

AN ORDINANCE 2014 - 06 - 12 - 0439

AUTHORIZING A RENEWAL AND AMENDMENT OF A PROFESSIONAL SERVICES CONTRACT WITH WELLMED MEDICAL MANAGEMENT, INC. THROUGH SEPTEMBER 30, 2016, TO PROVIDE HEALTH SCREENINGS AND WELLNESS SERVICES AT NO COST TO SENIORS AT COMPREHENSIVE SENIOR CENTERS IN CITY COUNCIL DISTRICTS 1, 4, 5, 8, AND 10 AND ADDITIONAL SENIOR CENTERS THROUGHOUT THE CITY, AND TO ACCEPT AN ANNUAL PAYMENT FROM WELLMED OF \$100,000.00.

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WHEREAS, on April 30, 2009, City Council approved a professional services contract with WellMed Medical Management, Inc. (WellMed) to provide health screening and wellness services, at no cost to seniors, at Comprehensive Senior Centers and Senior Nutrition Centers throughout the City; and

WHEREAS, services provided through this agreement include: health risk assessments and screenings, health education/prevention classes, immunizations, and vision and hearing screenings; and

WHEREAS, WellMed currently provides these health services at Comprehensive Senior Centers in City Council districts 1, 4, 5, and 10 and additional Senior Centers throughout the City; and

WHEREAS, WellMed agrees to provide these services to additional Senior Centers, including the Bob Ross Comprehensive Senior Center in City Council District 8, and to enter into a new contract through September 30, 2016; and

WHEREAS, the annual payment from WellMed of \$100,000.00 is allocated to the DHS Senior Services general fund and is used for senior activities; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Department of Human Services (DHS) or her designee, is authorized to renew and amend a professional services contract with WellMed Medical Management, Inc. (WellMed) through September 30, 2016, to provide health screenings and wellness services at no cost to seniors at Comprehensive Senior Centers in City Council Districts 1, 4, 5, 8, and 10 and additional senior centers throughout the City, and to accept an annual payment from WellMed of \$100,000.00. A copy of the amendment in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 238000000081 and General Ledger 4502210.

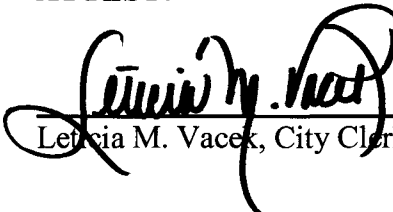
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

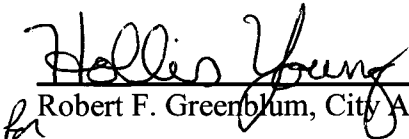
PASSED AND APPROVED this 12th day of June, 2014.


M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Robert F. Greenblum, City Attorney

Agenda Item:	36 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41)						
Date:	06/12/2014						
Time:	09:30:08 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an amendment to renew a professional services contract with WellMed Medical Management, Inc. through September 30, 2016, to provide health screenings and wellness services at no cost to seniors at Comprehensive Senior Centers in City Council Districts 1, 4, 5, 8, and 10 and additional senior centers throughout the City, with an annual payment from WellMed of \$100,000.00. [Gloria Hurtado, Assistant City Manager; Melody Woosley, Director, Human Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8	x					
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

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

STATE OF TEXAS

§

§

COUNTY OF BEXAR

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This renewal contract ("CONTRACT") is made and entered into by and between the **CITY OF SAN ANTONIO** ("CITY"), a Texas municipal corporation, acting by and through its Director of the Department of Human Services ("DIRECTOR") and **WELLMED MEDICAL MANAGEMENT, INC.** (hereinafter referred to as "CONSULTANT") (the CITY AND CONSULTANT are collectively referred to herein as the "Parties") as authorized by City Council on _____, pursuant to Ordinance No. _____.

WHEREAS, CONSULTANT presently manages and provides health services at various CITY senior centers (hereinafter referred to as the "Project") under a contract executed on October 9, 2009 pursuant to Ordinance No. 2009-04-30-0334, passed and approved on April 30, 2009; and

WHEREAS, the original contract provides for two (2)) additional one (1) year renewal terms and the parties agree to renew and extend the original contract until September 30, 2016; and

ACCORDINGLY, in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishments of the tasks hereinafter described.

I. TERM

- 1.1 This CONTRACT is effective immediately upon execution and shall terminate on September 30, 2016 unless earlier terminated or extended pursuant to any provision hereof, with the activities and services listed in Attachment "A" to commence on May 16, 2014.
- 1.2 If funding for the entire CONTRACT is not appropriated at the time this CONTRACT is entered into, CITY retains the right to terminate this CONTRACT at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation; provided, however, that CITY shall give CONSULTANT prior notice of termination pursuant to Article IV of this CONTRACT.

