

SERVICE AGREEMENT
OCCUPATIONAL MEDICAL SERVICES

Service Agreement No. _____

THIS **OCCUPATIONAL MEDICAL SERVICES Agreement** (this "Agreement") is entered into by and between Nueces Emergency Services d.b.a. The Doctor's Center (the "Contractor") and the City of Corpus Christi, a Texas home-rule municipal corporation (the "City"), by and through its duly authorized City Manager or designee ("*City Manager*"), effective for all purposes upon execution by the City Manager.

WHEREAS Contractor has proposed to provide **OCCUPATIONAL MEDICAL SERVICES** in response to **RFP No. BI-0048-13** which is incorporated and attached as Exhibit A;

WHEREAS the City has determined Contractor to be the most advantageous proposer;

NOW, THEREFORE, Contractor and City enter into this Agreement and agree as follows:

1. Services. Contractor will provide **OCCUPATIONAL MEDICAL SERVICES** in accordance with **RFP No. BI-0048-13**.

2. Term. This Agreement is for one (1) year commencing on the date signed by the last signatory hereto and continuing for one-year thereafter. The term includes four one-year automatic extension periods subject to the approval of the Contractor and the City Manager.

3. Contract Administrator. The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement including deductions for non-performance and authorizations for payment. All of the Contractor's notices or communications regarding this Agreement must be directed to the Contract Administrator, who is the **DIRECTOR OF HUMAN RESOURCES**.

4. Independent Contractor. Contractor will perform the services hereunder as an independent contractor and will furnish such services in its own manner and method, and under no circumstances or conditions may any agent, servant or employee of the Contractor be considered an employee of the City.

5. Insurance. Before activities can begin under this Agreement, the Contractor's insurance company(ies) must deliver a Certificate of Insurance, as proof of the required insurance coverages and the performance bond to the Contract Administrator. Additionally, the Certificate must state that the **DIRECTOR OF HUMAN RESOURCES** will be given at least thirty (30) days' notice, by certified mail, of cancellation, material change in the coverages or intent not to renew any of the policies. The City must be named as an Additional Insured. The City Attorney must be given copies of all insurance policies within 15 days of the City Manager's written request.

6. Assignment. No assignment of this Agreement or any right or interest therein by the Contractor is effective unless the City first gives its written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement and the City's right to withhold consent to such assignment is within the sole discretion of the City on any ground whatsoever.

7. Fiscal Year. All parties recognize that the continuation of any contract after the close of any fiscal year of the City (the City's fiscal year ends on July 31st), is subject to appropriations and budget approval providing for covering such contract item as an expenditure in said budget. The City does not represent that said budget item will be actually adopted as that determination is within the sole discretion of the City Council at the time of adoption of each budget.

8. Waiver. No waiver of any breach of any term or condition of this Agreement, or **RFP No. BI-0048-13**, or the Contractor's proposal in response to **RFP No. BI-0048-13** waives any subsequent breach of the same.

9. Compliance with Laws. This Agreement is subject to all applicable federal, state and local laws. All duties of the parties will be performed in the City of Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of Texas and such form and venue for such disputes is the appropriate district, county or justice court in and for Nueces County, Texas.

10. Subcontractors. The Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the **DIRECTOR OF HUMAN RESOURCES**. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All

requirements set forth as part of this Agreement are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the services.

11. Amendments. This Agreement may be amended only by written Agreement duly authorized by the parties hereto and signed by the parties.

12. Termination. The City Manager may terminate this Agreement for Contractor's failure to perform the services specified in **RFP No. BI-0048-13**. Failure to keep all insurance policies and performance bonds in force for the entire term of this Agreement is grounds for termination. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

Alternatively, the City may terminate this Agreement upon twenty (20) days' written notice to the Contractor. However, the City may terminate this Agreement on twenty-four (24) hours' written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out herein.

13. Taxes. The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes according to Circular E Employer's Tax Guide, Publication 15, as it may be amended. Upon his request, the City Manager shall be provided proof of payment of these taxes within fifteen (15) days of such request. The Contractor may terminate this Agreement upon ninety (90) days' written notice to the City.

14. Drug Policy. The Contractor must adopt a Drug Free Workplace policy.

15. Violence Policy. The Contractor must adopt a Violence in the Workplace policy.

16. Notice. Notice may be given by fax, hand delivery or certified mail, postage prepaid, and is received on the day faxed or hand-delivered and on the third day after deposit in the U.S. mail if sent certified mail. Notice shall be sent as follows:

IF TO CITY:
City of Corpus Christi

Attention: Director of Human Resources
P.O. Box 9277
Corpus Christi, Texas 78469-9277

IF TO CONTRACTOR:

Contractor Nueces Emergency Services D.B.A. The Doctor's Center
Contact Dr. J Keith Rose, M.D.
Address: 4637 Spid
City, State, Corpus Christi TX 78411-4415

17. **Month-to-Month Extension.** If the City has not completed the procurement process and awarded a new Agreement upon expiration of the original contract period or any extension period, the Contractor shall continue to provide goods/services under this Agreement, at the most current price under the terms of this Agreement or extension, on a month-to-month basis. This Agreement automatically expires on the effective date of a new contract.

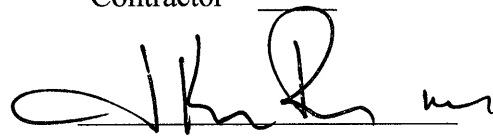
18. **Severability.** Each provision of the Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

19. **INDEMNIFICATION.** CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS

BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

SIGNED this day of, 20 ____.

Contractor

A handwritten signature in black ink, appearing to be 'J. K. ...', written over a horizontal line.

Title: President NCS

CITY OF CORPUS CHRISTI ("CITY")

Michael Barrera
Assistant Director of Financial Services

Date

Incorporated by Reference:
Exhibit A: RFP No. BI-0048-13
Exhibit B: Proposer's Proposal
Exhibit C: Clarification/Additional Service

**DRUG AND ALCOHOL TESTING SERVICES AGREEMENT
CITY OF CORPUS CHRISTI
CITY-WIDE/FIRE AND POLICE
FOR THE
DOT, NON-DOT, CDL EMPLOYEES, AND
PRE-EMPLOYMENT SCREENING TEST**

ALCOHOL AND DRUG TESTING POLICY

THIS DRUG AND ALCOHOL TESTING SERVICES AGREEMENT ("AGREEMENT") is entered by and between the City of Corpus Christi, a Texas municipal corporation ("City"), and Nueces Emergency Services d.b.a. The Doctor's Center, ("Contractor/Service Provider") effective for all purposes the _____ day of _____, 2013, to be implemented within thirty (30) days after the date this Agreement is approved by the City Council.

Incorporated into this Agreement are Attachments, attached and incorporated, as follows:

Attachment I contains DOT specimen collection procedures for drug testing and DOT alcohol testing procedures required by Department of Transportation (DOT) Transportation Workplace Drug and Alcohol Testing Programs, (49 CFR 40), for current employees and applicants assigned to the Gas Division, Marina, and covered under DOT, 49 CFR 199, Research and Special Program Administration, and DOT 49 CFR 382, et. al., Federal Highway Department, for covered employees required to have a Commercial Driver's License (CDL) to perform the essential functions of their jobs. **Attachment II** covers non-DOT drug specimen collection procedures for drug testing of employees and applicants covered under City-Wide Alcohol and Drug Policy. **Attachment III** covers NON DOT Specimen Collection Procedures for Drug Testing and NON DOT Alcohol Testing Procedures for Corpus Christi Fire Department Collection Procedure. **Attachment IV** NON DOT Specimen Collection Procedures for Drug Testing and NON DOT Alcohol Testing Procedures for Police Department Collection Procedure. **Attachment V** covers DOT and NON DOT Laboratory Drug Testing Protocol. **Attachment VI** covers Medical Review Officer (MRO) service procedures. **Attachment VII** is the Fee Schedule.

1.1 SERVICES

A. COLLECTION SERVICES

Contractor/Service Provider hereby agrees to perform drug and alcohol testing services for City's employees and applicants, Fire Department employees and applicants, Police Department employees and applicants (collectively Donor) as an independent contractor for the City in accordance with procedures for Department of Transportation (DOT) drug and alcohol testing for applicable Donors which are in compliance with DOT regulations under Paragraph 40.81 of 49 C.F.R. 40, Federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs, attached and incorporated as **Attachment I**, and in accordance with drug testing procedures for all other Donors consistent with and with the level of precision required

for the federally approved DOT and NON DOT testing procedures, attached and incorporated as **Attachment II**, and in accordance with Fire and Police Department procedures, attached and incorporated as **Attachments III and IV**.

Such services include, but are not limited to, the following:

1. A minimum of **two** collection sites (Facility), or provide one collection site and pick-up and delivery for occupation services, as described in **Attachments I through IV**, which meet the Facility requirements of Federal DOT and NON-DOT regulations as cited above, and are clean, well-lit and secured as provided for in these Attachments. A collection site (Facility), complete with locker, lock, and key which meets all requirements of Attachment I-IV incorporated herein is required for Fire and Police Department requirements.
2. Contractor/Service Provider must provide full collection services to City-Wide, Fire Department, and Police Department employees and applicants (Donors) covered by all City of Corpus Christi, Fire Department, and Police Department Alcohol and Drug Policies from Monday through Friday, 8 a.m. to 5 p.m., at Contractor/Service Provider's Facilities and for testing after hours (7 days a week including holidays) within one (1) hour after notification by pager by the Human Resources Director, Fire Chief, Police Chief, or designee(s). Contractor/Service Provider must make a designated Facility and a Collector of appropriate gender available for collection services. For DOT, NON-DOT, CDL City-Wide employees and applicants, Contractor/Service Provider shall provide full collection services to meet seasonal needs for full collection services, as required, by staying open until 6 p.m. each day and/or being open on Saturdays.
3. Contractor/Service Provider's collector must be specifically trained to carry out DOT and NON-DOT drug and alcohol collections successfully, or must be a licensed medical professional, or technician, who is provided instructions for collection, which comply with federal regulations, cited above, and the Collective Bargaining Agreement between City and the Police and Fire Associations. Contractor/Service Provider's collector performing evidentiary breath tests (EBT) must use EBT equipment 1) approved by the National Highway Traffic Safety Administration (NHTSA) for evidentiary testing of breath and 2) included on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL) and 3) that meets the requirements of Paragraph 40.229 of 49 CFR 40. The breath alcohol technician (BAT) must be trained to proficiency in the operation of the EBT to be used and in the alcohol testing procedures required by Paragraph 40.51 of 49 CFR 40.
4. The Contractor/Service Provider must conduct background investigations on laboratory and collection personnel involved in the collection of samples or handling of unsealed samples collected from City of Corpus Christi Police Officers. The Contractor/Service Provider must not use employees to perform services under this Agreement who have been arrested by members of the City of Corpus Christi Police Department or who have been convicted of a felony or misdemeanor crime involving dishonest conduct or the possession of illegal drugs.
5. Contractor/Service Provider's Collectors must be specifically trained, or be licensed medical professionals or licensed technicians, who have received specific training from

Contractor/Service Provider to carry out drug and alcohol collections following the protocols as specifically set out in the Agreement and incorporated attachments and must perform these requirements accurately and consistently.

6. Contractor/Service Provider must provide sufficient staffing to allow monitored and direct observation drug specimen collections (as stated in Attachment III) by Collectors of the same gender as the Donor for drug tests and to obtain specimens by direct observation if pre-approved by the Human Resources Director, Fire Chief, Police Chief, or designee.

7. Contractor/Service Provider shall provide competent and knowledgeable staff who strictly follow DOT, NON-DOT, CDL and Facility preparation requirements as established in **Attachments I – IV** prior to collection and who can consistently follow strict Custody and Control procedures for ALL drug testing collections to ensure the integrity of each specimen collection and transfer of the specimen to the laboratory while maintaining the Donor's privacy and the confidentiality of the collection process.

8. Contractor/Service Provider must provide a qualified supervisor for the Facility to ensure total compliance with established protocols and procedures set out in the Attachment I through IV and incorporated attachments; to provide facts regarding suspected adulteration of specimens; to coordinate with the Human Resources Director, Fire Chief, Police Chief or designee, and Contractor/Service Provider's personnel in resolving problems arising from any phase of the collection process; to supervise all aspects of the collection procedures including, but not limited to, maintaining collected specimens in a secured area prior to pick up by the courier; to oversee shipping of collected specimens to the drug testing laboratory following strict Custody and Control procedures and to ensure that every effort is made to minimize the number of persons handling specimens.

9. Contractor/Service Provider must provide Human Resources Director, or designee, with Contractor/Service Provider's courier's written procedure for the transportation of specimens to the laboratory which ensures confidentiality and integrity of the specimen.

10. Contractor/Service Provider must make collections of urine/blood specimens and breath samples, following procedures in the applicable Attachment, using a CCF to ensure the integrity of the specimen from collection to receipt by the laboratory, and maintaining collected specimens in a secured area prior to being picked up by the courier and transported to the laboratory.

11. Contractor/Service Provider must make its collection, laboratory, and MRO personnel available to the Human Resources Director, Fire Chief, Police Chief, or designee, for legal depositions, courtroom testimony, evaluation of chain-of custody procedures followed, and other related matters in relation to drug and alcohol testing in connection with claims, administrative hearings, arbitrations, lawsuits, or other proceedings arising from the City's reliance on such specimen collections. This testimony and availability is of the essence of this Agreement and failure of Contractor/Service Provider's personnel to be available for a "Proceeding" is grounds for termination.

B. LABORATORY SERVICES

(a) Specimen Storage and Transportation

Collected specimens must be maintained in a secured area prior to pick up by the courier.

The Contractor/Service Provider must ship the Specimen (both primary and split) to the Contractor/Service Provider's laboratory. Both parts of the Split Specimen (primary and split) must be placed in a single shipping container designed to minimize the possibility of damage during shipment together with copies 1, and 2, and the Split Specimen copy of the chain-of-custody form. The shipping container must be securely sealed to eliminate the possibility of undetected tampering. The Collector must ensure that the CCF documentation is enclosed in each container sealed for shipment to the drug testing laboratory. The Contractor/Service Provider will contact the specimen Collector and direct transport of the Specimens to the appropriate testing site in compliance with applicable regulatory procedures.

Attachment V, Laboratory Requirements, must be followed.

(b) Results (Availability)

1. Negative results on initial screen will usually be released to the Contractor/Service Provider's Medical Review Officer ("MRO") within forty-eight (48) hours after receipt of the specimen at Proposer's facility.
2. Confirmed positive test results shall be released to Contractor/Service Provider's MRO within seventy-two (72) hours after receipt of the specimen at Proposer's facility.
3. Holidays and weekend work schedules may alter the availability of results as described above.

(c) Results (Delivery)

Urine or blood specimens must be collected using custody-and-control procedures as provided in the applicable Attachment and tested by a laboratory certified by the Substance Abuse and Mental Health Services Administration (S.A.M.H.S.A.) **and** accredited by the College of American Pathologists - Forensic Drug Testing program. The testing laboratory must transmit all test results, in writing, directly to the Medical Review Officer (MRO). The Fire Department will pick up all results in person and by hand. Results for the Police Department shall be transmitted via electronic mail and Express Mail to the designated Police Department point-of-contact. Contractor/Service Provider must not communicate results verbally. Results from the laboratory may be transmitted verbally or by fax for DOT and NON-DOT City Employees, or pre-employment screening to the Human Resources Director, or designee. Contractor/Service Provider must discuss or provide additional information on results to the MRO and other personnel who may be designated by the Human Resources Director, in writing. Contractor/Service Provider must maintain Donor test records in confidence as required by applicable laws and regulations.

(d) Supplies

The Contractor/Service Provider must provide all supplies essential to the split-specimen collection (primary and split specimen portions), identification, packaging and transportation of specimens to the laboratory testing site or of a split specimen to a second laboratory which meets the required certification/accreditation requirements.

(e) Chain-of-Custody Form

CCF approved by the Human Resources Director, Fire Chief, Police Chief, or designee, must be used by Contractor/Service Provider to account for the integrity of each urine and blood specimen or breath sample by tracking its handling and storage from point of collection to final disposition. Collection Procedures incorporated in **Attachment V** are designed to disclose evidence of specimen tampering. Specimens arriving at the testing site showing signs of tampering or damage will be considered void and unqualified for testing. Contractor/Service Provider will notify the Human Resources Director, Fire Chief, Police Chief, or designee, in writing of any specimen it receives which shows any evidence of tampering or damage.

(f) Coordination of Activities

All drug testing services will be coordinated by Contractor/Service Provider's personnel, who will be responsible for setting up the Facility to ensure proper implementation of supply distribution, specimen transportation, results delivery, invoicing, and collection orientation. The Contractor/Service Provider will provide periodic training on custody-and-control collection procedures for the collection site personnel if requested by the Human Resources Director, Fire Chief, Police Chief, or designee.

C. MEDICAL REVIEW OFFICER SERVICES

The Medical Review Officer (MRO) for the City of Corpus Christi City-Wide, Fire Department, and Police Department's Alcohol and Drug Policies is required to be a licensed physician with knowledge of drug abuse disorders and certified as an MRO by the American Association of Medical Review Officers.

Contractor/Service Provider must provide a physician to perform Medical Review Officer Services as an independent contractor for the City in accordance with the medical services and procedures set out in the attached **Attachment VI** including but not limited to the following:

1. medical review of drug and alcohol laboratory test results,
2. maintenance of medical records for the drug testing program;
3. provide statistical data reports to the Human Resources Director, Fire Chief, Police Chief, or designee, based on program test results;

4. assessing and state what an employee can and cannot perform for fitness of employees for return-to-duty or applicants' fitness for hire based on drug test results;
5. providing services, such as legal depositions, courtroom testimony, evaluation of test results and advice about medical matters in relation to drug and alcohol testing, as required by the City Attorney in connection with grievances, arbitrations, claims and lawsuits or other proceedings arising from the City's reliance on such test results.

2.1 FEES

City will pay Contractor/Service Provider for services rendered by Contractor/Service Provider at the rate for each service quoted by Contractor/Service Provider in the Excel spreadsheet titled **Proposer's Response RFP BI-0048-13 3.6A Pricing D&A**, attached and incorporated. Contractor/Service Provider will invoice City monthly. City will pay invoices as approved by the Human Resources Director, Fire Chief, Police Chief, or designee, within 30 days of receipt of a valid invoice. City will not pay for services that are unsatisfactory or that have not been approved by the Human Resources Director, Fire Chief, Police Chief, or their respective designees.

2.2 FEES UPON TERMINATION

Upon termination by written notice, a final accounting will be made of the fees payable to Contractor/Service Provider. The Human Resources Director, Fire Chief, Police Chief's good faith determination of the amount due in this regard is final and binding between the parties. As the City's right to cancel and terminate this Agreement is expressly retained, Contractor/Service Provider is not entitled to lost or anticipated profits if the City of Corpus Christi, exercises such right.

2.3 CITY'S REPRESENTATIVE

The City's representative is the Human Resources Director, Fire Chief, Police Chief or their respective other City designees, who is authorized to direct Contractor/Service Provider to provide professional services related to testing of drug and alcohol specimens, and breath samples. All invoices, requests for payment, notices, or communications regarding this Agreement must be directed to the Human Resources Director, Fire Chief, Police Chief, or designee in accordance with the specified testing method.

3.1 TERM

(a) This Agreement shall be for a one-year term with four one-year automatic extension periods. By submission of its proposal, the Proposer agrees that the cost and price information quoted in its proposal is fixed and firm for the duration of the term of this Agreement, provided that upon extension of the Agreement for an additional one-year period(s), the prices for the services to be delivered during the ensuing one-year period(s) may be increased or decreased to

the extent of changes in the cost of material to the Contractor/Service Provider, as reflected in written documentation provided to the City by the Contractor/Service Provider. At the end of the original Agreement period or any extension period, if the City has not completed the procurement process and awarded a new Agreement, the City Manager, or his designee, may extend this Agreement on a month-to-month basis, through the begin date of a new contract, and at the pricing in place upon expiration of the most recent extension.

(b) This Agreement automatically terminates on and as of the date any of the following occur: The filing of a petition in bankruptcy by either party; or the making by either party of an assignment for the benefit of creditors; or if any involuntary petition in bankruptcy or petition for an arrangement pursuant to the Bankruptcy Act is filed against either of the parties; or if a receiver is appointed for the business of either party, or any part thereof, or if either party by law, or otherwise, discontinues its operations for any reason whatsoever.

(c) If either party fails to comply with any material term of this Agreement, the other party may, at its discretion, declare a default and terminate this Agreement upon thirty (30) days' written notice of its intention to so terminate, unless if within the notice period, the defaulting party has cured the default.

(d) Following expiration or termination of this Agreement by either party, Contractor/Service Provider must continue to make available to City, upon reasonable prior written request, copies of documents and records relating to tests performed by Contractor/Service Provider under this Agreement and must provide specimen retention services, consultation by Contractor/Service Provider's scientific and medical personnel, and litigation assistance relating to tests performed prior to termination of this Agreement, at the fees set out in Excel spreadsheet titled **Proposer's Response RFP BI-0048-13 3.6A Pricing D&A**. Any such services for which a fee is not specified in Excel spreadsheet titled **Proposer's Response RFP BI-0048-13 3.6A Pricing D&A**, will be billed at Contractor/Service Provider's reasonable and customary fees for such services.

3.2 RIGHT TO TERMINATE

The City Manager, or his designee, may terminate this Agreement for Contractor's failure to perform the services specified in Request for Proposal No. BI-0048-13. Failure to keep all insurance policies in force for the entire term of this Agreement is grounds for termination. The City's Contract Administrator must give Contractor 5 work-days' written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager, or his designee, may terminate this Agreement immediately thereafter. Alternatively, City may terminate this Agreement, with or without cause, upon 20 days' written notice to Contractor. However, City may terminate this Agreement on 24-hours' written notice to Contractor for failure to pay or provide proof of payment of taxes as set out herein.

If the City terminates its Contract under the foregoing paragraph, the City shall pay the Contractor for services actually performed prior to such termination, less such payments as have been previously made. Contractor shall not be entitled to any further compensation for work performed by the Contractor or anyone under its control or direction from the date of receipt of

notice of cancellation including any and all costs related to the transferring of any files to another Contractor or any costs related to the electronic transfer of any information including, but not limited to, tape transfers, downloads, uploads, CD, etc.

Within thirty (30) days of the date of termination of the Contract and at the Contractor's expense, the Contractor shall provide the City reproducible copies of all work completed or partially completed documents prepared under the Contract – all such documents thereafter being the sole property of the City.

4.1 RECORDS BELONG TO CITY

All Records compiled by Contractor/Service Provider, its employees, contractors, and agents, including without limitation Contractor/Service Provider's MRO, (collectively called Contractor/Service Provider's Agent) are compiled for the City to use in determining whether a Donor uses or has used drugs or alcohol. All records belong to the City. Contractor/Service Provider is the designated custodian of these Records, with certain Records in the custody of Contractor/Service Provider's MRO. All Records are compiled pursuant to a waiver signed by the Donor that authorizes Contractor/Service Provider to provide the Records to the Human Resources Director, Fire Chief, or Police Chief. It is the essence of this Agreement that Contractor/Service Provider provide all Records to the Human Resources Director, Fire Chief, or Police Chief, when requested.

4.2 NO DOCTOR-PATIENT RELATIONSHIP

Contractor/Service Provider and its Agent (specifically including Contractor/Service Provider's MRO) have no Doctor-Patient relationship with any Donor who provides a urine or blood specimen, or breath sample for drug or alcohol testing, or information during personal interviews between a Donor and Contractor/Service Provider's Agent with regard to drug and alcohol testing only. Contractor/Service Provider does have a relationship with City, which is purchasing its Services.

4.3 RECORDS NOT CONFIDENTIAL

All Records compiled by Contractor/Service Provider and Contractor/Service Provider's Agent (specifically including Contractor/Service Provider's MRO) from information and samples provided by a Donor are compiled for the City and belong to the city. ***If Contractor/Service Provider or its Agent believes that information provided by a Donor is confidential and chooses to redact that information, or conversely fails to redact confidential information, then Contractor/Service Provider agrees to indemnify City for all damages incurred by City due to Contractor/Service Provider or its Agent's redaction of, or failure to redact, confidential information from the Records.***

4.4 RECORDS UPON TERMINATION

Upon termination by either party, Contractor/Service Provider must within thirty (30) days deliver to the Human Resources Director all records, and files, as requested by the Human Resources Director. Books, Records, and other evidence pertaining to the drug and alcohol testing services performed under this Agreement which are retained by the Contractor/Service Provider must be maintained for five (5) years after termination or expiration of this Agreement, or, if a lawsuit or arbitration of this Agreement, or if a lawsuit or arbitration is pending, until a final decision is reached. All such Records and files and such other material maintained by the Contractor/Service Provider after termination of the Agreement must be made available to the Human Resources Director or designee at all reasonable times during the term of this Agreement for inspection or audit by the City Manager.

5.0 INSURANCE

Before activities can begin under this Agreement, a Certificate of Insurance as proof of the required insurance coverage must be delivered to the Human Resources Director or designee, which provides, at a minimum, the amounts of coverage as detailed in Section 2.39 "Insurance Provisions" of the RFP.

6.0 CERTIFICATIONS

- (1) The Contractor/Service Provider must use a laboratory, for initial and confirmation drug testing and for breath or blood alcohol testing services performed under this Agreement, which is certified by the Substance Abuse and Mental Health Services Administration (S.A.M.H.S.A.) and accredited by the College of American Pathologists - Forensic Drug Testing program and must provide documentation of this certification as required in the RFP. Any changes in laboratory certification status or in the specific S.A.M.H.S.A. and C.A.P. laboratory used by Contractor/Service Provider must be reported to the Human Resources Director, or designee prior to such change. Any re-certification/re-accreditation by Laboratory must be reported to the City's Human Resources Director, in writing, within thirty (30) days after such re-certification/re-accreditation.
- (2) A copy of the Physician's Medical Review Officer Certification from the American Association of Medical Review Officers must be provided to the City prior to commencement of services. The Human Resources Director, or designee, must be notified within thirty (30) days of any change in the MRO's certification status, re-certification or renewal of certification obtained by the Contractor/Service Provider's designated physician performing MRO services under this Agreement.

7.0 TESTIMONY

Proposer's Agent's testimony (specifically including MRO's testimony) both in preparation for any "Proceeding" and at the actual "Proceeding" itself, which concerns any drug and alcohol

collection, test, evaluation, or MRO services provided by Contractor/Service Provider or It's Agent is the essence of this Agreement "Testimony". Testimony from Contractor/Service Provider's Agent is absolutely essential for the City to defend any grievance, arbitration, or lawsuit that results from any donor challenging City's actions based on the results of that Donor's drug or alcohol urine/blood specimen or breath sample that was collected, tested, or evaluated by Contractor/Service Provider or It's Agent or reviewed by Contractor/Service Provider's MRO. Said grievance, arbitration, or lawsuit and preparation for same is collectively called "Proceeding". The failure of Contractor/Service Provider or It's Agent to appear in person to provide Testimony for any Proceeding is grounds for the City Manager to terminate this Agreement, or, alternatively, require Contractor/Service Provider to pay all of City's costs in preparing for and defending said Proceeding. At a minimum, the costs of a Proceeding include all Legal Staff time (Attorney's time will be billed at standard community rates for Attorneys of comparable experience; ditto secretarial and paralegal time; ditto copies made for exhibits prepared for the Proceeding) and costs, all Human Resources staff time and costs, all staff time and costs for the department whose employee or applicant (i.e. Donor) caused the Proceeding to occur [NOTE: in the case of Police and Fire Departments this may include overtime costs], and all expert witness fees, including the cost of Contractor/Service Provider's MRO's fees and any Arbitrator's Fees. The failure of Contractor/Service Provider's Agent (specifically including Contractor/Service Provider's MRO) to appear in person and give live Testimony at a Proceeding is presumed to be the reason that City lost the Proceeding. City's costs in an arbitration Proceeding that is decided against the City include all the arbitration costs.

7.1 CONTACT PERSON

Contractor/Service Provider must provide the name, address, phone number, and fax number of a single person who has the authority to schedule times for Contractor/Service Provider's Agents (specifically including Contractor/Service Provider's MRO) to provide live, in person Testimony for Proceedings, (this person with authority to schedule is the "Contact Person"). The Contact Person must talk to the Human Resources Director, (which by definition includes designees), about possible dates for Testimony within one City of Corpus Christi business day and confirm dates that Contractor/Service Provider's Agent (including Contractor/Service Provider's MRO) are available for live, in person Testimony for a Proceeding within eight (8) business days.

7.2 WAIVER OF LIVE TESTIMONY

Only the Hearing Examiner in a Proceeding (e.g. chairperson of the Civil Service Board or Commission, Judge, Arbitrator collectively called "Hearing Examiner" herein) has the authority to provide a prior written waiver that any Contractor/Service Provider's Agent (specifically including Contractor/Service Provider's MRO) does not have to appear in person and give live Testimony. It is the obligation of any Contractor/Service Provider's Agent who wishes to not appear in person and give live Testimony to make prior written arrangements with the Hearing Examiner and copy the Human Resources Director, and the City Attorney at (361) 880-3239 with all correspondence between Contractor/Service Provider's Agent and the Hearing Examiner. Simply because a Contractor/Service Provider's Agent obtained the Hearing Examiner's prior

written approval to not appear in person and give live Testimony does not rebut the presumption that the failure to give live Testimony is why the City lost the Proceeding.

8.0 MISCELLANEOUS

a. Applicable laws and venue

Contractor/Service Provider must comply with all applicable federal and state laws and all applicable rules and regulations promulgated by local, state and federal agencies. This Agreement must be enforced in Nueces County, Texas, and must be governed and construed in accordance with the laws of the State of Texas.

b. Notices

All notices required under this Agreement must be in writing, personally delivered or sent by certified mail, return receipt requested, addressed to the other party as follows.

IF TO CITY:

City of Corpus Christi
1201 Leopard 78401
P.O. Box 9277 78469
Corpus Christi, Texas
Phone #(361) 880-3315
Fax #(361) 880-3322
Attention: Yasmine Chapman
Director of Human Resources

AND

Chief Robert Rocha
Fire Department,
City of Corpus Christi
2406 Leopard Street
Corpus Christi, Texas 78408
Phone # (361) 880-3900;
Fax # (361) 887-8053.

AND

Floyd Simpson, Chief of Police
Police Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469

IF TO CONTRACTOR/SERVICE PROVIDER:

Name of Organization: Nueces Emergency Services
Name of Individual: Dr. J. Keith Rose, M.D.
Title: President
Address: 4637 SPID

City: Corpus Christi
State: TX
Telephone Number: 361-241-1116
Facsimile Number: 361-242-1116
E-mail Address: keithr@doctors-center.com

Either party may change its address to which written notice must be sent as provided in this section.

c. Force Majeure

Neither party will be liable for failure to perform any duty or obligation that either may have under this Agreement where such failure has been caused by any act of God, fire, strike, inevitable accident, war or any cause outside the reasonable control of the party who had the duty to perform.

d. Waiver

The failure of either party to exercise or enforce any right conferred upon it hereunder will not waive any such right nor bar the exercise of performance thereof at any time or times thereafter; nor is City's waiver of any right hereunder at any time, including rights to any payment, a waiver thereof for any other time.

e. Non-assignment

This Agreement must not be assigned or transferred by Contractor/Service Provider without the prior written consent of the City Manager, or designee. Contractor/Service Provider is at all times solely responsible for the provision of the drug and alcohol specimen collection, testing, laboratory and MRO services and the competency of services provided hereunder, whether accomplished through its officers and employees or through its agents or subcontractors.

f. Severability

If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the parties will, if possible, agree on a legal, valid and enforceable substitute provision which is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid or unenforceable remains valid and effective for the term remaining unless the provision found illegal, invalid or unenforceable goes to the essence of this Agreement.

g. Legislative Modification

Notwithstanding any other provision to the contrary, if any federal, state, or local law, rule, regulation, or interpretation thereof at any time during the term of this Agreement prohibits, restricts, or in any way materially changes the type of services rendered under this Agreement, then this Agreement may, in good faith, be amended by the parties to provide for payment of

compensation in a manner consistent with any such prohibition, restriction, or limitation; otherwise, this Agreement remains in full force and effect.

With respect to any other prohibition, restriction, or change that causes this Agreement to be impermissible or materially different in its effect than contemplated herein, the parties hereto will, in good faith, negotiate and amend this Agreement to cause their relationship to be as consistent as possible with that which is created herein; if this Agreement is not so amended in writing prior to the effective date of said prohibition, restriction, or change, this Agreement terminates on that date or as agreed in writing by the parties.

h. Section Headings

Section headings contained in this Agreement are for reference purposes only and do not affect, in any way, the meaning and interpretation of this Agreement.

i. Confidentiality

Contractor/Service Provider acknowledges that in the course of providing services under this Agreement, it may be privy to certain confidential information of the City and Donors, including but not limited to laboratory testing results, Donor medical records, and other confidential documents or information. Contractor/Service Provider agrees and directs all of Contractor/Service Provider's Agents that it, its employees and agents, must not directly or indirectly divulge or disclose to third persons any of such confidential information, except as specifically authorized or directed in writing by the Human Resources Director, Fire Chief, Police Chief, or designee. Contractor/Service Provider must advise Contractor/Service Provider's employees and agents having access to such information of the confidential nature of such information and must take reasonable steps to inform each Contractor/Service Provider's employees and agent's to preserve the confidentiality of such information and materials. Contractor/Service Provider and Contractor/Service Provider's employee's and agent's obligation under this provision must survive the expiration and/or termination of this Agreement.

j. Indemnification

PROPOSER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THE CONTRACT OR THE PERFORMANCE OF THE CONTRACT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. PROPOSER MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS

AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF PROPOSER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE CONTRACT.

k. Notice of Claim

The Human Resources Director, will promptly notify Contractor/Service Provider of any claim asserted against it for which such indemnification is sought, and will promptly deliver to Contractor/Service Provider a true copy of any such claim including, but not limited to, a true copy of any summons or other process, pleading or notice issued in any lawsuit or other proceeding to assert or enforce such claim.

The City Manager may participate in such investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. The City, its officers, employees, agents, and representatives will provide full cooperation to the Contractor/Service Provider at all times during the pendency of the claim or lawsuit, including, without limitation, providing Contractor/Service Provider with all available information concerning the claims.

l. Non-Appropriations

The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on July 31 of each year, will be subject to appropriations and budget approval covering this Agreement as an expenditure in said budget; however, it is within the sole discretion of City Council to determine whether to fund this Agreement.

m. Whole Agreement

This Agreement and its Attachments contain all commitments and agreements of the parties hereto, superseding any previous agreements between the parties, and no modification of this Agreement may be made except by written amendment executed by the duly authorized representatives of the parties hereto.

SIGNED this day of, 2013.

CONTRACTOR:



Name:

Title:

CITY OF CORPUS CHRISTI

Michael Barrera
Assistant Director of Financial Services

Date

Incorporated by reference:

Exhibit A: RFP No. BI-0048-13

Exhibit B: Proposer's Proposal

Exhibit C: Clarification/Additional Service

**CITY OF CORPUS CHRISTI
PURCHASING DIVISION
EXHIBIT C**

The City of Corpus Christi (City) and Nueces Emergency Services d.b.a. The Doctor's Center (referred to as "Contractor") do hereby agree to the following:

Section E, 9 (a), SPECIMEN COLLECTION PROCEDURES, OF ATTACHMENT III to Request for Proposal No. BI-0071-08 and styled Fire Department, COLLECTION PROCEDURES FOR DRUG AND ALCOHOL TESTING, is hereby revised to read:

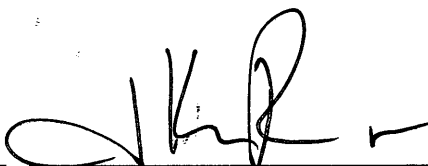
In the case of random testing (at a Fire Department facility) the unsuccessful Donor or Donor(s) shall be allocated an additional fifteen (15) minutes after the last successful Donor. If Donor(s) are not able to submit the required amount of specimen, the collector shall leave the Fire Department facility and the Donor(s) shall continue to consume reasonable quantities of fluids. Once the Donor(s) is ready to attempt to submit the required amount of specimen, the collector shall be called back to the Fire Department facility by Fire personnel. The collector shall return to the Fire Department facility as soon as practicable. The Donor(s) will have a period of up to 8 hours from the beginning of the collection procedure to submit the required amount of specimen. All testing will be conducted on-site, except for personnel assigned to Training, Fire Prevention & Arson, and Administration. Personnel not tested on-site will be required to report to a designated lab within 3 hours of notification by their supervisor.

Hair follicle testing shall be at a cost of \$75/test (collection and testing).

IN WITNESS WHEREOF, the parties hereto have affixed their signature.

CITY OF CORPUS CHRISTI

THE DOCTORS' CENTER



Michael Barrera

Date

J. Keith Rose, M.D.

Date

Assistant Director of Financial Services

President