

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its City Manager and Occupational Health Centers of the Southwest, PA, dba Concentra Medical Centers (hereinafter referred to as "**VENDOR**") with its principal place of business located at 5080 Spectrum Drive, Suite 1200W, Addison, Texas 75001.

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide occupational health services for the City.

II. SCOPE OF SERVICES

- 2.1 **VENDOR** shall provide all services as set forth in City's Request for Proposal and Vendor's Proposal, dated October 8, 2020, attached hereto respectively as Exhibits "A" and "B" and incorporated herein. The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of the Request for Proposal, the Vendor's Proposal, and the terms of this CONTRACT, and the City's Request for Proposal shall control where it conflicts with the Vendor's Proposal.
- 2.2 **VENDOR** shall work with the City's Human Resources Director or Designee and appropriate City officials to perform any and all related tasks required by the **CITY** in order to fulfill the purpose of this CONTRACT.
- 2.3 **VENDOR** shall perform services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional medical group 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.
- 2.4 **VENDOR** shall perform drug and alcohol screenings to include the following:
 - a. specimen collection, reference lab, and result validation for pre-employment, random, reasonable suspicion, post accident, return-to-duty, and follow-up screenings;
 - b. drug testing for pre-employment, random and reasonable suspicion, post accident must be in accordance with Department of Transportation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs 49 CFR, Part 40 and Federal Workplace Drug Testing Programs adopted in

Executive Order 12564 and section 503 of Pub. L. 100-71, and all subsequent amendments;

- c. accommodate monthly random or same day screenings for alcohol and substance abuse for walk-ins, whose names will be provided in advance by Office of Risk Management;
- d. store all specimens as follows:
 - For urine drug screen specimens: five (5) days for negative specimens and 12 months for positive.
 - For clinical/blood specimens: five (5) days;
- e. ensure that the individual and/or the laboratory responsible for collecting samples conducts and documents background investigations on all personnel involved in the collection or handling of an unsealed specimen;
- f. ensure, to the best of its knowledge, that no employees participating in the collection or handling of an unsealed specimen have been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs;
- g. shall document and maintain all records in a confidential manner and must forward all test results to the City's Human Resources Department according to the established performance standards set forth in Section III;
- h. ensure that both the preliminary and confirmation tests are performed at a laboratory that is experienced and capable of quality control documentation, chain of custody, demonstrated technical expertise and proficiency in urinalysis, and shall comply with all requirements of the Substance Abuse Mental Health Services Administration (SAMHSA) and the College of American Pathologist Forensic, Urine, Drug Testing Program (CAP FUDTP);
- i. must provide a Medical Review Officer that is a qualified physician;
- j. will provide data collection in accordance with state and federal regulations (e.g. U.S.D.O.T record retention requirements). Data is the property of the **CITY** and will be turned over to the **CITY** at the end of the contract if requested. Individual laboratory results are to be kept strictly confidential and any additional use of the information collected must be approved by the **CITY**.

2.5 Pre-employment Drug Testing
Civilian Pre-employment physicals requirements:

	Urinalysis	Non DOT D/S	DOT D/S	Finger Stick	Vision Chart	6Ft Whisper	Vitals	50lb	40lb
Physical Heavy	X	X		X	X		X	X	
Physical Medium	X	X		X	X		X		X
CDL	X		X	X	X	X			
Non CDL Civilian Employees		X							
Pre K		X						X	X
Training * Officer,	X	X		X	X		X		
Dispatcher*	X	X		X	X		X		
Call Taker*	X	X		X	X		X		

*City must obtain Texas Commission on Law Enforcement for Telecommuter L3 sign off

