

ORDINANCE 2022-01-27-0042

**ACCEPTING FUNDS UPON AWARD IN AN AMOUNT UP TO \$14,163,068.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES FOR PUBLIC HEALTH FUNCTIONS OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR THE PERIOD OF JULY 1, 2022 THROUGH DECEMBER 31, 2023, APPROVING ASSOCIATED CONTRACTS FUNDED BY THE END THE HIV EPIDEMIC GRANT FOR AMOUNTS UP TO \$35,000.00 EACH FOR A TERM ENDING JULY 31, 2022, WITH THE OPTION TO RENEW FOR ONE, ONE-YEAR TERM FOR A TOTAL AMOUNT OF \$70,000.00 EACH INCLUSIVE OF RENEWAL, APPROVING THE EXECUTION OF MEMORANDUMS OF AGREEMENT WITH NO EXCHANGE FUNDS ASSOCIATED WITH THESE GRANT-FUNDED PROJECTS, AND APPROVING ASSOCIATED PERSONNEL COMPLEMENTS. OF THE \$14,163,068.00 THIS ORDINANCE APPROVES UP TO \$571,977.00 IN AMERICAN RESCUE PLAN ACT (ARPA) FUNDS THROUGH THE DISEASE INTERVENTION SPECIALISTS WORKFORCE GRANT.**

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**WHEREAS**, as the public health authority for Bexar County, the San Antonio Metropolitan Health District (Metro Health) actively addresses the public health functions of policy development, health assessment, and health assurance; and

**WHEREAS**, to carry out these responsibilities, Metro Health operates evidenced based programs in various settings throughout the County; and

**WHEREAS**, Metro Health provides services to residents at public health settings and service locations located throughout the City and Bexar County; and

**WHEREAS**, with state grant support, Metro Health provides preventive health services, community education, limited clinical services to prevent communicable disease, emergency preparedness, disease control, supplemental nutrition programs, and dental health services; and

**WHEREAS**, Metro Health receives approximately 18% of its total budget support through these 21 contract and grant awards from the State of Texas in both direct funding and federal pass-through funding; and

**WHEREAS**, since 2007, this support has been authorized by City Council through a block submission of state grant applications and renewals, most recently on January 14, 2021 (Ordinance 2021-01-14-0007) as well as individual actions; and

**WHEREAS**, Metro Health will request approximately \$14,163,068.00 in funding from the Texas Department of State Health Services through this Ordinance; and



**WHEREAS**, additionally, Metro Health requests approval to execute contracts with entities listed below funded with DSHS' End the HIV Epidemic (EHE) grant award monies for amounts up to \$35,000.00 for terms commencing December 1, 2021 and ending July 31, 2022, with the option to renew for one, one-year term for total amounts of \$70,000.00 inclusive of renewal: San Antonio AIDS Foundation, San Antonio Nexus Connection, The Center for Health Care Services, Healthy Futures of Texas, Fiesta Youth, and the University of Texas Health Science Center at San Antonio; and

**WHEREAS**, Metro Health also requests authorization to execute Memoranda of Agreement to include Data Use Agreements and Business Associate Agreements with no exchange of funds that enhance programs or services associated with these grant-funded projects; **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 authorized to accept funds upon award in the amount up to \$14,163,068.00 from the Texas Department of State Health Services (TDSHS) for core public health functions of the San Antonio Metropolitan Health District for the period of July 1, 2022 through December 31, 2023. Additionally, of the \$14,163,068.00 in funding, up to \$571,977.00 are American Rescue Plan Act of 2021 (ARPA) for the Disease Intervention Specialists Workforce Grant. If awarded, the City will provide \$334,692.00 of in-kind services from the General Fund.

**SECTION 2.** The City Manager or designee, or the Director of the San Antonio Metropolitan Health district or designee, is authorized to execute agreements with the San Antonio AIDS Foundation, San Antonio Nexus Connection, The Center for Health Care Services, Healthy Futures of Texas, Fiesta Youth, and the University of Texas Health Science Center at San Antonio for amounts up to \$35,000.00 each with a term commencing December 1, 2021 and ending July 31, 2022, with the option to renew for one, one-year term for a total of \$70,000.00 inclusive of the renewal. Current funding is available in Internal Order 136000000867, GL 5201040, Fund 2201636109 entitled "Ending HIV Epidemic FY22" for a total amount of \$175,000.00. A copy of said agreements in substantially final form are attached hereto and incorporated herein for all purposes as **Attachment I-VI**.

**SECTION 3.** The City Manager or designee, or the Director of the San Antonio Metropolitan Health District or designee, is further authorized to initiate, negotiate, and execute any and all necessary documents and grant contracts to effectuate the acceptance of the grants referenced in Section 1 of this ordinance and to execute contract amendments pertaining to these contracts to include a) carry-over funds, when ascertained and approved by the funding agency through a revised notice of award; b) line item budget revisions authorized by the funding agency; c) modifications to the performance measures authorized by the funding agency and listed in the contract so long as the terms of the amendment stay within the general parameters of the intent of the grant; d) no cost extensions; e) amendments which will provide supplemental grant funds to the grant by the funding agency in an amount up to 20% of the total amount initially awarded to the grant; f) reimbursement increases of administrative funds for each participant served; g) amendments funding one time equipment purchases or defined program services; and h) changes in regulations mandated by the funding agency.



**SECTION 4.** Should funding be awarded, upon acceptance of this award, new funds and internal order numbers will be created, upon which the award amounts will be appropriated from the TDSHS. The proposed budget attached hereto and incorporated herein for all purposes as **Attachment VII** is approved. A final budget for each contract which will include SAP Internal Orders and SAP GL Accounts will be submitted by the San Antonio Metropolitan Health District upon award. The City Council of the City of San Antonio finds there is a public purpose served by the City's participation in these grants and authorizes incidental expenditures for grant program participants consistent with grant program parameters.

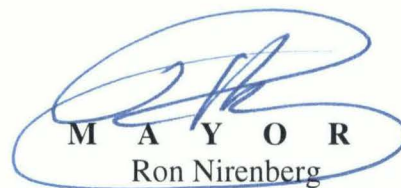
**SECTION 5.** The proposed personnel complement of 163 positions which is attached hereto and incorporated as **Attachment VII** is hereby approved. The Director of the San Antonio Metropolitan Health District or designed is further authorized to change personnel complement classifications within the approved personnel complement so long as there is no increase to the overall budget.

**SECTION 6.** The City Manager or designee or the Director of the San Antonio Metropolitan Health District or designee is further authorized to execute Memoranda of Agreement, to include Data Use Agreements and Business Associate Agreements, that enhance program services with no exchange of funds associated with these grant-funded projects.

**SECTION 7.** 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 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 8.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


**PASSED AND APPROVED this 27th day of January, 2022.**

  
M A Y O R  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, Acting City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney





**City of San Antonio**  
**City Council Meeting**  
**January 27, 2022**

**26.**

**2022-01-27-0042**

Ordinance accepting funds upon award in an amount up to \$14,163,068.00 from the Texas Department of State Health Services for 21 programs encompassing the public health functions of the San Antonio Metropolitan Health District for the period of July 1, 2022 through December 31, 2023, approving associated contracts funded by one of the grants for a term ending July 31, 2022, with the option to renew for one, one-year term for a total amount of \$70,000.00 inclusive of renewal, approving the execution of Memorandums of Agreement with no exchange funds associated with these grant-funded projects, and approving associated personnel complements. Of the \$14,163,068.00 this ordinance approves \$571,977.00 in American Rescue Plan Act (ARPA) funds through the Disease Intervention Specialists Workforce Grant. [Erik Walsh, City Manager; Claude A. Jacob, Director, Health]

Councilmember Rocha Garcia moved to Approve on Zoning Consent. Councilmember Courage 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  
01/27/22  
Item No. 26

# ATTACHMENT I



STATE OF TEXAS

§

CITY OF SAN ANTONIO

§

COUNTY OF BEXAR

§

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as “Metro Health”), acting by and through the City Manager or designee, and San Antonio AIDS Foundation (hereinafter referred to as “CONTRACTOR”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I.**  
**DEFINITIONS**

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.

“CONTRACTOR” 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.

“Ending the HIV Epidemic Grant” shall mean the DSHS grant or program which funds this agreement and is made in accordance with awards by the Centers for Disease Control and Prevention (Federal Award Identification number NU62PS92459, CFDA #93.940).

“Project or Program” shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the City’s Ending the HIV Epidemic Grant.

“System Agency” means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

**II.**  
**TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 1, 2021 and shall terminate on July 31, 2022. The City shall have the option to renew and extend the term of this Agreement for one period, with the period being one year in length. The renewal shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council.



2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the Ending the HIV Epidemic Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to CONTRACTOR of such lack of funding, this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Ending the HIV Epidemic Grant is not and will not be considered a breach of this Agreement.

### **III. SCOPE OF SERVICES**

3.1 CONTRACTOR 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. In alignment with the Ending the HIV Epidemic Grant program, CONTRACTOR shall provide the following services:

A. Disseminate the updated "You're the Cure" curriculum in the school districts currently receiving it: NEISD, NISD, AHISD, and SAISD by providing at least 1 class per month at each ISD. Submit report, by the end of the term, indicating the ISDs within Bexar County that have received the updated curriculum and the number of students that have participated in receiving the curriculum.

B. Develop an outreach strategy that will detail their focus population, research-based topics to be covered in classes, who and where they implemented recruitment strategies for participants, materials used for recruitment of participants, and any collaborations with other organizations that resulted in the marketing of the classes. Expand outreach efforts to include targeted nontraditional populations outside of schools such as, but not limited to: athletics organizations, neighborhood groups, and other community organizations. CONTRACTOR shall conduct at least four events by June 30, 2022. Submit a report at the end of the term that shall include number of outreach events, topics discussed at events, educational materials distributed, number of attendees for each event, and any other general demographic information obtained by CONTRACTOR.

C. Expand outreach efforts to higher education centers to reach the young adult population through targeted efforts to include any presentations or classes performed at local colleges and universities. "You're the Cure" curriculum is designed to meet State Board of Education requirements but has a more involved version for young adults. Provide these presentations on curriculum at the University of the Incarnate Word and one of the Alamo Colleges by April 30, 2022. Provide at least one class to participants on each campus. Submit a report by the end of the term which shall include number of outreach events, topics discussed at events, educational materials distributed, number of attendees for each event, and any other general demographic information obtained by CONTRACTOR.

D. CONTRACTOR shall conduct at least four focus groups of parents/caregivers to review and revise current sexual health curriculum to include LGBTQ+ health concerns for teens,



geared towards parents to facilitate the conversation about sexual health with their teenage children by May 30, 2022. CONTRACTOR shall share the revised curriculum that is the result of the focus groups with parents and/or caregivers through various outlets to include email, website, through other classes the CONTRACTOR hosts, outreach opportunities, and collaboration with other community organizations by June 15, 2022. Submit a report by the end of the term which shall include a summary of new findings and changes made to the original curriculum.

E. Participate in monthly End Stigma End HIV Alliance (ESEHA) sexual health community of practice convenings to coordinate with other community organizations and to review data, educational materials and outreach plans, and develop long-term goals for promoting sexual health and reducing HIV/ STI transmission among priority populations in Bexar County. Submit a report by the end of the term detailing the number of focus groups, outreach efforts, and number of classes offered covering their sexual health curriculum to include school districts in Bexar County and local colleges and universities.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of City, as determined by the 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 CONTRACTOR, 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 CONTRACTOR'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. All scope of services and work to be performed by CONTRACTOR hereunder is outlined hereinabove and no additional work or services other than described herein shall be requested or expected by the City, without prior approval and agreement of all Parties, as evidenced in writing and approved by CONTRACTOR.

#### **IV.**

#### **COMPENSATION TO CONTRACTOR**

4.1 In consideration of CONTRACTOR'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 CONTRACTOR an amount not to exceed THIRTY-FIVE THOUSAND DOLLARS AND 00/100THS (\$35,000.00) as total compensation to be paid to CONTRACTOR in the manner set forth as set out below:

- a. Upon completion of items set out in 3.2.1 A & C \$10,000.00
- b. Upon completion of items set out in 3.2.1 B \$5,000
- c. Upon completion of items set out in 3.2.1 E & F, 3.3 - \$20,000.00

4.2 CONTRACTOR shall submit an invoice upon submission of each deliverable set out above by the 10<sup>th</sup> business day of the month (June and July). The invoice shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. 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 be submitted to: [Accounts.Payable@sanantonio.gov](mailto:Accounts.Payable@sanantonio.gov) and copy to SAMHD.Invoices@sanantonio.gov or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Ending the HIV Epidemic Grant. 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.

