

STATE OF TEXAS

§

PROFESSIONAL SERVICES

COUNTY OF BEXAR

§

AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the Agreement) is made and entered into by and between the CITY OF SAN ANTONIO ("CITY"), a Texas Home Rule Municipality, on behalf of the San Antonio Metropolitan Health District ("Metro Health") pursuant to Ordinance No. _____ passed and approved on the _____ day of 2019, and THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO (UTHSCSA) on behalf of its Department of Developmental Dentistry. CITY and UTHSCSA shall collectively be referred to as "the Parties."

WITNESSETH

WHEREAS, CITY provides dental services for children at non-traditional setting such as Head Start and elementary schools; and

WHEREAS the Department of Developmental Dentistry is part of the UTHSCSA School of Dentistry; and

WHEREAS, the CITY does not have the capacity or resources to meet the demand for dental services for children that require comprehensive dental treatment; and

WHEREAS, the CITY believes it is in the best interest of the CITY for UTHSCSA to provide children with quality dental care in an appropriate clinical and/or surgical environment;

NOW THEREFORE, in consideration of the mutual covenants and agreements stated herein, the Parties agree as follows:

ARTICLE I.
PURPOSE/DEFINITIONS

1.1 The purpose of this Agreement is to establish the terms and conditions under which UTHSCSA will provide CITY with certain specified dental health services for uninsured or underinsured children eligible for care through the Title V Child Health Services Dental Grant. This Agreement shall also establish the CITY's and UTHSCSA's obligations, costs, and the manner and method of payment for provided services.

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

"CGUS," shall be defined as the Comptroller General of the United States.

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

"Department" shall mean the Texas Department of State Health Services.

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

"Director" shall mean the Director of the San Antonio Metropolitan Health District.

"HHSC" shall be defined as the Texas Health and Human Services, the agency that funds, oversees the statewide Title V Child Health Services Dental Grant, and evaluation efforts.

"Title V Dental Grant" shall be defined as the HHSC Title V Child Health Services Dental Grant which is the funding source for this contract.

"SAO," shall be defined as the Texas State Auditor's Office.

"OIG," shall be defined as the Office of the Inspector General.

ARTICLE II.

TERM

2.1 The term of this Agreement commences on September 1, 2019 and terminates on August 31, 2020.

2.2 UTHSCSA acknowledges that CITY has projected costs for this Agreement and that CITY expects to pay all obligations of this Agreement from projected revenue sources, but that all obligations of CITY are subject to funding from the United States Department of Health and Human Services (HHS) and annual appropriation by the Texas Health and Human Services. Accordingly, if HHS should fail to appropriate sums to pay any of CITY's obligations under the terms of this Agreement this Agreement shall terminate upon thirty (30) days written notice to UTHSCSA and neither UTHSCSA nor CITY shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. Payment for services performed by UTHSCSA through the effective date of termination shall be made pursuant to Article VI herein.

ARTICLE III.

DESIGNATED REPRESENTATIVES

3.1 UTHSCSA hereby appoints Kevin Donly, DD.S., M.S., Chairman of the Department of Developmental Dentistry, as its designated representative with regard to the services to be performed herein. UTHSCSA may change its designated representative at any time and must provide CITY with written notice of the change.

3.2 CITY hereby appoints Jennifer M. Bankler, DDS, Dental Clinical Director, San Antonio Metropolitan Health District, as its designated representative with regard to the services to be performed herein. CITY may change its designated representative at any time and must provide UTHSCSA with written notice of the change.

ARTICLE IV.
CITY'S OBLIGATIONS

- 4.1 In conjunction with its public health dental program activities, Metro Health will perform Title V Grant eligibility screening and program intake documentation for children in need of dental care.
- 4.2 Metro Health will refer eligible children to UT Health Science Center School of Dentistry, Pediatric Dental Clinics for further evaluation and treatment when appropriate.
- 4.3 CITY agrees to pay UTHSCSA for services provided as outlined in the HHSC Title V Dental Grant Fee Schedule.