- 2.5.1 **VENDOR** must provide all accurate drug testing results not later than three days, unless the specimen is sent to the laboratory for further testing that may take up to 5-7 days, following screening. Prospective hires will be sent to centralized vendor site on a weekly basis for appropriate drug testing and/or physical examination.
- 2.5.2 **VENDOR** will provide physical examination results to the City immediately following completion of the examination.
- 2.5.3 **VENDOR** must attend five (5) mass hiring processing events to be held in April, May and June each year to perform drug testing and physical examinations at the facility. These events are held at Ron Darner, 5800 Old Hwy 90 W, San Antonio, TX 78227. Additional labor charges will be assessed for these onsite event as set forth in the Fee Schedule.
- 2.5.4 **VENDOR** will ensure pre-employment testing for positions that do not require a Commercial Driver's License (CDL) shall at a minimum test for a substance abuse "Panel 5" as provided elsewhere in this document.
- 2.5.5 **VENDOR** to provide pre-employment drug testing for positions that do not require a Commercial Drive License (CDL), US Department of Transportation (DOT) testing for positions that require a CDL, and reasonable suspicion drug testing for a substance abuse "NIDA 5 drug panel which includes the following. The submitted urine specimen will be tested at the listed cutoffs.

Drug Class	Initial Test Level	Confirmatory Level	Confirmatory Method
Amphetamines	500 ng/mL		
Amphetamine		250 ng/mL	GC/MS
Methamphetamine		250 ng/mL	GC/MS
Cocaine metabolite	150 ng/mL	150 ng/mL	GC/MS
Benzoyllecgonine		100 ng/mL	GC/MS
Marijuana metabolite	50 ng/mL	15 ng/mL	GC/MS
Opiates	2000 ng/mL		
Morphine		2000 ng/mL	GC/MS
Codeine		2000 ng/mL	GC/MS
6-acetylmorphine		10 ng/mL	GC/MS
Phencyclidine	25 ng/mL	25 ng/mL	GC/MS

- 2.5.6 DOT testing shall test for alcohol concentration by Breathalyzer Test Method. The breathalyzer test will be reported as alcohol concentration (gm alcohol/210 liter of breath) or other industry standard.

Drug Class	Initial Test Level	Confirmatory Test Level
Alcohol concentration	0.00 – 0.019	None Required
	0.02 – 0.039	Perform
	0.04 +	Perform

- 2.5.7 **VENDOR** must use a laboratory that is experienced and capable of quality control documentation, chain of custody, demonstrated technical expertise and proficiency in urinalysis, and shall comply with all requirements of the Substance Abuse Mental Health Services Administration (SAMHSA) and the College of American Pathologist Forensic, Urine, Drug Testing Program (CAP FUDTP).
- 2.5.8 **VENDOR** must ensure that both the preliminary and the confirmation test are performed at a SAMHSA/CAP FUDTP certified laboratory.
- 2.5.9 **VENDOR** shall consider any concentrations of a drug at or higher than the specified levels a positive test on the initial drug-screening test.
- An initial positive test result will not be considered conclusive; rather, it will be classified as “confirmation pending”.
 - A positive test result on the initial drug-screening test will automatically require the performance of a confirmation drug test.
- 2.5.10 **VENDOR** must provide a medical officer that is a qualified physician and must provide in its proposal the fees or hourly rates for the review and confirmation of the positive test results.

- 2.5.11 **VENDOR** shall deliver physical test reports, excluding drug screen results to the City's Human Resources Department via the portal within 48 hours after completion of the physical. For drug testing results, those will be provided via e-screen not later than three days, unless the specimen is sent to the laboratory for further testing that may take up to 5-7 days, following the screening.
- 2.5.12 **VENDOR** will provide data collection in accordance with state and federal regulations (e.g. U.S.D.O.T record retention requirements). Minimal data collected must include patient identifier, age, race and assay results. Individual laboratory results are to be kept strictly confidential and any additional use of the information collected must be approved by the City.
- 2.5.13 **VENDOR** must have the ability to store all specimens collected for a minimum period of one (1) year, or until such time as all administrative and/or legal disputes have been resolved for positive test, as long as City has notified Vendor in writing prior to the expiration of the one (1) year period, of the necessity to retain the specimens beyond one (1) year.
- 2.5.14 **VENDOR** must ensure, to the best of its knowledge, that the individual and/or the laboratory responsible for collecting samples conducts and documents background investigations on all personnel involved in the collection or handling of an unsealed specimen.
- 2.5.15 **VENDOR** must ensure, to the best of its knowledge, that no employees participating in the collection or handling of an unsealed specimen have been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs.
- 2.5.16 **VENDOR** must have the ability to document and maintain all records in a confidential manner and must forward all test results to the appropriate city department.
- 2.5.17 **VENDOR** to provide a copy of medical certification to City following DOT examinations.

