

MEMORANDUM OF AGREEMENT

between

**The City of San Antonio on behalf of the San
Antonio Metropolitan Health District**

and

**Goodwill Industries of San Antonio
for the
The Goodwill/Good Health Work Project**

The Metro Health Work Project

PART I. INTRODUCTION

Section 1. Parties to and Purpose of this Memorandum of Agreement

This document serves as a Memorandum of Agreement (MOA) between the City of San Antonio on behalf of the San Antonio Metropolitan Health District (SAMHD), hereinafter referred to as the "City," and Goodwill Industries of San Antonio, hereinafter referred to as "Goodwill Industries," for the Metro Health Work Project, hereinafter referred to as the "Goodwill/Good Health Work Project."

The purpose of this MOA is to establish a cooperative and mutually beneficial relationship between the parties and to set forth the relative responsibilities of the parties insofar as they relate to the Goodwill/Good Health Work Project. This MOA serves to articulate the roles the City and Goodwill Industries will play in the provision of services to the Goodwill/Good Health Work Project.

Section 2. Background

The mission of the SAMHD is to provide leadership and services for San Antonio and Bexar County to prevent illness and injury, promote healthy behaviors, and protect against health hazards

Goodwill Industries enhances the dignity and quality of life of individuals, families, and communities by eliminating barriers to opportunity and helping people in need reach their fullest potential through the power of work. Goodwill Industries is a leading nonprofit provider of education, training, and career services for people with disadvantages, such as welfare dependency, homelessness, and lack of education or work experience, as well as those with physical, mental and emotional disabilities.

Section 3. Description of Project Goal

The goals of the Goodwill/Good Health Work Project are to eliminate periodic and seasonal data entry backlogs of immunization and other records of the SAMHD and provide assistance with a variety of clerical duties within the SAMHD in order to provide a real work experience for individuals transitioning to the workforce.

Section 4. Benefits to Parties

Both the City and Goodwill Industries have a vested interest in improving the lives, welfare and productivity of disadvantaged individuals in the community.

Section 5. Definitions

Eligible Participant is a constituent of Goodwill Industries that is eligible for participation in the Goodwill/Good Health Work Project, but not yet assigned to the Goodwill/Good Health Work Project.

Participant is a constituent of Goodwill Industries that has been selected for participation in the Goodwill/Good Health Work Project.

Intervention is a face to face meeting between a Goodwill Industries case manager and the Participant and may include a City employee assigned to oversee work of Participant, to discuss and attempt to resolve work related issues brought up by the City. An Intervention may occur when a Participant performs or behaves in an unsatisfactory manner.

Section 6. Period of MOA

This MOA will commence upon execution of this agreement and shall end unless earlier terminated as herein provided on January 1, 2018.

This MOA may be terminated by either party upon thirty (30) days written notice.

PART II. ROLES AND RESPONSIBILITIES

Section 1. Roles and Responsibilities of both parties

- a. Each party shall handle their own activities and utilize their own resources including expenditure of their own funds in pursuing their separate activities.
- b. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
- c. Each party will actively participate in project activities to ensure that project goals are attained.
- d. Each party will fulfill individual roles as identified by the agreement
- e. Each party will track performance-based outcomes.
- f. Office space for the Goodwill/Good Health Work Project may be provided by either the City or Goodwill Industries, or a combination of both. Existing Office space will be utilized. The City will not incur any additional costs for office space if Goodwill Industries' office space is used.
- g. Either party may remove any Participant that is identified by either City or Goodwill Industries as possibly posing a security risk to the confidentiality of immunization or other City records.

Section 2. City's Roles and Responsibilities

- a. City will define and communicate minimum security requirements and skill set for Participants.
- b. City will provide office equipment for Participants.
- c. City will provide Participants information on SAMHD data entry procedures, confidentiality policies, security policies and administrative policies.
- d. City will communicate any Participant issues to Goodwill Industries' case manager.
- e. City may change the minimum security requirements and skill set for Participants at any time provided 10 day notice is given to Goodwill Industries.
- f. The parties agree that City may refuse an eligible Participant for no cause.
- g. City will facilitate collaboration among the parties.
- h. City will provide reasonable work place accommodations.
1. City will coordinate resources.
- J. City may request an intervention.
- k. City's Division Management Analyst or designee will provide Participants direction and attendance tracking.

Section 3. Goodwill Industries' Roles and Responsibilities

- a. Goodwill Industries will operate as the lead for the Goodwill/Good Health Work Project.
- b. Goodwill Industries will identify up to a total of 14 qualified eligible Participants from among their constituents for participation in the Goodwill/Good Health Work Project of which up to 10 will be designated solely for immunization data entry services and up to four Participants will be designated for other general clerical duties. Goodwill Industries acknowledges that Participants under this MOA are not City employees nor does City guaranty future employment of any Participants.
- c. Goodwill Industries will compensate Participants at a rate determined by Goodwill Industries. Goodwill Industries agrees that the City will not be charged for any services performed by the Participants in connection with the activities covered by this MOA or have any obligation to pay salaries, compensation or expenses of any Participant under this agreement.
- d. Goodwill Industries will screen individuals for minimum skill set.
- e. Goodwill Industries will provide the background check information to the City's Human Resource Department.

