

CITY OF SAN ANTONIO ITEM NO. 15
 INTERDEPARTMENTAL MEMORANDUM
 SAN ANTONIO METROPOLITAN HEALTH DISTRICT

TO: Mayor and City Council

FROM: Fernando A. Guerra, MD, MPH, Director of Health

THROUGH: Terry M. Brechtel, City Manager

COPIES: Frances A. Gonzalez, Assistant City Manager; City Attorney's Office; Human Resources Department; Finance Department; Department of Asset Management; Economic Development Department; Municipal Courts; Project; File

SUBJECT: NURSING SERVICES AGREEMENT FOR CITY DETENTION CENTER FACILITY, 401 S. FRIO

DATE: August 19, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the City Manager to execute a professional services agreement for nursing services at the City Detention Center in an amount of \$390,804.00 per year with Dependable Health Services, Inc. for the period October 1, 2004 through September 30, 2006 with one subsequent two year renewal option, and approving payments to private practice physicians up to \$36,000.00 for medical on-call services at said facility.

Staff recommends approval.

BACKGROUND INFORMATION

The City has utilized a contract nursing service for the City Detention Center since October 1989 to screen and observe detained individuals for health problems. The San Antonio Metropolitan Health District (SAMHD) provides medical and nursing consultation oversight. The Municipal Courts Department provides funds to support the staffing and supplies. Last year, the program screened 6,932 persons arrested for public inebriation for life threatening conditions and provided first aid for 2,755 other detainees at this facility.

A Request for Proposal (RFP) to provide professional nursing services was advertised in the San Antonio Express-News on May 23, 2004, resulting in the submission of two proposals for consideration. An evaluation committee comprised of representatives from the SAMHD, Municipal Courts and Economic Development Departments has recommended that Dependable Health Services, Inc. be awarded the contract for the period October 1, 2004 through September 30, 2006 with one two year renewal option. Dependable Health Services, Inc. has been successful in securing the contract through RFP processes for the last eight (8) years and has performed in a satisfactory manner.

A matrix that reflects the evaluation criteria, scoring and outcome is as follows:

	Maximum Points	Points Awarded	Points Awarded
<i>Applicants</i>		<i>Dependable Health Services, Inc.</i>	<i>Advanced Medical Personnel Services, Inc.</i>
Responsiveness to RFP	25	20	10
Proposed Pricing Schedule	25	25	15
Background and Capability	30	23	13
SBEDA goals	<u>20</u>	<u>17</u>	<u>0</u>
Total scores	100	85	38

POLICY ANALYSIS

This contract follows past City policy in outsourcing professional services when they can be preformed more efficiently and effectively through the private sector.

FISCAL IMPACT

This ordinance authorizes payments not to exceed \$390,804.00 per year to Dependable Health Service, Inc., (an increase of \$32,600.50 from present year) and \$36,000.00 (no change from the present year) for private practice physician on-call services at the City Detention Center Facility for the period October 1, 2004 through September 30, 2005. The City has proposed a partnership with the Center for Health Care Services, University Health System, and University Physicians Group in coordination with the San Antonio Police Department (SAPD) to expand the hours and variety of services currently offered by the Downtown Urgent Care Clinic. SAPD officers and other law enforcement officials will be able to transport ill or injured arrestees as well as detainees from the City Detention Center to the expanded clinic as opposed to University Hospital. The officers will be able to spend much less time guarding their prisoners and more time exercising community law enforcement. The use of physicians at the Downtown Urgent Care Clinic will ultimately eliminate the need for contract on-call physicians. The increase in cost for nursing services reflects an adjusted pay rate for Licensed Vocational Nurses (LVNs) and Registered Nurses (RNs) needed to maintain the quality required for the facility. These funds are budgeted under the FY 2005 General Fund allocation to the Municipal Courts Department.

Funding in the same amount for fiscal year 2005/2006 is contingent upon the annual budget appropriations.

COORDINATION

This agreement has been reviewed by the City's Attorney's Office and the Human Resources Department, Risk Management Division. Representatives from the SAMHD, the Municipal Courts, Economic Development Department, and the Department of Asset Management participated in the selection of the contractor. The Finance Department and the Office of Management and Budget have been apprised of this ordinance's expenditures.