II. SCOPE OF SERVICES AND STANDARD OF CARE

- 2.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the Statement of Work, attached hereto as Attachment "A", the Performance Measures attached hereto as Attachment "B," the CITY's Request for Proposal, attached hereto as Attachment "C," CONSULTANT's Proposal, attached hereto as Attachment "D" and CONSULTANT's SBEDA Plan, attached hereto as Attachment "E." CONSULTANT understands and agrees to provide said activities and services at the Senior Centers listed on the List of Senior Centers attached hereto as Attachment "C-1," which shall supersede any conflicting or inconsistent lists of senior centers in the above referenced attachments. The CONSULTANT understands and agrees that the Attachments are a part of the CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the CONSULTANT as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this CONTRACT.

- 2.2 Goals, objectives and performance standards for the Project will be established by the CITY's Department of Human Services, and CONSULTANT agrees to comply with said goals, objectives and performance standards to the satisfaction of the DIRECTOR. The determination as to satisfactory performance made by the DIRECTOR shall be final, binding and conclusive on all Parties hereto.
- 2.3 CITY shall have the right to terminate this CONTRACT, in accordance with Article IV, Termination, in whole or in part, should CONSULTANT's work not be satisfactory to DIRECTOR; however, CITY shall have no obligation to terminate.
- 2.4 CONSULTANT shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

III. CONSIDERATION

- 3.1 Provided that CONSULTANT is not in default under this CONTRACT or is in the process of curing any default under Section 4.4 of this CONTRACT, CITY agrees that in order to facilitate CONSULTANT's management and orderly provision of health and health-related screening services (as described in the Statement of Work attached hereto as Attachment A hereto) during the term of this CONTRACT, CITY will not authorize any other person or entity to perform the same or substantially similar services or engage in the same or similar activities contemplated by this CONTRACT, with the exception of the Bob Ross Senior Center, at the senior centers listed in the List of Senior Centers, attached hereto as Attachment "C-1," or at any other senior center that may be added to the List of Senior Centers by the CITY from time to time during the term of this CONTRACT. CONSULTANT shall refer seniors for further diagnostic or treatment services, as appropriate, to the applicable senior's primary care physician, or if the senior does not have a primary care physician, to CONSULTANT's medical group of practicing physicians, or to another physician or specialist, as appropriate.
- 3.2 CONSULTANT is prohibited from requiring enrollment of a senior as a patient member of its medical group of practicing physicians as a prerequisite to providing the services required by this CONTRACT. All seniors frequenting the specified senior centers shall have a right to the services required by this CONTRACT, and CONSULTANT is prohibited from altering, reducing, or diminishing the quality of services based upon a senior's enrollment or lack thereof as a patient in CONSULTANT's medical groups.
- 3.3 CONSULTANT'S performance of services under this CONTRACT shall be offered at no cost to the CITY or the seniors using the centers, and CITY shall have no responsibility for payment to CONSULTANT for those services. CONSULTANT shall furnish all specialty equipment and computers necessary to perform the health-related services and maintain said equipment and computers at its sole cost and expense. However, CITY shall provide to CONSULTANT the space, basic office furniture, phones, utilities and janitorial support necessary for CONSULTANT's performance of services.
- 3.4 CONSULTANT and/or the WELLMED CHARITABLE FOUNDATION shall make a monthly payment of \$8,333.33 due no later than the 10th calendar day of each month, for an annual payment of \$100,000.00, which funds shall be used to enhance supportive services to seniors at senior centers throughout the City. Payments shall commence within 30 days of execution of this CONTRACT and shall continue thereafter in accordance with this Section 3.4 until termination of this CONTRACT pursuant to Article IV hereof. Payment shall be made to the CITY at the following address and to the attention of:

City of San Antonio
Finance Department
PO Box 839975
San Antonio, TX 78283

CONSULTANT shall include a "SAP" customer account number with its monthly payment, which number may be obtained from SAP Vendor Maintenance by calling 210-207-0118 or by e-mailing vendors@sanantonio.gov.

- 3.5 CONSULTANT is prohibited from charging fees or soliciting payment from any seniors using the centers and is prohibited from inviting or contracting with vendors who shall charge fees or solicit payment from seniors for the services provided by CONSULTANT pursuant to this CONTRACT.
- 3.6 CITY shall not be obligated or liable under the CONTRACT to any party, including any subcontractors, for payment of any monies for provision of any goods or services.

