

**CITY OF SAN ANTONIO  
HUMAN RESOURCES DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Sharon De La Garza, Director, Human Resources Department

**SUBJECT:** Concentra Health Services, Inc. Contract

**DATE:** November 18, 2004

**SUMMARY AND RECOMMENDATION**

This Ordinance authorizes the Interim City Manager or his designee to execute a contract with Concentra Health Services, Inc. at an estimated annual amount of \$104,786 to provide drug and alcohol testing for prospective non-uniformed City employees and City employees operating commercial vehicles. The term of this contract is three (3) years, beginning January 1, 2005 and ending December 31, 2007, with an option to extend the contract for up to two (2) one (1) year extensions, subject to and contingent upon funding and approval by City Council.

Staff recommends approval of this Ordinance.

**BACKGROUND INFORMATION**

Since January of 1995, the City of San Antonio has utilized an independent laboratory to conduct alcohol and drug testing mandated by the U. S. Department of Transportation for employees required to maintain commercial drivers' licenses. Moreover, the City has conducted alcohol and drug testing of prospective non-uniformed employees since March 1997. The purpose of these drug and alcohol testing activities is to conform to federal transportation rules, federal drug-free workplace guidelines, and City Administrative Directive 4.3, Alcohol and Controlled Substances Testing.

A Request for Proposal (RFP) for Combined Health Benefits, which included a drug testing services module, was developed in coordination with Asset Management and a contracted independent consultant. The RFP was posted on the City of San Antonio Government Website on March 15, 2004 and distributed to 15 drug testing vendors who currently provide this service in Texas. The Human Resources Department advertised the RFP in the San Antonio Express News on March 21, 2004. A Pre-Proposal Conference was held on April 2, 2004 and the RFP closed on April 21, 2004. Nine (9) drug testing service RFP responses were received by the deadline and reviewed by a Technical Committee for compliance with RFP requirements, financial stability, SBEDA scoring, and short listing for interview. The Technical Committee

consisted of representatives from the City Attorney's Office, Economic Development, Finance, Health, Asset Management, and the Human Resources Department.

The RFP Evaluation Committee convened on June 17, 2004 to review the short listed four (4) proposals for evaluation, interview and scoring. The Evaluation Committee was composed of department directors or designees from Human Resources, Finance, Fire, Health, Parks & Recreation, Police, Purchasing, and Asset Management (advisory role); and individuals from the Fire Association, Police Association, Civilian Employee Association and the Retiree Association. Interviews with the short listed drug testing firms were held on June 28-29, 2004, and final scoring by the committee was conducted on July 7, 2004. The Committee scored according to the evaluation criteria listed in the RFP which included the following: responsiveness to the RFP (5%), Proposed Service Plan (20%), Background and Capability (25%). The SBEDA scores were submitted by Economic Development and the proposed pricing schedule (30%) was calculated with the application of a mathematical formula. The scoring matrix is included with this memorandum as Attachment A.

The Evaluation Committee recommends that Concentra, Inc. be awarded the contract to provide drug and alcohol testing services. Concentra is the current contracted vendor and has maintained satisfactory performance and affordable rates since September 1, 2003. Their five locations in Northeast, East, North, West and Downtown San Antonio offer coverage to adequately handle the volume of testing required by the City of San Antonio.

### **POLICY ANALYSIS**

Execution of this agreement will allow the City to remain in compliance with federal transportation and drug-free workplace guidelines. This ordinance follows past City policy in outsourcing specialized services to companies that can perform them more efficiently and effectively.

### **FISCAL IMPACT**

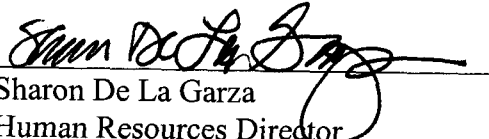
This ordinance authorizes payment to Concentra Services, Inc. at a rate of \$24.00 per pre-employment drug screen, \$24.00 per CDL drug screen and \$10.00 per intoxilyzer screen on a fee-for-service basis. The rates are guaranteed throughout the entire term of the contract.

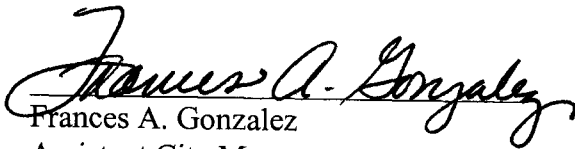
### **COORDINATION**


This item has been coordinated with the City Attorney's Office, Asset Management, Finance, Health and the Economic Development Departments.