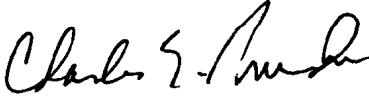
SUPPLEMENTARY COMMENTS

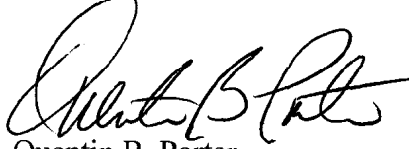
Execution of the renewal option for the years FY07 and 08 will require another ordinance and is contingent upon the availability of funds to continue these services.

Dependable Health Services Inc. is a certified disadvantaged business enterprise jointly owned by William Hernandez II, Joe Urby, Jr., and Alicia Ruiz, RN. A copy of the required Discretionary Contracts Disclosure Form is attached (See Attachment II).

Attachments:

- Attachment I: Professional Nursing Services Agreement
- Attachment II: Discretionary Contracts Disclosure Form


Fernando A. Guerra, MD, MPH
Director of Health


Quentin B. Porter
Director of Municipal Courts


Frances A. Gonzalez
Assistant City Manager

APPROVED:


Terry M. Brechtel
City Manager

**PROFESSIONAL SERVICES AGREEMENT
FOR
PROFESSIONAL NURSING SERVICES
CITY DETENTION CENTER**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2004 and _____ by and through its _____ (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

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

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the acting director of City's San Antonio Metropolitan Health District (SAMHD).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2004 and terminate on September 30, 2006.

2.2 The City shall have the option to renew and extend the term of this contract for one two year period. This renewal and extension shall be evidenced by passage of a subsequent City ordinance.

2.3 Consultant agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2004. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to

appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither Consultant nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

III. SCOPE OF SERVICES

All interested parties submitting proposals for Professional Nursing Services at the City Detention Center must be able to meet the following requirements:

A. Required Nursing Staffing Pattern

- Provide on-site staffing of Registered Nurses (RN) twenty-four (24) hours per day. (One RN on duty at all times).
- Provide on-site staffing of Licensed Vocation Nurses (LVN) seventy (70) hours per week, negotiated between Contractor and City. Generally one (1) LVN from 5:00 pm to 3:00 am daily.
- Substitution of lower level staff for any shift is unacceptable. Higher-level staff may be substituted at the contracted rate of the lower level staff.
- The City of San Antonio reserves the right to change the proposed staffing pattern and the resulting corresponding cost.
- The Contractor must provide a point of contact twenty-four (24) hours a day to resolve staffing or personnel issues (can be non-RN/LVN status, i.e., administrative or executive).

B. Required Nursing Skills

1. Assessment Skills (may not inclusive) and related documentation:
 - Triage: Assessing the physical and mental status of each detainee to determine nursing and/or medical needs.
 - History Taking: including demographic, medical history and obtaining consent.
 - Physical assessment including maternal, vital signs, and mental status.
 - Substance abuse screening assessment.
2. Equipment Skills (may not be inclusive):
 - Use of Intoximeter.
 - Electronic thermometer.
 - Glucometer.
 - Doppler for fetal heart tones.
 - First aid equipment including oxygen devices.
 - Automated blood pressure device.
 - Use of restraint devices.
3. Patient Management skills (may not be inclusive) with PI and Non-PI:
 - Treatment of minor injuries such as cuts and abrasions.
 - Monitoring vital signs.

- Care of life threatening emergencies – CPR with EMS backup.
- Airway management and oxygen administration.
- Care of alcohol/drug withdrawal.
- Seizure management.
- Care of pregnant patients with alcohol/drug history.
- Communication skills related to detainee population.
- Observation of patients for changes in condition.
- Medication administration in special situations for patients' specific medications, immunizations, or emergency care as per physician orders.
- Personal hygiene assistance which may include providing clothing and assistance in showering.
- Limited food and beverage service to include dispensing liquid drinks and crackers.
- Follow established SAMHD medical and nursing protocols.
- Nursing and custodial care duties deemed appropriate which may include operating washing machine/dryer.
- Initiate aid to injured city employees at the Detention Center.
- Monitor and care for individuals exhibiting violent and/or suicidal behavior.
- Care of diabetic emergencies.
- Responsible for ordering supplies and checking equipment for proper operation. City will furnish supplies and equipment.

