

**CITY OF SAN ANTONIO  
ECONOMIC DEVELOPMENT DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Ramiro A. Cavazos, Director, Economic Development Department

**SUBJECT:** Office of Economic Adjustment Grant Agreement

**DATE:** February 24, 2005

**SUMMARY AND RECOMMENDATIONS:**

This ordinance authorizes the Director of the Economic Development Department to accept, by electronic signature, a \$125,000 planning grant from the U.S. Department of Defense, Office of Economic Adjustment (OEA), for the purpose of studying the impact of local military medical centers in San Antonio. This ordinance also authorizes the Interim City Manager or designated representative to enter into a Professional Services Contract in an amount not to exceed \$125,000 with The DiLuzio Group, a local consultant, to execute the OEA planning grant on behalf of the City.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION:**

On June 17, 2004, OEA announced the availability of advance planning grants to help defense communities prepare for future actions related to the next round of military base realignment and closure (BRAC) in 2005. Based on direction received from the City Council Military Affairs Committee on August 12, 2004, staff submitted a grant proposal to OEA on August 24, 2004. On February 2, 2005, OEA approved the City's application and awarded a grant in the amount of \$125,000 for the project.

Through this grant project, the City intends to: (a) assess the current impact and contributions of the two local military medical centers, Wilford Hall Medical Center (WHMC) and Brooke Army Medical Center (BAMC), on the economy of San Antonio; (b) evaluate different scenarios that may occur under BRAC 2005 that could potentially result in a reduction in military medical support to the community; (c) develop various alternatives to address potential BRAC scenarios; and (d) prepare a conceptual plan outlining how the community might respond to a reduction in existing military medical care capacity in the community.

Staff issued a Request for Proposal (RFP) on January 2, 2005 and received eight (8) proposals from the following firms on January 31:

- The DiLuzio Group, LLC
- ICF Consulting
- Angelou Economics
- McManis Associates, LLC
- Leland Consulting Group
- Texas A & M Health Science Center
- Texas Perspectives, Inc.
- Economic Research Associates

An Evaluation Committee (attached) met on February 4 to review and score the proposals. Based on the scoring, the Committee voted unanimously to recommend The DiLuzio Group for award of the contract (see attached scoring matrix). The DiLuzio Group is a local consulting firm with headquarters in San Antonio and is certified as a Small Business Enterprise. The principal of the firm is Mr. Rudolph DiLuzio, who previously served for seven years as the President and General Manager of EG&G Management Services supporting the redevelopment of the former Kelly Air Force Base. The team assembled by The DiLuzio Group consists of local experts in the areas of military and civilian medical care, economic analysis, and military base reuse. The team also includes TerraHealth, Inc. (a local MBE firm), who will perform 20 percent of the contract.

The City Council Military Affairs Committee met on February 10 and recommended that City Council approve The DiLuzio Group to execute the grant project. The project will begin immediately following City Council action. OEA requires the community to complete a final draft of the conceptual plan by May 13, prior to the release of the Secretary of Defense BRAC recommendations on May 16. The entire grant scope of services must be completed by June 15.

### **POLICY ANALYSIS:**

The military in San Antonio provides over 89,000 jobs at three active bases (Lackland Air Force Base, Randolph Air Force Base and Fort Sam Houston), Brooks City-Base and KellyUSA with an annual economic impact estimated at \$5 billion. All of these bases and missions will be evaluated during the next round of BRAC in 2005. To prepare for BRAC, the community established the San Antonio Military Missions (SAMM) Task Force, which has been actively promoting the military value of local bases and missions; working to help attract new missions and jobs to San Antonio; and strengthening partnerships between the military and the community.

One of the most important military-community partnerships is the participation of the two military medical centers (WHMC and BAMC) in the City's Level I trauma system. Together these two centers provide 50% of the emergency trauma care for patients covering 22 counties in the South Texas region, with the majority of trauma cases being civilian. There are also over 210,000 eligible military medical care beneficiaries in the San Antonio region. Of this number, 84,000 are currently enrolled in area non-military health programs.

Although it is not expected, the closure of a military medical center or a significant reduction in the existing military medical care capacity in the community would have a huge impact on the citizens of our metropolitan area and the South Texas region, as well as on the City's number one industry--

healthcare. Through this grant project, The DiLuzio Group will study the potential impact of a BRAC action involving military medical facilities and develop some scenarios and alternatives for the community to consider, if necessary, in addressing any significant reduction in military medical care capacity.

