

**JOINT USE AGREEMENT
BETWEEN
THE CITY OF CORPUS CHRISTI
AND
WELLMED CHARITABLE FOUNDATION**

This Joint Use Agreement ("Agreement") is made this _____ day of _____, 2015, by and between the City of Corpus Christi (hereinafter called "City"), a Texas municipal corporation and political subdivision acting by and through its City Manager or designee and WellMed Charitable Foundation, a Texas non-profit corporation (hereinafter called "WCF").

PREAMBLE

WHEREAS, the City is recognized as having a commitment to providing Corpus Christi senior citizens with comprehensive services that will enhance their social, psychological, and physiological wellbeing; and

WHEREAS, WCF has a mission to support seniors and their caregivers with a special emphasis on prevention, wellness and living well with chronic illness; and

WHEREAS, the expense of renovating, constructing, operating and maintaining the Zavala Senior Center (herein, the "Senior Center") and the Joe Garza Recreation Center (collectively herein, the "Multigenerational Complex"), as proposed herein, would be cost-prohibitive to either City or WCF, individually; and

WHEREAS, City and WCF have determined that a joint collaborative effort for the renovation of the Multigenerational Complex by the City and WCF, serving senior users in general, and offering enhanced programs to youth and families, is a unique opportunity and an efficient approach to addressing the needs of seniors and the general community; and

NOW, THEREFORE, in consideration of the covenants, conditions and provisions set forth herein, the parties hereto agree as follows:

I. TERM

1.1. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall commence immediately upon its execution and shall continue for five (5) years.

II. CONTRACT ADMINISTRATION

2.1. WCF's Executive Director shall be WCF's designated representative responsible for the administration of all contractual matters pertaining to this Agreement.

2.2. City's Director of the Parks and Recreation Department ("Director") and/or his designee shall be City's representative responsible for the administration of this Agreement.

2.3. Communications between City and WCF shall be directed to the designated representatives of each as set forth in Sections 2.1 and 2.2 hereinabove.

III. STATEMENT OF GENERAL PURPOSE

3.1. The purpose and intent of this Agreement is to provide for the funding of the renovation, management and joint use and location of the "Multigenerational Complex." The City will run the youth program separately from this Agreement.

IV. SERVICES AND RESPONSIBILITIES

4.1. The parties agree that the "Zavala Senior Center" or "Senior Center" shall offer a multitude of services at no cost to persons 50 years of age and older, (herein referred to as "Seniors") in collaboration with WCF, including but not limited to social, recreational, fitness, nutrition (with nutrition program limited to persons 60 years of age and older), educational, health and screening services, and prevention programs. The parties also agree that the Senior Center shall consist of, at a minimum, recreational area(s), exercise room(s) and exercise equipment, a nutrition site for the serving and consuming of meals, classroom(s), computer lab or cyber café, health screening room(s), administrative and faculty/staff office space, reception area, custodial, storage and telecommunications areas, parking and ancillary support areas, all of which shall be comprised of approximately 7,530 square feet located at 510 Osage Street. A copy of the current floor plan for the Senior Center is attached hereto as Attachment "A-1," which is incorporated herein by reference for all purposes as if fully set forth.

4.2. The parties agree that the "Joe Garza Recreation Center" at 3204 Highland Ave, Corpus Christi, TX 78405 shall maintain full City management and oversight for current use as a recreation facility with programs for participants of all ages including after school programs; Summer Food Program; Fee based classes; rentals; and scheduling. A copy of the current floor plan for the Joe Garza Recreation Center is attached hereto as Attachment A-2, which is incorporated herein by reference for all purposes as if fully set forth. Joe Garza Recreation Center may also be used by the City as a nutrition site for the serving and consuming of meals.

4.3. WCF will contribute all expenses necessary (not to exceed \$280,000 – the "Maximum Amount") to complete the renovations to the Zavala Senior Center and Joe Garza Recreation Center as described herein and on Attachment B. WCF will make payments directly to the applicable contractor(s).

4.4. The City shall provide, oversee, administer, and carry out the following activities and services at the Senior Center:

- a) Nutrition Program;
- b) City services request such as social services;
- c) Custodial and maintenance of facilities; and
- d) IT and telephone support.

4.5. The City shall employ an individual having responsibility for oversight of the City services and part-time (19 hours per week) Nutrition Site Manager at the Senior Center and liaison to City management and the WCF representative manager described below with regard to operations at the Senior Center. With regard to the services above, WCF staff located at the Senior Center shall defer to the decisions and direction given by the City's representative manager who shall have final decision making authority with respect to the matters described in Section 4.4 above. In no way shall this provision be interpreted to mean that WCF staff at the Senior Center must report to or be held accountable to the City's representative manager in matters unrelated to those stated in this Section.

4.6. With the exception of those activities and services set forth in Section 4.3 above, WCF will be responsible for the day-to-day management of the Senior Center and, in addition, shall provide,

oversee, administer, and carry out the following activities and services at no cost to the City and at no cost to the seniors at the Senior Center:

- a) Fitness/recreation activities;
- b) Multigenerational programming opportunities (i.e.; arts/crafts; theater arts; computer classes, etc.)
- c) Health, wellness and disease prevention educational programs; and
- d) Access to a dedicated call center for no cost qualification and renewals of Medicare Savings Programs.