C. Required Data Reporting

A written report will be submitted to the City Detention Center staff and Director of Health every six months describing six month history of the program inclusive of:

- Number of PI's screened by age, gender, race/ethnicity
- Number of Non-PI's screened by age, gender, race/ethnicity, and chief complaint
- Number of hospital transports, both PI's and non-PI's, including mode of transportation and chief complaint.
- Number of PI's with repeat visits by age, gender, race/ethnicity, and number of visits per year, scaling by 1 to 5 visits/year, 6 – 10 visits/ year, 11-25 visits/year; over 25 visits/year.

D. Required Collaboration

The Respondent and their staff will make a good faith effort to work with the Bexar County Adult Detention Center ("Bexar County Jail") nursing staff to ensure problems are resolved quickly and procedures are developed that provide greater continuity of care for detainees. Good faith effort includes telephone communication with jail staff at the time of concern and that unresolved issues are referred to SAMHD.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by CITY, of all services and activities set forth herein, CITY agrees to reimburse CONTRACTOR for all eligible expenses incurred hereunder for an amount not to exceed \$ 390,804.00 for the CITY's Fiscal Year 2004/2005 and for an amount not to exceed \$ 390,804.00 for the CITY's Fiscal Year 2005/2006.

4.2 CONTRACTOR agrees to submit weekly statements to CITY, no later than seven (7) days after completion of work week (Sunday-Saturday), detailing the services rendered, hours worked by job classification and supporting documentation verifying staff activities. All services shall be performed to CITY's satisfaction, and CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory and which have not been approved by CITY. The final payment due hereunder will not be paid until the reports, data, and documents have been received and approved by CITY.

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

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement 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.

5.2 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.

VI. RECORDS RETENTION

6.1 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 Agreement 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.

6.2 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 Agreement. 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.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

7.4.3 Failing to perform or failing to comply with any covenant herein required

7.4.4 Performing unsatisfactorily

7.5 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 Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all 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 provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, 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.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement 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.

If intended for City, to:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

AND City of San Antonio
Director, San Antonio Metropolitan Health District
332 W. Commerce, Suite 307
San Antonio, Texas 78205

If intended for Consultant, to:

Dependable Health Services, Inc.
Attn: William Hernandez, III, President & CEO
4010 Privet Place
San Antonio, Texas 78259

IX. [RESERVED]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the City's Risk Management Division and the City Clerk's Office, and which shall be clearly labeled "Professional Nursing Services City Detention Center" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's San Antonio Metropolitan Health District and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement 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 Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 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 Agreement, 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 rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

1. Workers' Compensation ** Employers' Liability **	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors * c. Products/completed operations d. Personal Injury e. Contractual Liability *f. Explosion, collapse, underground *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 \$50,000
3. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
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.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by 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 in Section 10.6 herein within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

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

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds 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.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Consultant shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Consultant knows of said change in advance, or ten (10) days notice after the change, if the Consultant did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio
San Antonio Metropolitan Health District
P.O. Box 839966
San Antonio, Texas 78283-3966

AND City of San Antonio
City Clerk’s Office
P.O. Box 839966
San Antonio, Texas 78283-3966

10.7 If Consultant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Consultant to maintain said insurance or secure such endorsement. 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.

10.8 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 Agreement.

10.9 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 Agreement.

XI. INDEMNIFICATION

11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not

limited to, personal or bodily injury, 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 performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. 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.

11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONSULTANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONSULTANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.3 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 Agreement. 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.

11.4 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.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of Consultant. Consultant and its employees shall perform all necessary work.