**SUPPLEMENTARY COMMENTS**

The required Ethics Disclosure Statement is attached.

  
Sharon De La Garza  
Human Resources Director

  
Frances A. Gonzalez  
Assistant City Manager

  
J. Rolando Bono  
Interim City Manager

Attachments

# 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 a 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.

N/A

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

N/A

and the name of:

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

N/A

and the name of:

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

N/A

<sup>1</sup> 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.

(1) 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.

N/A

#### 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 name 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:

N/A

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall also use any known facts which reasonably understood raise a question as to whether any city officer or employee would violate Section 10 of Part 6, Improper Economic Benefit by Participating in Official Action, relating to the discretionary contract.

N/A

Signature:

Title: Director of Operations

Date: 4/26/04

Company: Concentra Health Services, Inc. dba  
Concentra Medical Centers

<sup>2</sup> 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.

**ATTACHMENT A  
EVALUATION MATRIX**

|   | Premier      | Concentra    | United Healthcare | Humana       |
|---|--------------|--------------|-------------------|--------------|
| Responsiveness to RFP - 5 Pts.                        | 3.50         | 4.38         | 4.00              | 3.88         |
| Proposed Services - 20 Pts.                           | 12.63        | 17.38        | 15.75             | 15.50        |
| Pricing Schedule - 30 Pts.                            | 30.00        | 28.96        | 19.44             | 19.44        |
| Background & Capability to Provide Services - 25 Pts. | 11.75        | 22.38        | 21.00             | 21.25        |
| <b>Total Technical Points</b>                         | <b>57.88</b> | <b>73.10</b> | <b>60.19</b>      | <b>60.07</b> |
| SBEDA   | 11.00        | 6.00         | 6.00              | 6.00         |
|   |              |              |                   |              |
|   |              |              |                   |              |
| <b>Total Score</b>                                    | <b>68.88</b> | <b>79.10</b> | <b>66.19</b>      | <b>66.07</b> |

STATE OF TEXAS           §

**PROFESSIONAL SERVICES  
AGREEMENT FOR DRUG AND  
ALCOHOL TESTING**

COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, hereinafter referred to as "**CITY**", a Texas municipal corporation, acting through its designated representative, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and CONCENTRA HEALTH SERVICES, INC., a Nevada Corporation, doing business as Concentra Medical Centers, hereinafter referred to as "**CONTRACTOR**."

**I. PURPOSE**

- 1.1 The purpose of this CONTRACT is to set forth the terms and conditions by which **CONTRACTOR** shall provide Drug and Alcohol Testing Services in connection with the **CITY'S** Pre-employment and Transportation Worker Drug Testing Program.

**II. DESCRIPTION AND SCOPE OF SERVICES**

- 2.1 **CONTRACTOR** shall perform all the services as set forth in **CITY'S** Request for Proposal (RFP), attached hereto as Exhibit A, and **CONTRACTOR'S** Proposal dated April 16, 2004, attached hereto as Exhibit B, both of which are made a part of this CONTRACT for all purposes provided; however should there be any conflict between the terms of the RFP, **CONTRACTOR'S** Proposal, and the terms of this CONTRACT, then the terms of this CONTRACT shall be final and binding.
- 2.2 **CONTRACTOR** understands and agrees that Exhibits A and B are a part of this CONTRACT, as though fully set out herein, and that all obligations are required to be fulfilled by **CONTRACTOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed in this CONTRACT.
- 2.3 **CONTRACTOR** shall work closely with the Director of Human Resources or his/her designee and appropriate **CITY** officials, and perform any and all related tasks required by **CITY** in order to fulfill the terms of this CONTRACT.
- 2.4 **CONTRACTOR** shall deliver, to the extent permissible by applicable federal and Texas state law, all data, reports and documentation which result from its services to **CITY** in a form that is satisfactory to **CITY**.
- 2.5 The **CONTRACTOR** shall be available to meet with representatives of the **CITY'S** Risk Management Division on a monthly basis. The **CITY** shall give the **CONTRACTOR** at least twenty-four (24) hours notice of such meetings.
- 2.6 The **CONTRACTOR** shall designate local administrative support and an account representative who shall be located within the geographical area of the **CITY**.