**FISCAL IMPACT:**

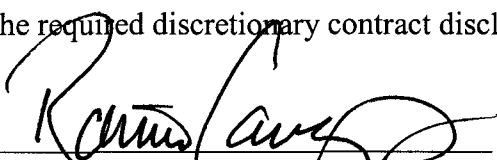
The total budget for the grant project is \$140,000. The City's required local match of \$15,000 will be provided from the \$75,000 approved by City Council in the FY 2005 Budget to help support SAMM's efforts to prepare the community for BRAC 2005. These funds are administered under a separate agreement between the City and the Greater San Antonio Chamber of Commerce, acting as administrative agent for SAMM. The City's annual contributions to SAMM are used exclusively to help fund the personnel costs of the SAMM Executive Director, who will also act as project manager for executing the grant scope of work. The City will accept and enter into this grant agreement with OEA by the online electronic signature of the Director of the Economic Development Department.

**COORDINATION:**

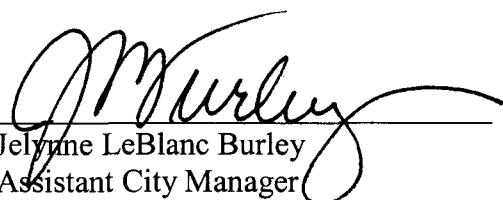
The Economic Development Department (EDD) staff has coordinated this item with the City Attorney's Office, Contract Services, Management and Budget Departments, and the SAMM Executive Director.

**SUPPLEMENTARY INFORMATION:**


The required discretionary contract disclosure forms from The DiLuzio Group are attached.



Ramiro A. Cavazos, Director  
Economic Development Department



Jelynn LeBlanc Burley  
Assistant City Manager



J. Rolando Bono  
Interim City Manager

# **Military Medical Center Study RFP Evaluation Committee Members**

## **Voting Members**

- **Ramiro Cavazos (Chair), City of San Antonio, Director, Economic Development Department**
- **Brigadier General (Retired) John Jernigan, Executive Director, San Antonio Military Missions Task Force**
- **Bill Mock, Vice President for Economic Development, Greater San Antonio Chamber of Commerce**
- **Tom Peters, Vice President, University Health System**

## **Advisory Members**

**Ed Davis, Economic Development Department**  
**Anita Martin, Economic Development Department (SBEDA)**  
**Albert Garza, Economic Development Department**  
**Ray Rodriguez, City Attorney's Office**  
**Kimberly Coleman, Contract Services Department**

<b><u>Evaluation Criteria</u></b> <b>for a</b> <b>Study and Analysis</b> <b>on the</b> <b>Impact of Military Medical Centers</b> <b>in San Antonio</b>	Maximum Points	Texas A & M Health Science Center	Angelou Economics	The DiLuzio Group	Economic Research Associates	ICF Consulting	Leland Consulting	McManis Associates	Texas Perspectives
<b>A - Project Understanding/ Proposed Timeline</b>	<b>15</b>	10.5	12.5	11.8	8.8	10.8	8.5	9.8	9.5
<b>B - Respondent's Experience and Capability</b>	<b>35</b>	17.5	21.8	23.0	25.5	26.3	21.3	23.8	26.8
<b>C - Project Team Qualifications</b>	<b>25</b>	18.0	14.5	21.8	13.8	18.0	11.3	16.8	15.8
<b>D - Proposed Fee Schedule</b>	<b>5</b>	4.9	3.8	4.1	3.4	3.7	4.8	3.5	5.0
<b>F - Local Business Enterprise</b>	<b>10</b>	6.00	0.00	10.00	0.55	2.10	0.00	2.10	0.00
<b>F - Historically Underutilized Enterprise</b>	<b>5</b>	0.00	0.00	1.00	0.28	1.05	0.00	1.05	1.20
<b>F - Compliance with City's SBEDA Policy</b>	<b>5</b>	0.00	0.00	2.00	2.00	3.00	0.00	2.00	3.00
<b>TOTAL SCORE:</b>	<b>100</b>	<b>56.90</b>	<b>52.55</b>	<b>73.60</b>	<b>54.23</b>	<b>64.85</b>	<b>45.80</b>	<b>58.90</b>	<b>61.20</b>

**Grant Agreement  
for  
San Antonio (APG)  
AP0516-05-01**

This agreement is between the City of San Antonio, TX, the Grantee, and the Office of Economic Adjustment (OEA), the Grantor, on behalf of the Department of Defense. The Grantee will undertake community economic adjustment activities as described in the Application for Federal Assistance, dated January 18, 2005, at the estimated cost of \$140,000. The \$140,000 consists of \$125,000 from the Grantor and \$15,000 from non-Federal sources.

1. Compliance by the Grantee

A. Overall Compliance: The Grantee and any consultant/contractor operating under the terms of this grant shall comply with all Federal, State, and local laws applicable to its activities; 32 CFR Part 33, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; OMB Circulars A-87, "Cost Principles for State and Local Governments," and the revised A-133, "Audits of States, Local Governments and Non-Profit Organizations"; and 32 CFR Part 28, "New Restrictions on Lobbying (Grants)."

B. Debarment and Suspension: The Grantee agrees to comply with the requirements regarding debarment and suspension in Subpart C of 32 CFR part 25, which implements E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235]; and Sec. 2455 of Federal Acquisition and Streamlining Act of 1994 (Pub. L. 103-355). The Grantee also agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Grantee enters into transactions that are "covered transactions" under Subpart B of 32 CFR part 25.

C. Drug-Free Workplace: The Grantee agrees to comply with the requirements regarding drug-free workplace in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*).

D. Hatch Act: The Grantee is advised that its employees may be subject to the Hatch Act (5 U.S.C. 1501-1508). If doubt exists in particular cases, the Grantee should seek legal counsel.

E. Grant Terms and Conditions: The Grantee and any consultant/contractor employed under this grant shall comply with the terms of this Grant Agreement. The decision of the Grantor in interpreting the Terms and Conditions of this grant shall be final.

2. Terms and Conditions

A. The grant period is from February 1, 2005, through August 31, 2005. Eligible costs incurred between February 1, 2005, and the date of this grant agreement are allowable and reimbursable.

B. The Grantee assures that \$15,000 or 10.7 percent of the total project costs shall be contributed by non-Federal sources.

C. Any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor.

D. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, for the convenience of the Government or whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

E. The Grantee is the responsible authority, without recourse to the Grantor, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of the grant.

#### F. Activities Prohibited

(1) Duplication of Work: The purpose and scope of work for which this grant is made shall not duplicate programs for which moneys have been received, are committed, or are applied for from other sources, public or private. Upon request of the Grantor, the Grantee shall submit full information about related programs that will be initiated within the grant period.

(2) Other Funding Sources: Grantor's funds budgeted or granted for this program shall not be used to replace any financial support previously provided or assured from any other source.

(3) Funds for Attorney/Consultant Fees: The Grantee hereby agrees that no funds made available from this grant shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing grants or other services provided by the Grantor, for example, preparing the application for this assistance. However, attorneys' and consultants' fees incurred for meeting grant requirements may be eligible project costs and may be paid out of funds made available from this grant provided such costs are otherwise eligible.

(4) The Grantee hereby agrees that no funds made available from this grant shall be used, directly or indirectly, to inform and/or influence base closure or realignment deliberations under Public Law 101-510, as amended, of the Department of Defense (including any of its components) and/or the Base Realignment and Closure (BRAC) Commission.

#### G. Personnel Approvals

The Grantor reserves the right to approve or disapprove the selection of professional-level employees of the Grantee. If requested by the Grantor, resumes, in sufficient detail to reveal the experience, education, and other general and special qualifications for the position, must be submitted to the Grantor for consent prior to employment of a candidate.

#### H. Use of Consultants/Contractors

(1) Procurement of consultant or contractor services shall be in accordance with all standards and procedures set forth in 32 CFR Part 33. The following terms, which are drawn from the Common Rule, are intended merely to highlight some of these standards and are, therefore, not inclusive.

(2) All procurement transactions, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

(3) Formal advertising, with adequate purchase description, sealed bids, and public openings, shall not be required for small purchase procurements, under \$100,000 in the aggregate unless otherwise required by State or local law or regulations.

(4) The Grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal grant funds. Grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from a contractor or potential contractors. To the extent permissible by State or local law, rules, or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the Grantee's officers, employees, or agents, or by contractors or their guests.

#### I. Separate Bank/Fund Accounts

(1) The Grantee is not required to establish a separate bank account but may do so. The Grantee, however, must maintain accounting records to adequately identify the source and application of grant funds. Other considerations, such as FDIC coverage, shall be in accordance with the provisions of 32 CFR Part 33.

(2) Interest earned on Federal funds shall be reported to the Grantor and used to reduce the Federal share of this grant. Grantees shall promptly, but at least quarterly, remit interest earned on advances to the Grantor. The Grantee may keep interest amounts up to \$100 per year for administrative expenses.

#### J. Grant Payments

(1) A Standard Form (SF) 270, "Request for Advance or Reimbursement," shall be submitted when requesting funds.

(2) All financial information on the SF 270 shall be shown as: Column (a)--Salaries and Benefits; Column (b)--Operating Expenses; Column (c)--Contracts.

(3) Grant payments will be made by electronic funds transfer.



(4) When grant payments are cash advances, they shall be quarterly or as needed. The amount requested will be limited to that actually required.

(5) Grantor will withhold 10 percent of the Federal share of the contractual amount of the grant subject to receipt of all required deliverables.

(6) Grantee's payments to contractors/consultants shall be contingent upon the Grantee's acceptance of deliverables.

(7) Requests for Federal funds (SF 270's) for payment of consultant/contractor deliverables should be submitted to the Grantor after Grantee's acceptance of the deliverables.

#### K. Reimbursement for Travel

Reimbursement for travel (transportation, food, and lodging) in the performance of official grant activities shall be consistent with those normally allowed in like circumstances in the non-Federally sponsored activities of the Grantee. Grantees may follow their own established rate but any travel allowance policies in excess of Federal limits must receive prior approval from OEA.

#### L. Office Equipment

All requests to purchase equipment (including software) with an estimated acquisition cost of more than \$5,000, shall be submitted to the Grantor for prior approval. (This applies to equipment not included in the approved application.)

#### M. Expenses and Purchases Excluded

(1) Funds budgeted under this grant may not be used for marketing or entertainment expenses.

(2) Funds budgeted under this grant may not be used for capital assets, such as the purchase of vehicles, improvements and renovation of space, and repair and maintenance of privately owned vehicles.

#### N. Grantee Contributions

Contributions by the Grantee, whether cash or in-kind, are expected to be paid out at the same general rate as Federal funds.

#### O. Grantee Reporting

(1) Interim performance reports and one final performance report are required for this grant. The performance reports will contain information on the following:

(a) A comparison of actual accomplishments to the objectives established for the period.

(b) The reasons for slippage if established objectives were not met.

(c) Additional pertinent information when appropriate.

(d) An accounting of actual and projected quarterly expenditures by the budget line items approved in the grant. The amount of Federal cash on hand at the beginning and end of the reporting period must also be provided.

(e) The final performance report must contain a summary of activities for the entire grant period. All required deliverables should be submitted with the final performance report.

(2) The final SF 269A, "Financial Status Report," shall be submitted to the Grantor within 90 days after the end date of the grant. Any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor.

(3) Please refer to the attached "Schedule of Reports" for reporting periods and dates due.

#### P. Contractor Deliverables

(1) A disclaimer statement will appear on the title page of any study prepared under this grant. It will read:

"This study was prepared under contract with the City of San Antonio with financial support from the Office of Economic Adjustment, Department of Defense. The content reflects the views of the City of San Antonio and does not necessarily reflect the views of the Office of Economic Adjustment."

(2) The contractor identification will appear on the title page of the analysis funded by this grant.

(3) Any final study shall be submitted electronically. The document will be dated the month and year that it is submitted to the Grantor.

#### Q. Audits

(1) The Grantee is required by OMB Circular A-133 and the Single Audit Act, 31 U.S.C. 7502(h) to furnish a sufficient number of copies of audit reports to a Governmentwide clearing house established by OMB.

(2) The Grantee shall send the audit reports to:

Single Audit Clearinghouse  
1201 E. 10th Street  
Jeffersonville, IN 47132

(3) The Grantee shall advise the Grantor in writing when the audit report is furnished to the Clearinghouse.

(4) The Department of Defense reserves the right to conduct an independent follow-up audit.

THE TERMS OF THIS GRANT ARE AGREED TO BY:

Patrick O'Brien

2/2/2005 11:31:04 AM

Patrick J. O'Brien

DATE

Director

Office of Economic Adjustment

Ramiro Alfonso Cavazos

DATE

Director

Economic Development Department

Schedule of Reports  
For  
AP0516-05-01  
San Antonio (APG)  
February 1, 2005 through August 31, 2005

<u>Interim Performance Reports</u>	<u>Due Date</u>
02/01/2005 through 04/30/2005	05/31/2005
05/01/2005 through 08/31/2005	11/30/2005
 <u>Final Performance Report</u>	
02/01/2005 through 08/31/2005	11/30/2005
 <u>Final Financial Status Report (SF 269A)</u>	
02/01/2005 through 08/31/2005	11/30/2005
 <u>Deliverables</u>	11/30/2005

STATE OF TEXAS  
COUNTY OF BEXAR

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**PROFESSIONAL SERVICES  
AGREEMENT FORMILITARY  
MEDICAL CENTER STUDY**

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 Interim City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the 24<sup>th</sup> day of February, 2005 and The DiLuzio Group, a Texas limited-liability company, by and through its Principal (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties."

**WHEREAS**, the City has been awarded certain federal grant funds, identified as AP0516-05-01, for the purpose of conducting a study considering the economic dependency the City has on military medical centers located in the surrounding area and identifying a conceptual plan to respond to the potential closing or partial closing of these facilities; and

**WHEREAS**, Consultant submitted a proposal to perform such study in response to City's Request for Proposals and has been selected through a competitive bid process to be contracted by City to undertake said study; and

**WHEREAS**, Consultant has read the Grant Agreement, attached as Exhibit "A" and hereby made a part of this Agreement, between the City and the Office of Economic Adjustment, on behalf of the Department of Defense, including all compliance requirements contained therein, and agrees to comply with those requirements in addition to all other requirements contained in this Agreement; **NOW THEREFORE:**

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

## **I. DEFINITIONS**

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

"BAMC" shall mean the Brooke Army Medical Center.

"BRAC" shall mean the Base Realignment and Closure Commission of 2005.

"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 director of City's Economic Development Department.

“Grant Agreement” shall mean the agreement between the City and the Office of Economic Adjustment, on behalf of the Department of Defense.

“Grant Application” shall mean the application submitted by City to the Office of Economic Adjustment for federal funding of a study on San Antonio’s area military medical centers.

“Project Manager” shall mean the Executive Director of the San Antonio Military Missions (“SAMM”) Task Force.

“TRICARE” shall mean the military health care program provided to military members and their families enrolled in the Defense Enrollment Eligibility Reporting System.

“WHMC” shall mean the Wilford Hall Medical Center.

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement and/or the Grant Agreement, the term of this Agreement shall commence on March 1, 2005 and terminate on June 15, 2005.

2.2 Only costs incurred during the term of this Agreement are allowable and reimbursable.

## **III. SCOPE OF SERVICES**

3.1 Consultant agrees to provide the services described in this Article III, entitled “Scope of Services” in exchange for the compensation described in Article IV, entitled “Compensation.”

3.2 Consultant agrees to work in coordination with City’s designated Project Manager while performing under this Agreement. The Project Manager may request status, information, meeting times, or provide direction to Consultant.

3.3 Consultant agrees to conduct a study, as described in the City’s Grant Application for federal funding, attached as Exhibit “B” and hereby made a part of this Agreement, on the impact of the two area military medical centers (BAMC and WHMC) in San Antonio. The study shall include but not be limited to the following:

- (a) A documented assessment of the current impact and contributions of the military medical centers and other related military medical programs to the San Antonio economy. This shall be accomplished through the following activities:

- (i) surveying WHMC and BAMC assets, capabilities and medical support to the community.
- (ii) determining the economic impact to the community.
- (iii) assessing the existing capacity in the local civilian medical community to care for TRICARE eligible beneficiaries, particularly military retirees and their families, if a military medical center were to close or lose significant capacity to continue caring for non-active duty eligible TRICARE recipients.

(b) A documented assessment of the eligible military medical care population in the community. This shall be accomplished through the following activities:

- (i) defining the demographics and makeup of the eligible military medical care population, particularly the military retiree population.
- (ii) assessing the general economic impact of that population on the community.
- (iii) estimating the potential growth and/or reduction in this population, if a military medical center were to close or lose significant capacity to continue caring for non-active duty eligible TRICARE recipients.

(c) A documented development of various scenarios that may occur under BRAC in 2005 and an estimate of the economic impact of each. This shall be accomplished through the following activities:

- (i) using reasonable assumptions to identify the various potential options that may be considered by the BRAC
- (ii) developing scenarios involving the potential closure or significant reduction at a military medical center.
- (iii) analyzing the potential costs to the community from various closure and/or reduction scenarios.

(d) The development of a documented conceptual plan that would provide the community potential options for adjusting to the possible closure and/or significant loss of medical care capacity at a local military medical care facility or facilities. This shall be accomplished through the following activities:



- (i) identifying and analyzing alternative uses of facilities and equipment that may become available to the community following BRAC 2005, to include the pros and cons of various alternative uses.
- (ii) developing potential options for providing trauma care in the community, if one of the two military medical centers is closed.
- (iii) providing recommendations and alternatives for minimizing the economic impact on the community.

3.4 Presentations. Consultant agrees to support City in its efforts to provide status on the progress of this Agreement by making presentations as requested by City including but not limited to presentations to a Study Steering Committee, City Staff, City Council and the San Antonio Military Missions Task Force.

3.5 Deliverables. In addition to the reporting requirements and other requirements contained in this Agreement, Consultant will provide two final reports to City:

(a) A bound written report encompassing Sections 3.3(a), and 3.3(b), of this Agreement, containing an extensive economic impact analysis of the two area military medical centers (BAMC and WHMC) in San Antonio; and

(b) A bound written report encompassing Section 3.3(c) and 3.3(d) of this Agreement, containing a detailed conceptual plan that provides the community potential options for adjusting to the possible closure and/or significant loss of medical care capacity at the two area military medical centers (BAMC and WHMC) in San Antonio.

3.6 Interim Performance Reporting. Interim written performance reports and one final written performance report are required for this Agreement. The performance reports will contain information on the following:

- (a) A comparison of actual accomplishments to the objectives established for the period.
- (b) The reasons for slippage if established objectives were not met.
- (c) Additional pertinent information when appropriate.
- (d) An accounting of actual and projected quarterly expenditures by the budget line items approved in the grant. The amount of Federal cash on

hand at the beginning and end of the reporting period must also be provided.

3.7 Final Performance Report. The final performance report must contain a summary of activities for the entire grant period. All required deliverables should be submitted with the final performance report.

3.8 Schedule of Reports. Reports required under this Agreement are due as follows:

<u>Date</u>	<u>Report Due</u>
March 15, 2005	None
April 15, 2005	First Interim Performance Report,
May 15, 2005	Second Interim Performance Report, Final Draft of Deliverable 1, and Final Draft of Deliverable 2
June 15, 2005	Final Performance Report and Final copies of Deliverables 1 and 2

3.9 Form of Reports.

(a) A disclaimer statement will appear on the title page of the study prepared under this Agreement and shall read:

*"This study was prepared under contract with the City of San Antonio with financial support from the Office of Economic Adjustment, Department of Defense. The content reflects the views of the City of San Antonio and does not necessarily reflect the views of the Office of Economic Adjustment."*

(b) The contractor identification will appear on the title page of the study.

(c) The final study shall be submitted in a bound report and electronically. The document will be dated the month and year that it is submitted.

3.10 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VIII, entitled "Termination," in

whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed one hundred and twenty-five thousand dollars (\$125,000.00) as total compensation, to be paid to Consultant as follows:

<u>Date</u>	<u>Amount</u>
March 15, 2005	\$37,500.00
April 15, 2005	\$37,500.00
May 15, 2005	\$37,500.00
Final Payment*	\$12,500.00

\* The date of Final Payment shall be determined by the date of the completion of the required Scope of Services as described in Article III, entitled "Scope of Services" and acceptance of the study by the Office of Economic Adjustment.

4.1.1 When payments are cash advances, the amount requested will be limited to that actually required.

4.1.2 All payments are contingent upon the Director's acceptance of Consultant's deliverables.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.3 Consultant shall remit invoices in accordance with the payment schedule in Section 4.1 of this Agreement and provide performance reports required in Section 3.3. Further, Consultant shall coordinate with City in its efforts to have invoices paid efficiently and in accordance with federal guidelines for reimbursement.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the 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. AUDIT**

7.1 Consultant is required to establish a separate bank account for funds paid under this Agreement and must maintain accounting records to adequately identify the source and application of these funds.

7.2 Consultant shall provide to Director all reports requested by City including, but not limited to, reviewed financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Consultant shall provide financial reports in a time frame as determined by City. Contractor shall also provide any other reports or documents to CITY within five (5) working days after Consultant receives City's written requests, unless the parties agree in writing on a longer period.

