

**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 (“SAMHD”) pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_ 2013, and the TEXAS DEPARTMENT OF STATE HEALTH SERVICES (DSHS) on behalf of its Center for Health Statistics. CITY and DSHS shall collectively be referred to as “the Parties.”

**WITNESSETH**

WHEREAS, the Texas Behavioral Risk Factor Surveillance System (BRFSS) is a telephone survey of adults over 18 years of age in Texas and is conducted annually by the DSHS; and

WHEREAS, the BRFSS survey captures the health behaviors as well as the health conditions of residents and its data is used as population data for all the programs and many agencies and local health departments in Texas including San Antonio for planning and implementing health programs; and

WHEREAS, while the number of respondents for DSHS’ BRFSS for 2014 would be 500 as per the Centers for Disease Control and Prevention (CDC) funding and guidelines, getting a higher number of respondents would provide validity for subpopulations and disparities within zip codes can be identified; and

WHEREAS, the SAMHD is proposing to fund an additional 1,000 BRFSS surveys for Bexar County in the 2014 Texas BRFSS and

WHEREAS, in 2010 and 2012, data from over 1500 respondents was collected by the SAMHD via the Bexar County Community Putting Prevention to Work surveys and the data is being used extensively by SAMHD; and

WHEREAS, the SAMHD relies extensively on BRFSS data as it provides data for all the agencies in San Antonio as the rationale for program planning, grant requests and to educate the public; and

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

**ARTICLE I.**  
**PURPOSE**

1.1 The purpose of this Agreement is to establish the terms and conditions under which DSHS will oversample by 1,000 surveys in Bexar County in the 2014 Texas BRFSS surveys in conjunction with the needs of the SAMHD. This Agreement shall also establish the CITY's and DSHS' obligations, costs, and the manner and method of payment for provided services.

**ARTICLE II**  
**DEFINITIONS**

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

“CITY” is defined in the preamble of this Agreement and includes its successors and assigns.

“Director” shall mean the Director of the SAMHD.

**ARTICLE III**  
**TERM**

3.1 The term of this Agreement commences on November 1, 2013 and terminates on June 30, 2015. Either Party may terminate the contract by giving thirty (30) days written notice to the other Party.

3.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, CITY retains the right to terminate this Agreement at the expiration of each of CITY's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

3.3 DSHS further agrees and understands that the CITY expects to pay obligations of this Agreement from grant funding from the DSHS. Accordingly, if CITY does not receive grant funding in a sufficient amount to pay any of CITY's obligations under the terms of this Agreement, then this Agreement shall terminate and neither CITY nor DSHS shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

**ARTICLE IV**  
**DESIGNATED REPRESENTATIVES**

4.1 DSHS hereby appoints Rebecca Wood, Texas BRFSS Coordinator as its designated representative with regard to the services to be performed herein. DSHS may change its designated representative at any time and must provide CITY with written notice of the change pursuant to Article XV, Section 15.1.

4.2 CITY hereby appoints Dr. Anil Mangla, SAMHD Chief Epidemiologist, 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 DSHS with written notice of the change pursuant to Article XV, Section 15.1.

**ARTICLE V**  
**SCOPE OF SERVICES**

5.1 DSHS will conduct BFRSS surveys of the SAMHD target area to include designing a questionnaire in consultation with SAMHD staff, conducting interviews, collecting the data and analyzing the results according to the following specific requirements for each BFRSS:

5.1.1 DSHS shall complete the work and provide the CITY with a complete 2014 Texas BRFSS Public Use Data File which will include at least 1,500 completed BRFSS interviews conducted for the BRFSS survey by June 30, 2015.

5.1.2 DSHS will oversample Bexar County by an additional 1,000 surveys in the Texas 2014 BRFSS.

5.1.3 The questionnaire is the 2014 BRFSS conducted annually by DSHS.

5.1.4 The 2014 BRFSS questionnaire shall include the addition of three questions from the optional diabetes module as specified by CDC.

5.1.5 The interviews shall conform to the BRFSS sampling and calling protocols of DSHS and CDC guidelines.

5.1.6 DSHS will provide the CITY an electronic file containing data tables and analysis of responses of all survey respondents by June 30, 2015 or when the final the data set is received from CDC.

5.2 All work performed by DSHS hereunder shall be performed to the satisfaction of the Director. The determination made by the Director shall be final, binding, and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by DSHS, which is not satisfactory to Director. CITY shall have the right to terminate this Agreement, in whole or in part, should DSHS' 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.

**ARTICLE VI**  
**CONSIDERATION**

6.1 In consideration of DSHS’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 DSHS as set out below:

City agrees to pay DSHS an amount not to NINETY FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$95,800.00) as total compensation for DSHS’ services over the term of this contract.

6.2 The payments due to DSHS are as follows, upon submission of invoices to the City:

Time line	Activity	Amount
December 15, 2013	Provide to CITY the modified 2014 Texas BRFSS questionnaire to include additional questions related to Diabetes.	\$20,000.00
March 31, 2014	Complete 350 surveys	\$ 25,000.00
June 30, 2014	Complete 350 surveys	\$ 25,000.00
September 30, 2014	Complete 300 surveys	\$25,800.00

6.3 Payment by the City shall be made to DSHS within thirty (30) days of receipt of the submitted invoice statements.

**ARTICLE VII**  
**PAYMENT FOR SERVICES**

7.1 DSHS shall issue invoices to CITY addressed to the San Antonio Metropolitan Health District, at 332 West Commerce, Suite 300, San Antonio, Texas 78205. 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 DSHS 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 DSHS will determine fees for additional services by mutual agreement through an amendment(s) of this Agreement. In the event the Parties agree that DSHS 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**  
**OWNERSHIP OF PROJECT MATERIALS**

8.1 CITY reserves the non-exclusive right, including each and every copyright, to use and reproduce all reports, data and materials delivered pursuant to this Agreement (the Project Materials) and reserves the right to authorize others to use or reproduce such Project Materials. CITY understands that under DSHS policies, copyright ownership in any works authored by DSHS's faculty belongs to that author and not DSHS. Therefore, DSHS does not exercise any authority to bind its faculty to any copyright use or transfer agreement. CITY also acknowledges that local governmental records are public records and as such, DSHS cannot transfer or otherwise confer any right to CITY any rights in these materials. Nothing herein is intended nor shall it be construed to prohibit DSHS or its faculty access to the database, or to transfer any ownership in DSHS's best practice and benchmarking information to the CITY.

**ARTICLE IX**  
**TERMINATION**

9.1 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.

9.2 **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 a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

9.3 **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.

9.4 **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.

9.5 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), DSHS 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.

9.6 In the event that through action or no action initiated by the CITY, 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 DSHS written notice stating that the CITY failed to appropriate funds. Lack of funding is not and shall not be considered a breach of this Agreement.

**ARTICLE X**  
**INDEPENDENT CONTRACTOR**

10.1 It is expressly understood and agreed that DSHS 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.

10.2 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.

10.3 Any and all of the employees of DSHS, wherever located, while engaged in the performance of any work required by the CITY under this Agreement shall be considered employees of DSHS 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 DSHS.

**ARTICLE XI**  
**INSURANCE**

11.1 DSHS 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 XII**  
**NO INDEMNIFICATION BY PARTIES**

12.1 DSHS 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 101.001 *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 XIII**  
**STATISTICS AND DOCUMENTATION**

13.1 CITY and DSHS will follow medical records standards in exchanging client care information. The parties shall comply with applicable confidentiality statutory provisions and rules, including the Health Insurance Portability and Accountability Act (HIPAA) requirements.

**ARTICLE XIV**  
**AUDIT**

14.1 DSHS 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 DSHS pertaining to the services rendered for CITY. 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 DSHS at least ten (10) days prior to the requested date of examination by CITY representatives. CITY agrees to provide DSHS with a copy of City's final report regarding each audit within thirty (30) days of completion. DSHS 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 XV**  
**NOTICES**

15.1 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 of San Antonio  
San Antonio Metropolitan  
Health District, Director  
332 W. Commerce, Suite 307  
San Antonio, TX 78205

If intended for DSHS, to:

Texas Department of State Health Services  
Center for Health Statistics, MC 1898  
Attn: Rebecca Wood  
P.O. Box 149347  
Austin, TX 78714-9347

**ARTICLE XVI**  
**ASSIGNMENT**

16.1 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 XVII**

[This section intentionally left blank]

**ARTICLE XVIII**  
**COMPLIANCE WITH LAWS AND ORDINANCES**

18.1 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 XIX**  
**LICENSES/CERTIFICATIONS**

19.1 DSHS warrants and certifies that DSHS 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.

**ARTICLE XX**  
**TEXAS LAW TO APPLY**

20.1 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 XXI**  
**PRIOR AGREEMENTS SUPERSEDED**

21.1 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 XXII**  
**AMENDMENT**

22.1 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 DSHS. 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 XXIII**  
**MULTIPLE COUNTERPARTS**

23.1 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 XIV**  
**PARTIES BOUND**

24.1 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 XXV**  
**LEGAL CONSTRUCTION**

25.1 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 \_\_\_\_\_, 2013.

**CITY OF SAN ANTONIO**

**TEXAS DEPARTMENT OF STATE  
HEALTH SERVICES**

\_\_\_\_\_  
**Thomas Schlenker, M.D., M.P.H.**  
**Director, San Antonio Metropolitan  
Health District**

\_\_\_\_\_  
**Ed House**  
**Chief Operating Officer**

**APPROVED AS TO FORM:**

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