2.6 Random, Post-Accident and Reasonable Suspicion Drug Testing

- 2.6.1 **VENDOR** will conduct random drug testing for CDL and non-CDL employees on a monthly basis. The monthly list will indicate the appropriate test to be performed. **VENDOR** will provide **CITY** with a list of the employees who reported for testing.
- 2.6.2 **VENDOR** must be capable of providing reasonable suspicion drug testing services within two (2) hours of request/notification by the City.
- 2.6.3 **VENDOR** must be capable of providing post-accident alcohol test within two (2) hours of the incident during business hours.
- 2.6.4 **VENDOR** must have the ability to allow an employee up to three (3) hours to provide a specimen and document the circumstances surrounding any unwillingness,

failure, or inability to provide a specimen.

2.6.5 **VENDOR** must have the ability to obtain a urine specimen through direct observation where there is reason to believe an initial specimen has been altered or substituted.

2.6.6 **VENDOR** must have the ability to conduct an initial screening (5 panel non-DOT look-alike) urine test for the listed drugs at the levels listed.

2.6.7 **VENDOR** shall consider any concentrations of a drug at or higher than the specified levels a positive test on the initial drug-screening test. An initial positive test result will not be considered conclusive; rather, it will be classified as “sent to lab”.

2.7 Physical Examinations

2.7.1 **VENDOR** will be required to provide the following physical examinations. **VENDOR** is required to provide all necessary equipment and personnel to conduct these examinations.

Special Examinations, as defined below.

- Firefighter Cadet pre-placement examinations
- Police Cadet pre-placement examinations
- Hazardous materials (HAZMAT) physical examinations
- SWAT physical examinations
- Respirator Fit Testing, qualitative
- Police Promotion examinations

SPECIAL PHYSICAL EXAMINATION REQUIREMENTS									
	CBC/C MP	NON DOT DRUG SCREE N	UA	AUD IO	PFT	TITM US	EKG	CHE ST X- RAY	OSHA QUESTI ONN AIRE
SAPD CADET	*	*	*	*	*	*			
SAPD PROMO	*		*	*	*	*	*		
FIRE CADET	*	*	*	*	*	*			
FIRE PROMO	*		*	*	*	*	*		
HAZMAT ANNUAL	*		*	*	*	*	*		*
HAZMAT ENTRY	*		*	*	*	*	*	*	*

CIVILIAN PHYSICAL EXAMINATION REQUIREMENTS									
	UA	NON DOT D/S	DOT D/S	FINGER STICK	VISION CHART	6FT WHISPER	VITALS	50LB LIFT	40LB LIFT
PHYSICAL HEAVY	*	*		*	*		*	*	
PHYSICAL MEDIUM	*	*		*	*		*		*
CDL	*		*	*	*	*			
PARK POLICE	*	*		*	TITMUS		*		

Respirator Fit-Testing				
	Chest X-ray	Pulmonary Function Test	Vitals	Osha Questionnaire
Qualitative Fit-Testing	*	*	*	*

- Employee to provide mask and be shaven

2.7.2 **VENDOR** will ensure testing and examinations referenced above remain current with standard practice, governmental requirements, and applicable law and may change accordingly.

2.7.3 **VENDOR** will provide documentation or wallet size card certifying successful respiratory fit-testing completion.