### **III. DEFINITIONS**

- 3.1 "CITY" means the City of San Antonio.
- 3.2 "CONTRACT YEAR" means January 1 through December 31.
- 3.3 "EMPLOYEE" means non-uniformed personnel who are directly employed by the City of San Antonio and who are regularly scheduled for a full shift or schedule, in like manner as other similarly situated workers in the department or division, on a permanent basis. "Employee" shall also include employees on Worker's Compensation, Disability, or Non-Paid status, Police Cadets, Firefighter trainees, the Mayor and City Council members, and such other officials or provisional employees as the City Council shall determine and specify.
- 3.4 "FISCAL YEAR" means the City of San Antonio accounting year, October 1 through September 30.
- 3.5 "HIPAA" is defined in Section 10.1.

### **IV. PERFORMANCE GOALS**

- 4.1 The **CONTRACTOR** acknowledges and agrees that the **CONTRACTOR** shall provide services under this CONTRACT with a certain degree of accuracy and timeliness. Therefore, as part of this CONTRACT with the **CITY**, the **CONTRACTOR** agrees to the performance goals set forth on the attached Exhibit C.
- 4.2 Performance compliance audits may be conducted at the discretion of the **CITY** at its cost, using an independent auditor of its choice, and are limited to one (1) per Contract Year. If the **CITY** conducts a performance audit, either party to this CONTRACT may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. The definition of an error in these audits is subject to a good faith review by the parties to this CONTRACT.
- 4.3 If the **CITY** waives its rights to an independent audit in any Contract Year, the **CITY** retains the right to audit in all subsequent years.

### **V. GENERAL ASSURANCES**

- 5.1 **CONTRACTOR** covenants and agrees to perform all services described in this CONTRACT 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 necessarily possessed by other laymen.



- 5.2 The **CONTRACTOR** warrants and certifies that the **CONTRACTOR** and any other person designated by it to provide services herein has the requisite training, license and/or certification to provide said service.
- 5.3 **CONTRACTOR** agrees to employ, at its own expense, all personnel required in performing the services described in this **CONTRACT**. Personnel employed by **CONTRACTOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **CONTRACTOR'S** personnel engaged in providing services under this **CONTRACT** shall be fully qualified and shall be authorized or licensed to perform such work as required.
- 5.4 **CONTRACTOR** shall, at a minimum, maintain the experience and quality of staff in accordance with **CONTRACTOR'S** proposal, attached hereto and incorporated herein for all purposes as Exhibit A, to perform services as required under this **CONTRACT**.

## **VI. TERM**

- 6.1 The term of this **CONTRACT** shall commence at 12:00 a.m., Central Standard Time, on January 1, 2005, and shall terminate at 11:59 p.m., Central Standard Time, on December 31, 2007. With at least sixty (60) days written notice prior to December 31, 2007, the **CITY** may, at its sole option and through appropriate action of the City Council, have the right to extend the term of this **CONTRACT** for up to two (2) one (1) year extensions, with each one (1) year extension subject to the same notice requirement and appropriate action of its City Council. However, the **CITY** may terminate this **CONTRACT** at any time if funds are restricted, withdrawn, not approved or services unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of the **CITY'S** budget for each fiscal year.

## **VII. CONSIDERATION & BILLING**

- 7.1 In consideration of the professional services to be performed by the **CONTRACTOR**, as stated herein, the **CITY** shall pay to the **CONTRACTOR** as follows. The rates set out in this Section shall remain in effect throughout the term of this **CONTRACT** as well as any extension periods as provided in Section VII.

\$24.00 per pre-employment 10 panel screen,  
 \$24.00 per DOT 5-panel NIDA screen, and  
 \$10.00 per DOT breath alcohol intoxilyzer reading.

- 7.2 **CONTRACTOR** agrees to submit bi-weekly statements to **CITY**, no later than seven (7) days after completion of bi-weekly work week (Sunday - Saturday), detailing the services rendered and providing supporting documentation verifying delivery of said

- 7.3 Payments to the **CONTRACTOR** shall be in the amount shown by the bi-weekly billings and supporting documentation submitted and shall be subject to the **CITY'S** approval. The final payment due herein will not be paid until the reports, data, and documents required under this **CONTRACT** have, to the extent permissible under applicable federal and Texas state law, been received and approved by the **CITY**.
- 7.4 The **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than the **CONTRACTOR** for payment of any monies or provision for any goods or services.
- 7.5 **CITY** shall not be liable to **CONTRACTOR** for costs incurred or performances rendered by **CONTRACTOR** prior to the commencement of this **CONTRACT** or after its termination.