ARTICLE V.
UTHSCSA'S SERVICES

- 5.1 Upon referral by Metro Health, UTHSCSA shall:
- 5.1.1 Provide diagnostic and preventive care services as set out in the HHSC Title V Dental Grant Fee Schedule for each referred child and determine treatment plan of care;
 - 5.1.2 Determine the family's income eligibility for sliding scale/reduced fees based on the established protocol at the Ricardo Salinas Dental Clinic;
 - 5.1.3 Waive all co-payments for procedures covered by the program and assess fees for non-covered procedures based on the established sliding scale based on family income;
 - 5.1.4 Provide required dental treatment for each child in an outpatient setting through the Ricardo Salinas Dental Clinic and/or other facilities designated by the UT Health Science Center School of Dentistry for pediatric dental patients;
 - 5.1.5 Communicate on an ongoing basis with Metro Health Case Managers regarding treatment plan/plan of care for each referred child through the program;
 - 5.1.6 Adhere to all subcontractor requirements for HHSC Title V Dental Grant subcontractors and provide related documentation required for inclusion in any report concerning the HHSC Title V Dental Grant.
- 5.2 UTHSCSA understands and agrees that the services to be provided under this agreement are expected to have a total value of \$271,064.00, but that the cumulative total for all invoices presented by UTHSCSA under this Agreement shall not exceed a total amount of \$216,852.00.
- 5.3 All work performed by UTHSCSA hereunder shall be performed to the reasonable

satisfaction of the Director. CITY shall be under no obligation to pay for any work performed by UTHSCSA, which is not reasonably satisfactory to Director. CITY shall have the right to terminate this Agreement, in whole or in part, should UTHSCSA's work not be satisfactory to Director;

5.4 UTHSCSA and the Director or his designee shall engage in an annual quality assurance evaluation for the purpose of: 1) maintaining the highest standards of clinical care, appropriate for the public health program; 2) ensuring compliance with clinical licensure regulations 3) other matters of interest raised by UTHSCSA or the Director.

5.5 UTHSCSA agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the FY20 Statement of Work and HHSC Uniform Terms and Conditions for the Title V Dental Grant.

ARTICLE VI.
CONSIDERATION

6.1 In consideration of UTHSCSA's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services, activities, duties and responsibilities set forth in this agreement, CITY agrees to pay UTHSCSA as set out below:

6.1.1 CITY shall pay an amount up to a maximum of \$216,852.00.

6.1.2 The maximum amount to be paid by CITY and the cumulative total of all invoices from UTHSCSA shall not exceed the amount of \$216,852.00.

6.2 UTHSCSA shall submit patient receipts/encounter forms with detailed description of services rendered within 30 days from the date of service. CITY shall pay UTHSCSA within thirty days of receipt of the invoice.

ARTICLE VII.
PAYMENT FOR SERVICES

7.1 UTHSCSA shall issue a monthly invoice to CITY addressed to:

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

[Email: ap@sanantonio.gov](mailto:ap@sanantonio.gov)

Such invoice shall separately detail the amount of compensation due for services. CITY shall make its payment within thirty (30) days of receipt of each invoice. If any amount set out in any invoice is disputed by CITY, then CITY agrees to notify UTHSCSA in writing of the disputed amount, and the basis for the dispute, within fifteen (15) days of receipt of such invoice. The Parties agree that only the disputed amount may be retained by CITY until the disputed matter is resolved, and that the undisputed balance must be paid in accordance with the terms of this

Section.

7.2 CITY and UTHSCSA will determine fees for additional services by mutual agreement through an amendment(s) of this Agreement. In the event the Parties agree that UTHSCSA is to provide additional services and also agree as to the basis for calculating the compensation for such services, the CITY agrees to pay for such services in accordance with the terms of this Agreement.

ARTICLE VIII.
TERMINATION

8.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term or earlier termination pursuant to any of the provisions hereof.

8.2 **TERMINATION BY NOTICE:** The Agreement may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

8.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this Agreement, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this Agreement shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

8.4 **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.

8.5 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), UTHSCSA shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this Agreement through the effective date of termination.

8.6 In the event that through action or no action initiated by the City of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of this contract and has no funds to do so from other sources, this contract may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send UTHSCSA written notice stating that the City of San Antonio failed to appropriate funds. Lack of funding is not and shall not be considered a breach of this Agreement.

ARTICLE IX.
INDEPENDENT CONTRACTOR

9.1 It is expressly understood and agreed that UTHSCSA shall be responsible for its respective

acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

9.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.

9.3 Any and all of the employees of UTHSCSA, wherever located, while engaged in the performance of any work required by the CITY under this Agreement shall be considered employees of UTHSCSA only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the UTHSCSA.

ARTICLE X.
INSURANCE

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

ARTICLE XI.
NO INDEMNIFICATION BY PARTIES

11.1 UTHSCSA and CITY acknowledge they are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section I 01.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accidents, injuries or deaths.

ARTICLE XII.
STATISTICS AND DOCUMENTATION

12.1 CITY and UTHSCSA will follow medical records standards in exchanging client care information. Both Parties shall comply with applicable confidentiality statutory provisions and rules, including the Health Insurance Portability and Accountability Act (HIPAA) requirements and state medical privacy laws.

ARTICLE XIII.
AUDIT

13.1 UTHSCSA shall keep at all times during the term of this Agreement complete financial records documenting the services provided to CITY. Authorized representatives of CITY shall have the right to examine all financial records of UTHSCSA pertaining to the services rendered for CITY as necessary for the City to meet the requirements of federal awards and subawards as set out in federal regulations. The written request for an audit, which shall list with specificity all records CITY desires to examine during a particular audit, must be submitted to the Director of External Relations for the City of San Antonio and the UTHSCSA at least ten (10) days prior to the requested date of examination by CITY representatives. CITY agrees to provide UTHSCSA with a copy of CITY's

final report regarding each audit within thirty (30) days of completion. UTHSCSA shall maintain all pertinent financial records for the term of this Agreement and for four (4) years after termination of this Agreement, or as required by law, whichever is longer.

ARTICLE XIV.
NOTICES

14.1 All notices to be given under this Agreement shall be in writing and shall either be personally delivered or sent by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below or at such other address as the Parties may designate.

If intended for City to:

City Clerk	AND	City of San Antonio
City of San Antonio		San Antonio Metropolitan Health District
P.O. Box 839966		Attn: Director
San Antonio, Texas 78283-3966		111 Soledad, Suite 1000
		San Antonio, Texas 78205

If intended for UTHSCSA to:

The University of Texas Health Science		
Center at San Antonio		
School of Dentistry	AND	The Office of Sponsored Programs
Department of Developmental Dentistry		7703 Floyd Curl Drive, MSC 7828
Attn: Dr. Kevin Donly, Chair		San Antonio, TX 78229-3900
San Antonio, Texas 78220-3900		Attn: Director

ARTICLE XV.
ASSIGNMENT

15.1 Neither Party may assign its rights, privileges or obligations under this Agreement, in whole or in part, without the written consent of the other Party. Any attempt to assign without such approval shall be void.

ARTICLE XVI.
SPECIAL PROVISIONS

UTHSCSA acknowledges that funds for this agreement are from the HHSC Title V Dental Grant. UTHSCSA agrees to comply with all HHSC terms and conditions associated with said funds as directed by the City or as required by this Agreement, including but not limited to:

16.1 Access to records, books and documents

In addition to any right of access arising by operation of law, UTHSCSA and any of

UTHSCSA'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, UTHSCSA 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. UTHSCSA 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.

16.2 SAO Audit

UTHSCSA 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. UTHSCSA agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. UTHSCSA will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through UTHSCSA and the requirement to cooperate is included in any Subcontract it awards.

16.3 Intellectual Property

HHSC and City will retain ownership, all rights, title, and interest in and to, their respective pre-existing Intellectual Property. A license to either Party's pre-existing Intellectual Property must be agreed to under this or another contract.

UTHSCSA grants to the HHSC and the State of Texas a royalty-free, paid up worldwide, perpetual, non-exclusive, non-transferable license to use any Intellectual Property invented or created by UTHSCSA, UTHSCSA contractor, or a subcontractor in the performance of the Project. UTHSCSA will require its contractors to grant such a license under its contracts.

16.4 Response/compliance with audit or inspection findings

UTHSCSA must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction

will be at UTHSCSA or its Subcontractor's sole expense. Whether UTHSCSA's action corrects the noncompliance will be solely the decision of the HHSC.

As part of the Services UTHSCSA must provide to HHSC upon request a copy of those portions of UTHSCSA's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

16.5 Conduct and Removal

While performing the Project, UTHSCSA must comply with applicable Contract terms, State and Federal rules, regulations, HHSC's requests regarding personal and professional conduct; and otherwise conduct themselves in a businesslike and professional manner.

ARTICLE XVII. COMPLIANCE WITH LAWS AND ORDINANCES

17.1 The Parties hereby agree to comply with all federal, state, and local laws and ordinances applicable to the work or services to be performed under this Agreement.

ARTICLE XVIII. LICENSES/CERTIFICATIONS

18.1 UTHSCSA represents and certifies that UTHSCSA faculty 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.

18.2 UTHSCSA faculty and any other person designated to provide services must carry an original of his/her license/credentials and shall present said license/credentials for posting at their designated work station under this agreement.

18.3 UTHSCSA faculty and any other person designated to provide services must, where applicable, have current CPR certification and have a hepatitis B vaccination or be made aware of its availability and has declined it.

ARTICLE XIX. TEXAS LAW TO APPLY

19.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas. The Parties agree that venue for any action is proper in Bexar County, Texas.

ARTICLE XX. PRIOR AGREEMENTS SUPERSEDED

20.1 This Agreement constitutes the sole and only agreement of the Parties and supersedes all prior understandings or written or oral agreements between the Parties regarding the subject matter of the Agreement.

ARTICLE XXI. AMENDMENT

21.1 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the CITY and UTHSCSA. The Director may execute contract amendments on behalf of CITY in the following circumstances a) no cost extensions up to one year, b) modifications to the scope of service listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and c) changes in state or federal regulations mandated by the funding agency.

ARTICLE XXII.
MULTIPLE COUNTERPARTS

22.1 This Agreement may be executed in several counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and such separate counterparts shall constitute but one and the same instrument.

ARTICLE XXIII.
PARTIES BOUND

23.1 This Agreement shall be binding upon and inure only to the benefit of the Parties hereto and their respective successors and assigns where permitted by this Agreement. There are no third-party beneficiaries to this Agreement.

ARTICLE XXIV.
CONFLICT OF INTEREST

24.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

24.2 UTHSCSA represents and certifies as follows:

- (i) UTHSCSA and its officers, employees and agents are neither officers nor employees of the City.
- (ii) UTHSCSA has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

24.3 UTHSCSA acknowledges that City's reliance on the above representations and certifications is reasonable.

**ARTICLE XXV.
DEBARMENT**

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

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

**ARTICLE XXVI.
LEGAL CONSTRUCTION**

26.1 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, this the _____ day of _____.

CITY OF SAN ANTONIO

**THE UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT SAN ANTONIO
VIN No. 1018367**

Colleen M. Bridger, MPH, PhD
Director
San Antonio Metropolitan Health District

Adriana Segura, D.D.S.
Interim Dean
UTHSCSA School of Dentistry

Approved as to Form:

Kevin Donly, D.D.S., M.S.,
Chair, Department of Developmental Dentistry
UTHSCSA School of Dentistry

City Attorney