In addition, WCF may utilize Joe Garza Recreation Center to provide senior educational classes as scheduling permits.

The activities and services provided at the Senior Center through WCF shall be substantially similar to the types and frequency as those previously provided through the City prior to the execution of this Agreement.

4.7. WCF shall directly employ an individual having responsibility for on-site oversight of the WCF services who shall serve as WCF's full-time on-site representative manager at the Senior Center and liaison to WCF management (the "WCF Senior Center Manager") and the City representative manager with regard to operations at the Senior Center. WCF shall additionally directly employ a receptionist and contract for the services of the number of personal trainers set out in the WCF budget for the Senior Center. All employees and contractors of WCF who provide any work or services at the Multigenerational Complex must first pass a criminal background check similar to the one used by the City for employees working with minors. The supervisors above the on-site WCF Senior Center Manager shall also be direct employees of WCF.

4.8. With regard to the services above in Section 4.4, City staff located at the Senior Center shall confer with WCF representative for matters involving the day-to-day operation of the Senior Center. Each entity shall have final decision making authority in their respective operations. In no way shall this provision be interpreted to mean that City staff at the Senior Center must report to or be held accountable to WCF's representative manager in matters unrelated to those stated in this Section. The parties agree to utilize the attached and incorporated Program Issues Resolution FlowChart attached hereto as Attachment "D" for contacts to assist with resolution of any issues regarding activities under this Agreement.

4.9. WCF is prohibited from requiring enrollment of a senior as a patient member of its affiliated medical group of practicing physicians as a prerequisite to providing the services required by this Agreement. All seniors frequenting the Senior Center shall have a right to the services required by this Agreement at no cost, and WCF is prohibited from altering, reducing, or diminishing the quality of services based upon a senior's enrollment or lack thereof as a patient in WCF's affiliated medical groups. Additionally, WCF shall ensure that it and its affiliate(s) notify seniors both within the Senior Center (i) of their option to receive health screening and education services covered by this Agreement at no cost within the Senior Center; (ii) that any additional diagnostic or treatment services beyond that which is offered in the Senior Center are separate and apart from the free services to which they are entitled in the Senior Center; and (iii) of their right to be referred to other medical care providers and institutions of their choice in the area to ensure comprehensive and quality care in order to meet the required standard of care for the health care industry.

4.10. The parties shall develop policies and procedures for management of responsibilities in the

temporary or long-term absence of a party's representative manager, the handling and notification of emergencies, public and media relations, and for any other subject matter the parties deem necessary and prudent.

4.11. WCF and City hereby agree to meet at least once quarterly and more frequently if the parties desire or deem necessary, to discuss and agree upon modifying, supplementing or discontinuing Senior Center services and programming based upon assessment of community needs and customer service feedback from the Senior Center. In recognition of the importance of nurturing a close spirit of cooperation between the parties to this Agreement, the parties shall endeavor to develop a relationship of trust and cooperation that will yield mutual assistance and facilitate the resolution of problems in order to implement the comprehensive service model.

4.12. WCF and the City are each independent contractors and are not agents or employees of the other and neither WCF nor the City will represent that it is an agent or employee of the other party.

4.13 WCF and the City shall coordinate with the Special Events Committee ("Committee") with respect to the utilization of the Senior Center by the Committee on occasional basis for special events coordinated by the Committee.

4.14 The City will retain ultimate authority for the operations and direction of the Senior Center and the Joe Garza Recreation Center. In the event of an impasse between the City and WCF about any matter, WCF will be entitled to discontinue its participation upon the giving of 60 days' advance written notice.

V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.1. Each party agrees to comply with all City, State and Federal laws, regulations, ordinances and codes affecting construction, procurement and operations pursuant to this Agreement.

5.2. WCF also agrees to require by written agreement that its consultants, contractors, subcontractors and their respective officers, agents, employees, directors, and representatives comply with all city, state and federal laws, regulations, ordinances and codes affecting construction, procurement and operations pursuant to this Agreement.

VI. RECORDS, REPORTING, RETENTION

6.1. The Parks and Recreation Department is assigned monitoring, fiscal control, and evaluation of senior service contracts funded by the City or to which the City is a party. Therefore, at such times and in such form as may be required by the Director of the Parks and Recreation Department, WCF shall furnish to the Director of the Parks and Recreation Department and the grantor of grant funds, if applicable, such statements, records, data, all policies, procedures, and information and permit the City and grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. WCF ensures that all information contained in all required reports submitted to City is accurate.

6.2. WCF shall retain all records, documents, reports and written accounting policies and procedures pertaining to the renovation / construction of the Senior Center and services provided under this Agreement for the period(s) set forth in the official records retention schedules of the Local Government Records Act of 1989 and any amendments thereto, and make available to the City at all reasonable times such records, documents, reports and written accounting policies and procedures.

VII. CONSULTANT AND CONTRACTS

7.1. It shall be WCF's responsibility to advertise for design, and contract bids and to award, in WCF's name, such contract(s) for the renovation / finish out of the Senior Center and Joe Garza Recreation Center as described on Attachment B. Attachment B shall also include a timeline for completion. WCF shall advise City of its recommendations regarding the firms to which it proposes to award contracts. The decision as to whom contracts are awarded is ultimately WCF's so long as such awards do not require payment of any municipal funds.

7.2. Monitoring and administration of such contracts, and the making of payments to contractors shall be the responsibility of WCF. Notwithstanding the foregoing, WCF agrees to coordinate and consult with City during the design, planning and specification phase. WCF agrees to keep the Director of the City's Parks and Recreation Department, informed of construction progress and of any problems or delays encountered during construction.

7.3. WCF agrees to contractually require payment and performance bonds and insurance from all contractors and consultants hired for the renovation project.

7.4 (A) No construction or modifications may be made, and no drilling, excavation, or penetration of the soil surface may be conducted without the prior written approval of the Director. WCF shall not make any additions or alterations without the Director's prior written approval, which such approval shall not be unreasonably withheld, conditioned or delayed. If approved, WCF must obtain clearance, in writing, from the City's Risk Management Department ("Risk Management") that the proposed addition or alteration will be covered under the insurance policy in force during the term of this Agreement proceeding with any type of addition or alteration.

(B) All construction, additions, alterations and equipment as described herein and on Attachment B must be made at WCF's expense. WCF must provide proof to the Director of sufficient funds on hand, subject to the Maximum Amount, to complete the work on Attachment B and any other reasonably anticipated addition or alteration. All additions, alterations and equipment installed by WCF must be promptly repaired or replaced at WCF's expense. All additions or alterations made by WCF and accepted by the Director become the property of the City without necessity of any legal action. WCF maintains ownership of its equipment used at the Multigenerational Complex and at the termination of this Agreement, WCF agrees to donate the exercise equipment to the City.

(C) The plans and specifications for all additions or alterations shall be prepared by state-licensed architects or engineers. The plans and specifications must be approved in writing by the Director of Capital Programs or designee prior to construction.

(D) A payment bond is required for construction contracts that exceed \$25,000. A performance bond is required for construction contracts that exceed \$100,000. The bond(s) shall be provided by WCF and made with the City as the obligee.

(E) Lessee shall ensure that an indemnity clause reasonably acceptable to the City Attorney or his designated Assistant City Attorney is included in all contracts related to construction or WCF's services provided at the property.

(F) All construction contracts must be approved in writing by the Director of Capital Programs or designee, which such approval shall not be unreasonably withheld, conditioned, or delayed. All construction contracts must include terms regarding the City's ability to inspect, reject and accept the work, which such acceptance shall not be unreasonably withheld, conditioned, or delayed.

(G) WCF shall keep the Multigenerational Complex free from any liens arising out of any work performed, materials furnished or obligations incurred by WCF, and shall indemnify, protect and hold harmless City from any liens and encumbrances arising out of any work performed or materials

furnished by or at the direction of WCF. If, at any time during the Agreement any interest of City in the Premises becomes subject to a lien for labor or materials furnished to WCF in the repair or improvement of the Multigenerational Complex, within thirty (30) days after WCF's receipt of written notice informing WCF of the recording of such lien, WCF shall cause the lien to be bonded or discharged, and shall otherwise defend and hold City harmless on account thereof, provided, however, that if WCF desires in good faith to contest the validity or correctness of any such lien, it may do so, and City shall cooperate to whatever extent may be necessary, provided only that WCF shall defend and indemnify City against any costs, loss, liability or damage on account thereof, including reasonable attorneys' fees. The interest of City in the Multigenerational Complex shall not be subject to liens for improvements made by or for the account of WCF, for which WCF shall provide due notice to all parties who provide any services or materials with respect to any work on the Multigenerational Complex.

VIII. COORDINATION AND CONSULTATION DURING RENOVATION

8.1. Throughout the design, planning and specification phase, WCF shall keep the Parks and Recreation Department reasonably informed of progress of the design, re-design, finish-out, and construction, if applicable, of the Senior Center. To accomplish such, WCF and City hereby agree to designate one (1) staff member each to act as a project liaison for the purpose of coordinating with one another regarding the progress of and furthering of the renovation project.

8.2. WCF shall provide to City its construction and finish-out plans and specifications for the Senior Center ("Plans") and such Plans shall be subject to the review and approval of City Director of Capital Programs or his designee, which approval shall not be unreasonably withheld, conditioned or delayed. After approval by City, such Plans shall be marked "Approved," dated, and attached hereto and made a part of this Agreement and incorporated herein by reference as if fully set forth. WCF shall not make any substantial changes to the Plans without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed. Any modified plans that are later approved shall be labeled so as to clearly indicate the date of approval and shall be attached as substituted approved Plans.

8.3. WCF shall submit all proposed changes to the Director of Parks and Recreation Department and Director of Capital Programs for review and approval to ensure their compatibility with the Plans, which approval shall not be unreasonably withheld, conditioned or delayed.

8.4. Commencing promptly after award of the construction contract(s) and continuing diligently thereafter until completion, WCF shall cause to be constructed the improvements at the Senior Center in accordance with the Plans and provided that construction shall be made in a good and workmanlike manner.

8.5. Representatives for the parties shall meet on a regularly scheduled basis at the Senior Center to review the progress of construction. Beyond scheduled meetings, City shall have authority to visit the Senior Center during normal business hours throughout the construction process to ensure compliance with the Plans. City staff shall contact the WCF representative by telephone, leaving a message if the representative cannot be reached, in order to provide advance notice of a visit by City staff and those that accompany City staff. Notwithstanding the foregoing, the City agrees that any comments regarding construction progress shall be directed to the WCF representative and not to contractors or other individuals working at the construction site. WCF shall cause its project consultants and contractors, as the case may be, to provide periodic certifications of construction and the final certification certifying that construction has been conducted in compliance with the Plans.

8.6. Should the Parks and Recreation Department observe any deficiencies or other problems in design or construction work, the same shall be immediately reported to WCF's project liaison for the renovation project. WCF agrees to promptly consider the report, and, where appropriate, cause corrective action(s) to be taken. It shall be WCF's sole responsibility to determine and diligently pursue the appropriate action required. Only WCF shall have the authority to issue a stop work order to the construction contractor or project consultants. However, City Building Official or Director of Capital Programs shall have authority to issue a stop work order to WCF when determined to be necessary to prevent a material non-compliance with applicable building codes or permits.

IX. FINAL PROJECT INSPECTION AND ACCEPTANCE

9.1. WCF agrees to notify the City's Parks and Recreation Department Director of the date and time of final project inspection. WCF agrees to permit City representatives to participate in such final inspection and to include such deficiencies, if any, as may be noted by City representatives, in the punch list for correction by the construction contractor.

9.2. WCF shall provide City with a copy of the final project acceptance document and shall also provide City with a set of as-built plans within a reasonable period of time following project acceptance. Thereafter, the Director may provide WCF with written notice of City acceptance of the work performed through WCF and WCF's contractor, which such acceptance shall not be unreasonably withheld, conditioned or delayed.

X. TIMES OF OPERATION

10.1. The parties shall mutually agree upon operating days and hours for the Senior Center based upon the needs of the population served, which schedule shall include agreed nationally observed holidays or days of shut-down for maintenance periods. The parties agree that the hours may be modified from time to time as a result of customer service feedback or studies performed or commissioned by the City. The minimum operating days and hours for the senior Center are as follows unless otherwise mutually agreed to by the Director and WCF: Monday through Friday 7:00 a.m. to 4:00 p.m., City observed holidays excluded.

10.2. The parties agree that use of the Senior Center by the parties for meetings, organizational or other special events not related to the General Purpose and Intent of the Senior Center shall be managed so as to minimize overuse, wear and tear, increases in utility or maintenance costs, or repairs beyond that which is expected for the center's uses as stated in this Agreement. If overuse becomes an issue, the parties agree to develop a policy of permitted after-hour or weekend use or a plan for covering increased costs based upon usage that is mutually acceptable.

XI. SIGNS AND ACKNOWLEDGMENT OF PARTICIPATION

11.1. WCF agrees to include in the design plans a permanently-installed plaque or other suitable permanent sign on, in or about the Senior Center which acknowledges that the parties are joint service providers at the facility. The size, form, material, verbiage and location of such sign shall be mutually agreed upon by the parties hereto.

11.2. WCF further agrees to provide in the design phase and include in the Senior Center renovation locations for sign(s) which announce public use hours and such other information as may be necessary to inform the public of available programs provided at the Senior Center by the parties to this Agreement and their users. The size, form, material, verbiage and location of such signs are subject to mutual agreement.

11.3. Throughout the term of this Agreement, the parties agree that in all Senior Center-related press releases, flyers, brochures and other informational material prepared and distributed by WCF or City, WCF and City agree to include acknowledgment and recognition of the joint nature of the Senior Center development and operations.

XII. SAFETY

12.1. WCF and City hereby agree and pledge that each shall fully comply with all established safety standards of the City applicable to operation and use of the Senior Center. WCF shall post such informational signs as necessary to inform users of facility rules and regulations, and governmental codes and ordinances applicable to access and use. During their respective use and joint use periods, City and WCF agree to enforce such rules and regulations.

XIII. UTILITIES

13.1. City shall secure all necessary utility services under its name and account and shall ensure that the invoices for these are paid in a timely manner. Utility costs of the Senior Center, shall include waste disposal, electricity, phone, sewer, water, and gas, as applicable.

XIV. INSURANCE

14.1. Prior to the commencement of any work under this Agreement, WCF shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Parks and Recreation Department which shall be clearly labeled "Construction and Operation — Senior Center" 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) 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 Agreement until such certificate and endorsements have been received and approved by the City's Director of the Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

14.2. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement which increase the City's risk with respect to this Agreement. In no instance will City allow modification whereby City may incur increased risk.

14.3. WCF's financial integrity is of interest to the City; therefore, subject to WCF's right to maintain reasonable deductibles in such amounts as are approved by the City, WCF shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at WCF'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 with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory

2. Employers' Liability (Each applicable only to contractors and subcontractors – WCF does not have any employees)	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

14.4. WCF agrees to require, by written contract, that all construction contractors and subcontractors providing goods or services hereunder provide a certificate of insurance and endorsement that names WCF and the City as additional insureds. WCF shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. Dance, computer, arts, crafts and other instructors are not subject to these requirements.

14.5. As they 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 and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Such changes shall be requested only as necessary due to changes in the law, in case law decisions, or in the event of unanticipated performance concerns. WCF shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. WCF shall pay any costs incurred resulting from said changes.

City of Corpus Christi
Attn: Parks and Recreation Department
P.O. Box 9277
Corpus Christi, Texas 78469-9277

14.6 WCF agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on

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

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

14.7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, WCF shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend WCF's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

14.10. It is agreed that WCF's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this Agreement.

14.11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

14.12. WCF and any subcontractors are responsible for all damage to their own equipment and/or property.

XV. INDEMNIFICATION

15.1. WCF COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY ARISING OUT OF, RESULTING FROM OR RELATED TO WCF'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF WCF, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF WCF, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND

REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. IN THE EVENT WCF AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. EACH PARTY RESERVES 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. WCF shall promptly advise the CITY in writing of any claim or demand against the CITY or WCF known to WCF related to or arising out of WCF's activities under this AGREEMENT. CITY shall promptly advise WCF in writing of any claim or demand against the CITY or WCF known to CITY related to or arising out of CITY's activities under this AGREEMENT.

15.4. WCF agrees, at its own expense, to investigate all claims and demands, attend to their settlement or other disposition, defend all actions based thereon with counsel approved by the City Attorney, which such approval shall not be unreasonably withheld, conditioned or delayed, and pay all charges of such attorney and all other costs and expenses of any kind arising from any of said claims and demands.

15.5. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES.

XVI. SUBCONTRACTING

16.1. City hereby consents to WCF's subcontracting of all or any part of the operation and maintenance services to WellMed Medical Management Inc. ("WMMI") through a written contract. All subcontractors of WCF who provide services at the Multigenerational Complex must first pass a criminal background check similar to one used by the City for employees working with minors. All other work or services covered by this Agreement may be sub-contracted by WCF without prior written consent so long as the proposed sub-contractor(s) are related to instruction and/or training (e.g. dance, computer use, etc.) and so long as payment for services under the sub-contracts is budgeted by WCF. However, the on-site Senior Center Manager must remain a WCF employee at all times.

16.2. Reserved.

16.3. Any work or services authorized for sub-contracting hereunder, shall be sub-contracted only by written Agreement, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. WCF shall attach to each subcontract a copy of this Agreement so as to advise each subcontractor of the provisions to which the subcontract is subordinate. WCF agrees to provide City with an executed counterpart of any subcontract permitted hereunder within ten (10) days following execution thereof.

16.4. Compliance by WCF's sub-contractors with this Agreement shall be the responsibility of WCF. WCF agrees that payment for services of any WCF sub-contractor shall be submitted through WCF, and WCF shall be responsible for all payments to its sub-contractors. Regardless of any subcontracting, WCF shall be primarily liable for the performance of its obligations under this Agreement. Such subcontracts shall contain insurance and indemnity provisions similar to those required in this Agreement, with the City named as an additional insured.

XVII. DISCLOSURE OF INTEREST

17.1 WCF has tendered to the City a completed Disclosure of Interest Statement attached as Attachment C.

XVIII. TERMINATION

18.1. Should either party fail to fulfill, in a timely and proper manner, any material obligations under this Agreement, or if either party should violate any of the material covenants, conditions, or stipulations of the Agreement, the other party shall thereupon have the right to terminate this Agreement by sending written notice to the breaching party of such termination and specify the effective date thereof. Prior to termination, the non-breaching party shall provide written notice of the unsatisfactory performance, violations or areas of non-compliance, and an opportunity to cure within thirty (30) days after receipt of notice of breach. However, in cases where the health, safety and welfare of one or more persons is at risk as a consequence of either party's unsatisfactory performance, violation or area of non-compliance, then the other party may require that the breaching party immediately act to cure the deficiency and the breaching party hereby waives all right to receive written notice. If a breach remains uncured, the non-defaulting party shall be entitled to pursue all remedies available under law which may include reimbursement for expenditures incurred in accordance with this Agreement.

18.2 Within thirty (30) calendar days after the expiration or termination of this Agreement, WCF shall turn over to the City copies of all records, documents, files and other instruments in its possession pertaining to WCF's performance under this Agreement.

IXX. ASSIGNMENT

19.1. This Agreement shall not be assignable by either party unless written authorization is first obtained from the other party, which such authorization shall not be unreasonably withheld, conditioned or delayed.

XX. SEVERABILITY

22.1. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, including any renewals, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement 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.

XXI. ENTIRE AGREEMENT

21.1. This Agreement contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon to date, and no other agreements of prior date, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto. It is the intent of the parties that neither party shall be bound by any term, condition or representation not herein written.

XXII. AMENDMENT

22.1. No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XXIII. NON-DISCRIMINATION

23.1. Any discrimination by WCF or City or their agents or employees on account of race, color, sex, age, religion, handicap or national origin, in employment practices or in the use of or admission to the Senior Center, is prohibited.

XXIV. NOTICES

24.1. Notices to the parties herelo required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified Mail, postage prepaid, addressed to:

CITY

City of Corpus Christi
Attn: Director, Parks and Recreation
PO Box 9277, Corpus Christi, Texas
78469-9277

WCF

WellMed Charitable Foundation
Attn: Carol Zernial
Executive Director
8637 Fredericksburg Rd., Suite 100
San Antonio, Texas 78240

XXV. RELATIONSHIP OF PARTIES

25.1. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

25.2. Any and all of the employees of WCF, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of WCF 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 WCF.

Any and all of the employees of City, wherever located, while engaged in the performance of any work required under this Agreement shall be considered employees of City only, and not of WCF, 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 City.

XXVI. VENUE

26.1 WCF and City agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Nueces County, Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Corpus Christi, Texas. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Nueces County, Texas.

XXVII. GENDER

27.1. Words of any gender used in this Agreement 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.

XXVIII. CAPTIONS

28.1. The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Agreement.

IXXX. AUTHORITY

29.1. The signers of this Agreement hereby represent and warrant that they have authority to execute this agreement on behalf of each of their governing bodies.

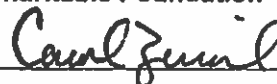
EXECUTED this the _____ day of _____, 2015.

CITY

City of Corpus Christi, Texas

WCF

WellMed Charitable Foundation



APPROVED AS TO FORM:


Assistant City Attorney

ATTACHMENTS

Attachment A	Facility Floor Plans
A-1	Zavala Senior Center
A-2	Joe Garza Recreation Center
Attachment B	Construction and Finish-Out Plans and Specifications
Attachment C	Disclosure of Interest form
Attachment D	Program Issues Resolution Flow Chart

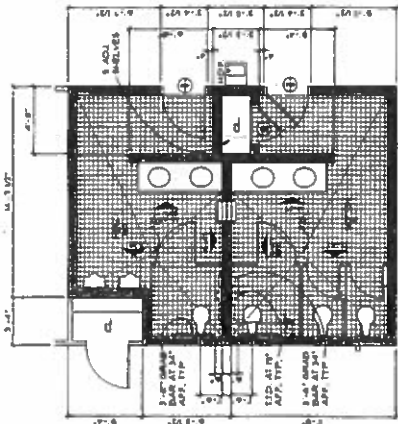
Attachment A

[INSERT Facility Floor Plans]

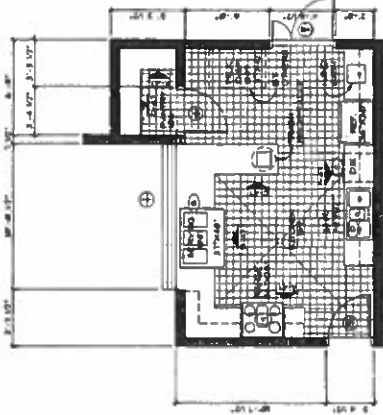
A-1 Zavala Senior Center

A-2 Joe Garza Recreation Center

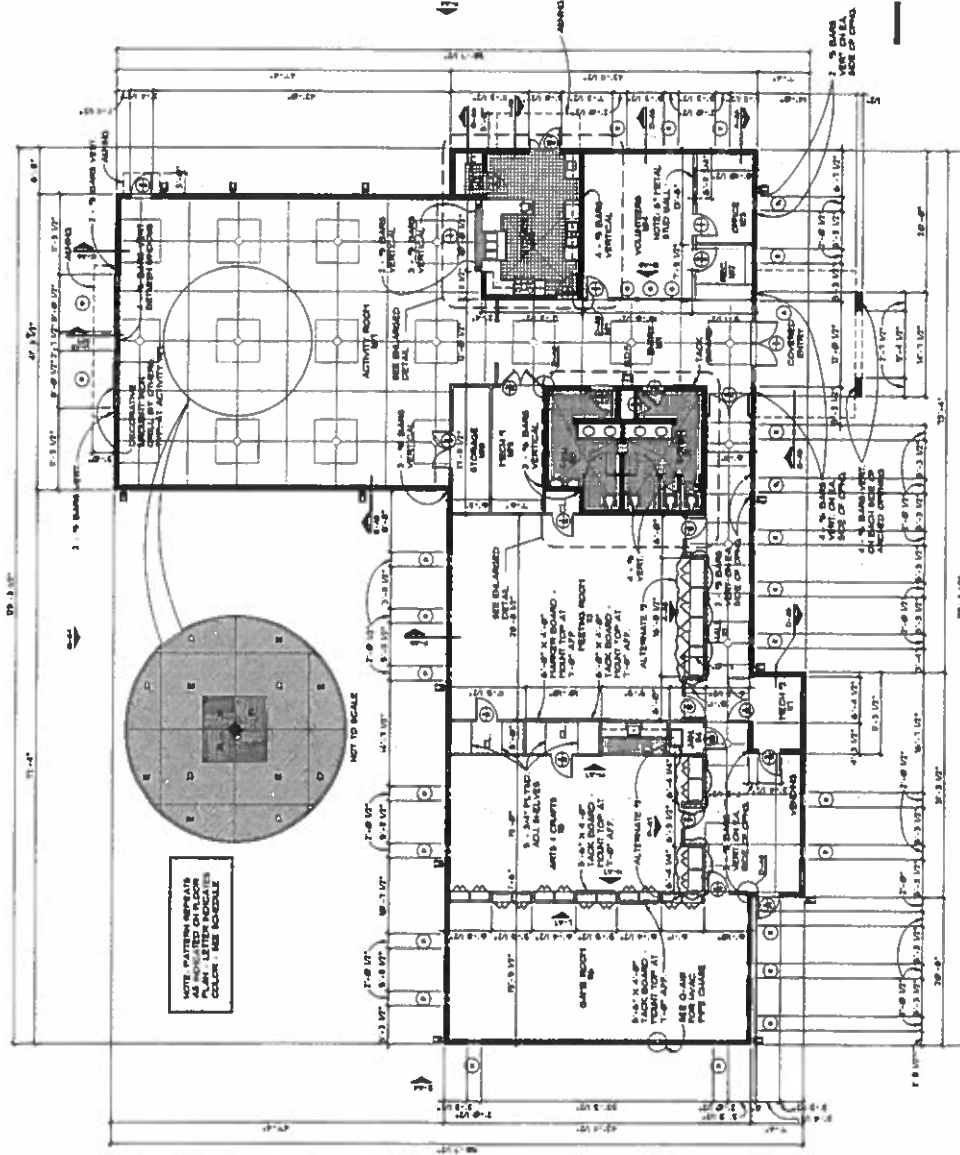
Attachment A-1



ENLARGED TOILET PLAN



ENLARGED KITCHEN PLAN



FLOOR PLAN 1/8" = 1'-0"

PBG.528

A2

2-25

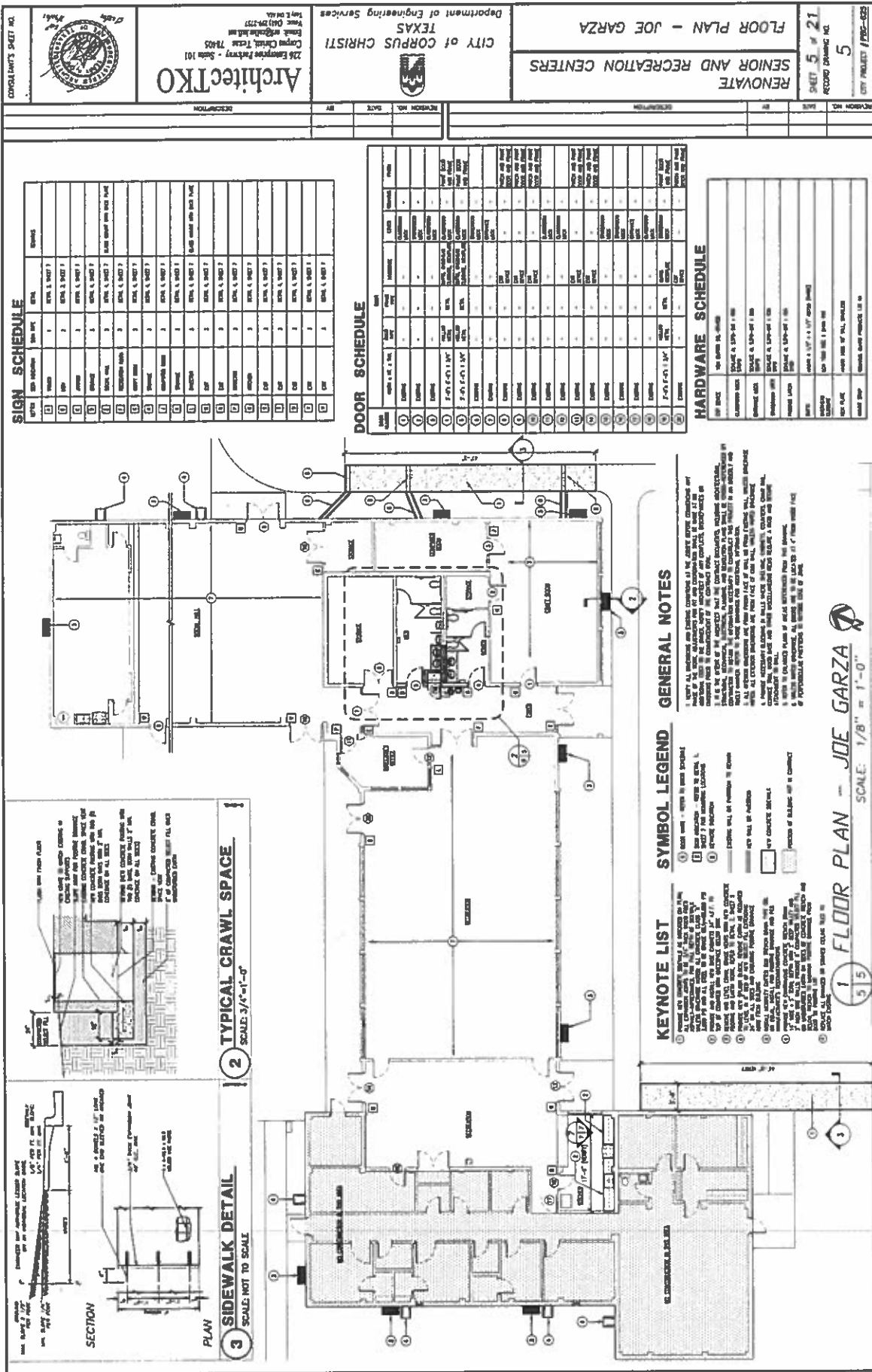
Bridges & Dynar
 812-982-8771
 812-982-8771
 812-982-8771



