

City of San Antonio
San Antonio Metropolitan Health
District
100 W Houston, 14th Floor
San Antonio, Texas 78205

South San Antonio Independent
School District
1450 Gillette Blvd
San Antonio, TX 78224

Memorandum of Agreement

This Memorandum of Agreement (MOA or Agreement) is entered into between the City of San Antonio (City) on behalf of the San Antonio Metropolitan Health District (Metro Health) pursuant to Ordinance No. _____, 2022, passed and approved on the _____, 2022 and South San Antonio Independent School District (AGENCY) (hereinafter collectively referred to as the Parties).

WHEREAS, the U.S. Department of Health and Human Services (HHS) through the Centers for Disease Control and Prevention (CDC) awarded the City funding through the Racial and Ethnic Approaches to Community Health (REACH) Program Grant (Grant); and

WHEREAS, the Grant funds Metro Health's Healthy Neighborhoods Program (Program) which was created to implement and address a lack of access to grocery stores and healthy foods by many San Antonians; and

WHEREAS, the primary goal of the Program is to improve health outcomes by increasing access to healthy foods, including fresh fruits and vegetables, within the local San Antonio landscape; and

WHEREAS, in collaboration with AGENCY's CARE Zone Food Pantry (Pantry), Healthy Neighborhoods seeks to increase the access of fresh produce in the South side community by expanding the CARE Zone Food Pantry; and

WHEREAS, barriers to the accessibility of nutritious foods at the Pantry were identified (e.g. lacking storage space for produce, no frozen storage space, nutrition signage); and

WHEREAS, in order to develop the Pantry's ability to offer and store fresh produce to ultimately increase access to nutritious foods in the community, Metro Health intends to furnish a refrigerator (refrigerator or equipment) to AGENCY for participating in the Program on the condition that AGENCY agrees to promote fresh produce in its Pantry, complies with Program requirements including communicating with the Program regarding successes and challenges throughout the program year, and fills the refrigerator with only approved healthy items to be provided to the public at no charge; and

WHEREAS, City Council has determined that the provision of equipment and training for healthy foods promotion within the South side community to improve access to healthy food options will serve a health related public purpose; and

NOW THEREFORE, this Memorandum of Agreement of the Parties delineates the responsibilities of each of the Parties.

I. PURPOSE

1.1 The Parties have determined that through their mutual collaboration, the Program can continue to improve health outcomes by increasing access to healthy foods, including fresh fruits and vegetables by developing a collaboration with AGENCY.

II. TERM

2.1 This agreement becomes effective on August 1, 2022 and terminates on September 29, 2023.

III. JOINT ACKNOWLEDGMENTS

3.1 AGENCY agrees and understands that the City expects to pay all obligations of this Agreement from City's Racial and Ethnic Approaches to Community Health (REACH) Program grant (FALN # 93.738, FAIN# NU58DP006589), U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor AGENCY will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

3.2 AGENCY agrees to provide any and all documentation required for inclusion in any report concerning the REACH Program Grant.

3.3 The City will procure the equipment and AGENCY agrees to provide services and support related to support and coordination for the expansion of the Program described herein in exchange for the equipment described in the attached **Attachment I** incorporated herein for all purposes.

3.4 The pick-up and delivery of all equipment set out within this Agreement shall be coordinated upon the mutual agreement of the Parties.

IV. RESPONSIBILITIES OF CITY

4.1 The City will provide the equipment set out in Section 3.2 to AGENCY for use in the Program, subject to the terms and conditions set out herein.

4.2 Metro Health staff will provide input and guidance regarding the Program throughout the course of this Agreement to include:

- a. Selecting a Metro Health Staff member to be the primary contact for this MOA.
- b. Facilitating any issue that arises with the equipment during the contract term (the Program will not pay for repairs that are not covered by the warranty).
- c. Purchasing and facilitating the installation of a refrigerator for the use of the Pantry.
- d. Providing onsite cooking demonstrations and nutrition education.
- e. Conducting site visits at least monthly.
- f. Promoting the produce in the Pantry through advertising and marketing.

g. Provide education to Pantry staff to implement methodologies to increase the nutritional standards of the Pantry. Methodologies that education may be provided on may include, but are not limited to Food Labeling, Client Points Systems, and the Client Choice Model.

4.3 Upon the effective date of expiration of this Agreement and successful completion of AGENCY in the Program, as deemed by City, the ownership of the refrigeration unit will be transferred from the City to AGENCY.

V. RESPONSIBILITIES OF AGENCY

5.1 AGENCY will work with Metro Health to implement the Program within its Pantry.

5.2 AGENCY will accept all equipment from the City "AS IS" condition and will be responsible for all maintenance and upkeep of all equipment in its possession for the duration of the Agreement, to include maintaining and repairing all equipment as necessary for safe operation, including providing parts and tools.