IV. TERMINATION

- 4.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 4.2 **RENEWAL TERM:** This CONTRACT shall commence immediately upon execution, with activities and services listed in Attachment "A" to commence May 16, 2014, and shall continue until September 30, 2016 unless either Party gives written notice of termination not less than sixty (60) days in advance of the last day of the term in accordance with this Article IV. This CONTRACT is subject to (a) the approval by the City Council of San Antonio of such CONTRACT renewal, as evidenced by an ordinance duly passed and approved; (b) the availability to CONSULTANT of funding to match, pro rata on an annual basis, the funding commitments made by CONSULTANT during the initial term; and (c) CONSULTANT satisfactorily meeting the performance requirements of this CONTRACT, as solely determined by CITY. The question of satisfactory completion of said work shall be determined by the CITY alone and its decision shall be final.
- 4.3 **TERMINATION BY NOTICE:** The CONTRACT may be canceled by either Party upon written notice only in the event that the role, function and/or activities conducted at the five (5) Comprehensive Senior Centers in Districts 1, 4, 5, 8 and 10, and the senior centers on Attachment C-1 (or at any additional senior centers added by the CITY from time to time during the term of this CONTRACT), are materially changed from the present, the facilities become inoperable due to fire, flood or other calamity, the City Council fails to appropriate sufficient funds to continue operation at the senior centers, or budgetary constraints cause the City to terminate programs or close the senior centers; provided, however, the City shall not issue any such notice if the City desires or intends to operate a comparable operation to the four (4) Comprehensive Senior Centers in Districts 1, 4, 5 and 10 (excluding the Bob Ross Senior Center) or any additional senior centers listed on Attachment C-1 (or any others that have been added to Attachment C-1 by the CITY from time to time during the term of this CONTRACT) and such comparable operation(s) is exclusively operated by CONSULTANT. Such notice shall specify an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party. Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the limitations imposed thereunder regarding transfer of information, and except as otherwise provided in this CONTRACT, all files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.
- 4.4 **TERMINATION FOR CAUSE:** Should CONSULTANT default in the performance of any of the terms or conditions of this CONTRACT, the CITY shall deliver to the CONSULTANT written notice thereof specifying the matters in default. The CONSULTANT shall have thirty (30) calendar days after its receipt of the written notice to cure such default. If the CONSULTANT fails to cure the default within such thirty (30) day period, the CITY shall have the right, without further notice, to terminate this CONTRACT in whole or in part as CITY deems appropriate, and to contract with another consultant to complete the work required under this CONTRACT.

- 4.5 **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 CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 4.6 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records, to include completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONSULTANT, or funds shall be completed at the CONSULTANT'S sole cost and expense. Upon termination, (i) CITY shall allow removal of all items, including specialty equipment, computers, marketing material, and other equipment contributed by CONSULTANT under this Project and (ii) CONSULTANT shall only be obligated to make payments under Section 3.4, on a pro rata basis, through the effective date of termination and shall have no further payment obligations thereafter.
- 4.7 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY its claim, in detail, for the monies owed by the CITY, if any, for services performed under this CONTRACT through the effective date of termination. Failure by CONSULTANT to submit its claims within said thirty (30) calendar days shall negate any liability on the part of the CITY and constitute a waiver by CONSULTANT of all right or claims to collect money that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this CONTRACT.
- 4.8 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records related to this CONTRACT in accordance with Article X hereof. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.9 Termination not sole remedy. In no event shall CITY's action of terminating this CONTRACT, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.

V. INDEPENDENT CONTRACTOR

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

- 5.4 No Third Party Beneficiaries: For purposes of this CONTRACT, including its intended operation and effect, the Parties specifically agree and contract that (1) this CONTRACT only affects matters/disputes between the Parties to this CONTRACT and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this CONTRACT; and (2) the terms of this CONTRACT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

VI. CONFIDENTIALITY

- 6.1 CONSULTANT will maintain the confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to an individual's "Patient Health Information" in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of HIPAA, as may be amended from time to time.
- 6.2 CONSULTANT shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 6.3 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.4 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to and shall comply with the confidentiality procedures pertaining to records and other information, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 Subject to obligations to maintain confidentiality under HIPAA, and the limitations imposed thereunder regarding transfer of information, all writings, documents or information in whatsoever form and character produced by CONSULTANT pursuant to the provisions of this CONTRACT is the exclusive property of CITY; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CONSULTANT. CONSULTANT understands and acknowledges that as the exclusive owner of all such writings, documents and information, CITY has the right to use all such writings, documents and information as CITY desires, without restriction. Notwithstanding anything contained in this CONTRACT to the contrary, CITY will not own, access, maintain, or have access to the medical records or any Protected Health Information of the seniors who access the services at the senior centers, and such medical records and Protected Health Information shall be the sole and exclusive property of CONSULTANT.
- 7.2 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