#### **VIII. RETENTION AND ACCESSIBILITY OF RECORDS**

- 8.1 **CONTRACTOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **CONTRACTOR** engages with **CITY**.
- 8.2 The books and records must be maintained for the term of this **CONTRACT** to which they relate and for the six (6) year period following the end of this **CONTRACT's** term.
- 8.3 **CONTRACTOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of HIPAA.
- 8.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of either examination, audit, or inspection as permitted by HIPAA.
- 8.5 Trade secrets are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **CONTRACTOR**.
- 8.6 **CITY** is entitled to continuing access, to the extent permissible under applicable federal and Texas law, to these books and records.
- 8.7 **CONTRACTOR** may, at **CITY's** option, fulfill the legal requirements of this provision on termination of this **CONTRACT** by delivering, to the extent permissible under applicable federal and Texas law, to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.
- 8.8 If the **CONTRACTOR** receives inquiries regarding documents related to this **CONTRACT**, the **CONTRACTOR** shall immediately forward such inquiries to the **CITY** for disposition.

### **IX. HIPAA COMPLIANCE**

- 9.1 **CONTRACTOR** will maintain the security and confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to City employees ("Patient Health Information") in accordance with all applicable federal and Texas state laws and regulations, including the electronic transmission standards, the Security Rule and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.

### **X. PUBLICATION**

- 10.1 In order to use any advertising relating to business underwritten and/or developed for **CITY**, **CONTRACTOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

### **XI. NOTICE OF CONTRACTOR'S CAPACITY**

- 11.1 **CONTRACTOR** shall give notice to City employees of the identity of **CONTRACTOR** and the relationship between **CONTRACTOR**, the **CITY**, and the Plan Participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

### **XII. AMENDMENT**

- 12.1 This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT** shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 12.2 It is understood by the parties that changes in local, state and federal rules, regulations or laws applicable to this **CONTRACT** may change during the term of the **CONTRACT**. Such changes shall be automatically incorporated into this **CONTRACT** without the need for a written amendment and shall become a part of this **CONTRACT** as of the effective date of the rule, regulation or law.

### **XIII. ASSIGNING INTEREST**

- 13.1 Any subcontracts or assignments of interests entered into by **CONTRACTOR** 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. **CONTRACTOR** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should **CONTRACTOR** 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 **CONTRACTOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **CONTRACTOR** shall in no event release **CONTRACTOR** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **CONTRACTOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 13.2 **CONTRACTOR**'S subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **CONTRACTOR** 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**. **CONTRACTOR** shall indicate this limitation in all contracts with approved subcontractors.
- 13.3 **CONTRACTOR** agrees to notify **CITY** 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**.
- 13.4 In no event shall such written consent, if obtained, relieve **CONTRACTOR** from any and all obligations hereunder or change the terms of this **CONTRACT**.
- 13.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

### **XIV. INSURANCE AND BONDING**

- 14.1 Prior to the commencement of any work under this **CONTRACT**, **CONTRACTOR** shall furnish an original completed Certificate(s) of Insurance or **CITY**'S Standard Certificate of Insurance form to **CITY**'S Budget and Employee Services Department and City Clerk's Office, which shall be completed by an agent authorized to bind the

named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and telephone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or to perform under this **CONTRACT** until such certificate has been delivered to **CITY'S** Human Resources Department and the City Clerk's Office, and no officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

- 14.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this **CONTRACT** and any extension or renewal hereof and to modify insurance coverages and its limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **CONTRACT**, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
- 14.3 **CONTRACTOR'S** financial integrity is of interest to **CITY**. Therefore, subject to **CONTRACTOR'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONTRACTOR** shall obtain and maintain in full force and effect for the duration of this **CONTRACT**, and any extension hereof, at **CONTRACTOR'S** sole expense, insurance coverage written on an occurrence/claims made 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 **CITY**, in the following types and amounts:

| <i><b>TYPE:</b></i>  | <i><b>AMOUNT:</b></i>                                       |
|--|---|
| A. <u>Commercial Crime/Fidelity Insurance Policy</u>   | \$1,000,000.00 per occurrence                               |
| B. <u>Commercial General (public) Liability Insurance to include coverage for the following:</u> |   |
| 1. Contractual Liability   | Bodily Injury and Property Damage                           |
| 2. Premises Operations   | of \$1,000,000 per occurrence;                              |
| 3. Personal Injury Liability   | \$2,000,000.00 general aggregate or its                     |
| 4. Products and Completed Operations   | equivalent in umbrella or excess liability coverage         |
| 5. Independent Contractors   |   |
| C. <u>Business Automobile Liability</u>  |   |
| Comprehensive Automobile Liability including:  | Combined Single Limit for Bodily Injury and Property Damage |
| 1. Owned/Leased Vehicles   | of \$1,000,000.00 per occurrence                            |
| 2. Non-Owned Vehicles  |   |
| 3. Hired Vehicles  |   |

D. Workers' Compensation and Employer's Liability

|                                    |                         |           |
|------------------------------------|-------------------------|-----------|
| Worker's Compensation<br>Liability | Employer's<br>Liability | Statutory |
|------------------------------------|-------------------------|-----------|

E. Professional Liability  
(Claims made form)

\$1,000,000.00 each medical  
incident/\$3,000,000 annual aggregate 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

14.4 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**.

14.5 **CONTRACTOR** 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/employer's liability and professional liability policies; and
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

14.6 **CONTRACTOR** shall notify **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notice not less than 30 days prior to the change or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

**City of San Antonio**  
**Human Resources Department**  
**Risk Management Division**  
**P.O. Box 839966**  
**San Antonio, Texas 78283-3966**

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

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

addition to any other remedies CITY may have upon CONTRACTOR'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due, to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR'S or its subcontractors' performance of the work covered under this CONTRACT.

## XV. INDEMNITY

- 15.1 CONTRACTOR 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 CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY UNDER THIS CONTRACT. THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONTRACTOR SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR CONTRACTOR KNOWN TO

CONTRACTOR RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONTRACTOR'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

- 15.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION (SECTION XVI), IS AN INDEMNITY EXTENDED BY CONTRACTOR 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. CONTRACTOR 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.

#### XVI. INDEPENDENT CONTRACTOR

- 16.1 **CONTRACTOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **CONTRACTOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **CONTRACTOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONTRACTOR**.
- 16.2 Any and all of the employees of the **CONTRACTOR**, wherever located, while engaged in the performance of any work required by the **CITY** under this **CONTRACT** shall be considered employees of the **CONTRACTOR** 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 **CONTRACTOR**.
- 16.3 No Third Party Beneficiaries: For purposes of this **CONTRACT**, including its extended 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 CONTRACTOR.

## **XVII. SBEDA**

- 17.1 **CONTRACTOR** 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"), handicapped 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 **CITY**. This policy and implementation is known as the Small Business Economic Development Advocacy Program ("SBEDA").
- 17.2 **CONTRACTOR** agrees to comply with the **CITY'S** SBEDA Program and all amendments thereto, and to implement the EAP Program submitted in **CONTRACTOR'S** proposal regarding the SBEDA Program, and further agrees to be in full compliance with this Section throughout the term of this CONTRACT. **CONTRACTOR** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this CONTRACT as may be approved pursuant to this CONTRACT. Should **CITY** find that **CONTRACTOR** is not in compliance with this Section, **CITY** shall give notice of noncompliance and **CONTRACTOR** shall have 30 calendar days to correct any and all deficiencies. Failure to comply with this Section and/or to correct any deficiencies within the time allotted shall be considered a default under this CONTRACT for which the **CITY** may terminate this CONTRACT in accordance with Section XXIII, Termination.

## **XVIII. NON-WAIVER**

- 18.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **CONTRACTOR** from any other covenants and conditions required in this CONTRACT.

### **XIX. FRAUD AND ABUSE PREVENTION**

- 19.1 **CONTRACTOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this **CONTRACT**. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **CONTRACTOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **CONTRACTOR** within thirty (30) days of such finding.
- 19.2 **CONTRACTOR** agrees to repay **CITY** for overpayments to service providers resulting from **CONTRACTOR'S** claims system's or processors' errors within 30 days of verification of overpayments.

### **XX. EQUAL EMPLOYMENT OPPORTUNITY**

- 20.1 **CONTRACTOR** 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, disability, or political belief or affiliation. Specifically, **CONTRACTOR** agrees to abide by all applicable provisions of the City of San Antonio ordinance number 69403 on file in the City Clerk's office.