12.2 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, 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 Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

12.3 Any attempt to transfer, pledge or otherwise assign this Agreement 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 Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. SBEDA

14.1 Consultant hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

14.2 Consultant shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Agreement, thereby meeting the percentages for participation of those groups as submitted in its proposal. Consultant's SBEDA plan, as submitted with Consultant's proposal, is attached hereto and incorporated herein by reference as Exhibit A. Consultant shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Agreement, and shall remain in compliance throughout the term of this Agreement. Consultant further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Agreement, as may be approved pursuant to this Agreement, which will meet the percentages submitted in its proposal.

14.3 Consultant shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that Consultant is not in compliance with this article, City shall give notice of non-compliance to Consultant. Consultant shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Agreement, for which this Agreement may be terminated in accordance with Article VII. Termination.

14.4 In all events, Consultant shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

XV. CONFLICT OF INTEREST

15.1 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 Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or

shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. 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.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement 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 Agreement, 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 Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. 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.

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to this the _____ day of _____, 20__.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
DEPENDABLE HEALTH SERVICES, INC.

Frances A. Gonzalez
Assistant City Manager

William Hernandez, III
President & CEO

ATTEST:

Leticia M. Vacek
City Clerk

Approved as to Form:

Andrew Martin
City Attorney

City of San Antonio

C. 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

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:

William Hernandez, III
Joe Urby Jr.
Alicia Ruiz, RN MPA

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

Dependable Health Services, Inc

and the name of:

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

Not Applicable

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;

Not Applicable

- (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.

Not Applicable

Political Contributions

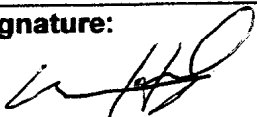
Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *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:
Not Applicable		

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, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Not Applicable

Signature: 	Title: President Company: Dependable Health Services, Inc.	Date: June 01, 2004
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D. LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

☒ NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

☒ NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES

☒ NO

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

**SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY
(SBEDA) POLICY
ATTACHMENT 4**



SCTRCA

Small, Minority, Women Business Enterprise (S/M/WBE) Program

DEPENDABLE HEALTH SERVICES, INC.

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified in the Texas Unified Certification Program, in accordance with 49 CFR Part 26 and SCTRCA Standards, as a:

SBE

MBE

This Certification Certificate must be updated annually by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements and any material change in the information provided in the submission of the business' application for DBE certification.

CERTIFICATE EXPIRES: 06/10/2007 CERTIFICATION NO.: 204-06-3949

Certified in the following work categories:
North American Industry Classification System (NAICS) code(s):

621610

Home Health Care Services

Bridget Negrón Booth
EXECUTIVE DIRECTOR

E. GOOD FAITH EFFORT PLAN

NAME OF COMPANY: Dependable Health Services, Inc.

PROJECT NAME: Professional Nursing Services City Detention Center

1. Indicate all MBE-WBE-AABE-SBE subcontractors proposed for this contract. (Use additional sheets as needed.)

NAME OF SUBCONTRACTOR	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE- AABE CERTIFICATION NUMBER	SBE (Y/N)
N/A	N/A	N/A	N/A	N

Only companies certified as MBE, WBE, AABE, or SBE by the City of San Antonio or its certifying organization can be applied towards the contracting goals. All MBE-WBE-AABE-SBE subcontractors must submit a copy of certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a subcontractor is not certified, please call the Small Business Outreach Division at (210) 207-3900 for information and details and how subcontractors can obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Affirmed List of Subcontractors form).

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

N/A

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

N/A

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

N/A

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

N/A

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

N/A

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	HUE (Y/N)	REASON FOR REJECTION
N/A			

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

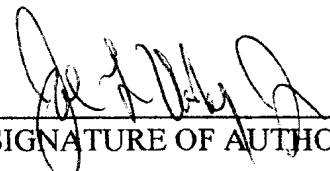
Dependable Health Services, Inc. does not subcontract its services and therefore does not have such policy.

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

Joe Urby Jr.

(210) 496-1858

10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.


SIGNATURE OF AUTHORIZED OFFICIAL

Vice- President

TITLE OF OFFICIAL

06-10-84 (210) 496-1858
DATE PHONE