ZAVALLA SENIOR CITIZEN CENTER
 Orange Street at Highland Avenue
 CORPUS CHRISTI, TEXAS

DATE	10/1/10
BY	10/1/10
FOR	10/1/10
PROJECT	10/1/10
REVISION	10/1/10

- 1. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 2. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 3. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 4. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 5. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 6. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 7. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 8. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 9. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"
- 10. SEE SCHEDULE FOR ALL SCHED. AT 1/8" = 1'-0"



ATTACHMENT B

ZAVALA SENIOR CENTER

SCOPE OF WORK

ENTIRE BUILDING

1. Paint – Interior/Exterior: Paint all painted surfaces with color to be determined by mutual agreement with the City Director of Parks and Recreation
2. Ceiling Fans: Clean all ceiling fans
3. A/C Vents in Ceiling: Replace all ceiling mounted grids (Does not include replacement of lay-in a/c grills)
4. Rotten wood: Replace damaged/rotten wood as needed
5. J-Boxes: Cover/close open electrical J-boxes in ceiling
6. Ceiling tiles: Clean/repair/paint damaged ceiling tiles as needed
7. Parking lot: Sweep/restripe parking lot including markings for ADA compliance

EXERCISE ROOM (formerly Zavala Senior Center Community Room)

1. New Flooring: Enhance back sport floors where treadmills are located (approximately 1/3 of room)
Other flooring: to be determined by mutual agreement
2. Add 9 electrical plugs for treadmills, includes running electrical along left wall as needed

KITCHEN

1. Serving Table: Relocate to Joe Garza Recreation Center
2. Replace countertop where serving table was removed

DANCE ROOM

1. Install new plank flooring
2. Mirrors to be located floor to ceiling on left wall facing the room at entry

EXTERIOR IMPROVEMENTS

1. Outside Front Entry: Repaint benches to existing paint color
2. Install pigeon proof overhangs
3. Install ADA ramp including cut curb and add ramp
4. Electric shutter: Replace existing roll up shutters
5. New Concrete: Remove existing unlevel pavers and concrete in three areas of sidewalk/path leading to facility
6. Repair concrete: Cut/patch/repair or replace with stamped concrete as needed for ADA compliance

JOE GARZA RECREATION CENTER
SCOPE OF WORK

ENTIRE BUILDING

1. Paint – Interior/Exterior: Paint all painted surfaces; color to be determined by mutual agreement
2. Rotten wood: Replace damaged/rotten wood as needed
3. Parking lot: Sweep/restripe parking lot including markings for ADA compliance



SUPPLIER NUMBER
TO BE ASSIGNED BY CITY
PURCHASING DIVISION

Attachment C
CITY OF CORPUS CHRISTI
DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See next page for Filing Requirements, Certifications and definitions.

COMPANY NAME: WellMed Charitable Foundation

P. O. BOX: _____ STREET ADDRESS: 8637 Fredericksburg Road Suite 100

CITY: San Antonio STATE: TX ZIP: 78240

FIRM IS: 1. Corporation ☐ 2. Partnership ☐ 3. Sole Owner ☐
4. Association ☐ 5. Other ☒ Non-profit corporation

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name
N/A

Job Title and City Department (if known)

_____	_____
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name
N/A

Title

_____	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name
N/A

Board, Commission or Committee

_____	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name
N/A

Consultant

_____	_____
_____	_____
_____	_____

FILING REQUIREMENTS

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Carol Zernial Title: Executive Director
(Type or Print)

Signature of Certifying Person:  Date: 07/20/15

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.

Attachment D

PROGRAM ISSUES RESOLUTION FLOW CHART