### **XXI. CONFLICT OF INTEREST**

- 21.1 **CONTRACTOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY**-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 21.2 **CONTRACTOR** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **CONTRACTOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the **CITY'S** Ethics Code.
- 21.3 **CONTRACTOR** warrants that no person or selling agency has been employed or utilized to solicit or secure this **CONTRACT** upon an agreement or understanding for

a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **CONTRACTOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this **CONTRACT** without liability or, at its discretion, to deduct from the **CONTRACT** price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- 21.4 If at any time it shall be found that the person, firm or corporation to whom a **CONTRACT** has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY's** option, and **CONTRACTOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

## **XXII. TERMINATION**

- 22.1 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.
- 22.2 Termination by Notice. This **CONTRACT** may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party. All files are the property of the **CITY** and, at the **CITY's** request, to the extent permissible under applicable federal and Texas law, will be delivered at no cost to the **CITY** or its designated recipient on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within 30 calendar days after the effective termination date.
- 22.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this **CONTRACT**, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have fifteen (15) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such fifteen (15) day period, this **CONTRACT** shall terminate at 11:59:59 p.m., Central Standard Time, on the fifteenth (15th) day after the receipt of the notice by the defaulting party.
- 22.4 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.
- 22.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records, to the extent permissible under applicable federal and Texas law, and funds, if any, from **CONTRACTOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate.

Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at **CONTRACTOR'S** sole cost and expense.

- 22.6 Upon termination or cancellation of this **CONTRACT**, **CITY** may immediately commence audit of **CONTRACTOR'S** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **CONTRACTOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 22.7 If **CITY** conducts an audit, either party to this **CONTRACT** may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **CONTRACTOR** and **CITY**. The results from said third audit shall be final.
- 22.8 Upon termination of this **CONTRACT**, at no additional cost to the **CITY**, **CONTRACTOR** shall be responsible for all incurred claims administration, unless responsibility for these claims is assumed by the Insurer. If responsibility for these claims is assumed by the applicable insurer, the **CONTRACTOR** shall pay any and all costs that such insurer bills to the **CITY**.
- 22.9 Within 30 calendar days of the effective date of termination or cancellation, **CONTRACTOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this **CONTRACT** through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

### **XXIII. COMPLIANCE WITH LAWS**

- 23.1 **CONTRACTOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State of Texas, and local San Antonio laws, regulations, policies and procedures.

### **XXIV. SUCCESSORS AND ASSIGNS**

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

## **XXV. NOTICES**

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

### **CITY**

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

AND

City of San Antonio  
Human Resources Department  
Risk Management Division  
P.O. Box 839966  
San Antonio, TX 78283-3966

### **CONTRACTOR**

Concentra Health Services, Inc.  
5080 Spectrum Dr., Suite 400 West  
Addison, Texas 75001  
Attention: Office of the General Counsel

## **XXVI. EXHIBITS**

- 26.1 **CONTRACTOR** 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. Such exhibits are as follows:

|                       |           |
|-----------------------|-----------|
| CITY'S LFP            | Exhibit A |
| CONTRACTOR'S Proposal | Exhibit B |
| PERFORMANCE GOALS     | Exhibit C |

## **XXVII. LEGAL AUTHORITY**

- 27.1 The signer of the CONTRACT for **CONTRACTOR** represents, warrants, assures and guarantees the legal authority to execute this CONTRACT on behalf of **CONTRACTOR** and to bind **CONTRACTOR** to all of the terms, conditions, provisions and obligations herein contained.

### **XXVIII. VENUE AND GOVERNING LAW**

- 28.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

### **XXIX. GENDER**

- 29.1 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.

### **XXX. CAPTIONS**

- 30.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

### **XXXI. ENTIRE AGREEMENT**

- 31.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

### **XXXII. SEVERABILITY**

- 32.1 If any clause or provision of this CONTRACT is illegal, invalid or unenforceable under present or future federal, Texas 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 the CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**XXXIII. ACKNOWLEDGMENT**

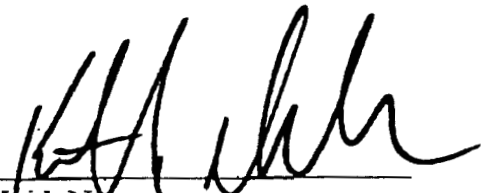
33.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

**EXECUTED** this, the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the **CITY**, signing by and through its City Manager, and by the **CONTRACTOR**, acting through its duly authorized officials.

**CITY OF SAN ANTONIO, TEXAS**

**CONCENTRA HEALTH SERVICES,  
INC.**

\_\_\_\_\_  
J. Rolando Bono  
Interim City Manager

  
\_\_\_\_\_  
By: Keith Newton  
Its: President

Approved as to Form:

\_\_\_\_\_  
Kathleen Finck  
Assistant City Attorney