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

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

VIII. INTELLECTUAL PROPERTY

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

IX. RECORDS

- 9.1 CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, records and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the CITY during the CONTRACT period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives in accordance with Article X hereof.
- 9.2 CONSULTANT shall retain all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the CONTRACT. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. CONSULTANT acknowledges and agrees that CITY shall have access to all such documents at 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 period.
- 9.3 CITY shall be notified immediately by CONSULTANT of any requests by a third party for information pertaining to documentation and records obtained and/or generated pursuant to this CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such requests.
- 9.4 The Public Information Act, Government Code Section 552.021, requires the CITY to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if CONSULTANT receives inquiries regarding documents within its possession pursuant to this CONTRACT, CONSULTANT shall within twenty-four (24) hours of receiving the requests forward such requests to CITY for disposition. If the requested information is confidential pursuant to state or federal law, including, without limitation, HIPAA, the CONSULTANT shall submit to CITY the list of specific statutory authority mandating confidentiality no later than five (5) business days after CONSULTANT's receipt of such request.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall

make such materials available to CITY during the CONTRACT term, including any renewal and extension hereof, at CONSULTANT's place of business, for the purpose of auditing, examining and making copies by CITY or any of its authorized representatives.

- 10.2 The CITY reserves the right to conduct, or cause to be conducted an audit or review of all information, documents and/or systems related to this CONTRACT at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. In the event that the CITY performs an audit, the audit shall be: (a) performed during CONSULTANT'S regular business hours in accordance with CONSULTANT'S security procedures; (b) performed without undue interruption of CONSULTANT'S business activities; (c) restricted to information and/or systems related to this CONTRACT; (d) the auditor shall not access any information that does not relate to this CONTRACT; and (e) all systems and/or information accessed or learned during the audit shall be deemed to be Confidential Information of CONSULTANT.

XI. LICENSES AND CERTIFICATIONS

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

XII. CONFLICT OF INTEREST

- 12.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any CONTRACT with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a CONTRACT with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the CONTRACT or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. INSURANCE

- 13.1 Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Department of Human Services, which shall be clearly labeled "***Establish and Operate Health Related Services at Senior Multi-Service Centers***" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the City's Department of Human Services. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- 13.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT and any extension or renewal hereof and to make reasonable modifications to insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT; provided, however, that such requested modifications shall be subject to CONSULTANT's ability to request such modifications from its carrier or similarly situated carriers on reasonable terms at a cost not materially in excess of the cost to CONSULTANT in effect at the time of the request. In no instance will CITY allow modification whereupon CITY may incur increased risk.
- 13.3 A consultant's financial integrity is of interest to the CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Professional Liability (Claims Made Form)	\$200,000 per claim/\$600,000 to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

- 13.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any such policies) and subject to the limitations in Section 13.2 hereof. CONSULTANT shall use commercially reasonable efforts in accordance with Section 13.2 to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. Subject to Section 13.2, CONSULTANT shall pay any costs incurred resulting from said changes.

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

- 13.5 CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the

named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 13.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT's performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this CONTRACT.
- 13.7 In addition to any other remedies the CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- 13.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this CONTRACT.
- 13.9 It is agreed that CONSULTANT's insurance shall be deemed primary with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this CONTRACT.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT.
- 13.11 CONSULTANT and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNITY

- 14.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually 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 CONTRACT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY**

AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 14.2 The provisions of this INDEMNIFICATION 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.
- 14.3 CONSULTANT shall promptly advise the CITY in writing of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT.

XV. AMENDMENT

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

XVI. NOTICE

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

CITY

City of San Antonio
Attn: Director
Department of Human Services
106 S. St. Mary's Street, 7th Floor
San Antonio, Texas 78205

CONSULTANT

WellMed Medical Management, Inc.
Attn: Chief Operating Officer
8637 Fredericksburg Rd., Suite 500
San Antonio, Texas 78240

XVII. LEGAL AUTHORITY

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

XVIII. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

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

- (A) SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- (B) Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- (C) Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.
- (D) SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with contractor’s bid for this project CONTRACT, are attached hereto and incorporated herein as “Attachment E”.