2.7.4 **VENDOR** will document and maintain all records in a confidential manner and will forward all respiratory fit-test results to **CITY** upon request including those not fit-tested and reason for noncompliance.

2.8 Immunizations

2.8.1 **VENDOR** will be required to provide City employees with the following immunizations at a minimum. **VENDOR** will be required to provide all necessary vaccines, equipment and personnel.

- Tdap
- Hepatitis A and B
- Meningococcal
- Rabies antibody titers for Animal Care Services, laboratory and vector control personnel as per job-required frequency
- Rabies vaccine available with prescription, but not available in center

- 2.9 **VENDOR** will, in general operate services at designated site located at 400 E Quincy, San Antonio, TX, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding Vendor recognized holidays.
- 2.10 **VENDOR** will use best effort to ensure a Spanish speaking employee is at the designated site capable of translation during all operating hours. In the event an employee is not available, Language Line will be used.
- 2.11 **VENDOR** will provide service for City of San Antonio employees/applicants as a preferred provider;
- 2.12 **VENDOR** will provide after hours testing when requested by **CITY**;
- 2.13 **VENDOR** will prepare and provide special reports as requested within 30 days following request;
- 2.14 **VENDOR** will provide written documentation of internal controls relative to an audit of financial statements;
- 2.15 **VENDOR** will participate in meetings with **CITY** as needed;
- 2.16 **VENDOR** and **CITY** will effectively communicate regarding services to be provided per the **CONTRACT**;
- 2.17 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this **CONTRACT**. All **VENDOR** personnel engaged in providing services under this **CONTRACT** shall be fully qualified and shall be authorized or licensed to perform such work as required.

III. PERFORMANCE STANDARDS

- 3.1 **VENDOR** acknowledges and agrees that **VENDOR** shall provide services under this **CONTRACT** at a certain level with a certain degree of accuracy and timeliness. Therefore, as part of this administrative services agreement with **CITY**, **VENDOR** agrees to the following performance standards.

VENDOR will share a copy of its monthly internal performance results with **CITY**. If **CITY** waives its right to an independent audit in any plan year, it retains the right to audit in all subsequent years.

- 3.2 **CITY** shall monitor, review, collect data for the Quality Assurance Performance Guarantee and evaluate **VENDOR'S** performance in accordance with the Performance Guarantees established in this **CONTRACT**. **CITY** shall inform **VENDOR** on a monthly basis regarding any identified concerns. **VENDOR** will not be responsible for failure to meet Performance Guarantee that is due to direct result of **CITY** error. Should **VENDOR** fall below the established Performance Guarantees, **VENDOR** agrees to the fee adjustments as outlined below:

PERFORMANCE GUARANTEES

VENDOR will place 15% of Concentra's Medical Centers quarterly statement total at risk as outlined below. Percentages noted equal total amount at risk. While performance is monitored monthly, penalties, if any, will be based on quarterly performance results and paid annually. Measurement will begin the month after CONTRACT start date for services

VENDOR is committed to the highest level of service and is dedicated to consistently meeting or exceeding **CITY'S** expectations in the following areas:

Performance Requirement	Expected Standards/Results	% of Penalty
Scheduling of Office Visits	VENDOR must schedule City referred pre-employment physicals in am on Tuesday, Wednesday and Friday. On occasion, pm visits may be requested. (95%)	5%
	Vendor will provide results from pre-employment physicals within one business days. (95%)	5%
	VENDOR must provide onsite pre-employment physicals at designated site to be determined by the City for special mass hiring at least five times annually. (95%)	5%
Wait Time In Clinic To Be Seen	Employees for random and reasonable suspicion drug testing at the designated health center at 400 Quincy Street should wait no more than 30 minutes to be seen. (90%)	5%

Performance Requirement	Expected Standards/Results	% of Penalty
Turnaround Time For Results	VENDOR must provide same day written results for online accessibility for random or reasonable suspicion alcohol testing conducted at San Antonio Downtown location (400 East Quincy Street) to the Human Resources Department or designated City representative. (90%)	5%
	VENDOR must provide results for civilian pre-employment, post accident, and random drug screenings for online accessibility within one to two business days for negative results and within five to seven business days after review for positive results. (90%)	5%
	VENDOR must provide random drug tests as listed on the random monthly listing provided by the City. (90%)	5%
	VENDOR must provide results of Fire and Police pre-employment, special, and promotional physical exams, including drug screening results for online accessibility within one to two business days for negative results and within five to seven business days after review for positive results to Human Resources and designated Police or Fire representatives within three business days of exam. (90%)	5%
Quality Assurance	Breach in chain of custody for drug testing (98%)	10%
	VENDOR will timely enter after hour alcohol tests so entered and in sync with internal portal. (95%). For purpose of this section, timely shall mean no later than 48 hours.	10%
	VENDOR will ensure employee names are not missing nor misspelled upon entry in E-screen. (95%). Driver's licenses will be used for obtaining correct names.	5%
	VENDOR will submit Chain of custody form to the appropriate portal (E-Screen and Concentra) timely following testing. (95%). For purpose of this section, timely shall mean no later than 48 hours. The chain of custody form is submitted through the Concentra portal.	10%
	VENDOR to update posting in E-Screen for all "pending" entries when results have been completed. (95%)	5%
	VENDOR to reporting results to wrong COSA account. (80%)	5%
	VENDOR to assure all site locations other than downtown follow COSA protocols. (85%)	5%

3.3 **VENDOR** shall not be liable to **CITY** or be deemed to be in breach of these Performance Guarantees for any failure or delay in performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes are strictly limited to include acts of God or a public enemy, explosion, fires or unusually severe weather. Dates and times of performance shall be extended to the extent of the delays excused by this paragraph, provided **VENDOR** notifies **CITY** promptly of the existence and nature of the delay.

Performance Measures reflect the expectations of the site at the San Antonio Downtown location (Quincy Street) unless otherwise stated.

Performance Measures will be based on Doctor's Office Quality Information Technology (DOQ-IT) reports and City's applicant processing staff reports.

IV. GENERAL ASSURANCES

- 4.1 **VENDOR** covenants and agrees to perform all services described in this CONTRACT in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** 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.
- 4.2 **VENDOR** agrees to assign a dedicated unit including, but not limited to, a Supervisor/Manager who shall be responsible for the task administration and work performance under this CONTRACT.
- 4.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this CONTRACT. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR** personnel engaged in providing services under this CONTRACT shall be fully qualified and shall be authorized or licensed to perform such work as required.

V. CONSIDERATION & BILLING

- 5.1 In consideration of **VENDOR's** performance hereunder, **CITY** shall pay to **VENDOR** as follows: *See Attached Pricing Schedule as Exhibit C
- 5.2 Payments to **VENDOR** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to **CITY'S** approval. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory, and which have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. Payments will be made within thirty calendar days of the last day of the month after receipt of invoice. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this CONTRACT.

- 5.3 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this **CONTRACT** or after its termination unless specifically requested in writing by **CITY**.
- 5.4 **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than **VENDOR**, for payment of any monies or provision for any services.
- 5.5 **VENDOR** will bill **CITY** directly on 10th of each month for prior month's services on a "per use" basis for the following **CITY** referred core services: drug testing (pre-employment and random and reasonable suspicion), pre-employment physical exams, return to work/fitness for duty exams, specialty exams and designated immunizations according to the fee schedule in Exhibit C. Monthly statements should be sorted type of service (Random/Post Accident/Pre-employment) and include employee name, employee number, and test administered.
- 5.6 **CITY** will remit payment 30 days of receipt of invoice at the end of each month. **VENDOR** will allow **CITY** a ten-day grace period beyond the 30 calendar days to submit payment to respondent to allow for computer, mail or other system malfunctions.
- 5.7 **CITY** requires monthly statements to reflect any outstanding balances.
- 5.8 **CITY** must be notified in writing of any disputes within 30 days from the date the check was submitted to **VENDOR**.
- 5.9 **VENDOR** shall meet with City on a quarterly basis to discuss any outstanding billing related issues.