## **V.**

### **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS**

5.1 CONTRACTOR shall make available to the City sufficient documents to demonstrate to the CITY, in the City's discretion, that CONTRACTOR has satisfied CONTRACTOR's contract deliverables. Except for documents and materials subject to Sections 5.2 and 5.3, below, any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, CONTRACTOR created as a result of the services provided to City shall be owned by the City ("Work Product"); however, CONTRACTOR shall have the right, in perpetuity, to display, copy and reproduce, use, distribute, publish, and create derivative materials from, and allow others to display, copy and reproduce, use, distribute, publish, and create derivative materials from, such documents without restriction in perpetuity.



5.2 All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by CONTRACTOR shall remain the property of CONTRACTOR as instruments of service. However, it is understood that City with the End Stigma End HIV Alliance shall have free access to all such Consultant information and City is granted the right to make and retain copies of CONTRACTOR's drawings, estimates, specifications and all other documents and data. CONTRACTOR acknowledges and agrees that City and System Agency has a permanent and perpetual, fully paid-up, non-exclusive license to reproduce, publish, use, and to make derivative works, from any documents prepared by CONTRACTOR for City in accordance with this Agreement. Any reuse of CONTRACTOR's information without specific written verification or adaptation by CONTRACTOR will be at City's sole risk and without liability or legal exposure to CONTRACTOR.

5.3 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CONTRACTOR, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by CONTRACTOR or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by CONTRACTOR to provide the services or project 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 CONTRACTOR or its suppliers.

5.4 In accordance with Texas law, CONTRACTOR 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.

## **VI.**

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

6.1 CONTRACTOR 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 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement, or as may be required by the grantor of funds. 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, CONTRACTOR shall retain



the records until the resolution of such litigation or other such questions. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, CONTRACTOR 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 CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR'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 City upon thirty (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;  
or

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

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR 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 CONTRACTOR'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. Any one or more of the following events shall be deemed an "event of default" hereunder:

- 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 Contractor's assets;
- 7.4.3 Failing to perform or failing to comply with any material covenant herein required;
- 7.4.4 Performing the services unsatisfactorily, as determined by the Director;
- 7.4.5 The failure to meet reporting requirements of the Ending the HIV Epidemic Grant, as set out and determined by City; or
- 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, CONTRACTOR 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 CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR 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 CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by City.

7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR 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 CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR 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, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR 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 CONTRACTOR for any default hereunder or other action.

7.10 City shall pay CONTRACTOR for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from CONTRACTOR to City.

## **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 (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 to City, to:

City of San Antonio  
Attn: Director  
San Antonio Metropolitan Health District  
100 W. Houston, 8th floor  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

San Antonio AIDS Foundation  
Attn: Cherise Rohr-Allegrini, Chief Executive Officer  
818 E. Grayson St.  
San Antonio, TX 78208

## **IX.** **SPECIAL PROVISIONS**

9.1 Contractor acknowledges that funds for this Agreement are from federal funds

provided to the City through the DSHS Contract under the Ending the HIV Epidemic Grant (Contract No. HHS000897700002). Contractor agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein by reference. Contractor agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contract to include, but not limited to the following:

9.1.1 In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This



certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.2.2 Debarment and Suspension. Contractor is required to verify that neither the Contractor nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Contractor is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Contractor certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Contractor shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9.2.3 Certification Regarding Lobbying

## Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for Influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or, will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.LL. "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## Statement for Loan Guarantees and Loan Insurance

The undersigned states to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit standard Form-L.LL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



## **X. AUDIT**

10.1 If the CONTRACTOR expends \$750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the CONTRACTOR shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of CONTRACTOR's fiscal year, expiration or early termination of this Agreement, whichever is earlier. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the CONTRACTOR's receipt of the report.

10.4 If CONTRACTOR expends less than \$750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

10.6 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City, not to exceed two times per twelve (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, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR 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.

10.7 CONTRACTOR shall during normal business hours, 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 CONTRACTOR 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 CONTRACTOR 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.

10.8 The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

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

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR 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, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

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



10.12 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-City resources.

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

11.1 The CONTRACTOR agrees to be subject to all the terms and conditions that the City must comply with in its participation in the Ending the HIV Epidemic Grant.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Ending the HIV Epidemic Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CONTRACTOR's facility and to



CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 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, CONTRACTOR 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 CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR 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. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

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

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

11.11 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Additionally, CONTRACTOR shall execute a HIPAA



Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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. CONTRACTOR 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, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR'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 of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

In addition, CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the funding agency or City designates as sensitive or the City considers sensitive consistent with applicable Federal, state, local and tribal laws regarding privacy and obligations of confidentiality.

11.12 Prohibited Political Activity. CONTRACTOR 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.

11.13 CONTRACTOR 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.

11.14 The prohibitions set forth in Sections 11.12 and 11.13 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 time 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.

11.15 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

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

11.17 Sections 11.12 through 11.17 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, CONTRACTOR 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.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,

- a. 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; and
- b. The CONTRACTOR, at the City's option, could be ineligible for



consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

## **XII.** **INSURANCE**

12.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "San Antonio AIDS Foundation Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<b><i>INSURANCE TYPE</i></b>	<b><i>LIMITS</i></b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors *f. Sexual Abuse/ Molestation	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate.

4. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.  Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.
*5. Cyber Liability	\$1,000,000 per claim \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
6. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
*If Applicable	

12.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Health Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.



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

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

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

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

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

### **XIII.**

#### **INDEMNIFICATION**

**13.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY**



## **GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

13.2 Defense Counsel - CONTRACTOR shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall reimburse City for all costs related to retaining defense counsel until such time as CONTRACTOR retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

## **XIV.**

### **SMALL BUSINESS ECONOMIC DEVELOPMENT AD ADVOCACY (SBEDA)**

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause



is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

## **XV.**

### **ASSIGNMENT AND SUBCONTRACTING**

15.1 CONTRACTOR 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 CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 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 CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, 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.

15.3 Except as otherwise stated herein, CONTRACTOR 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. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

## **XVI.**

### **INDEPENDENT CONTRACTOR**

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR. 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 CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

## **XVII.**

### **NONDISCRIMINATION POLICY**

17.1 Non-Discrimination. As a party to this contract, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VI and 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;
- g) Drug Free Workplace Act of 1988 (41 U.S.C. section 8102); and



- h) All applicable regulations implementing the above laws.

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

18.1 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in 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 effected by amendment, in writing, executed by both City and CONTRACTOR.

**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 may be possible, legal, valid and enforceable.

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

21.1 CONTRACTOR warrants and certifies that CONTRACTOR 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 CONTRACTOR 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 XVI. 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 AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between City and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.

24.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.

## **XXV.**

### **LEGAL AUTHORITY**



25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR 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. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXIX.**

**PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN  
BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

29.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

**XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING  
CERTAIN ENERGY COMPANIES**

30.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT  
DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**



31.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXXII.**

### **ENTIRE AGREEMENT**

32.1 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** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO**

**SAN ANTONIO AIDS FOUNDATION**

\_\_\_\_\_  
Claude A. Jacob, Dr PH(c), MPH  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Cherise Rohr-Allegrini  
Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

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



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 San Antonio AIDS Foundation, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on \_\_\_\_\_, whereby BA provides professional 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 WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- 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 \_\_\_\_\_, 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, Dr. PH(c), MPH  
Health Director  
San Antonio Metropolitan Health District

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

Cherise Rohr-Allegrini  
Chief Executive Officer

APPROVED AS TO FORM:

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



MH  
01/27/22  
Item No. 26

# ATTACHMENT II

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

CITY OF SAN ANTONIO

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as “Metro Health”), acting by and through the City Manager or designee, and San Antonio Nexus Connection (hereinafter referred to as “CONTRACTOR”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I.**  
**DEFINITIONS**

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.

“CONTRACTOR” 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.

“Ending the HIV Epidemic Grant” shall mean the DSHS grant or program which funds this agreement and is made in accordance with awards by the Centers for Disease Control and Prevention (Federal award Identification number NU62PS92459, CFDA #93.940).

“Project or Program” shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the City’s Ending the HIV Epidemic Grant.

“System Agency” means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

**II.**  
**TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 1, 2021 and shall terminate on July 31, 2022. The City shall have the option to renew and extend the term of this Agreement for one period, with the period being one year in length. The renewal shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council.



2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the Ending the HIV Epidemic Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to CONTRACTOR of such lack of funding, this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Ending the HIV Epidemic Grant is not and will not be considered a breach of this Agreement.

### **III. SCOPE OF SERVICES**

3.1 CONTRACTOR 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 In alignment with the Ending the HIV Epidemic Grant program, CONTRACTOR shall provide the following services:

A. Complete 200 HIV/Syphilis tests within the Substance Use Disorder (SUD) population in Bexar County utilizing the San Antonio Nexus' mobile testing clinic, specifically targeting higher risk populations. Identify locations with high SUD populations through outreach efforts with community partners and events. Report shall include goals mutually agreed and completion of said goals as well as aggregate demographic information for participants served during each time frame. Report shall be submitted by the end of the term and include the following information:

- Positivity rate, number of participants, gender, age race, ethnicity, zip code
- Return rate, number of participants, gender, age race, ethnicity, zip code
- Number of community organizations visited, community events held, dates of mobile units outreach events, education provided to clients/participants, referrals made per client.

B. Operate their Syringe Services Program ("SSP"). Submit report by end of term to include the following information:

- Return rate, number of participants, gender, age race, ethnicity, zip code
- Number of community organizations visited, community events held, dates of mobile units outreach events, education provided to clients/participants, referrals made per client.
- Return rate measured by the following goals:
  - 15% return rate for December – January
  - 20% return rate for February – March
  - 25% return rate for April – May

- 30% return rate for June – July

C. Complete outreach efforts to SUD population conducted within Bexar County to include: visiting other community organizations, reaching out to displaced population (participants without a home address), community events, twice a week mobile unit outreach, partnering with community partners to educate clients/patients, and provide information to SUD population, utilizing social media, flyers and informational handouts, and referral services from other clinics. Reach a minimum of 60 unduplicated qualified participants and submit report by the end of the term on the following data: total number of individual interactions, SSP demographic data to include: number of people served, any aggregate demographic information required by the Centers for Disease Control and Prevention (CDC).

D. Participate in a monthly sexual health community of practice convening with the End Stigma End HIV Alliance to coordinate with other community organizations and to review data, educational materials and outreach plans, and develop long-term goals for promoting sexual health and reducing HIV/ STI transmission among priority populations in Bexar County. Long-term goals shall be reviewed and by Program and CONTRACTOR shall submit a report by the end of the term detailing progress towards completion of said goals.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of City, as determined by the 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 CONTRACTOR, 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 CONTRACTOR'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. All scope of services and work to be performed by CONTRACTOR hereunder is outlined hereinabove and no additional work or services other than described herein shall be requested or expected by the City, without prior approval and agreement of all Parties, as evidenced in writing and approved by CONTRACTOR.

#### **IV.**

#### **COMPENSATION TO CONTRACTOR**

4.1 In consideration of CONTRACTOR'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 CONTRACTOR an amount not to exceed THIRTY FIVE THOUSAND DOLLARS AND 00/100THS (\$35,000.00) as total compensation to be paid to CONTRACTOR in the manner set forth below:

- a. Upon full execution of the agreement- \$5,000.00
- b. Upon completion of goals in December – March and deliverables included in 3.2 - \$15,000.00



- c. Upon completion of goals in April – July and deliverables included in 3.2 and 3.3 - \$15,000.00

4.2 CONTRACTOR shall submit invoices as set out above by the 10<sup>th</sup> day of the following month following the completion and submission of each deliverable. The invoices shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III. above and the amount due and owing. 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 be submitted to: [Accounts.Payable@sanantonio.gov](mailto:Accounts.Payable@sanantonio.gov) and copy to SAMHD.Invoices@[sanantonio.gov](mailto:sanantonio.gov) or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Ending the HIV Epidemic Grant. 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.

## V.

### **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS**

5.1 CONTRACTOR shall make available to the City sufficient documents to demonstrate to the CITY, in the City's discretion, that CONTRACTOR has satisfied CONTRACTOR's contract deliverables. Except for documents and materials subject to Sections



5.2 and 5.3, below, any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, CONTRACTOR created as a result of the services provided to City shall be owned by the City ("Work Product"); however, CONTRACTOR shall have the right, in perpetuity, to display, copy and reproduce, use, distribute, publish, and create derivative materials from, and allow others to display, copy and reproduce, use, distribute, publish, and create derivative materials from, such documents without restriction in perpetuity.

5.2 All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by CONTRACTOR shall remain the property of CONTRACTOR as instruments of service. However, it is understood that City with the End Stigma End HIV Alliance shall have free access to all such Consultant information and City is granted the right to make and retain copies of CONTRACTOR's drawings, estimates, specifications and all other documents and data. CONTRACTOR acknowledges and agrees that City and the System Agency has a permanent and perpetual, fully paid-up, non-exclusive license to reproduce, publish, use, and to make derivative works, from any documents prepared by CONTRACTOR for City in accordance with this Agreement. Any reuse of CONTRACTOR's information without specific written verification or adaptation by CONTRACTOR will be at City's sole risk and without liability or legal exposure to CONTRACTOR.

5.3 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CONTRACTOR, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by CONTRACTOR or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by CONTRACTOR to provide the services or project 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 CONTRACTOR or its suppliers.

5.4 In accordance with Texas law, CONTRACTOR 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.

## **VI.**

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

6.1 CONTRACTOR 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 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement, or as may be required by the grantor of funds. 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, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, CONTRACTOR 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 CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR'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 City upon thirty (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;  
or

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

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR 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 CONTRACTOR'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. Any one or more of the following events shall be deemed an "event of default" hereunder:

- 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 Contractor's assets;
- 7.4.3 Failing to perform or failing to comply with any material covenant herein required;
- 7.4.4 Performing the services unsatisfactorily, as determined by the Director;
- 7.4.5 The failure to meet reporting requirements of the Ending the HIV Epidemic Grant, as set out and determined by City; or
- 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, CONTRACTOR 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 CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR 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 CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by City.



7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR 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 CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR 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, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR 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 CONTRACTOR for any default hereunder or other action.

7.10 City shall pay CONTRACTOR for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from CONTRACTOR to City.

## **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 (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 to City, to:

City of San Antonio  
Attn: Director  
San Antonio Metropolitan Health District  
100 W. Houston, 8th floor  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

San Antonio Nexus Connection  
Attn: Samantha Sada  
Sexual Health Clinic Manager

8527 Village Drive, Ste. 205  
San Antonio, TX 78217

## **IX.**

### **SPECIAL PROVISIONS**

9.1 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS Contract under the Ending the HIV Epidemic Grant (Contract No. HHS000897700002). Contractor agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein by reference. Contractor agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contract to include, but not limited to the following:

9.1.1 In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds; federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by



Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.2.2 Debarment and Suspension. Contractor is required to verify that neither the Contractor nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Contractor is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Contractor certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Contractor shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or

debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### 9.2.3 Certification Regarding Lobbying

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for Influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or, will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.LL. "Disclosure of Lobbying Activities," In accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment



providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **X. AUDIT**

10.1 If the CONTRACTOR expends \$750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the CONTRACTOR shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of CONTRACTOR's fiscal year, expiration or early termination of this Agreement, whichever is earlier. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the CONTRACTOR's receipt of the report.

10.4 If CONTRACTOR expends less than \$750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contactor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.



10.6 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City, not to exceed two times per twelve (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, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR 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.

10.7 CONTRACTOR shall during normal business hours, 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 CONTRACTOR 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 CONTRACTOR 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.

10.8 The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

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

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR 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, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from



reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

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

10.12 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-City resources.

## **XI.**

### **ADMINISTRATION OF AGREEMENT**

### **AND RESTRICTIONS ON USE OF FUNDS**

11.1 The CONTRACTOR agrees to comply with all the terms and conditions that the City must comply with in its participation in the Ending the HIV Epidemic Grant.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Ending the HIV Epidemic Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other



action is completed, whichever is later.

11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 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, CONTRACTOR 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 CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR 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. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

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

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



11.11 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Additionally, CONTRACTOR shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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. CONTRACTOR 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, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR'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 of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

In addition, CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the funding agency or City designates as sensitive or the City considers sensitive consistent with applicable Federal, state, local and tribal laws regarding privacy and obligations of confidentiality.

11.12 Prohibited Political Activity. CONTRACTOR 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.

11.13 CONTRACTOR 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.

11.14 The prohibitions set forth in Sections 11.12 and 11.13 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 time 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.

11.15 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

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

11.17 Sections 11.12 through 11.17 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, CONTRACTOR 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.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,



- a. 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; and
- b. The CONTRACTOR, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

## **XII.** **INSURANCE**

12.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "San Antonio Nexus Connection Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<b><i>INSURANCE TYPE</i></b>	<b><i>LIMITS</i></b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage \$1,000,000 per occurrence;

a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	\$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate.
4. Professional Liability	<p>\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.</p> <p>Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.</p>
5. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

12.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Health Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.



- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

### **XIII.**

#### **INDEMNIFICATION**

**13.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND**



**JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

13.2 Defense Counsel - CONTRACTOR shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall reimburse City for all costs related to retaining defense counsel until such time as CONTRACTOR retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

#### **XIV.**

#### **SMALL BUSINESS ECONOMIC DEVELOPMENT AD ADVOCACY (SBEDA)**

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant



Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

## **XV.**

### **ASSIGNMENT AND SUBCONTRACTING**

15.1 CONTRACTOR 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 CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 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 CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, 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.

15.3 Except as otherwise stated herein, CONTRACTOR 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. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

## **XVI.**

### **INDEPENDENT CONTRACTOR**

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR. 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 CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

## **XVII.**

### **NONDISCRIMINATION POLICY**

17.1 Non-Discrimination. As a party to this contract, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VI and 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;
- g) Drug Free Workplace Act of 1988 (41 U.S.C. section 8102); and
- h) All applicable regulations implementing the above laws.

### **XVIII.**

#### **CONFLICT OF INTEREST**

18.1 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in 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 effected by amendment, in writing, executed by both City and CONTRACTOR.

### **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 may be possible, legal, valid and enforceable.

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

21.1 CONTRACTOR warrants and certifies that CONTRACTOR 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 CONTRACTOR 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 XVI. 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 AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between City and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.

24.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.



**XXV.**  
**LEGAL AUTHORITY**

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR 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.**  
**PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### **XXIX.**

#### **XXIX. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

29.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

#### **XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES**

30.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies



during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT  
DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

31.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;  
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXII.  
ENTIRE AGREEMENT**

32.1 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** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO**

**SAN ANTONIO NEXUS CONNECTION**

\_\_\_\_\_  
Claude A. Jacob, Dr PH (c), MPH  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Frederic J. Curtois  
Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

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



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 San Antonio Nexus Connection, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on \_\_\_\_\_, whereby BA provides professional 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 WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- 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 \_\_\_\_\_, 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, Dr PH (c), MPH  
Health Director  
San Antonio Metropolitan Health District

By: \_\_\_\_\_  
Frederic J. Courtois  
Director

APPROVED AS TO FORM:

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



MH  
01/27/22  
Item No. 26

# ATTACHMENT III

STATE OF TEXAS

§

CITY OF SAN ANTONIO

§

COUNTY OF BEXAR

§

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as "Metro Health"), acting by and through the City Manager or designee, and The Center for Health Care Services (hereinafter referred to as "CONTRACTOR") a political subdivision of the State of Texas, both of which may be referred to herein collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I.**  
**DEFINITIONS**

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.

"CONTRACTOR" 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.

"Ending the HIV Epidemic Grant" shall mean the DSHS grant or program which funds this agreement and is made in accordance with awards by the Centers for Disease Control and Prevention (Federal Award Identification number NU62PS92459, CFDA #93.940).

"Project or Program" shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the City's Sexually Transmitted Disease/Human Immunodeficiency Virus (STD/HIV) Grant.

"System Agency" means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

**II.**  
**TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 1, 2021 and shall terminate on July 31, 2022. The City shall have the option to renew and extend the term of this Agreement for one period, with the period being one year in length. The renewal shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council.



2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the Ending the HIV Epidemic Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to CONTRACTOR of such lack of funding, this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Ending the HIV Epidemic Grant is not and will not be considered a breach of this Agreement.

### **III. SCOPE OF SERVICES**

3.1 CONTRACTOR 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 In alignment with the Ending the HIV Epidemic initiative, CONTRACTOR will focus on peer recruitment and training, and HIV/STI testing. CONTRACTOR shall provide the following services:

A. Dedicate a peer recovery specialist knowledgeable about sexual and reproductive health to facilitate a comprehensive conversation with women who may be referred by Substance Use Disorder (SUD) treatment programs. Offer the following services to women as part of the SUD treatment program: needle/syringe exchange program, linkage to care through referrals to local community organizations for continuation of care, and providing resources for continued care.

B. Conduct a minimum of 30 HIV tests per month and a minimum of 360 per year, on individuals identified through outreach efforts by Contractor at either Contractor's facility or using the Contractor's mobile unit. Submit a report at the end of the term containing aggregate demographic information on all participants of the program.

C. Conduct outreach to SUD population, including by not limited to the following methods: attending community events, visiting local organizations, holding community clinics, and utilizing mobile testing events. Contact and reach a minimum of 60 unduplicated qualified participants, and submit a report at the end of the term containing the following data: total number of individual interactions and SSP demographic data to include: number of people served, any aggregate demographic information required by the Centers for Disease Control and Prevention (CDC) SSP program required to provide services to 60 unduplicated participants per month.

D. Conduct a minimum of 75 Syphilis tests with pregnant women who use injection drugs and access services. Submit a report at the end of the term containing aggregate demographic information on all participants of the program.

E. Participate in a monthly sexual health community of practice convening with the End Stigma End HIV Alliance.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of City, as determined by the 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 CONTRACTOR, 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 CONTRACTOR'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. All scope of services and work to be performed by CONTRACTOR hereunder is outlined hereinabove and no additional work or services other than described herein shall be requested or expected by the City, without prior approval and agreement of all Parties, as evidenced in writing and approved by CONTRACTOR.

#### IV.

#### **COMPENSATION TO CONTRACTOR**

4.1 In consideration of CONTRACTOR'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 CONTRACTOR an amount not to exceed THIRTY-FIVE THOUSAND DOLLARS AND 00/100THS (\$35,000.00) as total compensation to be paid to CONTRACTOR in the manner set forth in section 4.2.

4.2 CONTRACTOR shall submit an invoice upon completion of all services. The invoices shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. 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 be submitted to: [Accounts.Payable@sanantonio.gov](mailto:Accounts.Payable@sanantonio.gov) and copy to SAMHD.Invoices@[sanantonio.gov](mailto:sanantonio.gov) or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, for the payment of any monies or the provision of any goods or services.



4.6 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Sexually Transmitted Disease/Human Immunodeficiency Virus (STD/HIV) Grant. 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.

## **V.**

### **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS**

5.1 CONTRACTOR shall make available to the City sufficient documents to demonstrate to the CITY, in the City's discretion, that CONTRACTOR has satisfied CONTRACTOR's contract deliverables. Except for documents and materials subject to Sections 5.2 and 5.3, below, any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, CONTRACTOR created as a result of the services provided to City shall be owned by the City ("Work Product"); however, CONTRACTOR shall have the right, in perpetuity, to display, copy and reproduce, use, distribute, publish, and create derivative materials from, and allow others to display, copy and reproduce, use, distribute, publish, and create derivative materials from, such documents without restriction in perpetuity.

5.2 All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by CONTRACTOR shall remain the property of CONTRACTOR as instruments of service. However, it is understood that City with the End Stigma End HIV Alliance shall have free access to all such Consultant information and City is granted the right to make and retain copies of CONTRACTOR's drawings, estimates, specifications and all other documents and data. CONTRACTOR acknowledges and agrees that City and System Agency has a permanent and perpetual, fully paid-up, non-exclusive license to reproduce, publish, use, and to make derivative works, from any documents prepared by CONTRACTOR for City in accordance with this Agreement. Any reuse of CONTRACTOR's information without specific written verification or adaptation by CONTRACTOR will be at City's sole risk and without liability or legal exposure to CONTRACTOR.

5.3 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CONTRACTOR, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by CONTRACTOR or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by CONTRACTOR to provide the services or project 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 CONTRACTOR or its suppliers.

5.4 In accordance with Texas law, CONTRACTOR 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.

## **VI.**

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

6.1 CONTRACTOR 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 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement, or as may be required by the grantor of funds. 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, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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 CONTRACTOR 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 and CONTRACTOR 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, CONTRACTOR 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 CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR'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 City or CONTRACTOR upon thirty (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.

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

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR 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 CONTRACTOR'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. Any one or more of the following events shall be deemed an "event of default" hereunder:

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 Contractor's assets;

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

7.4.4 Performing the services unsatisfactorily, as determined by the Director;

7.4.5 The failure to meet reporting requirements of the Sexually Transmitted Disease/Human Immunodeficiency Virus (STD/HIV) Grant, as set out and determined by City; or

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

7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR 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 CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR 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, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR 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 CONTRACTOR for any default hereunder or other action.

7.10 City shall pay CONTRACTOR for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from CONTRACTOR to City.

## **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 (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 to City, to:

City of San Antonio  
Attn: Director  
San Antonio Metropolitan Health District  
100 W. Houston, 8th floor  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

The Center for Health Care Services  
Attn: Frederic Courtois, Services Program Director  
6800 Park Ten Blvd., Suite 200-S  
San Antonio, TX 78213

**IX.**  
**SPECIAL PROVISIONS**

9.1 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS Contract under the Ending the HIV Epidemic Grant (Contract No. HHS000897700002). Contractor agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein by reference. Contractor agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contract to include, but not limited to the following:

9.1.1 In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their

authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.



authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.2.2 Debarment and Suspension. Contractor is required to verify that neither the Contractor nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Contractor is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Contractor certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Contractor shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### 9.2.3 Certification Regarding Lobbying

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for Influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or, will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant,



loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.LL. "Disclosure of Lobbying Activities," In accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit standard Form-L.LL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **X. AUDIT**

10.1 If the CONTRACTOR expends \$750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the CONTRACTOR shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of CONTRACTOR's fiscal year, expiration or early termination of this Agreement, whichever is earlier. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the CONTRACTOR's receipt of the report.

10.4 If CONTRACTOR expends less than \$750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

10.6 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City, not to exceed two times per twelve (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, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR 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.

10.7 CONTRACTOR shall during normal business hours, 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 CONTRACTOR 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 CONTRACTOR 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.

10.8 The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

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

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR 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, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

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

10.12 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-City resources.

## **XI.**

### **ADMINISTRATION OF AGREEMENT**

### **AND RESTRICTIONS ON USE OF FUNDS**

11.1 The CONTRACTOR agrees to be subject to the terms and conditions that the City must comply with in its participation in the Sexually Transmitted Disease/Human Immunodeficiency Virus (STD/HIV) Grant.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as



representatives of the City and the parties ultimately responsible for all matters of compliance with the Sexually Transmitted Disease/Human Immunodeficiency Virus (STD/HIV) Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 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, CONTRACTOR 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 CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR 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. CONTRACTOR agrees that the



failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

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

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

11.11 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Additionally, CONTRACTOR shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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. CONTRACTOR 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, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR'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 of this



Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

In addition, CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the funding agency or City designates as sensitive or the City considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

11.12 Prohibited Political Activity. CONTRACTOR 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.

11.13 CONTRACTOR 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.

11.14 The prohibitions set forth in Sections 11.12 and 11.13 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 time 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.



11.15 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

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

11.17 Sections 11.12 through 11.17 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, CONTRACTOR 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.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,

- a. 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; and
- b. The CONTRACTOR, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

## **XII.**

### **INSURANCE**

12.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "The Center for Health Care Services Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been

received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i><b>INSURANCE TYPE</b></i>	<i><b>LIMITS</b></i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a) Premises/Operations b) Products/Completed Operations c) Personal/Advertising Injury d) Contractual Liability e) Independent Contractors f) *Sexual Abuse/ Molestation	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
*If Applicable	

12.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit



requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Health Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

12.9 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for

liability arising out of operations under this Agreement.

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

### **XIII. INDEMNIFICATION**

13.1 City and the CONTRACTOR 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 Texas 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.

### **XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT AD ADVOCACY (SBEDA)**

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

### **XV. ASSIGNMENT AND SUBCONTRACTING**

15.1 CONTRACTOR 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 CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 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 CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, 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.

15.3 Except as otherwise stated herein, CONTRACTOR 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. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

## **XVI.**

### **INDEPENDENT CONTRACTOR**

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR. 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 CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

## **XVII.**

## **NONDISCRIMINATION POLICY**

17.1 Non-Discrimination. As a party to this contract, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VI and 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;
- g) Drug Free Workplace Act of 1988 (41 U.S.C. section 8102); and
- h) All applicable regulations implementing the above laws.

## **XVIII. CONFLICT OF INTEREST**

18.1 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in 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 effected by amendment, in writing, executed by both City and CONTRACTOR.

## **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 may be possible, legal, valid and enforceable.

## **XXI.**

### **LICENSES/CERTIFICATIONS**

21.1 CONTRACTOR warrants and certifies that CONTRACTOR 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 CONTRACTOR 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 XVI. 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 AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matters in question between City and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.

24.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.

**XXV.**  
**LEGAL AUTHORITY**

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR 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.**

### **PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXIX.**

### **PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

29.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false,

or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

**XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING  
CERTAIN ENERGY COMPANIES**

30.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;  
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT  
DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

31.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;  
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture,



limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXII.**  
**ENTIRE AGREEMENT**

32.1 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** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO**

**THE CENTER FOR HEALTH CARE  
SERVICES**

\_\_\_\_\_  
Claude A. Jacob, Dr.PH(c) MPH  
Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Jelynn LeBlanc Burley  
President/CEO

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

---

City Attorney



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 Center for Health Care Services, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("**Service Contract**"), executed on \_\_\_\_\_, whereby BA provides professional 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 WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- 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 \_\_\_\_\_, 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, Dr PH (c), MPH  
Health Director  
San Antonio Metropolitan Health District

By: \_\_\_\_\_  
Jelynn LeBlanc Burley  
President/CEO

APPROVED AS TO FORM:

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



MH  
01/27/22  
Item No. 26

# **ATTACHMENT IV**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

CITY OF SAN ANTONIO  
  
**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as “Metro Health”), acting by and through the City Manager or designee, and Healthy Futures of Texas (hereinafter referred to as “CONTRACTOR”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I.**  
**DEFINITIONS**

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.

“CONTRACTOR” 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.

“Ending the HIV Epidemic Grant” shall mean the DSHS grant or program which funds this agreement and is made in accordance with awards by the Centers for Disease Control and Prevention (Federal Award Identification number NU62PS9249, CFDA #93.940).

“Project or Program” shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the Ending the HIV Epidemic Grant.

“System Agency” means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

**II.**  
**TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 1, 2021 and shall terminate on July 31, 2022. The City shall have the option to renew and extend the term of this Agreement for one period, with the period being one year in length. The renewal shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council.



2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the Ending the HIV Epidemic Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to CONTRACTOR of such lack of funding, this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Ending the HIV Epidemic Grant is not and will not be considered a breach of this Agreement.

### **III. SCOPE OF SERVICES**

3.1 CONTRACTOR 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 CONTRACTOR shall provide the following services:

3.2.1 Sexual health curriculum completion and evaluation; HIV prevention activities; monthly participation in End Stigma End HIV Alliance ("ESEHA") as a community organization to provide input on ESEHA goals

3.2.2 CONTRACTOR shall test and evaluate a curriculum focused on HIV prevention. CONTRACTOR shall identify and recruit a group of young people (ages 13-21) to assist staff in developing a sexual health curriculum.

3.2.3 The goal of the curriculum will be to prepare youth to engage in healthy relationships and empower them to take charge of their sexual decision-making and to access healthcare. The curriculum design project shall focus on three areas:

1. Involving young people, especially LGBTQ+ youth, as co-designers and co-evaluators.
2. The use of technology to enhance engagement of youth in the educational process.
3. Harnessing the power of peer-to-peer education by empowering young people to lead and teach in their own communities and provide materials, support and training.

3.2.4 Contractors will provide researched-based curriculum that covers the following subjects:

1. Comprehensive sexual health education specifically for LGBTQ youth
2. Intimate relationship education
3. Harm reduction
4. Development of support system
5. STD/HIV prevention education

3.2.5 CONTRACTOR shall:

1. Refine first draft of HIV/STI curriculum for LGBTQ+ youth and develop version for testing through implementation and evaluation.
2. Train ESEHA partners in testing version of curriculum through the presentation of the curriculum, input sessions, and Q&A opportunities.
3. Within 30 days of the execution of this agreement, CONTRACTOR will work with community organizations to implement the curriculum by providing presentations of curriculum.
4. Make curriculum available on their website and/or platform for viewing.
5. Testing of the curriculum shall extend through the duration of the term of the agreement.
6. Evaluate implementation of testing version of curriculum through pre-post testing, knowledge retention, and other evaluation measures.
7. Collaborate with community partners to revise the curriculum based on ongoing evaluations of the curriculum made during the term.
8. Edit test version to create final draft, create marketing and dissemination plan.
9. Submit the curriculum upon completion of development and assessment by the last day of the term.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of City, as determined by the 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 CONTRACTOR, 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 CONTRACTOR'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. All scope of services and work to be performed by CONTRACTOR hereunder is outlined hereinabove and no additional work or services other than described herein shall be requested or expected by the City, without prior approval and agreement of all Parties, as evidenced in writing and approved by CONTRACTOR.

#### **IV. COMPENSATION TO CONTRACTOR**

4.1 In consideration of CONTRACTOR'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 CONTRACTOR an amount not to exceed THIRTY FIVE THOUSAND DOLLARS AND 00/100THS (\$35,000.00) as total compensation to be paid to CONTRACTOR in the manner set forth in section 4.2.

4.2 CONTRACTOR shall submit an invoice upon completion of all services. The invoice shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. 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 be submitted to: [Accounts.Payable@sanantonio.gov](mailto:Accounts.Payable@sanantonio.gov) and copy to SAMHD.Invoices@sanantonio.gov or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Ending the HIV Epidemic Grant. 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.

## **V.**

### **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS**

5.1 CONTRACTOR shall make available to the City sufficient documents to demonstrate to the CITY, in the City's discretion, that CONTRACTOR has satisfied CONTRACTOR's contract deliverables. Except for documents and materials subject to Sections 5.2 and 5.3, below, any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, CONTRACTOR created as a result of the services provided to City shall be owned by the City ("Work Product"); however, CONTRACTOR shall have the right, in perpetuity, to display, copy and reproduce, use, distribute, publish, and create derivative materials from, and allow others to display, copy and reproduce, use, distribute, publish, and create derivative materials from, such documents without restriction in perpetuity.



5.2 All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by CONTRACTOR shall remain the property of CONTRACTOR as instruments of service. However, it is understood that City with the End Stigma End HIV Alliance shall have free access to all such Consultant information and City is granted the right to make and retain copies of CONTRACTOR's drawings, estimates, specifications and all other documents and data. CONTRACTOR acknowledges and agrees that City and System Agency has a permanent and perpetual, fully paid-up, non-exclusive license to reproduce, publish, use, and to make derivative works, from any documents prepared by CONTRACTOR for City in accordance with this Agreement. Any reuse of CONTRACTOR's information without specific written verification or adaptation by CONTRACTOR will be at City's sole risk and without liability or legal exposure to CONTRACTOR.

5.3 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CONTRACTOR, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by CONTRACTOR or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by CONTRACTOR to provide the services or project 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 CONTRACTOR or its suppliers.

5.4 In accordance with Texas law, CONTRACTOR 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.

## **VI.**

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

6.1 CONTRACTOR 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 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement, or as may be required by the grantor of funds. 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, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, CONTRACTOR 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 CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR'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 City upon thirty (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;  
or

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

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR 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 CONTRACTOR'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. Any one or more of the following events shall be deemed an "event of default" hereunder:

- 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 Contractor's assets;
- 7.4.3 Failing to perform or failing to comply with any material covenant herein required;
- 7.4.4 Performing the services unsatisfactorily, as determined by the Director;
- 7.4.5 The failure to meet reporting requirements of the Ending the HIV Epidemic Grant, as set out and determined by City; or
- 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, CONTRACTOR 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 CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR 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 CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by City.

7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR 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 CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR 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, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR 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 CONTRACTOR for any default hereunder or other action.

7.10 City shall pay CONTRACTOR for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from CONTRACTOR to City.

### **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 (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 to City, to:

City of San Antonio  
Attn: Director  
San Antonio Metropolitan Health District  
100 W. Houston, 8th floor  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

Healthy Futures of Texas  
Attn: Anthony Betori, Program Director  
2300 W. Commerce St. # 203  
San Antonio, TX 78207

## **IX.**

### **SPECIAL PROVISIONS**

9.1 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS Contract under the Ending the HIV Epidemic Grant (Contract No. HHS000897700002). Contractor agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein by reference. Contractor agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contract to include, but not limited to the following:

9.1.1 In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.



9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.2.2 Debarment and Suspension. Contractor is required to verify that neither the Contractor nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Contractor is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Contractor certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Contractor shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that

may arise from this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### 9.2.3 Certification Regarding Lobbying

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for Influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or, will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.LL. "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit standard Form-L.LL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction



imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **X. AUDIT**

10.1 If the CONTRACTOR expends \$750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the CONTRACTOR shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of CONTRACTOR's fiscal year, expiration or early termination of this Agreement, whichever is earlier. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the CONTRACTOR's receipt of the report.

10.4 If CONTRACTOR expends less than \$750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

10.6 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City, not to



exceed two times per twelve (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, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR 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.

10.7 CONTRACTOR shall during normal business hours, 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 CONTRACTOR 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 CONTRACTOR 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.

10.8 The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

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

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR 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, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.



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

10.12 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-City resources.

## **XI.**

### **ADMINISTRATION OF AGREEMENT**

### **AND RESTRICTIONS ON USE OF FUNDS**

11.1 The CONTRACTOR agrees to be subject to the terms and conditions that the City must comply with in its participation in the Ending the HIV Epidemic Grant.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Ending the HIV Epidemic Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.



11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 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, CONTRACTOR 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 CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR 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. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

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

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

11.11 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in



confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Additionally, CONTRACTOR shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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. CONTRACTOR 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, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR'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 of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

In addition, CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the funding agency or City designates as sensitive or the City considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

**11.12 Prohibited Political Activity.** CONTRACTOR 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.

**11.13** CONTRACTOR 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.

**11.14** The prohibitions set forth in Sections 11.12 and 11.13 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 time 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.

11.15 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

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

11.17 Sections 11.12 through 11.17 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, CONTRACTOR 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.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,

- a. 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; and

- b. The CONTRACTOR, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

## **XII. INSURANCE**

12.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "Healthy Futures of Texas Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<b><i>INSURANCE TYPE</i></b>	<b><i>LIMITS</i></b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000

3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a) Premises/Operations</li> <li>b) Products/Completed Operations</li> <li>c) Personal/Advertising Injury</li> <li>d) Contractual Liability</li> <li>e) Independent Contractors</li> <li>f) Sexual Abuse/ Molestation</li> </ul>	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.

12.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Health Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.



- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

### **XIII.**

#### **INDEMNIFICATION**

**13.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury,**



**death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

13.2 Defense Counsel - CONTRACTOR shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall reimburse City for all costs related to retaining defense counsel until such time as CONTRACTOR retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.3 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

#### **XIV.**

##### **SMALL BUSINESS ECONOMIC DEVELOPMENT AD ADVOCACY (SBEDA)**

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects



of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

## **XV.**

### **ASSIGNMENT AND SUBCONTRACTING**

15.1 CONTRACTOR 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 CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 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 CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, 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.

15.3 Except as otherwise stated herein, CONTRACTOR 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. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

## **XVI.**

## **INDEPENDENT CONTRACTOR**

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR. 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 CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

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

17.1 Non-Discrimination. As a party to this contract, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VI and 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;
- g) Drug Free Workplace Act of 1988 (41 U.S.C. section 8102); and
- h) All applicable regulations implementing the above laws.

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

18.1 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in 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 effected by amendment, in writing, executed by both City and CONTRACTOR.

### **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 may be possible, legal, valid and enforceable.

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

21.1 CONTRACTOR warrants and certifies that CONTRACTOR 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 CONTRACTOR 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 XVI. 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 AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**



24.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matters in question between City and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.

24.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.

## **XXV. LEGAL AUTHORITY**

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR 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. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### **XXIX.**

#### **PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

29.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

#### **XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES**

30.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;  
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the



company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT  
DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

31.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXII.**  
**ENTIRE AGREEMENT**

32.1 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** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO**

**HEALTHY FUTURES OF TEXAS**

\_\_\_\_\_  
Claude A. Jacob, Dr PH (c), MPH  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Evelyn Delgado  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

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



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 Healthy Futures 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 Professional Services Contract ("Service Contract"), executed on \_\_\_\_\_, whereby BA provides professional 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

MH  
01/27/22  
Item No. 26

# **ATTACHMENT IV**



STATE OF TEXAS           §  
                                      §  
COUNTY OF BEXAR       §

CITY OF SAN ANTONIO  
**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as “Metro Health”), acting by and through the City Manager or designee, and Healthy Futures of Texas (hereinafter referred to as “CONTRACTOR”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I.**  
**DEFINITIONS**

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.

“CONTRACTOR” 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.

“Ending the HIV Epidemic Grant” shall mean the DSHS grant or program which funds this agreement and is made in accordance with awards by the Centers for Disease Control and Prevention (Federal Award Identification number NU62PS9249, CFDA #93.940).

“Project or Program” shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the Ending the HIV Epidemic Grant.

“System Agency” means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

**II.**  
**TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 1, 2021 and shall terminate on July 31, 2022. The City shall have the option to renew and extend the term of this Agreement for one period, with the period being one year in length. The renewal shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council.

2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the Ending the HIV Epidemic Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to CONTRACTOR of such lack of funding, this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Ending the HIV Epidemic Grant is not and will not be considered a breach of this Agreement.

### **III. SCOPE OF SERVICES**

3.1 CONTRACTOR 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 CONTRACTOR shall provide the following services:

3.2.1 Sexual health curriculum completion and evaluation; HIV prevention activities; monthly participation in End Stigma End HIV Alliance ("ESEHA") as a community organization to provide input on ESEHA goals

3.2.2 CONTRACTOR shall test and evaluate a curriculum focused on HIV prevention. CONTRACTOR shall identify and recruit a group of young people (ages 13-21) to assist staff in developing a sexual health curriculum.

3.2.3 The goal of the curriculum will be to prepare youth to engage in healthy relationships and empower them to take charge of their sexual decision-making and to access healthcare. The curriculum design project shall focus on three areas:

1. Involving young people, especially LGBTQ+ youth, as co-designers and co-evaluators.
2. The use of technology to enhance engagement of youth in the educational process.
3. Harnessing the power of peer-to-peer education by empowering young people to lead and teach in their own communities and provide materials, support and training.

3.2.4 Contractors will provide researched-based curriculum that covers the following subjects:

1. Comprehensive sexual health education specifically for LGBTQ youth
2. Intimate relationship education
3. Harm reduction
4. Development of support system
5. STD/HIV prevention education



### 3.2.5 CONTRACTOR shall:

1. Refine first draft of HIV/STI curriculum for LGBTQ+ youth and develop version for testing through implementation and evaluation.
2. Train ESEHA partners in testing version of curriculum through the presentation of the curriculum, input sessions, and Q&A opportunities.
3. Within 30 days of the execution of this agreement, CONTRACTOR will work with community organizations to implement the curriculum by providing presentations of curriculum.
4. Make curriculum available on their website and/or platform for viewing.
5. Testing of the curriculum shall extend through the duration of the term of the agreement.
6. Evaluate implementation of testing version of curriculum through pre-post testing, knowledge retention, and other evaluation measures.
7. Collaborate with community partners to revise the curriculum based on ongoing evaluations of the curriculum made during the term.
8. Edit test version to create final draft, create marketing and dissemination plan.
9. Submit the curriculum upon completion of development and assessment by the last day of the term.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of City, as determined by the 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 CONTRACTOR, 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 CONTRACTOR'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. All scope of services and work to be performed by CONTRACTOR hereunder is outlined hereinabove and no additional work or services other than described herein shall be requested or expected by the City, without prior approval and agreement of all Parties, as evidenced in writing and approved by CONTRACTOR.

## IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of CONTRACTOR'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 CONTRACTOR an amount not to exceed THIRTY FIVE THOUSAND DOLLARS AND 00/100THS (\$35,000.00) as total compensation to be paid to CONTRACTOR in the manner set forth in section 4.2.

4.2 CONTRACTOR shall submit an invoice upon completion of all services. The invoice shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. 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 be submitted to: [Accounts.Payable@sanantonio.gov](mailto:Accounts.Payable@sanantonio.gov) and copy to SAMHD.Invoices@sanantonio.gov or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Ending the HIV Epidemic Grant. 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.

## V.

### **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS**

5.1 CONTRACTOR shall make available to the City sufficient documents to demonstrate to the CITY, in the City's discretion, that CONTRACTOR has satisfied CONTRACTOR's contract deliverables. Except for documents and materials subject to Sections 5.2 and 5.3, below, any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, CONTRACTOR created as a result of the services provided to City shall be owned by the City ("Work Product"); however, CONTRACTOR shall have the right, in perpetuity, to display, copy and reproduce, use, distribute, publish, and create derivative materials from, and allow others to display, copy and reproduce, use, distribute, publish, and create derivative materials from, such documents without restriction in perpetuity.



5.2 All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by CONTRACTOR shall remain the property of CONTRACTOR as instruments of service. However, it is understood that City with the End Stigma End HIV Alliance shall have free access to all such Consultant information and City is granted the right to make and retain copies of CONTRACTOR's drawings, estimates, specifications and all other documents and data. CONTRACTOR acknowledges and agrees that City and System Agency has a permanent and perpetual, fully paid-up, non-exclusive license to reproduce, publish, use, and to make derivative works, from any documents prepared by CONTRACTOR for City in accordance with this Agreement. Any reuse of CONTRACTOR's information without specific written verification or adaptation by CONTRACTOR will be at City's sole risk and without liability or legal exposure to CONTRACTOR.

5.3 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CONTRACTOR, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by CONTRACTOR or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by CONTRACTOR to provide the services or project 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 CONTRACTOR or its suppliers.

5.4 In accordance with Texas law, CONTRACTOR 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.

## **VI.**

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

6.1 CONTRACTOR 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 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement, or as may be required by the grantor of funds. 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, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, CONTRACTOR 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 CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR'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 City upon thirty (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;  
or

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

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR 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 CONTRACTOR'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. Any one or more of the following events shall be deemed an "event of default" hereunder:

- 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 Contractor's assets;
- 7.4.3 Failing to perform or failing to comply with any material covenant herein required;
- 7.4.4 Performing the services unsatisfactorily, as determined by the Director;
- 7.4.5 The failure to meet reporting requirements of the Ending the HIV Epidemic Grant, as set out and determined by City; or
- 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, CONTRACTOR 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 CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR 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 CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by City.

7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR 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 CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR 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, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR 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 CONTRACTOR for any default hereunder or other action.

7.10 City shall pay CONTRACTOR for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from CONTRACTOR to City.

## **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 (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 to City, to:

City of San Antonio  
Attn: Director  
San Antonio Metropolitan Health District  
100 W. Houston, 8th floor  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

Healthy Futures of Texas  
Attn: Anthony Betori, Program Director  
2300 W. Commerce St. # 203  
San Antonio, TX 78207



## **IX.**

### **SPECIAL PROVISIONS**

9.1 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS Contract under the Ending the HIV Epidemic Grant (Contract No. HHS000897700002). Contractor agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein by reference. Contractor agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contract to include, but not limited to the following:

9.1.1 In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.2.2 Debarment and Suspension. Contractor is required to verify that neither the Contractor nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Contractor is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Contractor certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Contractor shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that



may arise from this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### 9.2.3 Certification Regarding Lobbying

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for Influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or, will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.LL. "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit standard Form-L.LL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction

imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **X.** **AUDIT**

10.1 If the CONTRACTOR expends \$750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the CONTRACTOR shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of CONTRACTOR's fiscal year, expiration or early termination of this Agreement, whichever is earlier. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the CONTRACTOR's receipt of the report.

10.4 If CONTRACTOR expends less than \$750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

10.6 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City, not to



exceed two times per twelve (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, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR 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.

10.7 CONTRACTOR shall during normal business hours, 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 CONTRACTOR 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 CONTRACTOR 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.

10.8 The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

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

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR 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, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.



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

10.12 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-City resources.

## **XI.**

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

11.1 The CONTRACTOR agrees to be subject to the terms and conditions that the City must comply with in its participation in the Ending the HIV Epidemic Grant.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Ending the HIV Epidemic Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.



11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 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, CONTRACTOR 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 CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR 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. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

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

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

11.11 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in



confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the “Confidential Information”) and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Additionally, CONTRACTOR shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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. CONTRACTOR 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, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR’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 of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

In addition, CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the funding agency or City designates as sensitive or the City considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

11.12 Prohibited Political Activity. CONTRACTOR 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.

11.13 CONTRACTOR 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.

11.14 The prohibitions set forth in Sections 11.12 and 11.13 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 time 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.

11.15 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

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

11.17 Sections 11.12 through 11.17 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, CONTRACTOR 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.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,

- a. 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; and

- b. The CONTRACTOR, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

## **XII.**

### **INSURANCE**

12.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "Healthy Futures of Texas Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<b><i>INSURANCE TYPE</i></b>	<b><i>LIMITS</i></b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000



3. Commercial General Liability Insurance to include coverage for the following: a) Premises/Operations b) Products/Completed Operations c) Personal/Advertising Injury d) Contractual Liability e) Independent Contractors f) Sexual Abuse/ Molestation	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.

12.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Health Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

### **XIII.**

#### **INDEMNIFICATION**

**13.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury,**



**death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

13.2 Defense Counsel - CONTRACTOR shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall reimburse City for all costs related to retaining defense counsel until such time as CONTRACTOR retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

#### **XIV.**

##### **SMALL BUSINESS ECONOMIC DEVELOPMENT AD ADVOCACY (SBEDA)**

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects



of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

## **XV.**

### **ASSIGNMENT AND SUBCONTRACTING**

15.1 CONTRACTOR 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 CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 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 CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, 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.

15.3 Except as otherwise stated herein, CONTRACTOR 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. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

## **XVI.**



## **INDEPENDENT CONTRACTOR**

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR. 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 CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

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

17.1 Non-Discrimination. As a party to this contract, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VI and 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;
- g) Drug Free Workplace Act of 1988 (41 U.S.C. section 8102); and
- h) All applicable regulations implementing the above laws.

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

18.1 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in 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 effected by amendment, in writing, executed by both City and CONTRACTOR.

### **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 may be possible, legal, valid and enforceable.

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

21.1 CONTRACTOR warrants and certifies that CONTRACTOR 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 CONTRACTOR 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 XVI. 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 AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matters in question between City and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.

24.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.

## **XXV. LEGAL AUTHORITY**

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR 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. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.



"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXIX.**

### **PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

29.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

## **XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES**

30.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the

company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT  
DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

31.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.



**XXXII.**  
**ENTIRE AGREEMENT**

32.1 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** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO**

**HEALTHY FUTURES OF TEXAS**

\_\_\_\_\_  
Claude A. Jacob, Dr PH (c), MPH  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Evelyn Delgado  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

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

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 Healthy Futures 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 Professional Services Contract ("**Service Contract**"), executed on \_\_\_\_\_, whereby BA provides professional 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 WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*
- 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 \_\_\_\_\_, 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, Dr PH(c), MPH  
Health Director  
San Antonio Metropolitan Health District

By: \_\_\_\_\_  
Evelyn Delgado  
Executive Director

APPROVED AS TO FORM:

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

MH  
01/27/22  
Item No. 26

# ATTACHMENT V



STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

CITY OF SAN ANTONIO

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as “Metro Health”), acting by and through the City Manager or designee, and Fiesta Youth (hereinafter referred to as “CONTRACTOR”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I.**  
**DEFINITIONS**

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.

“CONTRACTOR” 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.

“Ending the HIV Epidemic Grant” shall mean the DSHS grant or program which funds this agreement and is made in accordance with awards by the Centers for Disease Control and Prevention (Federal award identification number NU62PS92459, CFDA #93.940).

“Project or Program” shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the City’s Ending the HIV Epidemic Grant.

“System Agency” means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

**II.**  
**TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 1, 2021 and shall terminate on July 31, 2022. The City shall have the option to renew and extend the term of this Agreement for one period, with the period being one year in length. The renewal shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council.

2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the Ending the HIV Epidemic Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to CONTRACTOR of such lack of funding, this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Ending the HIV Epidemic Grant is not and will not be considered a breach of this Agreement.

### **III. SCOPE OF SERVICES**

3.1 CONTRACTOR 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 In alignment with the Ending the HIV Epidemic Grant program, CONTRACTOR shall provide the following services:

- A. Create HIV information packet for teenagers and young adults centered around 4 main topics to include:
  - a. What is HIV/AIDS and how do we beat the stigma around it?
  - b. History of HIV/AIDS discrimination and how it has affected our community.
  - c. HIV stigma in the BIPOC communities.
  - d. HIV/AIDS rates among LGBTQ+ youth.
- B. Conduct monthly classes on Sexual Health and HIV/AIDS based on the 4 topics listed above.
  - a. Monthly classes shall be held at an ISD, either in person or virtually, provided through afterschool programming.
  - b. Classes shall also be available at their office location, both in person and online.
  - c. Offer a minimum of 1 class per month at their office location and may host additional classes based upon their capacity.
  - d. Distribute HIV information packets to participants of the classes in either electronic or paper form and provide information packets to partnering agencies for distribution.
- C. Co-develop a Speakers Bureau of teenagers and young adult advocates to speak on 4 topics listed above to include:
  - a. Identifying and training 2 or 3 teenagers and young adults leaders to participate in speakers bureau.
  - b. Requiring speakers to participate in the monthly Sexual Health classes listed above in Section A.
  - c. Have young adult advocate speakers present at monthly classes.
- D. Submit a monthly report detailing the number of participants, topics and agenda presented upon, speakers that presented at the monthly classes and their association with the organization or topic being discussed, and list of Speakers Bureau participants



recruited, including the list of speaking engagements completed by Speakers Bureau members.

- E. Participate in monthly ESEHA sexual health community of practice convenings to coordinate with other community organizations and to review data, educational materials and outreach plans, and develop long-term goals for promoting sexual health and reducing HIV/ STI transmission among priority populations in Bexar County.
- F. Host a week-long HIV/AIDS awareness, education and remembrance community event, and AIDS Memorial Quilt display, in conjunction with local organizations, for approximately 2,000 participants with the goal of providing information on services and resources offered by Fiesta Youth, including promoting Metro Health's HIV/STD programs.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of City, as determined by the 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 CONTRACTOR, 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 CONTRACTOR'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. All scope of services and work to be performed by CONTRACTOR hereunder is outlined hereinabove and no additional work or services other than described herein shall be requested or expected by the City, without prior approval and agreement of all Parties, as evidenced in writing and approved by CONTRACTOR.

#### **IV.**

#### **COMPENSATION TO CONTRACTOR**

4.1 In consideration of CONTRACTOR'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 CONTRACTOR an amount not to exceed THIRTY FIVE THOUSAND DOLLARS AND 00/100THS (\$35,000.00) as total compensation to be paid to CONTRACTOR in the manner set forth below:

- a. Upon submission and approval of all deliverables set out in 3.2.A - \$9,000.00
- b. Upon submission and approval of all deliverables set out in 3.2.B, C, D, E - \$14,000.00
- c. Upon submission and approval of all deliverables set out in 3.2.F - \$12,000.00

4.2 CONTRACTOR shall submit invoices as set out above by the by the 10<sup>th</sup> day of the month following the completion and submission of each deliverable. The invoices shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. 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 be submitted to: [Accounts.Payable@sanantonio.gov](mailto:Accounts.Payable@sanantonio.gov) and copy to SAMHD.Invoices@sanantonio.gov or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Ending the HIV Epidemic Grant. 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.

## **V.**

### **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by CONTRACTOR pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CONTRACTOR.

5.2 CONTRACTOR understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.3 Any and all work product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by City, as provided by Title 17 of the United States Code. To the extent that work product does not qualify as a "work made for hire" under applicable federal law, CONTRACTOR hereby irrevocably assigns and transfers to City, its successors and



assigns, the entire right, title, and interest in and to the work product, including any and all intellectual property rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the work product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. CONTRACTOR agrees to execute all papers and to perform such other acts as City may deem necessary to secure for City or its designee the rights herein assigned.

5.4 In accordance with Texas law, CONTRACTOR 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, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Contract shall be the subject of any copyright or proprietary claim by CONTRACTOR. CONTRACTOR acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, shall belong to and be the property of City and shall be made available to the City at any time. CONTRACTOR further agrees to make such records available to City at any time and to turn over all such records to City upon termination of this Agreement. CONTRACTOR agrees that it shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without the written permission of the Director, unless required to do so by a court of competent jurisdiction. CONTRACTOR shall notify City of such request as set forth in Article VIII, of this Agreement.

## **VI.**

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

6.1 CONTRACTOR 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 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement, or as may be required by the grantor of funds. 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, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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



CONTRACTOR 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, CONTRACTOR 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 CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR'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 City upon thirty (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;  
or

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

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR 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 CONTRACTOR'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. Any one or more of the following events shall be deemed an "event of default" hereunder:

- 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 Contractor's assets;
- 7.4.3 Failing to perform or failing to comply with any material covenant herein required;
- 7.4.4 Performing the services unsatisfactorily, as determined by the Director;
- 7.4.5 The failure to meet reporting requirements of the Ending the HIV Epidemic Grant, as set out and determined by City; or
- 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, CONTRACTOR 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 CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR 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 CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by City.

7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR 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 CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR 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, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR 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 CONTRACTOR for any default hereunder or other action.

7.10 City shall pay CONTRACTOR for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from CONTRACTOR to City.

## **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 (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 to City, to:

City of San Antonio  
Attn: Director  
San Antonio Metropolitan Health District  
100 W. Houston, 8th floor  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

Fiesta Youth  
Attn: David Laidaker-Luna, President  
702 Donaldson Ave., Ste. 205A  
San Antonio, TX 78201

## **IX.** **SPECIAL PROVISIONS**

9.1 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS Contract under the Ending the HIV Epidemic Grant (Contract No. HHS000897700002). Contractor agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO



Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein by reference. Contractor agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contract to include, but not limited to the following:

9.1.1 In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.



9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.2.2 Debarment and Suspension. Contractor is required to verify that neither the Contractor nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Contractor is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Contractor certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Contractor shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 9.2.3 Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for Influencing or attempting to influence an



officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or, will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.LL. "Disclosure of Lobbying Activities," In accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit standard Form-L.LL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **X.**

### **AUDIT**

10.1 If the CONTRACTOR expends \$750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the CONTRACTOR shall have completed an independent audit of its financial

statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of CONTRACTOR's fiscal year, expiration or early termination of this Agreement, whichever is earlier. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the CONTRACTOR's receipt of the report.

10.4 If CONTRACTOR expends less than \$750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

10.6 The City reserves the right to conduct or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City, not to exceed two times per twelve (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, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR 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.

10.7 CONTRACTOR shall during normal business hours, 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 CONTRACTOR 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 CONTRACTOR 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.

10.8 The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

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

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR 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, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

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

10.12 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-City resources.

## **XI.**



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

11.1 The CONTRACTOR agrees to be subject to the terms and conditions that the City must comply with in its participation in the Ending the HIV Epidemic Grant.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Ending the HIV Epidemic Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R. §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 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, CONTRACTOR 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 CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR 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. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

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

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

11.11 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Additionally, CONTRACTOR shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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. CONTRACTOR 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, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR'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 of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

In addition, CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the funding agency or City designates as sensitive or the City considers sensitive consistent with applicable Federal, state, local and tribal laws regarding privacy and obligations of confidentiality.

11.12 Prohibited Political Activity. CONTRACTOR 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.

11.13 CONTRACTOR 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.

11.14 The prohibitions set forth in Sections 11.12 and 11.13 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 time 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.

11.15 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

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

11.17 Sections 11.12 through 11.17 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, CONTRACTOR 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.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,

- a. 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; and
- b. The CONTRACTOR, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

## **XII.**

### **INSURANCE**

12.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "Fiesta Youth Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i><b>INSURANCE TYPE</b></i>	<i><b>LIMITS</b></i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a) Premises/Operations b) Products/Completed Operations c) Personal/Advertising Injury d) Contractual Liability e) Independent Contractors f) Sexual Abuse/ Molestation	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.



5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
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12.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Health Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

### **XIII.** **INDEMNIFICATION**

**13.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.



13.2 Defense Counsel - CONTRACTOR shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall reimburse City for all costs related to retaining defense counsel until such time as CONTRACTOR retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

#### **XIV.**

#### **SMALL BUSINESS ECONOMIC DEVELOPMENT AND ADVOCACY (SBEDA)**

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

#### **XV.**

#### **ASSIGNMENT AND SUBCONTRACTING**

15.1 CONTRACTOR 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 CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 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 CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, 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.

15.3 Except as otherwise stated herein, CONTRACTOR 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. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

## **XVI.**

### **INDEPENDENT CONTRACTOR**

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR. 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 CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

## **XVII.**

### **NONDISCRIMINATION POLICY**



17.1 Non-Discrimination. As a party to this contract, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VI and 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;
- g) Drug Free Workplace Act of 1988 (41 U.S.C section 8102); and
- h) All applicable regulations implementing the above laws.

## **XVIII.**

### **CONFLICT OF INTEREST**

18.1 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in 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 effected by amendment, in writing, executed by both City and CONTRACTOR.

## **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 may be possible, legal, valid and enforceable.

## **XXI.**

### **LICENSES/CERTIFICATIONS**

21.1 CONTRACTOR warrants and certifies that CONTRACTOR 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 CONTRACTOR 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 XVI. 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 AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between City and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.

24.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.

**XXV.**  
**LEGAL AUTHORITY**

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR 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.

## **XXIX.** **PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

29.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

29.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

29.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

29.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXX.** **PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

30.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.



### **XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES**

30.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;  
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds  
of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

### **XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

31.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;  
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds  
of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXI.**  
**ENTIRE AGREEMENT**

31.1 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** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO**

**FIESTA YOUTH**

\_\_\_\_\_  
Claude A. Jacob, DrPH (c), MPH  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
David Laidaker-Luna  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:



---

City Attorney

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 **Fiesta Youth**, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("**Service Contract**"), executed on \_\_\_\_\_, whereby BA provides professional 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 WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- 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 \_\_\_\_\_, 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, Dr PH (c), MPH  
Health Director  
San Antonio Metropolitan Health District

By: \_\_\_\_\_  
David Laidaker-Luna  
President

APPROVED AS TO FORM:

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

# ATTACHMENT VI



STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

CITY OF SAN ANTONIO  
**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as “Metro Health”), acting by and through the Director or designee of the San Antonio Metropolitan Health District, and the University of Texas Health Science Center at San Antonio d/b/a UT Health (hereinafter referred to as “CONTRACTOR”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I.**  
**DEFINITIONS**

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.

“CONTRACTOR” 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.

“Ending the HIV Epidemic Grant” shall mean the DSHS grant or program which funds this agreement and is made in accordance with awards by the Centers for Disease Control and Prevention (Federal Award Identification number NU62PS92459, CFDA #93.940).

“Project or Program” shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the City’s Ending the HIV Epidemic Grant.

“System Agency” means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

**II.**  
**TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 1, 2021 and shall terminate on July 31, 2022.

2.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the Ending the HIV Epidemic Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City’s obligations under the

terms of this Agreement, then upon written notice by City to CONTRACTOR of such lack of funding, this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Ending the HIV Epidemic Grant is not and will not be considered a breach of this Agreement.

### **III. SCOPE OF SERVICES**

3.1 CONTRACTOR 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 In alignment with the Ending the HIV Epidemic (EHE) Grant program, CONTRACTOR shall provide the following services:

A. Share data quarterly, on March 10 and June 10, with Metro Health and information on the local syringe services pilot with the End Stigma End HIV Alliance and EHE stakeholders on a quarterly basis, to include: 1) the number of Syringe Services Program (SSPs) (fixed site and mobile/ outreach) operating locally, 2) the number of encounters that received at least one standard SSP service, and 3) aggregate demographic information of all participants in the program.

B. Facilitate referrals to additional resources, to include but not limited to, additional medical care, social services, housing assistance, and or mental health services. Provide navigation services to include assistance to individuals to seek, apply for, and receive social services or medical care in addition to those services provided by CONTRACTOR. Provide comprehensive approach to linkage to additional services to ensure clients receive services they have been referred to. Submit quarterly reports, on March 10 and June 10, on the number of participants that were referred to other organizations, participants that were navigated through services, and participants that were linked to community organizations for continued care.

C. Meet with harm reduction SSP partnering organizations at least twice during the term. Meetings can be held either virtually or in-person and shall focus on ongoing projects, collaborations, and future projects that help reduce harm within our priority population. Submit supporting documents (meeting agendas, sign-in sheets, meeting materials, etc.) with invoice on a quarterly basis.

D. Identify partnering organizations in SSP in the first meeting hosted during term. Provide copies of partnering organizations agreements with CONTRACTOR, stating their part in reducing harm within the priority population and contributing to the overall collaboration of all organizations participating in this effort, to Metro Health within 30 days after execution of the Agreement.

E. Collect information regarding service areas for the SSP from each partnering organizations and provide a map data to Metro Health within 30 days after execution of the Agreement.



F. Provide a report quarterly, on March 10 and June 10, containing information regarding supplies distributed, including but not limited to personal care products and literature on harm reduction, demographic information of all participants receiving supplies, and location of all supply distributions.

G. Provide a report quarterly, on March 10 and June 10, on number SSPs (fixed site and mobile/ outreach) operating locally, and aggregate data of SSP clients demographic data to include: number of people served, any aggregate demographic information required by the Centers for Disease Control and Prevention (CDC).

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of City, as determined by the 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 CONTRACTOR, 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 CONTRACTOR'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. All scope of services and work to be performed by CONTRACTOR hereunder is outlined hereinabove and no additional work or services other than described herein shall be requested or expected by the City, without prior approval and agreement of all Parties, as evidenced in writing and approved by CONTRACTOR.

#### **IV. COMPENSATION TO CONTRACTOR**

4.1 In consideration of CONTRACTOR'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 CONTRACTOR an amount not to exceed THIRTY-FIVETHOUSAND DOLLARS AND 00/100THS (\$35,000) as total compensation to be paid to CONTRACTOR in the manner set forth below:

- a. March 10th, 2022 – upon submission and approval of first quarterly reports - \$17,500.00.
- b. June 10th, 2022 - upon submission and approval of second quarterly reports - \$17,500.00.

4.2 CONTRACTOR shall submit invoices as set out above by the 10<sup>th</sup> day of the following month following the completion and submission of each deliverable. The invoices shall outline the work completed in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. 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 be submitted to: [Accounts.Payable@sanantonio.gov](mailto:Accounts.Payable@sanantonio.gov) and copy to SAMHD.Invoices@sanantonio.gov or by mail to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, San Antonio Metropolitan Health District, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Ending the HIV Epidemic Grant. 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.

## **V.**

### **OWNERSHIP OF INTELLECTUAL PROPERTY AND DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by CONTRACTOR pursuant to the provisions of this Agreement is the exclusive property of CITY; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CONTRACTOR.

5.2 CONTRACTOR understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, CITY has the right to use all such writings, documents and information as CITY desires, without restriction.

5.3 Any and all work product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by City, as provided by Title 17 of the United States Code. To the extent that work product does not qualify as a "work made for hire" under applicable federal law, CONTRACTOR hereby irrevocably assigns and transfers to City, its successors and assigns, the entire right, title, and interest in and to the work product, including any and all



intellectual property rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the work product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. CONTRACTOR agrees to execute all papers and to perform such other acts as City may deem necessary to secure for City or its designee the rights herein assigned.

5.4 In accordance with Texas law, CONTRACTOR 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, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Contract shall be the subject of any copyright or proprietary claim by CONTRACTOR. CONTRACTOR acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, shall belong to and be the property of City and shall be made available to the City at any time. CONTRACTOR further agrees to make such records available to City at any time and to turn over all such records to City upon termination of this Agreement. CONTRACTOR agrees that it shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without the written permission of the Director, unless required to do so by a court of competent jurisdiction. CONTRACTOR shall notify City of such request as set forth in Article VIII, of this Agreement.

## **VI.**

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

6.1 CONTRACTOR 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 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement, or as may be required by the grantor of funds. 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, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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



CONTRACTOR 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Contract, CONTRACTOR 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 CONTRACTOR shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR'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 City upon thirty (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;  
or

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

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR 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 CONTRACTOR'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. Any one or more of the following events shall be deemed an "event of default" hereunder:

- 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 Contractor's assets;
- 7.4.3 Failing to perform or failing to comply with any material covenant herein required;
- 7.4.4 Performing the services unsatisfactorily, as determined by the Director;
- 7.4.5 The failure to meet reporting requirements of the Ending the HIV Epidemic Grant, as set out and determined by City; or
- 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, CONTRACTOR 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 CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR 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 CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by City.

7.7 Within thirty (30) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR 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 CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a Waiver by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR 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, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR 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 CONTRACTOR for any default hereunder or other action.

7.10 City shall pay CONTRACTOR for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from the CONTRACTOR to the City.

## **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 (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 to City, to:

City of San Antonio  
Attn: Director  
San Antonio Metropolitan Health District  
100 W. Houston, 8th floor  
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

The University of Texas Health Science Center at San Antonio  
d/b/a UT Health  
School of Nursing  
Attn: Kevin Irwin, Senior Public Health Consultant  
7703 Floyd Curl Drive  
San Antonio, TX 78229

## **IX.** **SPECIAL PROVISIONS**



9.1 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS Contract under the Ending the HIV Epidemic Grant (Contract No. HHS000897700002). Contractor agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein by reference. Contractor agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contract to include, but not limited to the following:

9.1.1 In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

9.1.3 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for*



*Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R., Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

9.2 Contractor acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS. As such, the Contractor agrees to comply with applicable terms and conditions associated with said funds as directed by the federal funding entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Contractor agrees to comply with terms and conditions as applicable, including but not limited to the following provisions and certifications:

9.2.1 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.2.2 Debarment and Suspension. Contractor is required to verify that neither the Contractor nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Contractor is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Contractor certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Contractor shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.



### 9.2.3 Certification Regarding Lobbying

#### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for Influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or, will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-L.LL. "Disclosure of Lobbying Activities," In accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### Statement for Loan Guarantees and Loan Insurance

The undersigned states to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit standard Form-L.LL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **X. AUDIT**

10.1 If the CONTRACTOR expends \$750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the CONTRACTOR shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of CONTRACTOR's fiscal year, expiration or early termination of this Agreement, whichever is earlier. CONTRACTOR understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by CONTRACTOR within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The CONTRACTOR agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from CONTRACTOR's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The CONTRACTOR agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the CONTRACTOR or its programs of any findings about accounting deficiencies, or violations of CONTRACTOR's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the CONTRACTOR's receipt of the report.

10.4 If CONTRACTOR expends less than \$750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

10.6 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City, not to exceed two times per twelve (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, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR 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.

10.7 CONTRACTOR shall during normal business hours, 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 CONTRACTOR 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 CONTRACTOR 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.

10.8 The City may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the CONTRACTOR shall abide by such requirements.

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

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the CONTRACTOR will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR 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, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

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



10.12 If the City determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-City resources.

## **XI.**

### **ADMINISTRATION OF AGREEMENT**

### **AND RESTRICTIONS ON USE OF FUNDS**

11.1 The CONTRACTOR agrees to be subject to the terms and conditions that the City must comply with in its participation in the Ending the HIV Epidemic Grant.

11.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Ending the HIV Epidemic Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to City. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, the CONTRACTOR shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, CONTRACTOR agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

11.6 CONTRACTOR shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained.



This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 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, CONTRACTOR 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 CONTRACTOR's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the CONTRACTOR 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. CONTRACTOR agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to CONTRACTOR, or CONTRACTOR subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

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

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

11.11 Unless disclosure is authorized by the City, CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its



obligations pursuant to this Agreement. Additionally, CONTRACTOR shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in **Attachment I**, 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. CONTRACTOR 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, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR'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 of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

In addition, CONTRACTOR must take reasonable measures to safeguard protected personally identifiable information and other information the funding agency or City designates as sensitive or the City considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

**11.12 Prohibited Political Activity.** CONTRACTOR 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.

**11.13** CONTRACTOR 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.

**11.14** The prohibitions set forth in Sections 11.12 and 11.13 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 time 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.

11.15 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid out of Agreement funds with a statement provided by CONTRACTOR of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Metro Health. CONTRACTOR shall list the name and number of a contact person from Metro Health on the statement that CONTRACTOR's personnel can call to report said violations.

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

11.17 Sections 11.12 through 11.17 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, CONTRACTOR 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.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to comply with the following special provisions,

- a. 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; and
- b. The CONTRACTOR, at the City's option, could be ineligible for

consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

## **XII.**

### **INSURANCE**

It is the 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, third parties must look to the Texas Tort Claims Act for relief with respect to 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 as more fully set out above. Notwithstanding the foregoing, each component of the University of Texas System may enroll qualified personnel into the UT Systems Professional Medical Liability Benefit Plan, under the authority of Chapter 59, Texas Education Code. A copy of the plan can be found at: <http://www.utsystem.edu/ogc/health/homepage.htm>. CONTRACTOR has and will maintain in force during the term of this agreement adequate insurance to cover its indemnification obligations, including worker's compensation/employer's liability coverage provided at statutory minimum coverage.

## **XIII. INDEMNIFICATION**

CONTRACTOR 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.

## **XIV.**

### **SMALL BUSINESS ECONOMIC DEVELOPMENT AD ADVOCACY (SBEDA)**

14.1 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause



is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

## **XV.**

### **ASSIGNMENT AND SUBCONTRACTING**

15.1 CONTRACTOR 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 CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 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 CONTRACTOR. City shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, 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.

15.3 Except as otherwise stated herein, CONTRACTOR 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. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

## **XVI.**

### **INDEPENDENT CONTRACTOR**

16.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR. 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 CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

## **XVII.**

### **NONDISCRIMINATION POLICY**

17.1 Non-Discrimination. As a party to this contract, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VI and 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;



- g) Drug Free Workplace Act of 1988 (41 U.S.C. section 8102); and
- h) All applicable regulations implementing the above laws.

### **XVIII.**

#### **CONFLICT OF INTEREST**

18.1 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in 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 effected by amendment, in writing, executed by both City and CONTRACTOR.

### **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 may be possible, legal, valid and enforceable.

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

21.1 CONTRACTOR warrants and certifies that CONTRACTOR 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 CONTRACTOR 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 XVI. 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 AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matters in question between City and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction.

24.3 Venue of any court action brought directly or indirectly as a result of this Agreement shall be in Bexar County, Texas.



**XXV.**  
**LEGAL AUTHORITY**

25.1 The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR 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.**  
**PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during

the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXIX.**

### **PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

29.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

### **XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES**

30.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.



**XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES THAT  
DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

31.1 This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;  
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds  
of the governmental entity.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXII.  
ENTIRE AGREEMENT**

32.1 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** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO**

**THE UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT SAN ANTONIO**

\_\_\_\_\_  
Claude A. Jacob, Dr PH(c), MPH  
Health Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Dr. Lisa Cleveland  
Associate Professor of Nursing

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

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



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 at San Antonio d/b/a UT Health, a **Business Associate** ("**BA**"), referred to collectively herein as the "**Parties**."

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on \_\_\_\_\_, whereby BA provides professional 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 \_\_\_\_\_, 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, Dr PH(c), MPH  
Health Director  
San Antonio Metropolitan Health District

By: \_\_\_\_\_  
Dr. Lisa Cleveland  
Associate Professor of Nursing

**APPROVED AS TO FORM:**

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



MH  
01/27/22  
Item No. 26

# ATTACHMENT VII

SAMHD State and Federal Pass Through Grants

Department of State Health Services											
Area	Description	Summary	START	END	FY 22 Amount below	Proposed Positions	Proposed FTEs	In Kind	Program Income	CFDA #	Grantor
					Proposed Amount						
Communicable Disease	Immunization Local	Local Immunizations Program works to eliminate barriers, expand immunization delivery, and establish consistent policies to immunize pre-school age children. The goal of the program is to prevent, control, and eliminate indigenous vaccine-preventable diseases by providing immunizations and applying epidemiologic principles and outbreak control measures in San Antonio and Bexar County.	9/1	8/31	\$594,495	9	9	\$0	\$8,000	N/A	DSHS
Communicable Disease	STD/HIV	STD Support Program conducts disease investigation and counseling to control and prevent the spread of sexually transmitted diseases such as syphilis, HIV, gonorrhea, and Chlamydia. The program provides diagnosis, treatment and partner notification.	9/1	8/31	\$1,402,936	13	13	\$0	\$0	93.940.006, 93.977, 93.940 & 93.118 & State	DSHS
Communicable Disease	HIV/AIDS Surveillance	HIV Surveillance Program enables compliance with a state law that requires HIV and AIDS cases to be reported to the local public health agency. Metro Health's HIV Surveillance Program compiles disease reports from community healthcare providers, laboratories, and hospitals through chart reviews in providers' offices and in hospitals for adult HIV/AIDS disease. Statistical reports are developed and forwarded to the TDSHS central office in Austin. These reports are also used for local analysis of HIV/AIDS disease trends and evaluation of the effectiveness of various local programs.	9/1	8/31	\$178,966	3	3	\$0	\$0	N/A	DSHS
Communicable Disease	TB Special Team Project	Special TB Team Program is one of two annual contracts providing patient home visits for directly observed therapy. This consists of administration of anti-tuberculosis medications to patients at home, work and school, and directly observing medication ingestion to ensure compliance with physicians' orders as required by law.	1/1	12/31	\$318,216	6	6	\$63,643	\$0	93.116	State
Communicable Disease	TB Prevention and Control State	TB Prevention and Control Program is one of two annual contracts to investigate, diagnose and manage suspected or confirmed cases of tuberculosis. TB services are available to residents and visitors of Bexar County.	9/1	8/31	\$599,369	5	5	\$119,874	\$5,000	N/A	DSHS
Communicable Disease	TB Waiver	This project will focus on expanding Tuberculosis (TB) screenings, with a special focus on high risk populations in Bexar County in order to reduce the spread of Tuberculosis. This project will increase targeted testing for latent tuberculosis testing for latent tuberculosis infection (LTBI) in high risk populations, provide routine testing for LTBI with interferon gamma release assays (IGRAs) instead of tuberculin skin testing, provide routine treatment of LTBI through a 12 dose and utilize a 12 week regimen administered by Directly Observed Therapy (DOT) to improve patient adherence and completion of LTBI therapy.	8/1	7/31	\$828,517	9	9	\$0	\$0	N/A	State
Communicable Disease	Surveillance Epidemiology	Epidemiologist shall conduct surveillance for all notifiable conditions listed in 25 TAC §97.3 and conduct telephone interviews of patients with notifiable conditions and individuals who are determined by the Emerging and Acute Infectious Disease Branch (EAID) of the Department of State Health Services (DSHS) to be part of a cluster or outbreak to ascertain possible risk factors. Epidemiologist may also perform surveillance and epidemiology activities during other major outbreaks and/or disasters.	9/1	8/31	\$136,562	2	2	\$0	\$0	N/A	DSHS
Communicable Disease	Milk Group	Milk Sample Lab Testing Program analyzes approximately 5,000 milk samples per year from processing plants located in San Antonio and the surrounding TDSHS Region 8 area. Samples are processed within 48 to 72 hours after collection and tested for bacteria, pasteurization, antibiotics, and excess water	9/1	8/31	\$89,714	0	0	\$0	\$0	N/A	DSHS
Communicable Disease	Flu Surveillance	Also known as Infectious Diseases Program funds influenza surveillance activities conducted by Metro Health	9/1	8/31	\$5,000	0	0	\$0	\$0	N/A	DSHS
Community Health	Maternal and Child Health (WIC)	The Texas Department of State Health Services (DSHS) is committed to improving the health of women of childbearing age, adolescents, children, infants, and children with special health care needs. Located within the Maternal and Child Health Section (under the Community Health Improvement Division), our staff supports the development of family-centered, community-based, coordinated systems of care. DSHS MCH works to improve the health of women, children, youth and families, including those with special health care needs.	9/1	8/31	\$185,000	3	3	\$0	\$0	N/A	DSHS



SAMHD State and Federal Pass Through Grants

Area	Description	Summary	START	END	Proposed Amount	Proposed Positions	Proposed FTEs	In Kind	Program Income	CFDA #	Grantor
Community Health	Healthy Texas Babies	San Antonio Metropolitan Health District will be used to develop collaborations to support collective impact in improving birth outcomes, maternal, perinatal and infant health and to reduce disparities in infant mortality	9/1	8/31	\$117,500	1	1	\$0	\$0	93.994	DSHS
Community Health	WIC	Women, Infants & Children (WIC) provides nutritious food, nutrition education, and breastfeeding promotion and support to qualified pregnant, breastfeeding and postpartum women and their infants and children less than five years of age.	10/1	9/30	\$6,107,243	73	73	\$0	\$0	10.557, 10.561 & 10.557.013	HHSC
Community Health	Local Public Health (Triple O)	Local Public Health Service Program (Triple O) funding supports core public health activities that include community-based Chronic Disease Prevention programming, health education, and community health planning.	9/1	8/31	\$226,056	4	4	\$0	\$0	93.991	DSHS
Community Health	Title V Dental Fee for Service	Title V-Dental contract provides funding for preventative dental services to children ages 0-21 who do not qualify for Medicaid or CHIP. SAMHD provides all enrollment and intake activities related to the grant, while the University of Texas Health Science Center San Antonio Dental School is the subcontractor for direct patient care.	9/1	8/31	\$100,000	1	1	\$0	\$0	93.994	HHSC
Community Health	EXHALE-Education on asthma self-management, eXtinguishing smoking and second hand smoke, Home visits for trigger reduction and asthma self-management, Achievement of guidelines-based medical assessment Linkages and coordination of care across settings, Environmental policies or best practices to reduce asthma triggers from indoor, outdoor, and occupational sources	The funds will be used to 1) work with community partners to expand access to asthma self-management education in schools and worksites; 2) expand delivery of home visits for asthma trigger reduction; 3) work with health systems partners to promote utilization of non-physician team members to identify patients with uncontrolled asthma in emergency departments and other clinical settings and navigate them to medical and self-management support; 4) provide technical assistance to employers to expand coverage of asthma self-management education for employees and their dependents; 5) promote anti-idling and clean diesel bus fleets among area school districts; 6) provide technical assistance to multi-unit housing and housing authorities to adopt tobacco-free policies; and, 7) work with established local tobacco prevention and control partners to reduce tobacco use and exposure to secondhand smoke through prevention/cessation education and policy, systems, and environmental change.	9/1	8/31	\$215,000	2	2	\$0	\$0	93.07	DSHS
Community Health	Diabetes Prevention and Control	The funds will be used to work with community partners to: 1) engage stakeholders to provide input on diabetes prevention and self-management education support services and outcomes; 2) implement classes for diabetes self-management and diabetes prevention; 3) establish a bi-directional referral system with local health providers; 4) attend Lifestyle Coach Training from a CDC-approved training entity and implement a CDC recognized lifestyle program; and, 5) develop a program expansion plan.	9/1	8/31	\$125,000	0	0	\$0	\$0	99.99	State
Environmental Health & Operations	PHEP Bioterrorism Preparedness	Public Health Emergency Preparedness (PHEP) funding supports the Metro Health's all-hazards emergency preparedness activities and additional Pandemic Influenza Preparedness activities. In conjunction with the Emergency Management Division, City/County First Responders, and local hospital systems, PHEP uses recent exercise outcomes to evaluate existing emergency plans and develop new response systems. This program and plan development is in collaboration with community resources and neighboring counties.	7/1	6/30	\$1,034,437	11	11	\$103,444	\$0	93.069	DSHS
Environmental Health & Operations	PHEP Cities Readiness Initiative	Cities Readiness Initiative (CRI) is a program to enhance the planning efforts of local response partners who will have access to the equipment, supplies and medications of the Strategic National Stockpile (SNS). Specifically, CRI provides initial funding for the planning stage to coordinate SNS response activities among the surrounding counties comprising the Metropolitan Service Area. CRI provides the framework to build a response system that allows for the City's increased population during daytime hours, and for standardization of bioterrorism response planning efforts among Bexar, Atascosa, Wilson, Guadalupe, Comal, Kendall, Bandera, and Medina counties. The planning activities include standardizing Point of Dispensing selection, adopting dispensing procedures, dispensing medical materials to treatment centers, controlling SNS inventory, public information and security, as well as uniform coordination of training, exercising and evaluation, and tactical communication, command and control.	7/1	6/30	\$227,862	2	2	\$22,786	\$0	93.069	DSHS

SAMHD State and Federal Pass Through Grants

Area	Description	Summary	START	END	Proposed Amount	Proposed Positions	Proposed FTEs	In Kind	Program Income	CFDA #	Grantor
Communicable Disease	PHEP Lab	Public Health Preparedness Laboratory funding under this grant contract is used primarily for the Metro Health Biosafety Level Three (BSL-3) Laboratory opened in 2005. Staff in this facility can rapidly identify terrorist threat agents including smallpox, anthrax, plague, and tularemia, as well as influenza, food borne illnesses and other diseases.	7/1	6/30	\$249,447	2	2	\$24,945	\$0	93.074	DSHS
Communicable Disease	HIV/HD-EHE	The Ending the HIV Epidemic (EHE) initiative, is intended to build on the ongoing activities funded through The Texas Department of State Health Services (DSHS) TB/HIV/STD Section to strategically advance (i.e., initiate new or expand existing) HIV prevention and surveillance efforts in specific jurisdictions in Texas. The funded services will, based on the best available scientific evidence and experience, most rapidly accelerate efforts to reduce new HIV infections. Funded entities must be responsive to local circumstances and are therefore encouraged to implement innovative activities unique to the jurisdiction's local context.	8/1	7/31	\$849,771	7	7	\$0	\$0	93.94	DSHS
<b>Total Department of State Health Services</b>			<b>Total</b>		<b>\$13,591,091</b>	<b>153</b>	<b>153</b>	<b>\$334,692</b>	<b>\$13,000</b>		
<b>Department of State Health Services</b>											
<b>Federal Pass Through Funding: ARPA</b>											
Communicable Disease	DIS Workforce Development STD/HIV	The Disease Intervention Specialists (DIS) Workforce Development Funding is part of the American Rescue Plan Act of 2021. This \$1 billion investment will be used over a five-year period. The goal of the investment is to support 21st-century outbreak response needs by:1.Expanding and enhancing frontline public health staff2.Conducting DIS workforce training and skills building3.Building organizational capacity for outbreak response4.Evaluating and improving recruitment, training, and outbreak response efforts	1/1	8/31	\$571,977	10	10	\$0	\$0	93.977.119	DSHS
<b>Total</b>					<b>\$571,977</b>	<b>10</b>	<b>10</b>	<b>\$0</b>	<b>\$0</b>		
<b>Overall</b>					<b>\$14,163,068</b>	<b>163</b>	<b>163</b>	<b>\$334,692</b>	<b>\$13,000</b>		