7.3 Consultant agrees to abide by all federal auditing requirements associated with the Grant Agreement.

## **VIII. TERMINATION**

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

8.2 City may terminate this Agreement in whole, or in part, at any time before the date of completion, for the convenience of the City, Federal Government, or whenever it is determined that Consultant has failed to comply with the conditions of the grant.

8.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article IX, entitled "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:

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

8.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 8.4 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 IX, entitled "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.

- 8.4.1 Failure to comply with the terms and conditions stated in Article XIV, entitled "SBEDA."
- 8.4.2 Bankruptcy or selling substantially all of company's assets
- 8.4.3 Failing to perform or failing to comply with any covenant herein required
- 8.4.4 Performing unsatisfactorily

8.5 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.

8.6 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, entitled "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.

8.7 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.

8.8 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.

8.9 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.

## IX. 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 of San Antonio  
Attn: Ed Davis  
Economic Development Department  
P.O. Box 839966  
San Antonio, TX 78283-3966

If intended for Consultant, to:

The DiLuzio Group, L.L.C.  
Attn: Rudolph G. DiLuzio  
314 E. Commerce, Suite 200  
San Antonio, TX 78205

## 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 of San Antonio Economic Development Department, P.O. Box 839966, San Antonio, TX, 78283-3966, Attention: Mr. Ed Davis, which shall be clearly labeled (*Military Medical Center Study*) 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 said Agreement until such Certificate shall have been delivered to the City of San Antonio Economic Development Department, P.O. Box 839966, San Antonio, TX, 78283-3966, Attention: Mr. Ed Davis, 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 contained in this Agreement during the effective period of the Agreement 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 the

Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 Consultant's financial integrity is of interest to the City, and, 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, at Consultant's sole expense, the following minimum 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:

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.
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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 an address provided by City herein within 10 days of the requested change. Consultant shall pay any costs incurred resulting from such 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 officials, 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 policy 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  
Risk Management  
Military Medical Center Study  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
Economic Development Department  
Military Medical Center Study  
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 this 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 under the Agreement, and/or withhold any payment(s) which become due to Consultant there under 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. It is agreed that Consultant's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City 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 or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: TerraHealth, Inc. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 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.

12.5 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 VIII, entitled "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 C. 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

## **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:

EXHIBIT A GRANT AGREEMENT

EXHIBIT B GRANT APPLICATION

EXHIBIT C CONSULTANT'S PROPOSAL

## **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, entitled "Amendments."

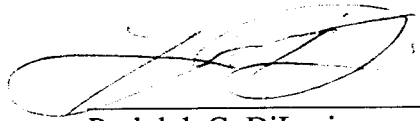
*Signatures appear on next page.*

**EXECUTED** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

**CONSULTANT:**  
**THE DILUZIO GROUP, L.L.C.**

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

  
\_\_\_\_\_  
Rudolph G. DiLuzio  
Principal

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

**ATTACHMENT 2**  
**City of San Antonio**  
**Discretionary Contracts Disclosure\***

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.*

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

**Disclosure of Parties, Owners, and Closely Related Persons**

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

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

Rudolph G. DiLuzio

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

The DiLuzio Group, LLC

**and the name of:**

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

TerraHealth, Inc.

**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;

<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.

- (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.

None

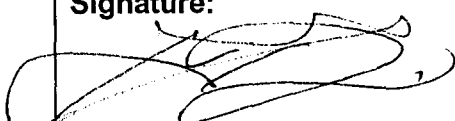
### Political Contributions

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:
Joel Williams	\$200.00	11/5/2003
Enrique Barrera	\$200.00	11/21/2003
Richard Perez	\$500.00	07/26/2004

### 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<sup>2</sup> 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.

<b>Signature:</b> 	<b>Title:</b> Principal  <b>Company:</b> The DiLuzio Group, LLC	<b>Date:</b> 1/31/05

<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 2  
City of San Antonio  
**Discretionary Contracts Disclosure\***

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.*

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

**Disclosure of Parties, Owners, and Closely Related Persons**

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

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

Ted Terrazas

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

Terra Health, Inc.

and the name of:

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

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;

<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.

(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.

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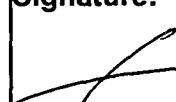
### Political Contributions

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:

### 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<sup>2</sup> 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.

Ted Terrazas		
Signature: 	Title: Chairman Company: Terra Health Inc.	Date: 28 Jan 05

<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.