- f. Goodwill Industries will provide an intervention or assist in investigations when requested by the Director of SAMHD or designee.
- g. Goodwill Industries will provide notice to the City when a Participant ends his or her participation in the Goodwill/Good Health Work Project, and when a replacement Participant will be available.

Section 4. Participants' Roles and Responsibilities

- a. Participants will provide data entry, to include but not limited to, data entry of SAMHD immunization records as well as general office and/or basic accounting services in accordance with SAMHD policies and procedures and other duties as further outlined in Part III, Section 3 below.
- b. All Participants shall sign and agree to comply with all applicable confidentiality policies, security policies, administrative policies and privacy training as determined by City.
- c. All Participants shall maintain confidentiality of health records and information in accordance with all applicable federal, state, local laws and City policies.
- d. All Participants shall provide reasonable notice to the City when unable to attend work.
- e. All Participants shall be responsible for using City resources, including Internet access in an appropriate and lawful manner and in accordance with all City policies. Participant use of office equipment, including Internet access, shall be restricted to legitimate Goodwill/Good Health Work Project related duties.

PART III. PERFORMANCE MEASURES AND STANDARDS

Section 1. Security Requirements

Eligible Participants must disclose any criminal convictions and undergo a criminal background check performed by Goodwill Industries in accordance with City Human Resource Department policies.

Due to the confidentiality and sensitivity of health records and information, individuals with a criminal conviction or record involving any of the following crimes are excluded as Participants in the Goodwill/Good Health Project:

- a. Child molestation or abuse
- b. Domestic Violence
- c. Identity Theft
- d. Any other criminal activity that may be regarded as a threat to the privacy of an individual's personal information as determined by City.

Section 2. Participant Skill Requirements

Section 2.1- General Participant Skill Requirements

- a. Ability to exercise independent initiative and judgment.
- b. Ability to work cooperatively with City employees and the public.
- c. Ability to lift a minimum of 35 lbs.
- d. Ability to work between the hours of 7:45 a.m. to 4:30p.m. Monday through Friday at a location to be determined.
- e. Knowledge of principles and procedures of record keeping and filing.
- f. Ability to verbally communicate clearly and effectively.
- g. Ability to perform routine clerical work.
- h. Bilingual language skills are preferable.

Section 2.2 - Immunization Data Entry Skill Requirements

- a. Ability to type 25 words per minute.
- b. Ability to learn related material primarily through oral instruction and observation to effectively perform duties. This learning takes place mainly in a training setting within the first 2 days.
- c. Ability to comprehend and make inference from material written in the English language.
- d. Ability to establish priorities for duties based upon such factors as need for immediate action, objectives and schedules.

Section 3. Participants' duties

- a. Performs a variety of clerical duties including data entry, to include but not limited to, data entry of SAMHD immunization records, filing, distributing mail, answering telephones, taking messages, and basic accounting.
- b. Responds to inquiries about department services and activities.
- c. Performs related duties and fulfills responsibilities as required.

Section 4. Standards- Immunization Data Entry

- a. Experience in keyboarding and data entry.
- b. After initial training period, Participant should be able to enter a minimum of 10-13 records per hour with an 80% accuracy rating.

- c. Throughout the period of participation, the Participant should be able to enter a minimum of 15-20 records per hour with a 95% accuracy rating.

PART IV. INDEMNIFICATION

GOODWILL INDUSTRIES 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 GOODWILL INDUSTRIES' activities under this Agreement, including any acts or omissions of GOODWILL INDUSTRIES, any Participant, agent, officer, director, representative, employee, consultant or subcontractor of GOODWILL INDUSTRIES, 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 GOODWILL INDUSTRIES 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. GOODWILL INDUSTRIES shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or GOODWILL INDUSTRIES known to GOODWILL INDUSTRIES related to or arising out of GOODWILL INDUSTRIES' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GOODWILL INDUSTRIES' cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GOODWILL INDUSTRIES of any of its obligations under this paragraph.

Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by GOODWILL INDUSTRIES in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. GOODWILL INDUSTRIES shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If GOODWILL INDUSTRIES fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and GOODWILL INDUSTRIES shall be liable for all costs incurred by City. 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.

Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of GOODWILL INDUSTRIES, 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 GOODWILL INDUSTRIES or any subcontractor under worker's compensation or other employee benefit acts.

PART V. INSURANCE

- a. Prior to the commencement of any work under this Memorandum of Agreement, Goodwill Industries shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "The Goodwill/Good Health Work Project The Metro Health Work Project" 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 Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and 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.
- b. 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 whereupon City may incur increased risk.
- c. Goodwill Industries' financial integrity is of interest to the City; therefore, subject to Goodwill Industries' right to maintain reasonable deductibles in such amounts as are approved by the City, Goodwill Industries shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Goodwill Industries' sole expense, insurance coverage written on an occurrence basis, 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:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability 	For bodily Injury and property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

- d. 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 endorsements thereto, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Goodwill Industries shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Goodwill Industry shall pay any costs incurred resulting from said changes.

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

- e. Goodwill Industries 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 auto liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- f. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Goodwill Industries shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Goodwill Industries' 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.
- g. Nothing herein contained shall be construed as limiting in any way the extent to which Goodwill Industries may be held responsible for payments of damages to persons or property resulting from Goodwill Industries' or its Participant Workers' performance of the work covered under this Agreement.
- h. It is agreed that Goodwill Industries' 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.
- i. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

PART VI. INDEPENDENT CONTRACTOR

Nothing contained herein shall be deemed to create any relationship other than that of an independent contractor between the Parties. Under no circumstances shall either Party, its directors, officers, employees, agents, successors or assigns, be deemed employees, agents, partners, successors, assigns or legal representatives of the other Party.

PART VII. RECORDS

Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the limitations imposed thereunder regarding transfer of information, any and all writings, documents or information in whatsoever form and character produced by Goodwill Industries 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 Goodwill Industries. Goodwill Industries 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. Goodwill Industries further agrees to comply with the Health Insurance Portability and Accountability Act (HIPAA). Goodwill Industries has entered into a Business Associate Agreement with the City that is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.

a. Goodwill Industries 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.

b. In accordance with Texas law, Goodwill Industries 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, Goodwill Industries agrees that no such local government records produced by or on the behalf of Goodwill Industries pursuant to this Contract shall be the subject of any copyright or proprietary claim by Goodwill Industries.

PART VIII. NOTICES AND ADDRESSES

a. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given when either delivered in person, or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested, addressed to the appropriate party at the following address or to such other address as either party may from time to time designate in writing:

If to Goodwill Industries of San Antonio:

Clarke Mosley, GCDFI,
Director of People Services
Goodwill Industries of San Antonio
406 W. Commerce
San Antonio, TX 78207

or

Marla Jackson
President / CEO
Goodwill Industries of San Antonio
406 W. Commerce
San Antonio, TX 78207

If to City:

City of San Antonio
Attn: Director
San Antonio Metropolitan Health District
332 West Commerce Street
San Antonio, Texas 78205

- b. Notice of changes of address by either Party must be made in writing and delivered to the other Party's last known address within five (5) business days of such change.

PART IX. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Part XII. Amendments.

PART X. ASSIGNMENT

Neither this Agreement nor any rights, duties or obligations hereunder shall be assignable by either Party without the prior written consent of the other Party. Any such attempt at assignment without prior approval shall be void.

PART XI. TEXAS LAW TO APPLY

This Agreement is performable in Bexar County, Texas, and the validity of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas. The parties further agree that venue for any legal action, claim or dispute arising under this Agreement will be in Bexar County, Texas.

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PART XII. AMENDMENTS

No amendment, supplementation, 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 parties hereto.

PART XIII. LEGAL CONSTRUCTION

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

EXECUTED and AGREED to this ____ day of _____, 2015.

Goodwill Industries of San Antonio

City of San Antonio

Marla Jackson, President/CEO
Goodwill Industries of San Antonio

Thomas L. Schlenker, M.D., M.P.H.
Director of Health
San Antonio Metropolitan Health District

Approved as to Form:

City Attorney

Attachment I - Business Associate Agreement

**WITNESSETH:
HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio (“Covered Entity”), and Goodwill Industries of San Antonio, a Business Associate (“BA”).

WHEREAS, the City of San Antonio and BA have entered into a Contract (“Service Contract”), whereby BA provides data entry 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”) 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) “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.
 - (2) “Individual” shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
 - (3) “Parties” shall mean Covered Entity and BA.
 - (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.
 - (5) “Protected Health Information” or “PHI” shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.
 - (6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
 - (7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

- (8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

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 that BA becomes aware of;
- (5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity 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 to protect such information;
- (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 of the U.S. Department of Health and Human Services 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 of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document such 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) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

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. 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.
- (2) 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).
- (3) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 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 Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) The term of this Agreement shall commence on the date on which it is fully executed. 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 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 of the U.S. Department of Health and Human Services.
 - (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 such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.
- 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 SERVICE AGREEMENTS, 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 or 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 Business Associate.
- 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 Contracts 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.

EXECUTED to be effective _____, by the City of San Antonio, signing by and through its program manager.

Health Care Provider:
CITY OF SAN ANTONIO
San Antonio Metropolitan Health District

Business Associate:
GOODWILL INDUSTRIES OF SAN ANTONIO

By: _____
Print Name: Thomas L. Schlenker, MD, MPH
Print Title: Director of Health

By: _____
Print Name: Marla Jackson
Print Title: President/CEO

APPROVED AS TO FORM:

City Attorney