VI. TERM

- 6.1 This **CONTRACT** shall commence on March 1, 2021, and shall terminate on February 28, 2024. The parties may mutually agree to extend the term of the **CONTRACT** for up to (2) one (1) year extensions by written and signed agreement prior to the expiration of the term without the need for further council action provided money is appropriated. However, **CITY** may terminate this **CONTRACT** at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of City's budget for each fiscal year.

VII. OWNERSHIP OF PRODUCT

- 7.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this **CONTRACT** and shall be used as **CITY** desires without restriction, subject to applicable law and Section IX of this **CONTRACT**. **VENDOR** may utilize the information produced as a result of this **CONTRACT** for statistical purposes and in house quality assurance only as allowed by federal or state law.

VIII. RETENTION AND ACCESSIBILITY OF RECORDS

- 8.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.
- 8.2 The books and records must be maintained for the term of this **CONTRACT** to which they relate and for the five (5) year period following the end of this **CONTRACT**'s term.
- 8.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 8.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of either examination, audit, or inspection as required by federal or state law.
- 8.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.
- 8.6 **CITY** is entitled to continuing access to these books and records.
- 8.7 **VENDOR** may, at **CITY**'S option, fulfill the requirements of this Section of this **CONTRACT** by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

IX. HIPAA COMPLIANCE

- 9.1 **VENDOR** will maintain the confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.
- 9.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 9.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit D and incorporated herein by reference.

X. PUBLICATION

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

XI. NOTICE OF VENDOR'S CAPACITY

- 11.1 **RESERVED.**

XII. AMENDMENT

- 12.1 This CONTRACT, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this CONTRACT shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XIII. ASSIGNING INTEREST

- 13.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this CONTRACT. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this CONTRACT, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 13.2 If approved, **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** 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. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.
- 13.3 **VENDOR** agrees to notify **CITY** of any changes in Vendor's ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.

- 13.4 In no event shall such written consent for a change of Subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 13.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIV. INSURANCE AND BONDING

- 14.1 Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Human Resources Department, Employee Benefits Division, which shall be clearly labeled "**Occupational Health**" in the Description of Operations block of the Certificate. The 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 certificate(s) or form must have the agent's signature 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 Human Resources Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 14.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk. Any requested insurance change must be mutually agreed upon by both parties.
- 14.3 **VENDOR'S** financial integrity is of interest to **CITY**. Therefore, subject to **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **VENDOR** shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at **VENDOR'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and rated A-(VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following:	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;

a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

- 14.4 As they may apply to the limits required by the **CITY**, 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 **CITY** and may make a reasonable request for 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). Upon such request by **CITY**, **VENDOR** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof. Any change requested under this section must be mutually agreed to by both parties.
- 14.5 **VENDOR** 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** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this 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;
 - **VENDOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of its operations under this CONTRACT with **CITY**; and
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of **CITY**.
- 14.6 **VENDOR** provide advance, written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and shall give such notice not less than ten (10) calendar days for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

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

- 14.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **VENDOR** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **VENDOR'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**.
- 14.8 In addition to any other remedies **CITY** may have upon **VENDOR's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due, to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.
- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its Subcontractors' performance of the work covered under this **CONTRACT**.
- 14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **CONTRACT** and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 14.11 **VENDOR** and any Subcontractors are responsible for all damage to their own equipment and/or property

XV. INDEMNITY

- 15.1 **VENDOR** 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 and 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 **VENDOR'S** activities under this **CONTRACT**, including any acts or omissions of **VENDOR**, any agent, officer, director, representative, employee, **VENDOR** or Subcontractor of **VENDOR**, and their respective officers, agents employees, directors and representatives while in the exercise 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 arising out of or related to its activities under this CONTRACT, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR 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.

