

ORDINANCE 2022-12-15-0952

**AUTHORIZING THE CITY TO PURCHASE BIOLOGICAL AND INFLUENZA VACCINES THROUGH THE MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY (MMCAP) FOR AN ESTIMATED AMOUNT OF \$1.5 MILLION OVER A PERIOD OF FIVE YEARS. FUNDING FOR THE FIRST YEAR IS AVAILABLE IN THE AMOUNT OF \$201,000.00 IS FROM THE FY 2023 GENERAL FUND BUDGET AND \$250,000.00 IS FROM THE IMMUNIZATION COVID-19 ROUND 3/ROUND 4 GRANT. FUNDING FOR SUBSEQUENT YEARS IS CONTINGENT UPON COUNCIL APPROVAL OF THE ANNUAL BUDGET.**

\* \* \* \* \*

**WHEREAS**, the San Antonio Metropolitan Health District (Metro Health) historically used contracts available through the Texas SmartBuy Program and managed by the Texas Statewide Procurement Division to purchase biological and influenza vaccines; and

**WHEREAS**, the Texas Statewide Procurement Division ended direct contracting with multiple biological and influenza vaccines manufacturers and joined the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) contract as a Statewide Agency; and

**WHEREAS**, the MMCAP program is operated by the State of Minnesota's Department of Administration and provides vaccines, biologicals, healthcare products and services from multiple manufacturers at discount pricing equal to or greater than the pricing previously realized through the Texas Statewide Procurement Division; and

**WHEREAS**, the State of Texas's MMCAP Membership, through the Texas Statewide Procurement Division, provides access to competitively bid vaccines and biological products under MMCAP terms and conditions; and

**WHEREAS**, Texas Local Government Code section 271.102 provides for the City's participation in cooperative purchasing programs and such purchases satisfy any state law requiring competitive bidding; and

**WHEREAS**, in March 2019 by Ordinance No. 2019-03-21-0209, City Council approved the City's use of the MMCAP contract for an amount up to \$500,000.00 over a period of five years; and

**WHEREAS**, this ordinance will authorize the City's to continue to purchase biological and influenza vaccines through the MMCAP for an estimated amount of \$1.5 million over a five-year period; **NOW THEREFORE:**

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

**SECTION 1.** The City is hereby authorized to continue to purchase biological and influenza vaccines through the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) for an

estimated amount of \$1.5 million over a five-year period. The terms of the MMCAP Membership Application and Facility Agreement are hereby approved and a copy is attached hereto as **Exhibit I**. The City Manager or designee, or the Director of the San Antonio Metropolitan Health District or designee, is hereby authorized to execute the MMCAP Membership Application and Facility Agreement on behalf of the City of San Antonio.

**SECTION 2.** Funding for this ordinance in the amount of \$201,000.00 is available in Fund 11001000, Cost Center 3616010002 and General Ledger 5304040 as part of the Fiscal Year 2023 Adopted Budget approved by City Council.

**SECTION 3.** Funding for this ordinance in the amount of \$250,000.00 for this ordinance is available in Fund 2103600008, Internal Order 136000001756 and General Ledger 5304040 as part of the Fiscal Year 2023 Adopted Budget approved by City Council.

**SECTION 4.** Payment not to exceed the budgeted amount is authorized to the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) contract to provide the City with biological and influenza vaccines. All expenditures will be in accordance with the Fiscal Year 2023 and subsequent budgets that fall within the five-year approved by City Council in this ordinance.

**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 designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

**SECTION 6.** This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

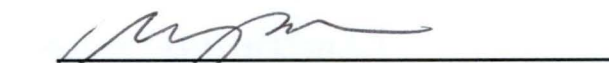
**PASSED and APPROVED this 15<sup>th</sup> day of December, 2022.**

  
M A Y O R  
Ron Nirenberg

**ATTEST:**

**APPROVED AS TO FORM:**

  
Debbie Racca-Sittre, City Clerk

  
Andrew Segovia, City Attorney





## City of San Antonio

### City Council Meeting December 15, 2022

10.

2022-12-15-0952

Ordinance authorizing the City to purchase biological products and influenza vaccines through the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) for an estimated amount of \$1.5 million over a period of five years. Funding for the first year in the amount of \$201,000 is from the FY 2023 General Fund budget and \$250,000 is from the Immunization COVID-19 Round 3/Round 4 Grant. Funding for subsequent years is contingent upon Council approval of the annual budget. [Ben Gorzell Jr., Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]

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

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

LC  
12/15/22  
Item No. 10

# **Exhibit I**



## Minnesota Multistate Contracting Alliance for Pharmacy

651.201.2420 [www.mmcap.org](http://www.mmcap.org)

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### Membership Application and Facility Agreement Instructions for Completion

Thank you for your interest in membership with the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP). Processing a new membership application generally takes less than a week after MMCAP receives it. You will receive a welcome letter and copy of the fully executed Membership Application and Facility Agreement after the membership has been activated.

#### Eligibility

Membership in MMCAP is limited to facilities that:

1. Have legal authority to contract with the State of Minnesota, and
2. The State of Minnesota has legal authority to contract with the entity. Minnesota's authority is limited by Minnesota Statutes Section 471.59, subdivision 10 to:
  - Other states
  - Agencies of other states
  - Counties
  - Cities
  - School Districts
  - Federally recognized Indian tribes
  - Entities recognized by the member state's statutes as authorized to use that state's commodity or service contracts (Minnesota Statutes Section 16C.03, subdivision 10 – found at: <https://www.revisor.mn.gov/statutes/?id=16C.03>).

#### Application Check List:

☐ Membership Application completed with each question answered

**If this application includes multiple ship-to locations contact MMCAP Membership at 651.201.2420 or [MMCAP.Membership@state.mn.us](mailto:MMCAP.Membership@state.mn.us).**

☐ Facility Agreement signed by proper authority of the facility applying

☐ Membership Application and Facility Agreement forwarded to MMCAP for final processing, at [MMCAP.Membership@state.mn.us](mailto:MMCAP.Membership@state.mn.us)

If you have any questions, please contact MMCAP at 651.201.2420.



## Minnesota Multistate Contracting Alliance for Pharmacy

### Membership Application and Facility Agreement

Forward the completed Membership Application and executed Facility Agreement to MMCAP for final processing, at [MMCAP.Membership@state.mn.us](mailto:MMCAP.Membership@state.mn.us)

1. Facility Information:

\* If this application includes multiple ship-to locations contact MMCAP Membership at 651.201.2420

Legal Name: (no abbreviations or acronyms)		
"Bill To" Street Address:		
City:	State:	Zip:
"Ship To" Street Address:		
City:	State:	Zip:
Facility Website:		
Primary Contact Name:		Title:
Primary Contact Email:		Primary Contact Phone:
Second Contact Name: (two contacts must be listed for facility)		Title:
Second Contact Email:		Second Contact Phone:

2. What type of entity is the facility? (Check one)

- |   |  |
|---|--|
| <input type="checkbox"/> State Government         | <input type="checkbox"/> Non-government Private – non-profit |
| <input type="checkbox"/> County/Parish Government | <input type="checkbox"/> Federal Government                  |
| <input type="checkbox"/> Municipal Government     |  |

3. What is the primary purpose of your facility? (Check one)

- |   |   |
|---|---|
| <input type="checkbox"/> Central Purchasing/Business Office | <input type="checkbox"/> Public Safety/First Responders |
| <input type="checkbox"/> Correctional Facility              | <input type="checkbox"/> School/College/University      |
| <input type="checkbox"/> Convalescence/Nursing Facility     | <input type="checkbox"/> Veterinary                     |
| <input type="checkbox"/> Mental Health                      | <input type="checkbox"/> Other _____                    |
| <input type="checkbox"/> Public Health                      |   |



4. Facility Identifiers:

a) Health Industry Number (HIN), if unknown leave blank:	
b) Facility's State Pharmacy License Number, if applicable:	
c) DEA Number, if applicable (required for controlled substances):	

5. Indicate which MMCAP programs the facility intends to use? (Check all that apply)

☐ **Pharmacy Program**

- ☒ Pharmaceutical Wholesaler Services (AmerisourceBergen, Cardinal Health, or Morris & Dickson)
- ☐ Products
  - ☐ Prescription Drugs (other than vaccines)
  - ☒ Vaccines (other than influenza)
  - ☐ Over-the-counter
  - ☐ Nutritional
  - ☐ Diabetic Supplies (meters/strips/syringes)
  - ☐ Containers and Vials
- ☐ Contract Price Auditing
- ☐ Returned Goods Processing
- ☐ Pharmaceutical Repackaging

☒ **Influenza Vaccine Program**

- ☐ **Prescription Filling/Pharmacy Service Program**
- ☐ **Student Health Oral Contraceptives Program**
- ☐ **Emergency Preparedness/Stockpiling Program**
- ☐ **Healthcare Products and Services Program**
  - ☐ Medical Supplies & Distribution Services
  - ☐ Dental Supplies & Distribution Services
  - ☐ Drug Testing Kits and Services
  - ☐ Condoms

6. If anything under "Pharmacy Program" was checked please answer this question, otherwise skip.

Within the past year, has this facility been affiliated with a pharmaceutical group purchasing organization (GPO) other than MMCAP? (Please check one.)

☐ No

☐ Yes, but the facility is switching to MMCAP. Attach a signed letter on the facility's letterhead stating that it wishes to discontinue your association with its current pharmaceutical GPO and use MMCAP instead.

☐ Yes and the facility will remain with its current GPO.

Current pharmaceutical GPO Name: \_\_\_\_\_

Products the facility currently purchases: \_\_\_\_\_

\*\*\*\*\* MMCAP WILL COMPLETE THESE TWO QUESTIONS \*\*\*\*\*

7. Specific legal authority under which this facility may purchase goods and services from MMCAP:

8. Is the facility 340B (PHS)\* Eligible?

\*The Federal 340B Drug Pricing Program provides significant pharmaceutical discounts to facilities receiving certain types of federal government funding.

☐ Yes

☐ No

\*\*\*\*\*

9. Which best describes this facility? (Check all that apply)

- ☐ Acute Care
- ☐ Adult Daycare
- ☐ Ambulatory Care Pharmacy
- ☐ Assisted Living
- ☐ Clinic (if checked, then check all that apply)
  - ☐ city
  - ☐ dental
  - ☐ dialysis
  - ☐ oncology infusion clinic or practice
  - ☐ outpatient
  - ☐ radiology services
  - ☐ state
  - ☐ surgical
  - ☐ WIC (women, infant, children)
- ☐ Central Purchasing/Business Office
- ☐ Community/Public Health Nursing
- ☐ Corrections
  - ☐ city Jail
  - ☐ county Jail
  - ☐ Juvenile Detention
  - ☐ state Prison
- ☐ Dentist
- ☐ Detoxification
- ☐ Education
  - ☐ school district
  - ☐ elementary
  - ☐ secondary
  - ☐ post-secondary
- ☐ Emergency First Responders
- ☐ Emergency Medicine & Ambulance
- ☐ Emergency Preparedness
- ☐ Health Service
- ☐ Home Health
  - ☐ home health provider, non-pharmacy
  - ☐ home infusion
  - ☐ home medical equipment
- ☐ Hospice
- ☐ Hospital (if checked, then check all that apply)
  - ☐ acute care
  - ☐ city/county/state
  - ☐ dialysis
  - ☐ long-term care
  - ☐ oncology infusion clinic or practice
  - ☐ outpatient
  - ☐ radiology services
  - ☐ surgical

- ☐ Juvenile Detention
  - ☐ Laboratory services
  - ☐ Long Term Care
  - ☐ Mail Order Pharmacy
  - ☐ Mental Health (if checked, then check all that apply)
    - ☐ ICF / IDD
    - ☐ inpatient
    - ☐ outpatient
    - ☐ developmental disabilities
  - ☐ No Care Provided
  - ☐ Nursing Facility
    - ☐ convalescences
    - ☐ nursing home
    - ☐ inpatient
    - ☐ outpatient
  - ☐ Nutrition Services
  - ☐ Other (State and Local Gov't) healthcare related:
- 
- ☐ Patient Population Served
    - ☐ pediatrics
    - ☐ adult
    - ☐ geriatrics
  - ☐ Public Health
  - ☐ Public Safety
  - ☐ Rehabilitation (if checked, then check all that apply)
    - ☐ inpatient
    - ☐ outpatient
    - ☐ skilled nursing facilities
  - ☐ Research/Training
  - ☐ Senior Services
  - ☐ Skilled Nursing Facilities
  - ☐ Specialty Pharmacy/Special Care
  - ☐ Student Health
  - ☐ Surgery Center
  - ☐ University (if checked, then check all that apply)
    - ☐ teaching hospital
    - ☐ training or research (clinic research centers)
    - ☐ college student health services
    - ☐ pharmacy school
  - ☐ Urgent Care Center
  - ☐ Veterans Home – State
  - ☐ Veterinary
    - ☐ veterinary medicine
    - ☐ veterinary medicine – university dept.
    - ☐ veterinary zoological medicine





## Minnesota Multistate Contracting Alliance for Pharmacy

50 Sherburne Avenue, Suite 112, St. Paul, MN 55155

651.201-2420

[www.mmcap.org](http://www.mmcap.org)

### Member Facility Agreement

This Agreement is by and between the State of Minnesota, acting through its Commissioner of Administration on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and the facility named in line one of the Membership Application.

MMCAP is a free, voluntary, public sector group purchasing organization for government-authorized facilities and is operated by the Office of State Procurement of the State of Minnesota's Department of Administration. It combines the purchasing power of its members to receive the best prices available for the products and services for which it contracts. Membership in MMCAP is limited to facilities with which the State of Minnesota may contract, as defined by Minnesota Statutes Section 471.59, subdivision 10.

The Member Facility desires to access MMCAP's programs to purchase products and services for the Member Facility.

#### 1. Term of Agreement and Cancellation

This Agreement, which is required by 42 C.F.R. § 1001.952(j) and Minnesota law, will be effective upon the date it is fully executed by all parties; and will remain in effect until cancelled by MMCAP or the Member Facility. This Agreement may be cancelled by either party upon 30 days' written notice to the other party, or immediately upon material breach by one of the parties.

#### 2. Member Facility

The Member Facility:

- A. Certifies it has authority to enter into this Agreement with the State of Minnesota and, where applicable, authorizes MMCAP to negotiate contracts on its behalf. For non-government entities, also certifies it has statutory authority under which it may purchase goods and services from its state's contracts.
- B. Must comply with all applicable laws, rules, and regulations governing government purchasing of pharmaceuticals, and related healthcare products and services when utilizing MMCAP contracts and programs.
- C. Should endeavor, where practical, to purchase its goods and services from MMCAP contracts.
- D. Acknowledges it will be bound by applicable antitrust laws (Robinson-Patman (15 U.S.C. 13 (a)) and purchase products for its "own use" as defined by *Abbott Labs v. Portland Retail Druggists* (425 U.S. 1(1976)) and *Jefferson County Pharmaceutical Association, Inc. v. Abbott Labs* (460 U.S. 150 (1983))).
- E. Will not resell (as may be prohibited by law) or divert products obtained under the MMCAP contracts. If there are any questions about the propriety of the use of products purchased from the MMCAP contracts, the Member Facility will obtain an opinion from its legal counsel and notify MMCAP of the decision.
- F. When applicable, acknowledges that the prices made available under MMCAP's contracts may represent a discount to price that must be properly and accurately accounted for and reported in accordance with all federal and state laws, including the anti-kickback law (42 C.F.R. § 1320a-7b(b)(3)(A)) and regulations thereunder (42 C.F.R. §1001.952(h)).
- G. Must comply with the terms and conditions of the applicable MMCAP vendor contracts and usual and customary industry standards, upon making a purchase.
- H. Understands that MMCAP is not liable for any denied pricing, chargeback, refusal of vendors to honor contract pricing, or failure of vendors to deliver the products or services. THE

MEMBER FACILITY ACKNOWLEDGES THAT MMCAP IS NOT THE MANUFACTURER OR DISTRIBUTOR OF ANY PRODUCT AND SERVICE AND MAKES NO REPRESENTATION AS TO WARRANTY OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITION, OR OTHER ATTRIBUTE OF THE PRODUCTS SUPPLIED BY VENDORS UNDER MMCAP CONTRACTS.

- I. Must update MMCAP regarding changes to the Member Facility information and contact person information.
- J. Must promptly pay MMCAP-contracted vendors for all products or services purchased. MMCAP does not assume any responsibility for the accountability of funds expended by the member Facility.

### **3. MMCAP**

MMCAP will:

- A. Select products or services for cooperative contracting under the programs offered.
- B. Comply with Minnesota laws, including procurement and data practices, that require fair and open competition.
- C. Make available copies of contract documents.
- D. Maintain vendor performance records.
- E. Assist in resolving administrative, contract, or supplier problems that cannot be resolved by the Member Facility.
- F. Provide information to the Member Facility regarding products and services available through the MMCAP program.
- G. Distribute to Member Facilities any unused administrative fees collected from contracted vendors (Article 4 below); and annually disclose in writing to Member Facilities, and to the Secretary of the United States Department of Health and Human Services upon request, the amounts received by MMCAP from vendors that were directly attributable to the Member Facility's purchases.

### **4. Administrative Fee Collected from MMCAP's Vendors**

The MMCAP Managing Director may, pursuant to contract terms and conditions, require the contracted vendors (not Member Facilities) to pay an administrative fee to MMCAP. The fee of not more than three percent will be based on a percentage of sales made through the individual contracted vendor. Fees will be collected by the MMCAP office and used to pay for the administrative costs incurred in the operation of MMCAP as approved by the MMCAP Managing Director. Any remaining balance of funds will be returned to active members by means of either a credit to their wholesaler or distributor account, or other mechanism agreed to by the parties, in an amount proportional to the Member Facility's on-contract purchases.

### **5. Assignment, Amendments, Waiver, and Contract Complete**

**5.1 Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a fully executed assignment agreement.

**5.2 Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement.

**5.3 Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

### **6. Liability**

Each party will be responsible for their own acts and behavior and the results thereof. Nothing in this membership agreement will be construed as expanding the limits of liability of the Member Facility beyond the limits of the law of its state. MMCAP's liability is governed by the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, and other applicable laws.



## 7. State Audits

As mandated by Minnesota Statutes Section 16C.05, subdivision 5, "the books, records, documents and accounting procedures and practices of the [Member Facility] relevant to this Agreement shall be made available and subject to examination by the State of Minnesota, including the contracting agency/division, Legislative Auditor, and State Auditor" for a minimum period of six years after the termination of this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties represent they have the authority to bind their respective party and have signed intending to be bound thereby.

<b>Member Facility:</b> (Person with legal authority to bind the facility)  Signature: _____  Title: _____  Date: _____	<b>State of Minnesota, through its Commissioner of Administration on behalf of MMCAP:</b>  Signature: _____  Title: _____  Date: _____
	<b>Commissioner of Administration</b> , as delegated to the Office of State Procurement:  Signature: _____  Date: _____

### IN AN APPROVAL CAPACITY ONLY:

**State Contact:** I have reviewed and approve the facility's eligibility for membership in MMCAP.

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

Date: \_\_\_\_\_