5.3 AGENCY will coordinate with Metro Health to establish the Program at the following location for which it will use the equipment as set out herein with the requirements for participation and completion as set out herein:

CARE Zone Food Pantry
1450 Gillette Blvd
San Antonio, TX 78224

5.4 AGENCY will periodically communicate with Metro Health staff related to the Program for the term of this Agreement.

5.5 AGENCY will be responsible for oversight/implementation of the healthy food Pantry at its location. Responsibilities will include the following:

- a. Receiving training from Metro Health or designee on produce handling procedures.
- b. Stocking the refrigerator exclusively with fruits, vegetables and other healthy food items for intake by the public at no cost.
- c. Displaying marketing materials advertising healthy foods as part of the Pantry.
- d. Displaying relevant recipe sheets supplied by Metro Health for the purpose of encouraging fruit and vegetable intake.
- e. Implementing methodologies to increase nutritional standards of the Pantry as outlined above.
- f. Notifying Metro Health primary contact promptly of issues with the refrigerator preventing the ability to display fruits and vegetables (AGENCY is responsible for any costs associated with the refrigerator not covered by warranty).

5.6 AGENCY agrees that it will be responsible for the security of the equipment provided by the City and will keep it securely stored at all times.

5.7 AGENCY agrees that in the event that this Agreement is terminated prior to the end of the term or the Program ceases to operate for any reason during the term of this Agreement, that AGENCY will immediately return the equipment provided by Metro Health or shall reimburse Metro Health for equipment not returned along with any supporting documentation to demonstrate the loss, damage, or provision of any piece of equipment not returned.

5.8 AGENCY agrees to provide any and all documentation required for inclusion in any report concerning the REACH Program Grant and cooperate with any audit or examination by Metro Health, CDC, HHS or other oversight agency will further inform the City upon receipt of any notice or communication regarding an impending audit or examination.

5.9 AGENCY agrees it is responsible for the acts, omissions and negligence of its volunteers, under state and federal law.

VI. RECORDS RETENTION

6.1 AGENCY and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein , for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 AGENCY shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement or whatever period is determined necessary based on the records retention guidelines established by applicable law for this Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, AGENCY shall retain the records until the resolution of such litigation or other such questions. AGENCY acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require AGENCY to return said documents to City prior to or at the conclusion of said retention.

6.3 The Public Information Act, codified in Texas Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if AGENCY receives inquiries regarding documents within its possession pursuant to this MOA, AGENCY shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law the AGENCY shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of AGENCY's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

VII. TERMINATION

7.1 For purposes of this Agreement, “termination” of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions herein.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval by the City; or

7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should the AGENCY default in the performance of this MOA in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. AGENCY shall have ten (10) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If the AGENCY fails to cure the default within such ten day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate.

7.4.1 Bankruptcy or selling substantially all of company's assets;

7.4.2 Failing to perform or failing to comply with any covenant herein required; or

7.4.3 Performing unsatisfactorily as determined solely by City.

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

7.6 Regardless of how this Agreement is terminated, AGENCY shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by AGENCY, or provided to AGENCY, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by AGENCY in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at AGENCY 's sole cost and expense. Payment of compensation due or to become due to AGENCY, if any, is conditioned upon delivery of all such documents, if requested.

7.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way at law or at equity, City's right to seek damages from or otherwise pursue AGENCY for any default hereunder or other action.

VIII. NOTICE

8.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the City:

City of San Antonio
Claude A. Jacob, Health Director
San Antonio Metropolitan Health District
100 W Houston, 14th Floor
San Antonio, TX 78205

If to AGENCY:

Jose Guereca
Family and Community Engagement
Specialist
1450 Gillette Blvd
San Antonio, TX 78224

IX. FURTHER ADMINISTRATION OF AGREEMENT

9.1 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this MOA and Program goals and objectives. City reserves the right to make unannounced visits to AGENCY Pantry when it is determined that such unannounced visits are in the interest of effective project management and service delivery.

9.2 City agrees that it will present the findings of any such review to AGENCY in a timely manner and will attempt to convey information of Program strengths and weaknesses and assist with Project improvement.

9.3 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by Metro Health shall be submitted by AGENCY to City within five (5) working days of the request. The parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. In the event that AGENCY fails to deliver the required reports or information or delivers incomplete information within the prescribed time period, the City may, upon reasonable notice, suspend reimbursements to AGENCY until such reports are delivered to City. Furthermore, the AGENCY ensures that all information contained in all required reports or information submitted to City is accurate.

9.4 Unless disclosure is authorized by the City, AGENCY agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. AGENCY shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, AGENCY shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. AGENCY shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with AGENCY 's employees and subcontractors prior to any disclosure of the Confidential Information. Upon termination or expiration of this Agreement, AGENCY shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

X. INSURANCE

10.1 AGENCY shall maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations for their employees.

10.2 With respect to AGENCY, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000.00 for each person and \$500,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Employees of AGENCY are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

XI. INDEMNIFICATION

11.1 AGENCY and City acknowledge they are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

XII. APPLICABLE LAW

12.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

12.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XIII. AMENDMENTS

13.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and AGENCY. The Director of Metro Health may execute contract amendments on behalf of City in the following circumstances a) budget adjustments authorized by the funding agency so long as the total dollar amount of the budget remains unchanged, b) modifications to the performance measures listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and c) changes in state or federal regulations mandated by the funding agency.

XIV. SEVERABILITY

14.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause

or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XV. LEGAL AUTHORITY

15.1 The signer of this Agreement for AGENCY represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of AGENCY and to bind AGENCY to all of the terms, conditions, provisions and obligations herein contained.

XVI. DEBARMENT

16.1 AGENCY certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

16.2 AGENCY shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof, AGENCY learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XVII. CONFLICT OF INTEREST

17.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

17.2 Pursuant to the subsection above, AGENCY warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. AGENCY further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVIII. NONDISCRIMINATION POLICY

18.1 Non-Discrimination. As a party to this contract, AGENCY understands and agrees to comply with the Non-discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex sexual orientation, gender identity, veteran status, age, or disability, unless exempted by state or federal law, or as otherwise established herein.

XIX. COMPLIANCE

19.1 AGENCY shall provide and perform all services under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations and shall comply with standards, guidelines, and policies of the City and Metro Health. Applicable federal and state laws and regulations may include, but are not limited to: 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, policies and CDC general terms and conditions for non-research awards at <https://www.cdc.gov/grants/federalregulationspolicies/index.html>, the CDC Notice of Funding Opportunity (NOFO) number DP18-1813, entitled Racial and Ethnic Approaches to Community Health (REACH), and application dated March 29, 2021, as may be amended.

19.2 Required Disclosures for Federal Awardee Performance and Integrity Information System (FAPIIS): Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the CDC, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the CDC and to the HHS OIG at the following addresses:

CDC, Office of Grants Services
Thelma Jackson, Grants Management Specialist Centers for Disease Control and Prevention
Chronic Diseases and Injury Prevention Branch 5
2939 Flowers Road South, MS TV-2
Atlanta, GA 30341-5507
Email: TJackson12@cdc.gov (Include "Mandatory Grant Disclosures" in subject line)
AND

U.S. Department of Health and Human Services Office of the Inspector General
ATTN: Mandatory Grant Disclosures
Intake Coordinator
330 Independence Avenue
SW Cohen Building, Room 5527
Washington, DC 20201
Fax: (202)-205-0604 (Include "Mandatory Grant Disclosures" in subject line) or
Email: MandatoryGranteeDisclosures@oig.hhs.gov

AGENCY must include this mandatory disclosure requirement in all subawards and contracts under this Agreement.

XX. ENTIRE AGREEMENT

20.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly


executed by the parties, in accordance with Article XIII. This Agreement shall supersede any and all prior written and oral agreements between the City and AGENCY.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

**SOUTH SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT**

Claude A. Jacob
Health Director
San Antonio Metropolitan Health District



Henry Yzaguirre
Superintendent

Date: _____

Date: 8-2-22

Approved as to Form:

City Attorney

ATTACHMENT I

Refrigerator Specs:

The Arctic Air ARG49 two door glass reach-in refrigerator combines performance with value. With a 49 cubic foot capacity, the Arctic Air ARG49 glass door refrigerator has a bright stainless-lined cabinet interior with full stainless-steel floor and coved corners to meet NSF Standard 7 requirements. The Arctic Air ARG49 features two self-closing, lockable glass doors. The cabinet's exterior front and sides are designed in smooth stainless steel that looks great in any commercial kitchen. In addition to its attractive aesthetics, the Arctic Air ARG49 is packed with features important for commercial use. Features include high output fan motors, plus a bottom-mounted compressor with a bottom-mounted condenser on a slide-out rack, accessible from the front for ease of maintenance and cleaning. The Arctic Air ARG49 comes with six adjustable shelves and features a digital LED temperature display.

2 DOOR GLASS REACH-IN REFRIGERATOR (49 CU FT)

SKU: ARCAGR49

Manufacturer: Arctic Air

MPN: AGR49

UOM: Each

Weight: 500.0000

Ext. Width: 54 Inches

Ext. Depth: 31-1/4 Inches

Ext. Height: 83-1/4 Inches

Stock: Factory Stock Item

Lead Time: 5 to 7 Business Days

Certifications: ETL, cETLus

Door Count: 2

Door Style: Swing

Door Type: Glass

Voltage: 115V

Hertz: 60 Hz

Phase: 1 Phase

Horse Power: 1/2 HP

NEMA Configuration: 5-15P

Compressor: Bottom Mount

Temperature Range: 33F - 41F

Warranty: Two Year Parts and Labor; Five Year Compressor