- 15.2 **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.**
- 15.3 **A Party shall advise the other within 10 days of any claim or demand against the other related to or arising out of this contract.**

XVI. INDEPENDENT CONTRACTOR

- 16.1 **VENDOR** covenants and agrees that it is an independent **VENDOR** and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, **VENDORS** and Subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, **VENDORS** and Subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.
- 16.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.
- 16.3 **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 **VENDOR**.

XVII. NON-DISCRIMINATION

- 17.1 As a party to this contract, **VENDOR** 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.

XVIII. NON-WAIVER

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

XIX. FRAUD AND ABUSE PREVENTION

- 19.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.

XX. CONFLICT OF INTEREST

- 20.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a Subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 20.2 **VENDOR** warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.
- 20.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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

XXI. TERMINATION

21.1 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.

21.2 Termination by Notice. This CONTRACT may be canceled by either party for any reason or no reason, upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

21.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have thirty (30) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such thirty (30) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the thirtieth (30th) day after the receipt of the notice by the defaulting party.

21.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.

21.5 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 **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within thirty (30) calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR'S** sole cost and expense. 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 on 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.

21.6 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of Vendor's books, accounts, and records. Within thirty (30) calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any undisputed amount shown by said audit to be owed **CITY** or its

employees. No waiver of existing default shall be deemed to waive any subsequent default.

21.7 If **CITY** conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.

21.8 Within thirty (30) calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this CONTRACT through the effective date of termination.

XXII. COMPLIANCE WITH LAWS

22.1 **VENDOR** and **CITY** hereby agree to perform hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

XXIII. SUCCESSORS AND ASSIGNS

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

XXIV. NOTICES

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

CITY

City of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad Suite 100
San Antonio, Texas 78205

VENDOR

Occupational Health Centers of the Southwest, P.A.
d/b/a Concentra Medical Centers
5080 Spectrum Drive, Suite 1200W
Attn: Contracting – W. Gibbons
Addison, Texas 75001

XXV. EXHIBITS

25.1 **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

City's Request for Proposal	Exhibit A
Vendor's Proposal	Exhibit B
Pricing Schedule	Exhibit C
HIPAA Business Associate Agreement	Exhibit D

25.2 **VENDOR** understands and agrees that Exhibits A, B, C and D 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 **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

25.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of City's Request for Proposal, Vendor's Proposal and the terms of this CONTRACT; City's Request for Proposal shall control where it conflicts with Vendor's Proposal.

XXVI. LEGAL AUTHORITY

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

XXVII. VENUE AND GOVERNING LAW

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

XXVIII. GENDER

28.1 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.

XXIX. CAPTIONS

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

XXX. ENTIRE AGREEMENT

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

XXXI. SEVERABILITY

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

XXXII. CONFIDENTIALITY

- 32.1 The parties recognize and acknowledge that in the course of performing its duties and obligations under the CONTRACT, such parties may have access to the other party's trade secrets and confidential or proprietary information ("Confidential Information"). Confidential Information shall include, but is not limited to, pricing and **VENDOR'S** response to the contract solicitation. Each party hereby agrees that except when required by law, it will not disclose in whole or in part such information for its own purposes or for the benefit of any other person, firm, partnership, association, corporation, or business organization, entity or enterprise.
- 32.2 This Article 32 shall survive the termination of the CONTRACT.

XXXIII. ACKNOWLEDGMENT

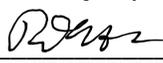
33.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2021.

CITY OF SAN ANTONIO

OCCUPATIONAL HEALTH CENTERS OF THE SOUTHWEST, P.A., DBA CONCENTRA MEDICAL CENTERS

Erik Walsh
City Manager

DocuSigned by:

1/4/2021
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Robert G. Hassett, D.O., MPH
President, Treasurer and Corporate Secretary

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney