

ORDINANCE 2022-11-03-0850

**AUTHORIZING THE EXECUTION OF AGREEMENTS RELATED TO THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S TUBERCULOSIS PREVENTION AND CONTROL PROGRAM TO INCLUDE AN AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO FOR PATIENT REFERRALS AT NO COST, FOR A TERM ENDING OCTOBER 31, 2027, WITH THE OPTION TO RENEW FOR ONE, TWO-YEAR TERM, AND AN AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER FOR THE PROVISION OF PHYSICIAN SERVICES IN AN AMOUNT UP TO \$120,000.00 FOR A TERM ENDING SEPTEMBER 30, 2023 WITH THE OPTION TO RENEW FOR FOUR, ONE-YEAR TERMS, FOR A CUMULATIVE AMOUNT UP TO \$600,000.00.**

\* \* \* \* \*

**WHEREAS**, in 1993 the Centers for Disease Control and Prevention (CDC) established The Tuberculosis Trials Consortium (TBTC) to conduct programmatically relevant clinical, laboratory and epidemiologic research concerning the diagnosis, clinical management and prevention of tuberculosis infection; and

**WHEREAS**, on March 31, 2021 the U.S. Centers for Disease Control and Prevention announced the members of its Tuberculosis Trials Consortium (TBTC) for the 2021 - 2030 cycle; and

**WHEREAS**, San Antonio was announced as Site 63, the only site recognized in Texas, and only 1 of 6 sites in the entire United States; and

**WHEREAS**, Metro Health's collaboration with the University of Texas Health Science Center at San Antonio (UT Health) and the TBTC dates back more than 20 years and includes three clinical studies of treatment with rifapentine based therapy for treatment of latent TB and one study to shorten treatment of active TB; and

**WHEREAS**, through a Memorandum of Agreement with UT Health, Metro Health seeks to continue its collaboration with UT Health for the referral of Metro Health TB Clinic patients for possible participation in TBTC studies and continuation of care and treatment; and

**WHEREAS**, additionally, as the local health district for the City of San Antonio and unincorporated Bexar County, Metro Health is charged with investigating all suspected and confirmed cases of active TB and provides prompt diagnosis and treatment through a process of Directly Observed Therapy (DOT); and

**WHEREAS**, Metro Health's TB Clinic has relied on the University of Texas Health Science Center at Tyler (UTHSCT) for physician services supporting the TB Clinic for over nine years; and

**WHEREAS**, the UTHSCT Heartland National TB Center is one of four Centers of Excellence in the United States and is the only one in Texas funded by the CDC's Division of TB Elimination, providing medical and technical consultation services related to various aspects of TB control; and.

**WHEREAS**, as such, the UTHSCT is the only entity with this level of expertise available within the state to provide these services; and

**WHEREAS**, through an Interlocal Agreement with UTHSCT, Metro Health seeks to continue its collaboration with UTHSCT to secure expert TB physician services and for full medical coverage for all active TB patients referred to Metro Health's TB Clinic; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or designee, or the Director of the San Antonio Metropolitan Health District or designee, is hereby authorized to execute agreements related to the San Antonio Metropolitan Health District's Tuberculosis Prevention and Control program to include an agreement with the University of Texas Health Science Center at San Antonio for patient referrals at no cost, for a term ending October 31, 2027, with the option to renew for one, two-year term, and an agreement with the University of Texas Health Science Center at Tyler for the provision of physician services in an amount up to \$120,000.00 for a term ending September 30, 2023 with the option to renew for four, one-year terms, for a cumulative amount up to \$600,000.00. A copy of the agreements in substantially final form are attached hereto and incorporated herein for all purposes as **Attachment I and II.**

**SECTION 2.** Funding in the amount of \$120,000.00 for this ordinance is available in Fund 11001000, Cost Center 3616010003 and General Ledger 5201040 as part of the Fiscal Year 2023 Adopted Budget approved by City Council.

**SECTION 3.** Additional funding is contingent upon City Council approval of the Fiscal Year 2024 and subsequent budgets that fall within the contract terms of this ordinance.

**SECTION 4.** Payment is authorized to the University of Texas Health Science Center at Tyler and should be encumbered with a purchase order.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**PASSED and APPROVED this 3rd day of November 2022.**

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney



## City of San Antonio

### City Council Meeting November 3, 2022

29.

**2022-11-03-0850**

Ordinance approving agreements related to the San Antonio Metropolitan Health District's Tuberculosis Prevention and Control program including an agreement with the University of Texas Health Science Center at San Antonio for patient referrals at no cost, for a term ending October 31, 2027, with the option to renew for one, two-year term, and an agreement with the University of Texas Health Science Center at Tyler to provide physician services in an amount up to \$120,000 for a term ending September 30, 2023 with the option to renew for four, one-year terms, for a cumulative amount up to \$600,000. Funding for the first year of the contract in the amount of \$120,000 is from the FY 2023 General Fund Adopted Budget. Funding for future years is dependent upon City Council approval of the annual budget. [Erik Walsh, City Manager; Claude Jacob, Director, Health]

Councilmember Castillo moved to Approve on the Consent Agenda. Councilmember Rocha Garcia seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry

MH  
11/03/22  
Item No. 29

# Attachment I

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE CITY OF SAN ANTONIO  
AND  
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO**

This Memorandum of Agreement (hereinafter MOA) is by and between The University of Texas Health Science Center at San Antonio (hereinafter HSC) and the City of San Antonio (hereinafter City), on behalf of the San Antonio Metropolitan Health District (hereinafter Metro Health).

WHEREAS, in 1993 The Centers for Disease Control and Prevention established The Tuberculosis Trials Consortium (TBTC) to conduct programmatically relevant clinical, laboratory and epidemiologic research concerning the diagnosis, clinical management and prevention of tuberculosis infection (the Study); and

WHEREAS, on March 31, 2021 the U.S. Centers for Disease Control and Prevention announced the members of its Tuberculosis Trials Consortium (TBTC) for the 2021 - 2030 cycle and the San Antonio site (Site 63) is the only site recognized in Texas the only 1 of 6 sites in the entire United States; and

WHEREAS, the San Antonio Metropolitan Health District's collaboration with HSC and the Tuberculosis Trials Consortium<sup>1</sup> (TBTC) goes back more than 20 years and includes three clinical studies of treatment with rifapentine based therapy for treatment of latent tuberculosis and a study to shorten treatment of active tuberculosis; and

WHEREAS, Dr. Jose Cadena, MD is a consortium member and is designated by the HSC as a Principal Investigator for TBTC studies; and

WHEREAS, the HSC shall appoint Dr. Cadena to be responsible for the conduct of the study by the HSC; and

WHEREAS, Metro Health is the primary public health entity serving the City of San Antonio and unincorporated Bexar County and charged with responsibility for health assessment, assurance and policy development; and

WHEREAS, the City, by and through Metro Health and HSC intend to collaborate on referral of treatment services for tuberculosis infected patients; and

WHEREAS, Metro Health will refer patients for continuation of care and treatment to the HSC under the care of Dr. Cadena for possible participation in said Study to be conducted by Dr. Cadena; and

WHEREAS, the parties understand that this MOA is to facilitate collaboration between the parties during the Study for the referral of potential participants to the Study and their continuing treatment; and

WHEREAS, Metro Health has access to a large number of patients and/or clients who may qualify for participation in the Study; and

WHEREAS, HSC by and through Dr. Cadena desires Metro Health's collaboration in the implementation of this Study and can provide continuing treatment for referred participants; and

WHEREAS, this MOA between the CITY and HSC will promote the coordination and access of treatment to these patients who may additionally qualify for participation in the Study; NOW THEREFORE:

- 1. Dr. Cadena on behalf of the HSC will:**
  - A. Provide the City with information on its services and Study to enable City to make referrals to Dr. Cadena.
  - B. Accept referrals from Metro Health for provision of treatment services and potential participation in the Study. If a participant does not complete the study, Dr. Cadena will refer participants to Metro Health for continuing care and treatment.
  - C. Screen patients for Study eligibility and be responsible for collecting and having participants execute

all authorization and consent forms as may be required.

- D. Communicate and update key Metro Health personnel on Study status.
- E. Include Metro Health in manuscript preparation and related publication endeavors. In the event that Dr. Cadena publishes as first (communicating) author the results of this Study or uses any of the Study materials for educational activities, Dr. Cadena will acknowledge the City's contribution to the project in any such materials. Such acknowledgement shall indicate the project was supported in part by Metro Health. If a third party uses the study results, then the standard policies of the Tuberculosis Trials Consortium (TBTC) of the Centers for Disease Control and Prevention will be followed, which generally acknowledges TBTC study sites that will include Metro Health.
- F. Allot time to meet with Metro Health to discuss Study findings and future collaboration in research studies or interventions.
- G. Have personnel performing activities under this MOA at the Metro Health clinic execute a Release and Indemnification Form concurrently with this MOA, a copy of which is attached hereto and incorporated herein for all purposes as **Attachment I**.
- H. Liaise with HSC Institutional Review Board and supervise the studies.
- I. HSC shall comply with standard practices of confidentiality of patient information as required by Metro Health and by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. HSC shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment II**, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws.

**2. City through Metro Health will:**

- A. Make patient referrals with patient authorization to HSC under the direction of Dr. Cadena for continuation of care and treatment and who may qualify for the Study to be provided by Dr. Cadena.
- B. Inform patients of Study in clinical sites if identified as potentially eligible for Study participation.
- C. Give information sheet with contact telephone number to potential participant or directly contact Dr. Cadena if patient indicates willingness to participate at the time of the encounter.
- D. Facilitate communication between Metro Health and Dr. Cadena and his staff.
- E. Subject to availability allow Dr. Cadena's staff to conduct initial interview at the Metro Health clinic site and allow usage of a phone and computer.

**3. Both parties agree:**

- A. To maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.
- B. That each party be responsible for the acts and negligence of its employees under state and federal law.

4. **Term/Termination.** This MOA will be effective on November 1, 2022 and will terminate on October 31, 2027 unless sooner terminated by the parties. The City shall have the option to renew this Agreement for one, two-year term. The renewal shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council.

Either party may terminate this Agreement upon 30 days written notice to the other party. Notices to each party will be in accordance with Section 9. Notice.

5. **Indemnification.** HSC 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.

6. **Confidentiality:** HSC acknowledges that in connection with the services to be performed under this Agreement by HSC, HSC and its employees may be acquiring and making use of certain confidential information of the City and Metro Health which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, HSC and its employees shall not use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event HSC receives a request or demand for the disclosure of Confidential Information, HSC shall immediately provide written notice to the City of such request or demand, including a copy of any written element of such request or demand. HSC further agrees to adequately instruct its employees, physicians and all personnel that may provide services pursuant to this Agreement regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the HSC and with all federal and state laws and regulations regarding patient and medical record confidentiality. HSC assumes full responsibility for any breach of confidence by its employees or its staff with regard to the provision of services under this Agreement.

7. **Ownership of Documents:** In accordance with Texas law, HSC acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

All documents, including any original drawings, estimates, specifications and all other documents and data, produced by HSC in the course of the Study shall remain the property of HSC. However, it is understood that City shall have access to all such HSC information and City is granted the right to make and retain copies of HSC's drawings, estimates, specifications and all other documents and data.

Any materials or data previously owned by City and provided to HSC pursuant to this Agreement shall remain property of City, and nothing herein shall be construed to grant any right or license to HSC in or to any material or data. HSC agrees and covenants to protect any and all proprietary rights of City in any materials and data provided to HSC. Additionally, any materials or data provided to HSC by City shall not be released to any third party without the consent of City and shall be returned intact to City, or destroyed if instructed by City to do so, upon termination or completion of this Agreement.

All previously owned intellectual property of HSC, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by HSC or its suppliers hereunder, and any know-how, methodologies or processes used by HSC to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of HSC or its suppliers.

8. **Compensation:** No fees or expenses shall be exchanged between the City and HSC for the activities set out under this Agreement. The City will not be charged for any services performed by HSC in connection with the activities covered by this Agreement or have any obligation to pay the salaries or expenses of any HSC personnel.

9. **Notice:** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

**City:**

City of San Antonio  
San Antonio Metropolitan Health District  
Attn: Claude A. Jacob, Health Director  
100 W. Houston, 14<sup>th</sup> Floor  
San Antonio, TX 78205

**HSC:**

University of Texas Health Science Center at  
at San Antonio  
Attn: Melissa Engle, Clinical Research Program Manager  
7703 Floyd Curl Dr.  
San Antonio, TX 78229

10. **Independent Contractor:** HSC is an independent contractor, and neither HSC nor any of its agents, representatives, staff or employees shall be considered agents, representatives, or employees of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relations between the parties hereto. HSC shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits. City shall not provide HSC staff any salaries, insurance or other benefits.

11. **Non-Discrimination:** As a party to this contract, HSC 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

12. **Amendments:** 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 HSC.

It is understood and agreed by Parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

13. **Licenses/Certifications:** HSC warrants and certifies that HSC and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

14. **Compliance:** HSC 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.

Notwithstanding any other provisions contained in this Agreement, the Parties shall comply in all material respects with the applicable provisions, if any, of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA"), and agree to enter into any such other agreements between the Parties as may be required in order to evidence such compliance with HIPAA.

15. **Assignment:** This Agreement is not assignable by either party without the prior written consent of the other party. Any assignment without such written consent shall be void.

16. **Captions:** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

17. **Texas Law to Apply/Venue:** This Agreement shall be construed under and in accordance with the laws of the United States and the State of Texas. The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

18. **Legal Construction:** In case any one or more of the provisions contained in this Agreement shall for

any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

19. **Entire Agreement:** The final and entire Memorandum of Agreement between the parties hereto and contains 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 hereof, and duly executed by the parties.

In witness whereof, the parties have caused this MOA to be executed as of the day and year listed below.

**The University of Texas Health  
Science Center at San Antonio**

**City of San Antonio**

\_\_\_\_\_  
Jose Cadena, MD  
Principal Investigator- TBTC

\_\_\_\_\_  
Claude A. Jacob  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CITY OF SAN ANTONIO**  
**AGREEMENT INCLUDING RELEASE AND INDEMNIFICATION**