18.2 For this CONTRACT, the Parties agree that:

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

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

- (A) Failure of CONSULTANT to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this CONTRACT, or failing to allow such SE to perform a Commercially Useful Function; or
 - (B) Modification or elimination by CONSULTANT of all or a portion of the scope of work attributable to an SE upon which the CONTRACT was awarded; or
 - (C) Termination by CONSULTANT of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the CONTRACT without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
 - (D) Participation by CONSULTANT in a Conduit relationship with an SE scheduled to perform work that is the subject of this CONTRACT.
- 18.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this CONTRACT for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONSULTANT materially breaches the requirements of the SBEDA Program:
- (A) Terminate this CONTRACT for default;
 - (B) Suspend this CONTRACT for default;
 - (C) Withhold all payments due to the CONSULTANT under this CONTRACT until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
 - (D) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the CONTRACT, or from any other amounts due to the CONSULTANT under the CONTRACT.
 - (E) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.
- 18.5 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this CONTRACT.
- 18.6 **The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.**
- 18.7 CITY Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a CONSULTANT violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the CITY Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the CONTRACT. If the

recommended remedy is to terminate the CONTRACT, then the Managing Department Director or CITY Manager, or her designee, shall bring forward the recommendation to CITY Council for final determination.

- 18.8 Special Provisions for Extension of Contracts. In the event the CITY extends this CONTRACT without a competitive Bid or Proposal process, the CITY Managing Department responsible for monitoring the CONTRACT shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (A) a SBEDA Utilization Goal for the extended period; and
- (B) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and
- (C) the required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the CONTRACT extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 - (i) subject CONSULTANT to any of the remedies listed above; and/or
 - (ii) result in a new bid or proposal request of the CONTRACT that was considered for extension.

XIX. PERSONNEL; SUBCONTRACTING AND ASSIGNING INTEREST

- 19.1 CONSULTANT, its employees or its approved subcontractors shall perform and be qualified to perform all necessary work under this CONTRACT. Should assigned personnel become unavailable so as to unfavorably impact administration or performance of this CONTRACT, a competent replacement will be assigned promptly.
- 19.2 It is CITY's understanding and this CONTRACT is made in reliance thereon, that CONSULTANT intends to use the following subcontractors in the performance of this CONTRACT: Quilez & Associates Texas, LLC and WellMed Medical Group, P.A. 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 ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor. Notwithstanding the foregoing, changes may be made to CONSULTANT's SBEDA Plan with the written approval of Director and City's SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.
- 19.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this CONTRACT. Compliance by subcontractors with this CONTRACT shall be the responsibility of CONSULTANT. 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 CONTRACT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 19.4 Except as otherwise stated herein, CONSULTANT may not sell, assign, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, CONSULTANT shall remain liable

for completion of the services outlined in this CONTRACT in the event of default by the successor consultant, assignee, transferee or subcontractor.

- 19.5 Any attempt to transfer, pledge or otherwise assign this CONTRACT without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this CONTRACT, CITY may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.
- 19.6 If approved, CONSULTANT'S subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with CONSULTANT arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. CONSULTANT shall indicate this limitation in all contracts with approved subcontractors.
- 19.7 CONSULTANT agrees to notify CITY of any changes in control of CONSULTANT greater than 30% 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 in control of CONSULTANT may be grounds for termination of this CONTRACT at the sole discretion of the CITY.

XX. SUCCESSORS AND ASSIGNS

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

XXI. NON WAIVER

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

XXII. COMPLIANCE

- 22.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations, including, but not limited to, HIPAA. Both parties will adhere to all federal and state medical and privacy laws, and protect the confidentiality of any Protected Health Information. In the event of a breach, the parties agree to immediately, and in no later than 2 business days of discovery, notify the other party and coordinate with the other party to identify, record, investigate, and report any PHI breach. In the event of a breach, WellMed will comply with all breach notification requirements within 60 days.
- 22.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and

for completion of the services outlined in this CONTRACT in the event of default by the successor consultant, assignee, transferee or subcontractor.

- 19.5 Any attempt to transfer, pledge or otherwise assign this CONTRACT without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this CONTRACT, CITY may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.
- 19.6 If approved, CONSULTANT'S subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with CONSULTANT arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. CONSULTANT shall indicate this limitation in all contracts with approved subcontractors.
- 19.7 CONSULTANT agrees to notify CITY of any changes in control of CONSULTANT greater than 30% 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 in control of CONSULTANT may be grounds for termination of this CONTRACT at the sole discretion of the CITY.

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

XXI. NON WAIVER

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

XXII. COMPLIANCE

- 22.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations, including, but not limited to, HIPAA. Both parties will adhere to all federal and state medical and privacy laws, and protect the confidentiality of any Protected Health Information. In the event of a breach, the parties agree to immediately, and in no later than 48 hours of discovery, notify the other party and coordinate with the other party to identify, record, investigate, and report any PHI breach. In the event of a breach, WellMed will comply with all breach notification requirements within 60 days.
- 22.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and

regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.

- 22.3 CONSULTANT understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Also, CONSULTANT certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing the foregoing laws.
- 22.4 The funding level of this CONTRACT, if any, is based on the receipt of funds from the General Fund, a budget allocation to the Department of Human Services, and the appropriation for the project related to health services at senior centers. The budget for this CONTRACT may be adjusted to correspond to the actual award, if this Contract is grant funded. In the event that any disagreement or dispute should arise between the Parties pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

XXIII. ATTACHMENTS

- 23.1 CONSULTANT understands and agrees that all attachments referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said attachments are as follows:

Statement of Work	Attachment A
Performance Measures	Attachment B
CITY's Request for Proposal	Attachment C
List of Senior Centers	Attachment C-1
CONSULTANT'S Proposal	Attachment D
SBEDA Plan	Attachment E

- 23.2 CONSULTANT understands and agrees that all Attachments are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by CONSULTANT as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.
- 23.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of CITY'S Request for Proposal, CONSULTANT'S Proposal and the terms of this CONTRACT; CITY'S Request for Proposal shall control where it conflicts with CONSULTANT'S Proposal. However, where CONSULTANT's Proposal offers more or better services, greater resources, or a greater financial commitment than that which is requested in the CITY'S Request for Proposal, CONSULTANT's Proposal shall control with regard to that aspect of the Proposal only.

XXIV. VENUE AND GOVERNING LAW

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

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

XXV. SEVERABILITY

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

XXVI. GENDER

- 26.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVII. CAPTIONS

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

XXVIII. PROHIBITED CONTRIBUTIONS

- 28.1 CONSULTANT acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. CONSULTANT understands that if the legal signatory entering the Contract has made such a contribution, the CITY may not award the Contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 28.2 CONSULTANT acknowledges that the CITY has identified this CONTRACT as high risk.
- 28.3 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that the individual signing this CONTRACT has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this CONTRACT. Should the signor of this CONTRACT violate this provision, the City Council may, in its discretion, declare this CONTRACT void.

XXIX. ENTIRE AGREEMENT

- 29.1 This CONTRACT, together with its authorizing ordinance and exhibits, if any, embodies the final and entire agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the matters of this CONTRACT shall be deemed to exist or to bind the Parties unless same be executed in accordance with Section XV.

XXX. LIMITATION OF LIABILITY

30.1 NEITHER CONSULTANT NOR THE CITY SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES. THE FOREGOING IS NOT INTENDED TO LIMIT THE LIABILITY OF ANY PARTY FOR ANY INDEMNIFICATION REQUIRED BY THIS CONTRACT.

EXECUTED this the _____ day of _____, 2009.

CITY

City of San Antonio, Texas

Melody Woosley, Director
Department of Human Services

CONSULTANT

WellMed Medical Management, Inc.

Bill Connolly
Chief Operating Officer

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS

Statement of Work
Performance Measures
CITY's Request for Proposal
List of Senior Centers
CONSULTANT'S Proposal
SBEDA Plan

Attachment A
Attachment B
Attachment C
Attachment C-1
Attachment D
Attachment E

Attachment A Statement of Work

A. CONSULTANT shall manage and provide health and health-related screening services (as described below) to seniors at five (5) one-stop Comprehensive Senior Centers and the additional Senior Nutrition Centers as listed in Attachment C-1, the List of Senior Nutrition Centers, in accordance with the following provisions:

1. Service goal: CONSULTANT shall provide high quality, proactive health and health-related screening services, using industry best practices, in a manner that furthers the mission that every senior in the community have a medical home, and that every senior have the opportunity to take advantage of timely preventive health services, to address acute episodes before they become even greater problems, and to develop relationships that will facilitate continuity of care.
2. Comprehensive Senior Centers (5):
 - District 1 Westend Park Senior Center, located at 1226 NW 18th Street, San Antonio, Texas 78207;
 - District 4 Willie Cortez Senior Center, located at 5512 S.W. Military, San Antonio, Texas 78242;
 - District 5 Senior Center, located at 2701 South Presa, San Antonio, Texas 78210;
 - District 8 Bob Ross Senior Center, located at 2219 Babcock Road, San Antonio, Texas 78229;
 - District 10 Northeast Senior Center, located at 4355 Center Gate, San Antonio, Texas 78217
3. Additional Senior Nutrition Centers: CONSULTANT shall provide the services described herein to eligible seniors at the additional senior center sites listed in Attachment C-1, the List of Senior Nutrition Centers, and at any additional senior nutrition centers that may be added to Attachment C-1 by the CITY from time to time during the term of this CONTRACT.
4. Hours of Operation: CONSULTANT shall perform and provide the services described herein to eligible seniors at Senior Nutrition Centers based on a tiered schedule as specified in Attachment C-1, List of Senior Nutrition Centers. Additionally, CONSULTANT may be asked by CITY to perform services on occasional weekends or evenings during peak seasonal times, such as when immunizations are necessary.
5. Eligibility: Eligible seniors are seniors age sixty (60) and older.
6. Scheduling: CONSULTANT shall schedule health assessments and screenings at the five (5) Comprehensive Senior Centers by appointment to ensure that the clinic has the appropriate staff and supplies needed for that day. This also ensures that the clients do not have excessive wait times due to unscheduled appointments. CONSULTANT shall use its best efforts to accommodate the occasional influx of walk-ins who may require services, to the extent CONSULTANT's schedule permits and staff is available.
7. Referrals: CONSULTANT shall refer, as appropriate, seniors to physicians or clinics for further evaluation, treatment and follow-up of health conditions that were identified in the diagnostic appointment so that the seniors receive necessary or advisable medical treatment.
8. Minimum Staffing: CONSULTANT shall ensure that appropriate staff be present to provide all appropriate health-related services at each of the Senior Nutrition Centers and for the times described in Attachment C-1, the List of Senior Centers. CONSULTANT may provide basic dental services, contingent upon the availability of funding and services through CONSULTANT'S approved dental partners.

9. Health and health-related services: CONSULTANT shall perform the following for seniors at the Comprehensive Senior Centers:

- a. Health risk assessments and age-appropriate screenings for the following conditions as recommended by the US preventive Services Task Force Guidelines:
 - Diabetes mellitus
 - High blood pressure checks
 - Lipid disorders, including screening of total cholesterol.
 - Obesity, including the use of Body mass Index (BMI) to include intensive counseling and behavioral interventions to promote sustained weight loss for obese adults.
- b. Vision screenings
- c. Hearing assessments
- d. Annual influenza immunization, and all necessary vaccine supply, medical equipment, and personnel for administration
- e. Health education/prevention classes, to address such conditions with special emphasis on evidence-based disease prevention and health promotion programs including but not limited to the following:
 - Diabetes and the Stanford Diabetes Self Management Training Program (DSMP)
 - Hypertension
 - Heart disease
 - Nutrition
 - Exercise
 - A Matter of Balance, Fall prevention
 - Chronic disease management and the Stanford Chronic Disease Self-Management Program (CDSMP)

10. Biomedical hazard removal: In the event that CONSULTANT generates biomedical hazardous materials in the course of performing services under this CONTRACT, then CONSULTANT shall dispose of such materials in accordance with applicable law and industry best practices.

B. Call center: CONSULTANT shall provide seniors access to a dedicated call center for free qualification and renewals to the Medicare Savings Programs.

C. Reporting: CONSULTANT shall submit to the Department of Human Services such reports as may be required by the CITY, including a Contract Monitoring Report in the form provided to CONSULTANT by CITY. The Contract Monitoring Report is to be submitted by the CONSULTANT no later than the 10th calendar day of each month. CONSULTANT ensures that all information contained in all required reports submitted to CITY is accurate.

D. Marketing Program: CONSULTANT, utilizing its marketing department and in collaboration with CITY, shall create a marketing program to develop a variety of bilingual (Spanish/English) print, television and radio promotional and outreach materials to be distributed, produced, and presented at the targeted city sites and at related community events to inform seniors about available services. CONSULTANT commits to expend no less than \$25,000.00 during the term of the CONTRACT for the marketing program. CITY acknowledges and agrees that CONSULTANT may include in any of its marketing materials during the term of the CONTRACT that CONSULTANT is the exclusive provider of health and health-related services at the Senior Centers listed in Attachment C-1, the List of Senior Centers, with the exception of the District 8 Bob Ross Senior Center.

E. Meetings and Presentations: CONSULTANT's representative shall attend meetings with CITY staff relating to administration and performance pursuant to the CONTRACT, and shall make presentations as requested by the CITY at CITY events, including, but not limited to, CITY health fairs or before City Council and its subcommittees.

F. Needs Assessment and Additional Services: CONSULTANT shall engage in an annual needs assessment, which shall be an assessment identifying additional necessary, preventative, or optional health assessments, health screenings, or health education other than that which will be provided by CONSULTANT under this CONTRACT. CONSULTANT shall submit a proposal to implement the provision of additional services no less than 45 days after the CONTRACT commences and 45 days after each successive year of the CONTRACT, all at no cost to the CITY.

G. Performance Measures: CONSULTANT shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the Performance Measures affixed to the CONTRACT as Attachment B.

Attachment B

MONTHLY PERFORMANCE MEASURES	
	Value
Total monthly number of unduplicated seniors to receive cost-free health screening services at Senior Centers	431
Total monthly number of health screenings provided to seniors at Senior Centers	7,188
Total monthly number of health education/prevention classes provided to seniors at Senior Centers	288
Total monthly number of seniors who attended health education/prevention classes at Senior Centers	288
Total monthly number of dental services provided to seniors at Senior Centers	863
Total monthly number of seniors who established a medical home	345
Total % of seniors with high customer satisfaction and high service satisfaction	95%
Value of services per senior at Senior Centers	(TBD based on the specifics of each Center)

Attachment C
CITY Request for Proposal

Attachment C-1

List of Senior Centers

Tier 1: Minimum 4 days per Week, from 8am – 2pm
Comprehensive Senior Centers: <ul style="list-style-type: none">- District 4 Willie M. Cortez Senior Center- District 5 Senior Center- District 8 Bob Ross Senior Center- District 10 Northeast Senior Center- And any additional Comprehensive Centers added
Tier 2: Minimum one (1) visit per Month or Week, as indicated
Comprehensive Senior Centers: (Once per Week) <ul style="list-style-type: none">- West End Park Senior Center City Managed Centers: (Once per Month) <ul style="list-style-type: none">- Kenwood Community Center- Claude Black Community Center- Harlandale Senior Center- South San Senior Center- Virginia Gill Community Center- Palm Heights
Tier 3: Minimum one (1) visit per Quarter (January–March; April–June; July–September; October–December)
City Managed Centers: <ul style="list-style-type: none">- Comanche Park #2- Hope of Glory- Rolling Oaks- St Andrews Vendor Sites: <ul style="list-style-type: none">- Sacred Heart Church- Salvation Army – Hope Center- Ella Austin Community Center- Salvation Army – Dave Coy- Fair Avenue Apartments- Good Shepherd Lutheran Church- Mission San Jose- St Margaret Mary’s Church- St Vincent de Paul- Our Lady of Guadalupe Catholic Church- Palacio del Sol- St Timothy Catholic Church- Bethel Senior Center- Villa Allegre Apartments- Salvation Army – Peacock Center- St Matthews Catholic Church- El Carmen Senior Center- Somerset Senior Center

Attachment D
CONSULTANT Proposal

GOOD FAITH EFFORT PLAN

(Page 1 of 4)

NAME OF PROJECT: RFP to Establish and Operate Health Related Services at Senior Multi-Service Center for the City of San Antonio. RFP 09-015-JW

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: WellMed Medical Management Inc. _____

Address: 8637 Fredericksburg Rd. Suite 360 _____

City: San Antonio _____ State: Texas _____ Zip Code: 78240 _____

Telephone: 210-615-0805 E-mail Address: czernial@wellmed.net _____

Is your firm certified? Yes ☒ No ☐ (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE- SBE CERTIFICATION NUMBER
Quilez and Associates 2515 Braypark Lane Houston TX 77450		35%	209028190

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

GOOD FAITH EFFORT PLAN
(Page 2 of 4)

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

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

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

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

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

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

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

GOOD FAITH EFFORT PLAN*(Page 3 of 4)*

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

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION


8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.
9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.
 Carol Zernial, VP Community Relations, 210-615-4234 _____

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

GOOD FAITH EFFORT PLAN
(Page 4 of 4)

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.


SIGNATURE OF AUTHORIZED OFFICIAL

George M. Rapier, MD _____
TITLE OF OFFICIAL

2/18/09 _____ (210) 617-0805 _____
DATE PHONE

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval _____ Denial _____

Action Taken: Approved _____ Denied _____

DIRECTOR OF ECONOMIC DEVELOPMENT



SCTRCA

Small, Minority, Woman, African-American, Veteran, Disabled
Individual Business Enterprise
(S/M/W/AA/V/DIBE) Program

Qullez & Associates Texas LLC

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

SBE MBE

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

CERTIFICATE EXPIRES: **February 28, 2011**

CERTIFICATE NO. **209028190**

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

NAICS-541613: MARKETING CONSULTING SERVICES

Blaine R. Mitchell
Executive Director