewal Agreement for the first year are estimated to be \$331,176.00, calculated as follows:

Nix Hospital – Mid City Garage First Year Revenues		
License Fee – Above ground	362 spaces @ \$67.00 per space @ 12 months	\$291,048.00
License Fee – Basement level (Premium spaces)	38 spaces @ \$88.00 per space @ 12 months	\$40,128.00
	First Year Contract Total Revenue	\$331,176.00

The license fee for use of the above-ground spaces for each additional year of the renewal period will be based on a 5% increase over the previous year or the monthly rate charged for parking as set by City Council, which ever is less.

The license fee for the use of the basement level spaces for each additional year of the renewal period will be based on a 5% increase over the previous year or the monthly rate charged for parking as set by City Council, which ever is less. However, because basement level parking is considered premium, a stipulation in the contract states that this fee shall not be less than \$88.00.

COORDINATION

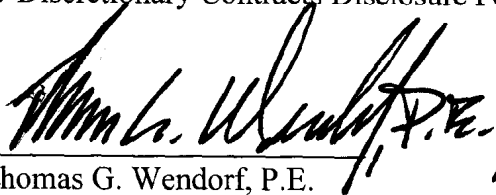
This request has been coordinated with the City Attorney's Office, Risk Management and Asset Management.

SUPPLEMENTARY COMMENTS

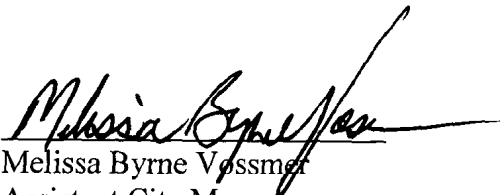
The Discretionary Contract Disclosure Form required by the Ethics Ordinance is attached.

ATTACHMENTS

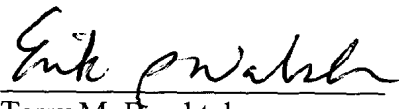
1. Proposal
2. Discretionary Contracts Disclosure Form


Thomas G. Wendorf, P.E.
Director of Public Works

1/29/04


Melissa Byrne Vossmer
Assistant City Manager

Approved:


Terry M. Brechtel
City Manager

RENEWAL AND EXTENSION OF LICENSE AGREEMENT

This Renewal and Extension of License Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter called "**LICENSOR**"), acting by and through its City Manager, or her designee, pursuant to Ordinance No. _____, dated _____, 2004, and Accord Medical Management, Inc. d/b/a Nix Health Care System (hereinafter referred to as "**LICENSEE**"), acting by and through its Chairman and Chief Executive Officer, John F. Strieby, for the purpose of renewing and extending that certain License Agreement entered into by **LICENSOR** and **LICENSEE** dated July 14, 1998 and approved by City of San Antonio Ordinance No. 87741 on April 30, 1998.

I. RENEWAL AND EXTENSION

A. LICENSEE has timely notified **LICENSOR** in writing of **LICENSEE**'s intent to renew and extend the terms of that certain License Agreement for the non-exclusive right to use, in common with others, a total of 400 parking spaces ("Parking Spaces") within a structure commonly known as the Mid-City Parking Garage, having a street address of 240 E. Houston Street, San Antonio, Texas, legally described as being a 0.646 acre (28,139.76 sq. ft.) tract of land out of Block 21, New City Block 406 and being the east 5 feet of Lot 5, and all of Lots 6, 7, and 8 out of Block 21, New City Block 406, in the City of San Antonio, Bexar County, Texas ("Licensed Premises"). The right to renew and extend was granted by **LICENSOR** to **LICENSEE** in **ARTICLE IV. TERM AND RENEWAL, Section 4.2** of the original License Agreement, a copy of which License Agreement is attached hereto as **EXHIBIT 1** and the terms of which, except as modified by this Renewal and Extension of License Agreement, are incorporated herein verbatim for all purposes.

B. The parties hereby agree that the term of said License Agreement, as originally stated in **ARTICLE IV. TERM AND RENEWAL, Section 4.1**, is hereby extended for five (5) years ("first extended term") in accordance with **Section 4.2** of the original License Agreement. **Section 4.1, Section 4.2, Subsection 4.2.1, Subsection 4.2.2, and Section 4.3** of **ARTICLE IV.** are hereby deleted in their respective entireties and the following new **Section 4.1, Section 4.2, Subsection 4.2.1, Subsection 4.2.2, and Section 4.3** substituted in lieu thereof:

"IV. TERM AND RENEWAL

"4.1 This License Agreement shall be effective for a period of five (5) years, commencing on May 1, 2003 ("commencement date") and terminating on April 30, 2008 ("first extended term"), unless renewed, canceled or terminated under the provisions contained herein. Upon expiration, cancellation or termination, **LICENSEE** and those under its control or otherwise authorized by it to use said Parking Spaces shall vacate said Licensed Premises and remove said **LICENSEE**'s, or said other persons' effects therefrom at **LICENSEE**'s, or said other persons' sole cost and expense.

"4.2 As long as **LICENSEE** is not in default of any of the provisions contained herein, and subject to approval of the City of San Antonio City Council, as evidenced by passage of an ordinance, this License Agreement may be renewed and extended for two (2) additional five (5) year periods, under the same terms and conditions. All terms and conditions of this License Agreement, as modified by this Renewal and Extension of License Agreement, will remain in full force and effect upon each renewal, save and except the License Fee, which shall be as follows:

"4.2.1 For the use of the above-ground level parking spaces in said Licensed Premises, the License Fee shall be an amount equal to the lesser of (i) the rate for the previous year increased by five percent (5%), or (ii) a License Fee established by **LICENSOR** for the use of Mid City Parking Garage Parking Space existing at the commencement date of

each and every year of the two (2) additional five (5) year renewal periods. Said License Fee shall be paid on a per parking space, per month basis; and shall be paid on or before the first day of each and every month during each and every year of the (2) additional five (5) year renewal periods.

"4.2.2 For the use of basement level parking spaces in said Licensed Premises, the License Fee shall be an amount equal to the lesser of (i) the rate for the previous year increased by five percent (5%), or (ii) a License Fee established by **LICENSOR** for the use of Mid City Parking Garage Parking Space existing on the commencement date of each and every year of the two (2) additional five (5) year renewal periods; provided however, that such License Fee shall not be less than the \$88.00 per month, per space fee. Said License Fee shall be paid on a per parking space, per month basis; and shall be paid on or before the first day of each and every month during each and every year of the two (2) additional five (5) year renewal periods.

"4.3 **LICENSEE** shall notify **LICENSOR**, in writing, in accordance with **Section 13.1**, of its request to renew and extend, at least ninety (90) days prior to the expiration of the previous extended term, including the first extended term, unless this License Agreement is terminated or canceled prior thereto. If such occurs, there shall be no right of renewal and extension."

C. The parties agree that **Section 4.4** shall remain intact and unchanged from the original wording in the License Agreement.

II. CONSIDERATION UPON RENEWAL AND EXTENSION

A. The parties hereby agree that the consideration, as originally stated in **ARTICLE V. CONSIDERATION**, **Section 5.1**, **Subsection 5.1.1**, **Subsection 5.1.2**, **Subsection 5.1.3**, **Subsection 5.1.4**, **Subsection 5.15**, **Section 5.2**, **Subsection 5.2.1** and **Subsection 5.2.2** of **ARTICLE V.** are hereby deleted in their respective entireties and the following new **Section 5.1**, **Subsection 5.1.1**, **Subsection 5.1.2**, **Section 5.2**, **Subsection 5.2.1** and **Subsection 5.2.2** are substituted in lieu thereof:

"V. CONSIDERATION

"5.1 **LICENSEE** hereby covenants and agrees that, in consideration for the license granted hereby, **LICENSEE** shall pay **LICENSOR**, during the first extended term the following sums, as a License Fee for the use of above-ground level parking spaces in said Licensed Premises:

"5.1.1 For and during the first year of the first extended term, specifically, May 1, 2003 through April 30, 2004, **LICENSEE** shall pay, in equal monthly installments, a License Fee of sixty-seven dollars and no cents (\$67.00) per parking space, per month on or before the first day of each and every month, beginning May 1, 2003.

"5.1.2 For and during each of the remaining second, third, fourth and fifth years of the first extended term, **LICENSEE** shall pay, in equal monthly installments, a License Fee equal to the lesser of (i) the rate for the previous year increased by five percent (5%) each year over the previous year, or (ii) a License Fee established by **LICENSOR** for the use of Mid City Parking Garage Parking Space existing on the commencement date of said second, third fourth and fifth years, respectively. Said License Fee shall be paid on a per parking space, per month basis; and shall be paid on or before the first day of each and every month during each of the remaining second, third, fourth and fifth years of the first extended term, beginning May 1, 2004.

"5.2 **LICENSEE** hereby covenants and agrees that, in consideration for the license granted hereby, **LICENSEE** shall pay **LICENSOR**, during the first extended term the following sums, as a fee for the use of basement level parking spaces in said Licensed Premises:

"5.2.1 For and during the first year of the first extended term, specifically, May 1, 2003 through April 30, 2004, **LICENSEE** shall pay, in equal monthly installments, a License Fee of eighty-eight dollars and no cents (\$88.00) per parking space, per month, on or before the first day of each and every month during the first year of the first extended term, beginning May 1, 2003.

"5.2.2 For and during each of the remaining second, third, fourth, and fifth years of the first extended term, **LICENSEE** shall pay, in equal monthly installments, a License Fee equal to the lesser of (i) the rate for the previous year increased by five percent (5%), or (ii) a License Fee established by **LICENSOR** for the use of Mid City Parking Garage Parking Space existing on the commencement date of said second, third, fourth, and fifth years, respectively, provided however, that such License Fee shall not be less than \$88.00 per month, per space. Said License Fee shall be paid on or before the first day of each and every month during each of the remaining second, third, fourth, and fifth years of the first extended term, beginning May 1, 2004."

B. The parties agree that **Section 5.3** and **Section 5.4** shall each remain intact and unchanged from the original wording in the License Agreement.

III. CONFLICT OF INTEREST

The parties agree that **ARTICLE XIV. CONFLICT OF INTEREST** is hereby deleted in its entirety and the following is substituted in lieu thereof:

"ARTICLE XIV. CONFLICT OF INTEREST

"14.1 **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio ("City" and **LICENSOR** herein) and City's Ethics Code prohibit City or a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, as may be amended from time to time, 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 or her parent, child or spouse; a business entity in which the officer or employee, or his or her 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. **LICENSEE** warrants and certifies, and this License is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. **LICENSEE** further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code."

IV. SAME TERMS AND CONDITIONS

All other terms, conditions, covenants and provisions of the License Agreement approved by City of San Antonio, Texas Ordinance No. 87741 on April 30, 1998 are hereby renewed and extended, save and

except for the Articles, Sections, and Subsections provided for herein, which the undersigned parties agree are hereby modified by this Renewal and Extension of License Agreement.

EXECUTED AND AGREED TO this the _____ day of _____, 200⁴~~3~~, to be effective May 1, 2003.

LICENSOR:

City of San Antonio, a
Texas municipal corporation

LICENSEE:

Accord Medical Management, Inc.
d/b/a Nix Health Care System

Name: _____
Title: _____

Name: John F. Strieby
Title: Chairman and Chief Executive Officer

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

City of San Antonio Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract

NA

(2) the identity of any business entity that would be a party to the discretionary contract

Accord Medical Management, Inc. d.b.a. Nix Health Care System

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract

NA

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract

NA

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

NA

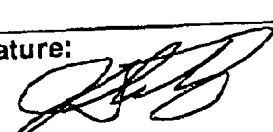
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
NA		

Disclosures In Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which reasonably understood raise a question as to whether any city official or employee would violate Section 1 of Part B, to Proper Economic Benefit, by participating in official action relating to the discretionary contract.

NA		
Signature:  John F. Strieby	Title: President and CEO Company: Nix Health Care System	Date: January 20, 2004

* For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.