**Attachment I**

WHEREAS, the City of San Antonio (hereinafter referred to as "CITY") consents and agrees to permit employees of The University of Texas Health Science Center at San Antonio, to participate in the collaboration of Study referrals (hereinafter referred to as the "PROJECT"), subject to the adherence of the individual to any provisions set out in the rules and regulations of the City.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises, covenants, and agreements set forth in this Agreement and subject in all ways to the extent authorized under the Constitution and laws of the State of Texas, the CITY and the individual agree that the CITY, its agents or employees, shall not be liable or responsible for, and shall be **SAVED, HELD HARMLESS, RELEASED and INDEMNIFIED** by the individual employer from and against any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including but not limited to all expenses of litigation, court costs, and attorney fees for injury or death to any person, or injury to any property received or sustained by any person or persons or property arising out of, or occasioned by, directly or indirectly, the participation of the individual in the **PROJECT**.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS AGREEMENT IS AN INDEMNITY EXTENDED BY THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO SUBJECT TO THE EXTENT AUTHORIZED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS TO INDEMNIFY AND PROTECT THE CITY FROM ANY AND ALL CLAIMS OR ACTIONS, AS SET FORTH ABOVE, OF ANY KIND, ARISING DIRECTLY OR INDIRECTLY FROM THE PARTICIPATION OF THE EMPLOYEE IN THE PROJECT.

It is further understood and agreed that the individual will participate solely as an individual on a voluntary basis and not as an employee, contractor or agent of the CITY or its agents or employees. Individuals who are employed by CITY acknowledge that this participation is outside the scope of their employment and is performed on a voluntary basis only. The Parties acknowledge that the individual is acting in their capacity as an employee of The University of Texas Health Science Center at San Antonio and as such are subject to the laws and Constitution of the State of Texas. Nothing contained herein is intended to waiver or reduce the rights or privileges of the State of Texas.

In making this Agreement, the individual relies wholly upon his/her own judgement, belief and knowledge and has not been influenced to any extent whatsoever by any representations or statements not contained in this Agreement.

I, the undersigned, do hereby release to and authorize the use of any photographs taken of the participants listed below by the City, my employer, any other sponsor, or their contractors for the purpose of developing public information materials.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE ZIP CODE

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
EMERGENCY NUMBER

## WITNESSETH:

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (**Agreement**) is entered into by and between the City of San Antonio ("**Covered Entity**"), and the University of Texas Health Science Center at San Antonio an Institution of The University of Texas System and an agency of the State of Texas, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Contract ("Service Contract"), executed on \_\_\_\_\_; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

- A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:
- (1) "Breach" shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:
    - (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
    - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;
    - (c) whether the protected health information was actually acquired or viewed; and
    - (d) the extent to which the risk to the protected health information has been mitigated.
  - (2) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. 164.501.
  - (3) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
  - (4) "Health Information" is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
  - (5) "Individual" means the person who is the subject of protected health information and

shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

- (6) "Individually Identifiable Health Information" is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (7) "Privacy Rule" shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.
- (9) "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 45 C.F.R 164.103.
- (10) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (11) "Security Rules" shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.
- (12) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
  - (a) does business, and
  - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are aware of and agree to the same restrictions

and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all Security Rules requirements;
- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

#### C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the

person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) This Agreement becomes effective on the date it is signed by the last Party. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
  - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
  - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and

disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.
- I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. Indemnification. BA 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.
- M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. Assignment. Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- Q. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

**EXECUTED** to be effective \_\_\_\_\_, 2022, by the **City of San Antonio**, signing by and through its program manager.

**COVERED ENTITY**  
By **City of San Antonio**

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_

Claude A. Jacob  
Health Director  
San Antonio Metropolitan Health District

By: \_\_\_\_\_

Jose Cadena, MD  
Principal Investigator

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

MH  
11/03/22  
Item No. 29

# Attachment II

**INTERLOCAL AGREEMENT  
BETWEEN  
THE CITY OF SAN ANTONIO AND THE UNIVERSITY OF TEXAS HEALTH SCIENCE  
CENTER AT TYLER**

THIS INTERLOCAL AGREEMENT (the Agreement) is made and entered into by and between the CITY OF SAN ANTONIO ("CITY"), a Texas Home Rule Municipality, on behalf of the San Antonio Metropolitan Health District ("Metro Health") acting by and through the City Manager or designee pursuant to Ordinance No. \_\_\_\_\_ and THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER (UNIVERSITY), an institution of The University of Texas System, an agency of the state of Texas (UNIVERSITY). CITY and UNIVERSITY shall collectively be referred to as "the Parties."

**WITNESSETH**

**WHEREAS**, to increase efficiency and effectiveness, Texas Government Code, Chapter 791 authorizes local governments to contract to the greatest extent possible with one another and with agencies of the state; and

**WHEREAS**, Texas Government Code, section 791.011 provides that a local government may contract with another to perform governmental functions and services, and the definition of "governmental function and services" under Section 791.003(3) includes the areas of public health and welfare; and

**WHEREAS**, the City's Tuberculosis (TB) Prevention and Control Program within Metro Health provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease and latent TB infections; and

**WHEREAS**, Metro Health also provides screening and preventive medicine for those with a known exposure to TB or those from high risk populations; and

**WHEREAS**, additional services offered include case management, contact investigation and community intervention with prevention measures in order to reduce the rates and control the spread of TB disease; and

**WHEREAS**, UNIVERSITY is one of four Centers of Excellence (COE) in the United States funded by the Center for Disease Control and Prevention's Division of TB Elimination; and

**WHEREAS**, UNIVERSITY provides medical consultation services related to various aspects of TB control; and

**NOW THEREFORE**, this Agreement defines the terms between the City and UNIVERSITY for the provision of physician medical services by UNIVERSITY for active TB cases; and

**I.  
PURPOSE/DEFINITIONS**

1.1 The purpose of this Interlocal Agreement is to establish the terms and conditions under which UNIVERSITY will provide CITY with certain specified public health services for physician services as part of the Metro Health's Tuberculosis (TB) Prevention and Control Program. This Agreement shall also establish the CITY's and UNIVERSITY's obligations, costs, and the manner and method of payment for

provided services.

1.2 As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"UNIVERSITY" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's San Antonio Metropolitan Health District.

"Project or Program" shall mean the general scope of services of this Agreement.

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2022, and shall terminate on September 30, 2023. This Agreement may be renewed by mutual consent of the Parties for up to four (4), one (1) year terms (a "Renewal Term"). Any renewals shall be in writing and signed by the Parties. The Director of the San Antonio Metropolitan Health District shall have the authority to execute renewals on behalf of the City without further City Council action, subject to appropriation of funds therefore.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

2.3 It is expressly understood and agreed by the City and UNIVERSITY that City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet the City's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If City does not receive adequate funds to pay obligations under this Agreement, then this Agreement shall terminate and neither UNIVERSITY nor City shall have any further obligations hereunder.

## **III. SCOPE OF SERVICES**

3.1 UNIVERSITY agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 UNIVERSITY agrees to provide a Licensed Medical Physician (Physician) specializing in the diagnosis and treatment of TB to provide services at the Metro Health City Chest Clinic (Clinic) as described in this Article III. UNIVERSITY may change Physicians but shall ensure one of its Physicians is available during clinic hours. UNIVERSITY shall ensure a Physician is available for consultations by telephone during periods when the physical presence of a Physician cannot be provided. UNIVERSITY agrees to provide a minimum of ten (10) business day notice if unable to provide coverage, with the exception of an unforeseen emergency.

3.3 UNIVERSITY agrees to notify City upon identifying the Physicians who shall provide services as described in this Article III so City may ensure any Physicians performing services are credentialed for filing claims and billing with Metro Health.

3.4 UNIVERSITY agrees to perform the following services:

3.4.1 UNIVERSITY shall provide through the services of a Physician specializing in the diagnosis and treatment of TB the following professional physician medical services to include:

- a. Providing clinical service coverage and patient care for the Clinic for all active TB cases and active TB case contacts referred to the Clinic which includes persons identified as having exposure to known active TB cases and are at risk for being infected or developing TB disease. Active TB case contacts identified as having a latent tuberculosis infection will be referred for services and treatment and shall not be provided treatment services under this Agreement. Medical and clinical services will include but not be limited to: guiding the treatment of active tuberculosis utilizing available resources including mycobacterial cultures, genotyping, drug susceptibility testing, radiographic facilities, first and second-line drugs. Services to be provided include organization and supervision of treatment, utilizing recommended treatment regimens, initiating treatment, conducting appropriate baseline and follow-up evaluations, identification and management of patients at increased risk of treatment failure and relapse, as well as providing treatment in special situations such as HIV infection, diabetes, children, extrapulmonary tuberculosis, pregnancy, or liver disease.
- b. Providing non-treatment activities to include but not limited to, Board and Cohort review. Non-treatment activities could also include professional guidance and recommendations for the investigation of contacts or persons with infectious tuberculosis. Examples could include input on decisions to initiate or expand a contact investigation, investigating sites of transmission, assigning priorities to contacts, and conducting contact investigations in special circumstances such as outbreaks, congregate settings, correctional facilities, health-care settings, schools, or shelters.

3.5 All work performed by UNIVERSITY hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by UNIVERSITY, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII Termination, in whole or in part, should UNIVERSITY's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### **IV. COMPENSATION TO UNIVERSITY**

4.1 In consideration of UNIVERSITY's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay UNIVERSITY an amount not to exceed ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) as total compensation to be paid to UNIVERSITY in the manner set forth in Section 4.2.

4.2 City agrees to pay UNIVERSITY upon receipt of an invoice submitted in accordance with this section. UNIVERSITY shall submit invoices monthly in the amount of \$10,000.00 throughout the term of this Agreement. Each invoice shall outline the work completed during the previous period in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. City shall pay the invoice from UNIVERSITY within 30 days after the date on which City receives

the invoice. The total payments hereunder shall not exceed the amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing.

4.3 Invoices shall include Purchase Order number provided by City and submit via email to City's Accounts Payable inbox (ap@sanantonio.gov) or by mail at the following address:

City of San Antonio  
Attn: Accounts Payable  
P.O. Box 839976  
San Antonio, TX 78283-3976

4.4 No additional fees or expenses of UNIVERSITY shall be charged by UNIVERSITY nor be payable by City. The Parties hereby agree that all compensable expenses of UNIVERSITY have been provided for in the total payment to UNIVERSITY as specified in Section 4.1 above. Total payments to UNIVERSITY cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.5 Final acceptance of work products and services require written approval by City, as determined by the Director as the City's approval official. Payment will be made to UNIVERSITY following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than UNIVERSITY, for the payment of any monies or the provision of any goods or services.

4.6 All services required under this Agreement will be performed to City's satisfaction, and City will not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder will not be paid until required reports, data, and documentation have been received and approved by the City, as determined by the Director as the City's approval official.

4.7 The Parties agree that any payment by either Party for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

## V. OWNERSHIP OF DOCUMENTS

5.1 Ownership of Intellectual Property. UNIVERSITY and City agree that any and all writings, documents, maps or information in whatsoever form and character produced by UNIVERSITY pursuant to the provisions of this Agreement (the "Project") shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. UNIVERSITY hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent, and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand name, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. As owner of the tangible and intangible intellectual property, City shall have the right to reproduce, publish, authorize others to reproduce or publish, or otherwise use such material. UNIVERSITY agrees to execute all documents

reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure UNIVERSITY'S signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters, patent, copyright, or other protection relating to Project, for any reason whatsoever, UNIVERSITY hereby irrevocably designates and appoints City and its duly authorized officers and agents as UNIVERSITY's agent and attorney-in-fact, to act for and in UNIVERSITY's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by UNIVERSITY. Provided, however, nothing herein contained is intended nor shall it be construed to require UNIVERSITY to transfer any ownership interest in UNIVERSITY's best practice and benchmarking information to the City.

5.2 In the event that UNIVERSITY desires to copyright material or to permit any third- party to do so, UNIVERSITY must obtain City's prior written approval to do so and must appropriately acknowledge City's support in any such materials.

5.3 UNIVERSITY shall not use any City data or information collected or observed during the term of this Agreement for publication, or reviews or presentations unless approval is obtained in writing from the City.

5.4 In accordance with Texas law, UNIVERSITY acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, UNIVERSITY agrees that no such local government records produced by or on the behalf of UNIVERSITY pursuant to this Agreement shall be the subject of any copyright or proprietary claim by UNIVERSITY.

## **VI. REQUESTS FOR AND RETENTION OF RECORDS**

6.1 UNIVERSITY 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 UNIVERSITY 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. 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, UNIVERSITY shall retain the records until the resolution of such litigation or other such questions. UNIVERSITY 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 UNIVERSITY to return said documents to City prior to or at the conclusion of said retention.

6.3 The Public Information Act, 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 UNIVERSITY receives inquiries regarding documents within its possession pursuant to this Contract, UNIVERSITY 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 UNIVERSITY shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of UNIVERSITY'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 hereof.

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, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should UNIVERSITY default in the performance of this Agreement 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. UNIVERSITY shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If UNIVERSITY 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, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against UNIVERSITY's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

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

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

7.4.4 Performing unsatisfactorily as determined by City;

7.4.5 The failure to meet reporting requirements as set out and determined by City;

7.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

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, UNIVERSITY 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 UNIVERSITY, or provided to UNIVERSITY, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by UNIVERSITY 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 UNIVERSITY's sole cost and expense. Payment of compensation due or to become due to UNIVERSITY is conditioned upon delivery of all such documents, if requested.

7.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, UNIVERSITY shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by UNIVERSITY to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by UNIVERSITY of any and all right or claims to collect moneys that UNIVERSITY may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, UNIVERSITY shall cease all operations of work being performed by UNIVERSITY or any of its subcontractors pursuant to this Agreement.

7.9 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 UNIVERSITY for any default hereunder or other action.

## **VIII. NOTICE**

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally or by electronic mail (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City to:

City of San Antonio  
Director, San Antonio Metropolitan Health District  
100 W. Houston, 14<sup>th</sup> floor  
San Antonio, Texas 78205

metrohealthcontracts@sanantonio.gov

If intended for UNIVERSITY to:

Panda Powell, Director of  
Office of Sponsored Programs  
The University of Texas Health  
Science Center at Tyler  
11937 US HWY 271  
Tyler, TX 75708  
grants@uthct.edu

OR

Halbert Brown, Executive Director  
Heartland National TB Center  
2303 SE Military Dr  
San Antonio, TX 78223  
halbert.brown@uthct.edu

**IX.  
RESERVED**

**X.  
AUDIT**

10.1 The City reserves the right to conduct or cause to be conducted an audit or review of all funds received under this Agreement during normal business hours with advanced written notice as deemed necessary by City, not to exceed two times per 12 month period. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, UNIVERSITY agrees to make available to City all accounting and Project records. UNIVERSITY acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine.

10.2 UNIVERSITY shall during normal business hours with advance written notice, and not to exceed two times per twelve month period by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the UNIVERSITY shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by UNIVERSITY in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

10.3 When an audit or examination determines that the UNIVERSITY has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the UNIVERSITY shall be notified and provided an opportunity to address the questioned expenditure or costs.

10.4 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the UNIVERSITY will promptly refund such amount to the City no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such undisputed claims from subsequent

reimbursements under this Agreement; however, in the absence of prior notice by City of the exercise of such option, UNIVERSITY shall provide to City a full refund of such amount no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. If UNIVERSITY is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by check, cashier's check or money order. Should the City, at its sole discretion, deduct such undisputed claims from subsequent reimbursements, the UNIVERSITY is forbidden from reducing Project expenditures and UNIVERSITY must use its own funds to maintain the Project.

10.5 UNIVERSITY agrees and understands that all expenses, fees, and penalties associated with the collection of delinquent debts owed by UNIVERSITY shall be the sole responsibility of the UNIVERSITY and shall not be paid from any Project funds received by the UNIVERSITY under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

## **XI. ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS**

11.1 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, UNIVERSITY agrees to permit City and/or State to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess UNIVERSITY's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the UNIVERSITY shall furnish to Metro Health and the Grantor of the Funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by Metro Health and shall permit the City and Grantor of the Funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. UNIVERSITY agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the UNIVERSITY of any liability to the City for failure to comply with the terms of the Project or the terms of this Agreement.

11.2 Unless disclosure is authorized by the City, UNIVERSITY 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, 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. UNIVERSITY 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, UNIVERSITY shall, where possible, give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. UNIVERSITY certifies that it has established specific procedures designed to meet the obligations of this Article, including, but not limited to execution of agreements regarding the treatment of Confidential Information with UNIVERSITY's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the State's or the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration this Agreement, UNIVERSITY 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 this Agreement for the period noted above. The Parties shall ensure that their respective employees, agents, and contractors are aware of

and shall comply with the aforementioned obligations. The foregoing shall not apply when, after and to the extent the Confidential Information disclosed, as documented by competent evidence:

- A. is not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure; is already in the recipient party's possession at the time of disclosure as evidenced by written records in the possession of the receiving party prior to such time;
- B. is or later becomes part public domain through no fault of recipient party;
- C. is received from a third party having no obligations of confidentiality to the disclosing party;
- D. is independently developed by the recipient party by its personnel having no access to the Confidential Information.

11.3 UNIVERSITY shall comply with standard practices of confidentiality of patient information as required by Metro Health and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. UNIVERSITY will enter into a Business Associate Agreement with the City, which is attached hereto as **Attachment I** and incorporated herein as part of this Agreement for all purposes.

11.4 City policies regarding authorization for access to confidential information and review of medical records will be followed by UNIVERSITY. UNIVERSITY assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

11.5 Prohibited Political Activity. UNIVERSITY agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

11.6 UNIVERSITY agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

11.7 The prohibitions set forth in Sections 11.3 and 11.4 above include, but are not limited to, the following:

- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
- (B) working or directing other personnel to work on any political activity during paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
- (C) coercing personnel, whether directly or indirectly, to work on political activities on their

personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

- (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes, including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

11.8 UNIVERSITY agrees that in any instance where an investigation of the above is ongoing or has been confirmed, fees paid to the UNIVERSITY under this Agreement may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the UNIVERSITY's personnel is terminated.

11.9 Sections 11.4 through 11.8 shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, UNIVERSITY and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

11.10 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the UNIVERSITY agrees to that under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

## **XII. INSURANCE**

12.1 UNIVERSITY and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

12.2 With respect to UNIVERSITY, 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 the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

## **XIII. INDEMNIFICATION**

13.1 UNIVERSITY and the City acknowledge they are political subdivisions of the State of Texas and 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. UNIVERSITY and City shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this Agreement.

## **XIV.**

**SMALL MINORITY OR WOMAN OWNED  
BUSINESS ADVOCACY POLICY**

14.1 UNIVERSITY is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. UNIVERSITY agrees that it will adhere to its established policies regarding small, minority, or women owned business policy regarding procurement, construction and professional service contracts.

14.2 In the event that the UNIVERSITY utilizes subcontractors to perform any part of this agreement the UNIVERSITY will ensure that each subcontractor is aware that they must comply with the City of San Antonio's Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City.

**XV.  
ASSIGNMENT AND SUBCONTRACTING**

15.1 UNIVERSITY shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of UNIVERSITY. UNIVERSITY, its employees or its subcontractors shall perform all necessary work.

15.2 It is City's understanding that this Agreement is made in reliance thereon that UNIVERSITY does not intend to use subcontractors in the performance of this Agreement.

15.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of UNIVERSITY. City shall in no event be obligated to any third party, including any subcontractor of UNIVERSITY, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

15.4 Except as otherwise stated herein, UNIVERSITY may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, UNIVERSITY shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor UNIVERSITY, assignee, transferee or subcontractor.

15.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void *ab initio* and shall confer no rights upon any third person. Should UNIVERSITY assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of UNIVERSITY shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by UNIVERSITY shall in no event release UNIVERSITY from any obligation under the terms of this Agreement, nor shall it relieve or release UNIVERSITY from the payment of any damages to City, which City sustains as a result of such violation.

**XVI.**  
**INDEPENDENT CONTRACTOR**

16.1 UNIVERSITY covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that UNIVERSITY shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of *respondeat superior* shall not apply as between City and UNIVERSITY, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, collaborators or joint venturers between City and UNIVERSITY. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the UNIVERSITY under this Agreement and that the UNIVERSITY has no authority to bind the City.

**XVII.**  
**NONDISCRIMINATION POLICY**

17.1 Non-Discrimination. As a party to this contract, UNIVERSITY 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.

17.2 The UNIVERSITY shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, UNIVERSITY agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. Additionally, UNIVERSITY certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VII of the Civil Rights Act of 1964, as amended;
- b) Section 504 of the Rehabilitation Act of 1973, as amended;
- c) The Age Discrimination Act of 1975, as amended;
- d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
- e) Fair Labor Standards Act of 1938, as amended;
- f) Equal Pay Act of 1963, P.L. 88-38; and
- g) All applicable regulations implementing the above laws.

**XVIII.**  
**CONFLICT OF INTEREST**

18.1 UNIVERSITY acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his- parent, child or spouse owns- ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a collaborator or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, UNIVERSITY 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. UNIVERSITY further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement compliance with the City's Ethics Code.

#### **XIX. AMENDMENTS**

19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof: shall be affected by amendment, in writing, executed by both City and UNIVERSITY.

#### **XX. SEVERABILITY**

20.1 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 maybe possible, legal, valid and enforceable.

#### **XXI. LICENSES/CERTIFICATIONS**

21.1 UNIVERSITY warrants and certifies that UNIVERSITY and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

#### **XXII. COMPLIANCE**

22.1 UNIVERSITY shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

**XXIII.  
NONWAIVER OF PERFORMANCE**

23.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XIX. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

**XXIV.  
LAW APPLICABLE**

**24.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

**XXV.  
LEGAL AUTHORITY**

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

**XXVI.  
PARTIES BOUND**

26.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

**XXVII.  
CAPTIONS**

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

**XXVIII.  
DEBARMENT**

28.1 UNIVERSITY 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.

28.2 UNIVERSITY shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this Agreement, including any renewals here of, UNIVERSITY

learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

**XXVIX.  
ENTIRE AGREEMENT**

29.1 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 XIX. Amendments.

Executed to be effective \_\_\_\_\_ as signed by the Parties below.

**CITY OF SAN ANTONIO**

\_\_\_\_\_  
Name: Claude A. Jacob  
Title: Health Director  
San Antonio Metropolitan Health District

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**THE UNIVERSITY OF TEXAS  
HEALTH SCIENCE CENTER AT  
TYLER**

Panda Powell

Panda Powell (Oct 11, 2022 13:36 CDT)

\_\_\_\_\_  
Name: Panda Powell  
Title: Director, Office of Sponsored Programs

**READ AND UNDERSTOOD:**

Barbara Seaworth

Barbara Seaworth (Oct 11, 2022 12:46 CDT)

\_\_\_\_\_  
Barbara Seaworth, M.D.

## WITNESSETH:

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (**Agreement**) is entered into by and between the City of San Antonio ("**Covered Entity**"), and the University of Texas Health Science Center at Tyler an Institution of The University of Texas System and an agency of the State of Texas, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Services Contract ("Service Contract"), executed on \_\_\_\_\_, whereby BA provides services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

- A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:
- (1) "Breach" shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:
    - (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
    - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;
    - (c) whether the protected health information was actually acquired or viewed; and
    - (d) the extent to which the risk to the protected health information has been mitigated.
  - (2) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. 164.501.
  - (3) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
  - (4) "Health Information" is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
  - (5) "Individual" means the person who is the subject of protected health information and

shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

- (6) "Individually Identifiable Health Information" is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (7) "Privacy Rule" shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.
- (9) "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 45 C.F.R 164.103.
- (10) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (11) "Security Rules" shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.
- (12) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
  - (a) does business, and
  - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are aware of and agree to the same restrictions

and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all Security Rules requirements;
- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the

person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) This Agreement becomes effective on the date it is signed by the last Party. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
  - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
  - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and

disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.
- I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. Indemnification. BA 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.
- M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. Assignment. Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- Q. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

**EXECUTED** to be effective \_\_\_\_\_, 2022, by the **City of San Antonio**, signing by and through its program manager.

**COVERED ENTITY**  
**By City of San Antonio**

By: \_\_\_\_\_

Claude A. Jacob  
Health Director  
San Antonio Metropolitan Health District

**BUSINESS ASSOCIATE:**

*Kris I. Kavasch*  
By: Kris I. Kavasch (Oct 26, 2022 13:48 CDT)

Kris Kavasch  
SVP, Finance, Chief Financial Officer  
The University of Texas at Tyler

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney