

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Human Resource/Risk Management

AGENDA DATE: December 21, 2010

CONTACT PERSON(S) NAME(S)
AND PHONE NUMBER(S): Linda Ball Thomas, 541-4102, Irene Y. Morales, 541-4448
Bruce D. Collins, Purchasing Manager, 541-4308

DISTRICT(S) AFFECTED: All

SUBJECT:

Approve the award for the management and operation of the City's Wellness Clinics to H2U Wellness Centers LLC d/b/a/ First Onsite for an initial contract period of January 15, 2011 through January 14, 2016 with two (2) two-year extensions.

BACKGROUND / DISCUSSION:

Request for Qualifications #2010-100R was released seeking proposals for the management and operation of the four (4) City on-site Wellness Clinics. There were five proposals received: Concentra Health Services, Inc. dba Concentra Medical Center, El Paso Med Partners, P.A., First Onsite, LLC, Marathon Health, Inc. and El Paso County Hospital District dba University Medical Center of El Paso. During the review process for this solicitation, First Onsite, LLC changed their legal name to H2U Wellness Centers, LLC. Crest Benefits assisted the City with the evaluation of the proposals. A six-member employee committee reviewed the proposals. The committee evaluation was a blind evaluation. The members of the committee consisted of representatives from Sun Metro, Department of Public Health, El Paso Municipal Police Officers Association, Human Resources Department, El Paso Association of Firefighters Local 51, and El Paso Water Utilities. The evaluation criteria and weight of each is attached. Cost of services is not a criterion in requests for proposals; the committee ranked each proposal based on qualifications.

In the request for qualifications process, the committee ranks the vendors based solely on qualifications. After the ranking is done, negotiations begin with the highest ranked proposer. If both parties cannot reach agreement, negotiations cease with the highest ranked proposer and begin with the next highest ranked proposer.

The overall committee ranking is attached. Concentra Health Services, Inc. dba Concentra Medical Center received the highest ranking. Personnel from Crest Benefits and Irene Morales, City of El Paso Risk Manager, proceeded to negotiate pricing and services with Concentra. The parties could not reach agreement on the payment of laboratory expenses, indemnity provisions required by Concentra, payment by the City of a penalty in case of termination for convenience before the expiration of the initial contract term and Concentra's hourly rate. Concentra was notified that since agreement could not be reached on these points, negotiations would terminate.

The City proceeded to negotiate with the second highest ranked proposer, H2U Wellness Centers LLC d/b/a First Onsite. After various negotiation meetings with H2U Wellness Centers LLC d/b/a/ First Onsite, they agreed to all the requirements in the request for qualifications and lowered their hourly rate from \$182.20/hour for the first year to \$116.00/hour for the first year with a 3% increase for years two through five. The approximate savings to the health plan would be \$175,000.00/year during the initial five year contract period.

The City is currently paying \$105.00/hour for clinic management and operation of the clinics; an average of \$262,080.00/year. The new rate of \$116.00/hour is a 11% increase to the present hourly rate.

PRIOR COUNCIL ACTION:

In January 2002 the City approved a license agreement with Physicians Healthcare Associates PA to operate wellness clinics for City employees and retirees. This is the first time the City has released a request for qualifications for these services.

AMOUNT AND SOURCE OF FUNDING:

Health Benefit Fund, 502111-45121-09100248-09000

BOARD / COMMISSION ACTION: NA

DEPARTMENT HEAD:

Linda Ball Thomas, Human Resources Director

**COUNCIL PROJECT FORM
(RFQ)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR** agenda for the Council Meeting of **December 14, 2010**.

Discussion and action on the award of Solicitation No. 2010-100R On-Site Wellness Clinics to H2U Wellness Centers, LLC d/b/a/ First Onsite for an initial term estimated award of \$1,537,185.94.

Department:	HR-Risk Management
Award to:	H2U Wellness Centers, LLC d/b/a First Onsite
Vendor Location:	Nashville, TN
Item(s):	All
Option:	Two Options of two years each
Payment Terms:	3%-10 Days, 2%-20 Days, 1%-30 days
Year One Amount:	Estimated Amount: \$289,536.00
Year Two Amount:	Estimated Amount: \$298,222.08
Year Three Amount:	Estimated Amount: \$307,168.74
Year Four Amount:	Estimated Amount: \$316,383.80
Year Five Amount:	Estimated Amount: \$325,875.32
Total Initial Term Award:	Estimated Amount: \$1,537,185.94 (5 years)
1 st Two- Year Option:	Estimated Minimum Amount: \$651,750.64 (2 years)
2 nd Two-Year Option:	Estimated Minimum Amount: \$651,750.64 (2 years)
Total Estimated Award:	Estimated Minimum Amount: \$2,840,687.22 (9 years)
Funding Source:	Health Benefit Fund– Health Care Providers Account
District(s):	All

This is a Request for Qualifications, Professional Services Agreement.

The cost under this Professional Services Agreement is only an estimated minimum value. The actual cost of this contract may be higher or lower than the total estimated minimum value and will be the sum total at the end of the contract term, so long as increased funds are appropriated in the budget.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

The Financial Services - Purchasing Division and Human Resource Department-Risk Management Division recommend award as indicated to H2U Wellness Centers, LLC d/b/a/ First Onsite, the highest ranked qualifier.

*******ADDITIONAL INFO BELOW*******

The City formally ended negotiations with the highest ranked qualifier, Concentra Health Services, Inc. d/b/a/ Concentra Medical Center on August 17, 2010 and entered into negotiations with H2U Wellness Centers LLC d/b/a First Onsite on August 19, 2010.

COMMITTEE SCORE SHEET

SOLICITATION TITLE: ON-SITE WELLNESS CLINICS
SOLICITATION NO: 2010-100R

RFQ SCORING CRITERIA	MAX POINTS	CONCENTRA HEALTH SERVICES, INC. DBA CONCENTRA MEDICAL CENTER	EL PASO MED PARTNERS, P.A.	H2U WELLNESS CENTERS, LLC DBA FIRST ONSITE	MARATHON HEALTH, INC.	EL PASO COUNTY HOSPITAL DISTRICT DBA UNIVERSITY MEDICAL CENTER OF EL PASO
Scope of Services and Capabilities Offered	30	27	19	26	24	21
Personnel Qualifications and Credentials	25	23	15	22	16	18
Demonstrated Experience	25	23	16	23	17	13
Return on Investment Guarantees	20	15	4	16	12	7
GRAND TOTAL	100	88	54	87	69	59
(Maximum 100 points)						

QTC MEDICAL GROUP/MANAGEMENT INC.
ATTN: ELEANOR KAY
1350 SOUTH VALLEY VISTA DR
DIAMOND BAR, CA 91765

COLUMBIA LIFECARE CENTER
ATTN: DOUG PARK
3333 N MESA STREET
EL PASO, TX 79902

ATTN: CHRIS ESTRADA
LAS PALMAS LIFECARE CENTER
3333 N. MESA
EL PASO, TX 79902

MEDICAL EXAMS WALK-IN CLINIC
ATTN: CARLOS M. GARCIA MD
1550 HAWKINS BLVD, SUITE #16
EL PASO, TX 79925

COMMUNITY MEDICAL CLINIC
ATTN: HECTOR LOPEZ, D.O.
9955 DYER ST
EL PASO, TX 79924

FAMILY MEDICAL ASSOCIATION
ATTN: BOBBI GONZALEZ
10555 VISTA DEL SOL DR., STE. 200
EL PASO, TX 79925

ACCLAIM RESOURCE SERVICES
ATTN: WILLIAM LEE HIGAR
10501 BIRTHSTONE DR
EL PASO, TX 79925

EL PASO MEDICAL LABORATORY
ATTN: DR. HABIL ASPFANI
2616 N OREGON ST
EL PASO, TX 79902

LAS PALMAS MEDICAL CENTER
3333 N MESA
EL PASO, TX 79902

PROFESSIONAL HEALTH SERVICES
ATTN: MATHEW JOHNSON
83 S EAGLE RD
HAVERTOWN, PA 19083

CONCENTRA MEDICAL CENTER
ATTN: RANDAL A. BECKER
6320 GATEWAY BLVD EAST
EL PASO, TX 79905

CONCENTRA MEDICAL CENTER
ATTN: GARY DEL PALACIO
6320 GATEWAY BLVD EAST
EL PASO, TX 79905

PROVIDENCE MEMORIAL HOSPITAL
ATTN: IRENE CHAVEZ
2001 N OREGON ST
EL PASO, TX 79902

MONTANA MEDICAL CLINIC
ATTN: MAURICE MODAUI
2415 MONTANA AVE.
EL PASO, TX 79903

ATTN: DR. VEMOY WALKER
PHYSICIANS HEALTHCARE ASSOCIATES
7430 REMCON CIRCLE
BLDG. B. SUITE 150
EL PASO, TX 79912

ATTN: ANNA M. MCGREGOR
HEALTH SCIENCES CENTER
TEXAS TECH INTERNAL CLINIC
4800 ALBERTA AVE.
EL PASO, TX 79905

FRANKLIN MEDICAL CENTER
836 E REDD RD
EL PASO, TX 79932

MICHELLE ROMAGLINO
2ND FL OCCUPATIONAL HLTH ANNEX BLDG
THOMASON HOSPITAL
4815 ALAMEDA AVE.
EL PASO, TX 79905

MESA MEDICAL CLINIC
2030 N. MESA ST
EL PASO, TX 79902

JULIE MILLER, R.D., L.D., CDE, DIRECTOR
DEL SOL DIABETES TREATMENT CENTER,
LIFE CARE CENTER, INPATIENT & OUTPATIENT
CARDIAC REHABILITATION
7878 GATEWAY EAST SUITE 301
EL PASO, TX 79915

ATTN: HECTOR LOPEZ D.O.
COMMUNITY MEDICAL CLINIC
9955 DYER ST
EL PASO, TX 79924

ATTN: RANDAL A. BECKER
CONCENTRA MEDICAL CENTERS
6320 GATEWAY EAST BLVD
EL PASO, TX 79905

LAS PALMAS DIAGNOSTIC CENTER
1700 N. OREGON ST.
EL PASO, TX 79902

ATTN IRENE CHAVEZ HOSPITAL
SIERRA PROVIDENCE MEMORIAL
2001 N OREGON ST
EL PASO, TX 79902

ATTN CARLOS M. GARCIA MD
MEDICAL EXAMS WALK-IN CLINIC
1550 HAWKINS BLVD STE #S16 & 17
EL PASO, TX 79925

DEL SOL DIAGNOSTIC CENTER
10420 VISTA DEL SOL DR.
EL PASO, TX 79925

RIO GRANDE HEALTH CENTER
OF EL PASO INC
7230 GATEWAY EAST BLVD STE E
EL PASO, TX 79915

AI-NDA A

DR. T. P. INDIRA M. D.
ASWINGROUP LLC
2623 PENNINGTON DR
WILMINGTON, DE 19810

ATTN: PAUL WILLEMS
H P I
16 CAMERAY HEIGHTS
LAGUNA NIGUEL, CA 92677

SELENE QUINTANA, CAO
EL PASO MHMR
1600 MONTANA VENUE
EL PASO, TX 79902

ATTN: SCOTT OMERNICK
LOGISTICS HEALTH, INC.
328 FRONT STREET - SUITE 500
LAS CROSSE, WI 54601

KRISTI D. DAUGHERTY, DIRECTOR
SUN CITY BEHAVIORAL HEALTH CARE
616 N. VIRGINIA SUITE B
EL PASO, TX 79902

RANDY JACKSON, DIRECTOR
MATERIALS MANAGEMENT/PURCHASING
UNIVERSITY MEDICAL CENTER
4815 ALAMEDA
EL PASO, TX 79905

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

**LICENSE TO ENTER/USE FACILITIES AND
PROFESSIONAL SERVICES AGREEMENT
H2U WELLNESS CENTERS, LLC**

This License and Professional Services Agreement is entered into by and between the City of El Paso, hereinafter referred to as "City" and the H2U Wellness Centers, LLC, a Tennessee limited liability company d/b/a First Onsite, authorized to do business in Texas, hereinafter referred to as "H2U" on this ____ day of _____, 2010.

WITNESSETH:

WHEREAS, the City as part of its Self Funded Health Benefit Plan ("Benefit Plan") desires to provide medical clinic on-site at four (4) City facilities for City employees and retirees who are enrolled in the Benefit Plan;

WHEREAS, the City issued Solicitation No. 2010-100R, a Request for Qualifications for health care providers or management firms to oversee the operation of the City's on-site wellness clinic(s);

WHEREAS, H2U has the ability to staff and manage such on-site health care clinics and submitted its Statement of Qualifications for the City's solicitation and, following evaluation of the submittals, the parties have negotiated terms that are mutually agreeable; and

WHEREAS, the City and H2U desire to contract for these on-site clinic services and City has agreed to provide a license to H2U to enter and use certain City facilities for the purpose of providing services at the on-site wellness clinics.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, both the City and H2U mutually agree as follows:

1. **SCOPE OF SERVICES**

H2U shall provide the clinical and management/operations services for four (4) on-site primary care health clinics for the City, as more particularly described in **Exhibit A**, attached hereto and incorporated into this Agreement (the "Services"). Clinical services shall be open to active City employees or retirees that are enrolled in the City Self Funded Health Benefit Plan ("Covered Persons"), or to persons as otherwise directed by the City. The clinics shall operate on a part-time basis from Monday through Friday, not to exceed a combined total of forty hours per week, unless mutually agreed to by both parties. Operating hours and locations shall be those set forth in **Exhibit B**, attached hereto and incorporated into this Agreement ("Clinic Site"), but may be revised by mutual agreement by both parties. The City Manager or his/her designee may administratively agree to such revisions without action by the City Council, provided that such revisions are do not materially alter the obligations under this Agreement and

do not increase the amount of the Compensation due under this Agreement beyond any amounts that may be within the City Manager's authority.

2. LICENSE FOR USE OF CITY FACILITIES

A. The City hereby grants to H2U, a non-exclusive license to enter City property to occupy the Clinic Sites in order to operate health clinics at the locations designated in Exhibit B. In addition, H2U is granted the right to the non-exclusive use of the main lobby, common corridors and hallways, stairwells, elevators, restrooms, and other public or common areas at each of the City properties where the clinics are located.

B. Each Clinic Site shall be subject to an inspection by H2U to ensure that the sites adhere to medical requirements such as safety, cleanliness and patient confidentiality. Except for the supplies and equipment provided by the City as identified in Exhibit C, H2U shall provide all of the equipment and supplies necessary for the operation of each clinic.

C. The City will provide at each Clinic Site all public utilities and building services to support operation of the Clinics, including, but not limited to, water, electricity, and gas, heating, air conditioning, and janitorial services. In addition, City will make available to H2U access to telephone and internet connections so that H2U may establish its service accounts directly with service providers. The utility, access and services will be those provided for City operations generally at the City facility in which each Clinic Site is located. The City will coordinate with H2U if other or additional services are required by H2U who shall bear the cost of such additional services.

3. TERM

The initial term of this Agreement shall be for a period of five (5) years beginning on January 22, 2011 ("Effective Date") and ending on January 21, 2016. The City shall have the option of extending the term of this Agreement for two (2) successive additional two-year terms.

4. CLINICAL PROFESSIONAL SERVICES

A. H2U shall provide a sufficient number of qualified and licensed nurse practitioners and support personnel to staff based upon the historical number of visits at each Clinic Site and in consultation with the City's Risk Manager. The nurse practitioner(s) will be supervised by a board certified family practice physician. The supervising physician and nurse practitioner(s) (collectively, the "Medical Personnel") will be licensed in the state of Texas. H2U shall ensure that all Medical Personnel and support personnel complete and pass background checks to verify licensing and training. At the City's request, H2U shall provide reasonable evidence of the qualifications of the Medical Personnel and/or support personnel assigned to the Clinic Sites.

B. H2U does not commit to provide any particular person as Medical Personnel, and H2U shall have the right at any time and from time to time, with or without cause, to change

Medical Personnel provided under this Agreement. The City shall have the right to require H2U to remove one or more Medical Personnel, with or without cause, upon prior written notice which shall specify the time why which the Medical Personnel should be removed.

C. H2U represents and warrants that the person(s) performing the Services have the requisite training and expertise necessary to fully and satisfactorily complete their obligations under this Agreement. H2U agrees that if further training or expertise is or becomes necessary or is required to fully and satisfactorily perform the Services, that H2U or its employee(s) shall obtain such training or expertise at no cost to the City and that the City shall have no responsibility or duty to provide such training or expertise.

D. H2U represents and warrants that (a) the Clinical Services shall be performed in a professional and competent manner consistent with the level of care and skill ordinarily exercised in the trade under similar circumstances; and (b) H2U will comply with all applicable federal, state and local laws, rules, regulations and orders in connection with the performance of its obligations under this Agreement.

6. COMPENSATION AND PAYMENT

A. H2U shall be paid for the Services under this Agreement an amount not to exceed ONE MILLION FIVE HUNDRED THIRTY SEVEN THOUSAND ONE HUNDRED EIGHTY FIVE AND 94/100 \$1,537,185.94, at the rates set forth in Exhibit D, attached hereto and incorporated into this Agreement.

B. H2U shall provide a separate invoice to the El Paso Water Utilities Public Service Board (PSB) for Services rendered at the two Clinic Sites located at PSB facilities, as set forth in Exhibit A, at the address set forth below. The invoice to the two sites located at other City facilities will be sent to the City's Risk Manager. Invoices will be itemized and will reflect the contract number. The City is a tax-exempt entity and will provide a tax exemption certificate to H2U upon request. The invoices shall be submitted to the following addresses:

To PSB:

El Paso Water Utilities
1154 Hawkins
El Paso, Texas 79925
Attn: Arturo Duran

To City:

City of El Paso
1 Civic Center Plaza
El Paso, Texas 79905
Attn: Risk Manager

C. Payment shall be due thirty (30) days from the date of the City's receipt of the invoice in accordance with state law. Any payment not paid to H2U within said period will incur a late payment fee and will accrue interest in an amount equal to the rate computed pursuant to the provisions of Texas Government Code Section 2251.025 (Payment of Goods and Services), which governs the City of El Paso.

D. All payments by the City under this Agreement are payable only out of current City revenues. In the event that funds relating to this Agreement do not become available, such

Medical Personnel provided under this Agreement. The City shall have the right to require H2U to remove one or more Medical Personnel, with or without cause, upon prior written notice which shall specify the time why which the Medical Personnel should be removed.

C. H2U represents and warrants that the person(s) performing the Services have the requisite training and expertise necessary to fully and satisfactorily complete their obligations under this Agreement. H2U agrees that if further training or expertise is or becomes necessary or is required to fully and satisfactorily perform the Services, that H2U or its employee(s) shall obtain such training or expertise at no cost to the City and that the City shall have no responsibility or duty to provide such training or expertise.

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D. All payments by the City under this Agreement are payable only out of current City revenues. In the event that funds relating to this Agreement do not become available, such

as by City Council not appropriating the funds, the City shall have no obligation to pay or perform any services related herein to H2U for the City's fiscal year during which time such funding is not available or appropriated. Should City experience a funding unavailability, either party may choose to terminate the Agreement subject to Section 6 of this Agreement.

7. **TERMINATION**

A. Termination for Convenience. The City may terminate this contract, in whole or in part, at any time by providing thirty (30) days written notice to H2U. H2U may terminate this contract, in whole or in part, at any time by providing one hundred eighty (180) days written notice to City. The H2U will be paid its costs, including the contract close out costs and profit on work performed up to the time of termination. H2U will promptly submit its termination claim to the City. If H2U has any property in its possession belonging to the City, H2U will account for the same, and dispose of it in the manner the City directs.

Upon termination of this Agreement, **for cause or for convenience**, or upon expiration of the Term of this Agreement, H2U agrees, with the appropriate written consent pursuant to state and federal law, to provide electronic medical records to any successor on-site clinic provider.

B. Termination for Cause. If H2U fails to comply with any provision of this Agreement, the City may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which H2U is in default. H2U will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. H2U will on be paid the contract price for services performed in accordance with the manner of performance set forth in the Agreement. The City shall have the right to immediately terminate the Agreement if H2U violates any local, state or federal laws, rule or regulations that relate to the performance of this Agreement.

C. Termination for Default by City. If the City fails to perform any of its duties under this Agreement, H2U may deliver a written notice to the Purchasing Manager describing the default, specifying the provisions of the agreement under which H2U considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. H2U at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, H2U may terminate its performance under this Agreement as of such date.

8. **INDEMNIFICATION**

H2U, ITS SUBCONTRACTORS AND INSURERS WILL INDEMNIFY, DEFEND AND HOLD THE CITY AND THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES HARMLESS FOR ANY DAMAGE TO OR LOSS OF PROPERTY OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT.

A. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to H2U every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein.

B. In addition, H2U shall promptly advise the City in writing of any claim or demand against the City or H2U known to H2U related to or arising out of H2U activities under this Agreement.

C. H2U understands and agrees that it will 1) investigate or cause -the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as H2U may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages.

D. H2U understands and agrees that it will pay all final judgments establishing liability of the City in actions defended by H2U pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by H2U, and premiums on any appeal bonds.

E. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving H2U of any of its obligations under this paragraph.

9. INSURANCE

H2U shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement and to ensure that any subcontractors provided by H2U carry such insurance coverage and comply with these insurance requirements. City shall be provided with certificates of insurance and such appropriate endorsements evidencing the required insurance prior to the commencement of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance on or before the date of the expiration or cancellation of any such policies.

A. General/Public Liability Insurance. For the duration of this Agreement and any extension thereof, H2U shall carry, in a solvent company authorized to do business in the State of Texas, public liability insurance to with at a minimum the following coverages and limitations: a) cover H2U and its employees and protect the general public and the City in the minimum amounts of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or wrongful death and One Million general aggregate and One Million Dollars (\$100,000,000) per occurrence for property damage.

B. Professional Liability Insurance. H2U shall carry professional liability insurance with a limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and such policy shall be written on an occurrence basis.

C. Workers Compensation. A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.

D. Auto Liability. Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by Consultant, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than Five Hundred Thousand Dollars (\$500,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage.

E. Form of Policies. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager. City prefers that the general liability and auto liability coverages be provided by either the same insurance carrier or the same insurance group.

F. Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.

G. Insured Parties. Each policy, except those for Workers' Compensation, employee injury and professional liability must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.

H. Deductibles. A policy may contain deductible amounts only if the City's Risk Manager approves the amount and scope of the deductible. The Consultant shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the City of El Paso, their officers, agents or employees.

I. Material Change in Policy(ies). Prior to any material change in any policy required herein, City will be given thirty (30) days advance written notice by registered mail. Further, City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.

J. Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager by the insurance company. H2U shall give written notice to the Purchasing Manager **within five (5) days** of the date

upon which total claims by any party against H2U reduce the aggregate amount of coverage below the amounts required by this Agreement.

K. Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.

L. Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance, so long as it is customary in the industry and under Texas law for such insurance to be primary, to any other insurance available to the City, the Additional Insured, with respect to claims arising hereunder and that the insurance applies separately to each insured.

M. Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to H2U for any further premium payment and has no right to recover any premiums from the City.

10. NOTICES

Any notices required under this Agreement shall be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to the City or the H2U at the following addresses:

CITY: City of El Paso
ATTN: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

H2U: H2U Wellness Centers, LLC
ATTN: Brian Jones, Vice President
3322 West End Avenue, Suite 400
Nashville, TN 37203

11. RECORDS/AUDIT

A. H2U shall maintain medical records for each person who receives services at the Clinic Sites. Such medical records shall be the property of H2U. H2U shall be solely responsible for the storage, maintenance and confidentiality of such records in accordance with the requirements imposed by applicable state and federal law and its own conforming policies and procedures.

B. H2U shall maintain all records (other than patient medical records) related to its performance of any services under this Agreement. H2U agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and copy directly any pertinent books, compute and digital files, documents,

papers and records of H2U involving transactions relating to this Agreement. H2U agrees that the City shall have access during normal working hours to all necessary H2U facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give H2U reasonable advance notice of intended audits. The City will pay H2U for reasonable costs of any copying the City performs on H2U's equipment or requests H2U to provide. H2U agrees to refund to the City any overpayments disclosed by such audit.

C. H2U agrees that it will include this requirement into any subcontract entered into in connection with this Agreement.

12. **FORCE MAJEURE**

Each party agrees that in the event of Force Majeure, destruction of City property where the clinics are located, or other unforeseen act causing significant disruption of the operation of the City government, this agreement is immediately terminated and each party is excused from further obligations hereunder. Force Majeure as employed herein, shall mean Acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals.

13. **INDEPENDENT CONTRACTOR**

Nothing contained herein shall be construed as creating the relationship of employer and employee between the CITY and H2U. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-consultants. As an independent contractor, each party understands and agrees that it will be responsible for its respective acts or omissions, and the other party shall in no way be responsible as an employer to the other party's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement. H2U and City are independent legal entities. Neither Contractor nor City nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement. H2U is an independent contractor and nothing contained herein will constitute or designate the H2U or any of its employees as employees of the City.

14. **ASSIGNMENT/SUBCONTRACTORS**

The services to be provided under this Agreement are specific to H2U and shall not be assigned or delegated without the prior written consent of the City. Notwithstanding the above, the City acknowledges that H2U has subcontract(s) with a third-party to provide services under this Agreement and may from time to time require the assistance of other subcontractors to provide Clinical Services and hereby consents to such subcontract(s). H2U will notify City in writing of its intent to change its subcontractor(s) or if it becomes necessary for H2U to utilize other subcontractors to fulfill its obligations to City. H2U will ensure that any subcontractor will

comply with all applicable terms of this Agreement, provided however that at all times during the Term of this Agreement, H2U shall remain responsible for all Services provided by its subcontractor(s) pursuant to this Agreement.

15. **COMPLIANCE WITH LAWS**

A. H2U covenants and agrees that it and its subcontractors and agents are bound by and will observe and perform all duties under this Agreement in accordance with all applicable local, state, and federal laws and regulations. H2U reserves the right to notify City in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.

B. H2U shall be responsible for the proper disposal of all hazardous and/or bio-medical waste associated with the operation of the clinics in accordance with all applicable laws. H2U reserves the right to notify City in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.

C. HIPAA and HITECH Act. To the extent applicable to this Agreement, H2U agrees to comply with the Federal Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C.A. §1320d-8 ("HIPAA") and any current and future regulations promulgated under either the HITECH Act or HIPAA, including without limitation the federal privacy standards contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Standards"), and the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Standards"), all as may be amended from time to time, and collectively referred to herein as the "Confidentiality Requirements". H2U agrees to enter into any further agreements as necessary to facilitate compliance with Confidentiality Requirements. H2U shall make his/her internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with Confidentiality Requirements.

16. **SEVERABILITY**

In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.

17. **GOVERNING LAW/VENUE**

This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws. Venue shall be in El Paso County, Texas.

18. **ENTIRE AGREEMENT/COUNTERPARTS**

This Contract constitutes and expresses the entire agreement between the parties and shall not be amended or modified except by written instrument signed by both parties, except that the provisions of the Section C, Contract Clauses of the City's Request for Qualifications, Solicitation No. 2010-100R are incorporated into this Agreement as if fully set forth herein and shall apply unless the parties have explicitly modified such terms and conditions in this Agreement. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of both parties except as provided in this Agreement.

19. **LEGISLATIVE/REGULATORY MODIFICATION.** In the event that any federal or state legislation or regulations are enacted, promulgated, modified or interpreted, or a decision of a court or a governmental agency is rendered, that, in the opinion of legal counsel for H2U or the City, (i) prohibits, restricts or in any way materially alters the agreements made by the Parties to this Agreement (or may prohibit, restrict or in any way materially alter such agreements), (ii) subjects either H2U or the City to a significant fine or penalty in connection with its performance of obligations hereunder, (iii) subjects either H2U or the City to a loss of Medicare or Medicaid certification because of the existence of this Agreement or the applicable Party's performance of its obligations hereunder, or (iv) adversely affects the ability of H2U or the City to perform its obligations hereunder, then, within thirty (30) days following notice from one Party to the other, H2U and the City shall negotiate in good faith an amendment to this Agreement or a substitute agreement which will carry out the original intention of the Parties to the extent possible in light of such legislation, regulation or decisions and each Party shall execute such amendment. In the event that H2U and the City cannot reach agreement as to the terms and provisions of the amendment or substitute agreement within sixty (60) days following the notice provided in this Section or such earlier date as necessary to avoid substantial penalties or fines, provided such earlier date is mutually agreeable to H2U and the City, which agreement shall not be unreasonably withheld, then this Agreement shall be subject to termination pursuant to Section 7A or the effective date of the law, regulation or decision, whichever comes first, following written notice of termination from H2U's or the City's legal counsel, as applicable.

(Signature Page Follows)

12/3/2010

STATE OF TEXAS

COUNTY OF EL PASO

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LICENSE TO ENTER/USE FACILITIES AND
PROFESSIONAL SERVICES AGREEMENT
H2U WELLNESS CENTERS, LLC d/b/a First
Onsite

Signature Page

APPROVED this _____ day of _____ 2010.

H2U WELLNESS CENTERS, LLC
d/b/a First Onsite



Brian Jones
Vice President

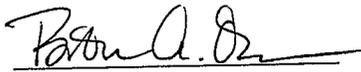
THE CITY OF EL PASO

Joyce Wilson
City Manager

ATTEST:

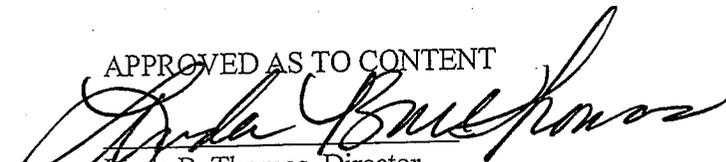
Richarda Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT



Linda B. Thomas, Director
Human Resources Department

EXHIBIT A

SCOPE OF SERVICES

I. Primary and Urgent Care Services

The Clinical Services to be performed by the H2U's Medical Personnel at each Clinic Site for each Covered Person (or, as directed by the City) will be determined by the Medical Personnel. Generally the Clinical Services shall include those services normally provided in a primary medical care facility as permitted by the licensure of the Medical Personnel, and by the equipment and physical restrictions of the clinic, including, but not limited to, the following services:

- a. Provide preventive care
- b. Provide non-work related urgent care as may be limited by Nurse Practitioner protocols
- c. Monitor and assess and work to improve the general health of Covered Persons
- d. Counsel and treat high risk medical conditions as defined by Assessments
- e. Interpret test and examination results and make referrals to specialists as appropriate

- f. Provide recommendations and expected outcomes to be filed in medical files
- g. Administer immunizations
- h. Administer flu vaccines

- 1)
 - i. Medical instruction, direction, standing orders and supervision of nursing, physician extender and emergency staff as required by applicable regulation or by City policies.
 - j. Wellness Programs and support of the programs through referrals and case management.
 - k. Health fairs and screenings (Blood Pressure, Cholesterol and Glucose Testing, etc.) for employees and spouses.
 - l. Documentation and maintenance of medical records for all patient encounters.

 - m. Establishment of communication with the Covered Person's treating physicians for the purpose of effective case management, as appropriate.
 - n. Assistance with making appointment when appropriate with local providers within Health Plan network.

II. MANAGEMENT SERVICES

In addition to the Clinical Services, H2U shall provide overall management services and management of the operations of each of the Clinic Sites, including, but not limited to, the following:

- a. Manage and supervise daily operation of the Clinics in accordance with all applicable local, state, and federal laws.
- b. Obtain and maintain all necessary licenses, certifications, and accreditations for the operation of the Clinics.
- c. Recruit, employ, and supervise all medical and non-medical staff necessary for the operation of the Clinics.
- d. Provide appropriate physician supervision for nurse practitioners and other licensed staff.
- e. Provide content for communication pieces that can be used by City in educational and information efforts with the Covered Persons (or to such persons as may be determined by the City) regarding the wellness clinics, wellness programs or any services provided pursuant to this Agreement.
- f. Provide to the City on a monthly basis a report in the format acceptable to the City's Risk Manager, which shall at a minimum include information regarding the number of patients reporting to the clinics, the number of patients who were referred to other medical providers, the number of patients who received no treatment, number of patients who were treated and released back to work, and the number of patients who were sent home.
- g. Prepare additional reports of operations and activity required by City or the state, local or federal regulatory agencies.
- h. Maintain medical records and patient files for each person who receives services at the Clinic Sites as required by industry standards and applicable laws. Such medical records shall be the property of H2U. H2U shall be solely responsible for the storage, maintenance and confidentiality of such records in accordance with the requirements imposed by applicable state and federal law and its own conforming policies and procedures.
- i. Purchase at City's expense all supplies necessary for the operation of the Clinics. To the extent such supplies are paid for by the City, such supplies shall be the property of the City.
- j. Maintain, or arrange for the maintenance of, all technical, mechanical or electronic equipment used in the operation of the Clinics.
- k. Regularly assess and recommend cost-saving measures while maintaining high quality of care.
- l. Participate in meetings at the reasonable request of City.

EXHIBIT B

OPERATING HOURS AND LOCATIONS

<u>Location</u>	<u>Operating Hours</u>
City Hall 2 Civic Center Plaza (1 st Floor)	<u>(if 5 Day Week)</u> 8am – 12pm, Monday, Wednesday, Friday 1pm – 5pm, Tuesday, Thursday <u>(if 4 Day Week)</u> 7am – 5pm, Monday 12 noon – 5pm, Tuesday, Thursday 7am – 12 noon, Wednesday Closed Friday
Municipal Service Center 7969 San Paulo	1pm – 4pm, Tuesday, Thursday
Public Service Board 210 N. Lee (Field Office)	7am – 11am, Tuesday, Thursday
Public Service Board 1154 Hawkins (Main Office)	1pm – 5pm, Monday, Wednesday

EXHIBIT C

EQUIPMENT LIST

List of Equipment Provided by the City Of El Paso

Waiting Room Chairs
Two telephone lines per location
One telephone per location
One locking cabinet per location
Two small refrigerators with freezer compartments per location
(All City equipment to remain the property of the City)

List of Equipment Provided by H2U

(All H2U equipment to remain the property of H2U)

Examination Table(s)
Examination Equipment
Computer Equipment
Medical Supplies, including equipment for the proper disposal of medical waste

EXHIBIT D

COMPENSATION AND RATES

H2U shall provide services at an hourly rate of One Hundred Sixteen and no/100 Dollars (\$116.00) per hour (the "Hourly Rate") for an estimated number of 2,750 services hours per year. The Hourly Rate shall be increased annually by 3% beginning on the date that is one year from the date that services commence and thereafter on the same date each year.

In addition to the Hourly Rate, the City shall pay to H2U the following pass-through costs not included in the Hourly Rate, at H2U's Cost:

- Laboratory Fees
- Vaccinations, Immunizations and Injectibles
- Special Services (i.e. H1N1 vaccine)
- Direct mailing of promotional materials (At Cost pricing of printing and postage)

At the City's option, H2U may also provide the following services at the following costs:

H2U Wellness Services and HRA	\$20/member/year
Biometrical Screenings	At cost