

ORDINANCE 2021 - 02 - 04 - 0064

AUTHORIZING AN AGREEMENT WITH THE UNIVERSITY OF TEXAS AT SAN ANTONIO FOR THE IMPLEMENTATION OF AN OPIOID SUBSTANCE USE EVIDENCE-BASED PRACTICE INTERVENTION AND PROVIDER EDUCATION FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S STD/HIV PREVENTION PROGRAM IN AN AMOUNT UP TO \$90,000.00 FOR AN INITIAL TERM ENDING AUGUST 30, 2021 WITH OPTIONS TO RENEW FOR FOUR ADDITIONAL ONE-YEAR TERMS, FOR A TOTAL AMOUNT UP TO \$450,000.00 INCLUSIVE OF RENEWALS.

* * * * *

WHEREAS, as the local health district for the City of San Antonio and Bexar County, the San Antonio Metropolitan Health District (Metro Health) provides HIV/STD testing, treatment and linkage to care services to community members; and

WHEREAS, opioid substance use (OSU) and HIV infection have a syndemic relationship; and

WHEREAS, people living with HIV are at risk for opioid-related complications including opioid misuse, addiction, and overdose; and

WHEREAS, according to the Texas Department of State Health Services, OSU has continued to increase in Bexar County and contributes to more than 10% of HIV exposures, with 5.6% identified specifically among men who have sex with men and people who inject drugs; and

WHEREAS, Metro Health seeks to enter into an agreement with the University of Texas at San Antonio (UTSA) for UTSA to provide an OSU evidence-based intervention to participants with tailored health education messages and/or materials that address each participant's level of risk and prevention needs and community education to pharmacists and providers as required under the Pathways to Prevention Project Grant funded by the Substance Abuse and Mental Health Services Administration; **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 negotiate and execute an agreement with the University of Texas at San Antonio for the implementation of an opioid substance use evidence-based practice intervention and provider education for the San Antonio Metropolitan Health District's STD/HIV Prevention Program in an amount up to \$90,000.00 for an initial term ending August 30, 2021, with options to renew without further Council action, for four additional one-year terms for a total amount up to \$450,000.00 inclusive of renewals. A copy of the agreement in substantially final form is attached hereto and incorporated herein

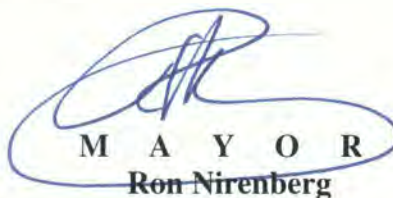
for all purposes as **Attachment I**. The execution authority granted by this Ordinance shall expire 60 days after the effective date.

SECTION 2. Fund 2201636083 entitled "PW to Prevention 21" Internal Order 136000000823 and General Ledger 5201040 are hereby designated for use in the accounting for the fiscal transaction in the execution of this contract up to an amount of \$90,000.00. Payment not to exceed the budgeted amount is authorized to UTSA upon issuance of a purchase order.

SECTION 3. 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 Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 4th day of February, 2021.


M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

February 04, 2021

Item: 18

File Number: 21-1132

Enactment Number:

2021-02-04-0064

Ordinance approving an agreement with the University of Texas at San Antonio for the implementation of an opioid substance use evidence-based practice intervention and provider education for the San Antonio Metropolitan Health District's STD/HIV Prevention Program for an initial term ending August 30, 2021 with options to renew for four additional one-year terms, and for a total amount up to \$450,000.00 inclusive of renewals. [Colleen M. Bridger, MPH, PhD, Assistant City Manager, Interim Director, Health]

Councilmember John Courage made a motion to approve. Councilmember Adriana Rocha Garcia seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Sandoval, Pelaez and Courage

Absent: 1 Perry

MH
02/04/2021
Item No. 18

ATTACHMENT I

STATE OF TEXAS §
§
COUNTY OF BEXAR §

CITY OF SAN ANTONIO
PROFESSIONAL SERVICES
AGREEMENT

This Professional Services Agreement (Agreement) is entered into between the City of San Antonio ("CITY"), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District ("Metro Health"), acting by and through its City Manager or designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____ 2021, and the University of Texas at San Antonio ("CONTRACTOR"), hereinafter collectively referred to as the "Parties."

WHEREAS, the U.S. Department of Health and Human Services' Pathways to Prevention Project's purpose is to: (1) provide HIV/STD/Viral Hepatitis testing; (2) provide opioid misuse prevention education to prevent Opioid Substance Use (OSU) and comorbidity of OSU and HIV community members, pharmacist and medical providers; (3) provide linkage to services to people living with HIV to HIV specialty and primary care service providers; and, (4) provide linkage to substance use treatment.

WHEREAS, CITY desires CONTRACTOR to provide evidenced-based practice (EBP) intervention to participants with tailored health education messages that address participants' level of risk and prevention needs and education to community members, including local providers, on the safe use of opioid medications for the City's STD/HIV Program; and

WHEREAS, these services are required by CITY STD/HIV Program's Pathways to Prevention Project; and

WHEREAS, the CONTRACTOR represents that it possesses the knowledge, ability, professional skills, and qualifications to perform this work in an expeditious and economical manner consistent with CITY's interests;

NOW THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, the parties agree as follows:

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 and assigns.

"Director" shall mean the director or interim director of Metro Health.

"Pathways to Prevention Project Grant" shall mean the U.S. Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA) Grant which provides funding for this Agreement.

I. TERM

1.1 The term of this Agreement shall commence on January 1, 2021 and end on August 30, 2021. Upon agreement of the parties and availability of funding, this Agreement may be renewed for four, one-year terms on the same terms and conditions. Renewals shall be in writing and signed by the Director without further action by the San Antonio City Council.

1.2 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this

Agreement from Pathways to Prevention Project 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 this Agreement will terminate and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

II. SCOPE OF SERVICES

2.1 CONTRACTOR agrees to provide the following services during the term of the agreement described in this Article II entitled Scope of Services in exchange for the compensation described in Article III Compensation:

2.1.1 CONTRACTOR will provide an evidence-based practice (EBP) intervention to 115 unduplicated participants with tailored health education messages and/or materials that address participant's level of risk and prevention needs that focuses on Opioid Substance Use (OSU) and comorbidity of OSU and HIV provided to individuals meeting at least one of the following criteria: (1) at-risk, racial/ethnic minority, youth and young adults, 13-24 years of age; (2) identify as men who have sex with men; and, (3) high-risk heterosexuals, commercial sex workers, people who inject drugs, and/or transgender.

2.1.2 CONTRACTOR will utilize digital technology (messaging, social media, websites and dating apps) and traditional marketing (radio, TV, billboards) to distribute prescription opioid substance use (OSU) and sexual health prevention education and testing services information.

2.1.3 CONTRACTOR will use this method to distribute resources so that community members will gain knowledge and skills needed to be successful in implementing safe prescription OSU.

2.1.4 CONTRACTOR will also provide education to 10 local pharmacies and providers utilizing the EBP, *GenerationRx*, to instruct providers on how to educate patients about the safe use of opioid medications.

2.1.5 CONTRACTOR will use the *GenerationRx* toolkit to provide patient waiting room videos, controlled substances handouts, and an "Opioid Checklist: Medication Guidelines for Patient Safety" that providers will be able to utilize to provide safe use opioid medication education.

2.2 CONTRACTOR agrees to provide any and all documentation required by the CITY for inclusion in any report concerning the CITY's Pathways to Prevention Project Grant. All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of 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 V. 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.

III. COMPENSATION TO CONTRACTOR

3.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Agreement, City agrees to pay CONTRACTOR a fee of NINETY THOUSAND DOLLARS (\$90,000.00) as total compensation, to be paid to CONTRACTOR as set out below:

3.2 Contractor shall submit monthly invoices for services in the amount of \$11,250.00 for Contractor fees by the 10th of each month throughout the term of this Agreement. Each monthly invoice shall include a monthly report for work completed during the previous period in accordance with the stated scope of work for the contract term described in Article II above and the amount due and owing.

3.3 CITY and CONTRACTOR agree that reimbursement for eligible services shall be made within thirty (30) days after the date on which CITY receives an invoice which will be submitted after submission, review and approval of all deliverables and services listed above, with appropriate documentation as required by CITY, from CONTRACTOR for said services.

3.4 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 3.1 above. Total payments to CONTRACTOR cannot exceed that amount set forth in section 3.1 above, without prior approval and agreement of all parties evidenced in writing and approved consistent with appropriate City policy.

3.5 It is expressly understood and agreed by the CITY and CONTRACTOR that CITY's obligations under this Agreement are contingent upon the actual receipt of adequate grant funds from the Pathways to Prevention Project Grant to meet the CITY's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If CITY does not receive adequate grant funds to pay obligations under this Agreement, then this Agreement shall terminate and neither CONTRACTOR nor CITY shall have any further obligations hereunder.

3.6 Final acceptance of work products and services require written approval by CITY. The approval official shall be Director. 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.

3.7 CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the Pathways to Prevention Project 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.

3.8 Invoices shall include Purchase Order number provided by City and submit via email to City's Accounts Payable inbox (Accounts.Payable@sanantonio.gov) and copy April Tejada (April.Tejeda@sanantonio.gov) or by mail at the following address:

City of San Antonio
Attn: Accounts Payable
PO Box 839976
San Antonio, TX 78283-3976

IV. RECORDS RETENTION

4.1 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.

4.2 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") or whatever period is determined necessary based on the Records Retention (hereafter referred to as "retention period") guidelines established by applicable law for this Agreement from the date of termination of the Agreement. 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 period.

4.3 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 Agreement, 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.

V. TERMINATION

5.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article I. Term, or earlier termination pursuant to any of the provisions hereof.

5.2 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 the provisions of this Agreement. CITY will pay CONTRACTOR for all work or services provided up to the day of termination, subject to submission of an invoice by CONTRACTOR and approval and acceptance of work by CITY.

5.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with the provisions of this Agreement, 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:

- 5.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article X. Assignment and Subcontracting.
- 5.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

5.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this Agreement in a manner stated in this section 5.4 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 XXV. 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.

- 5.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article X. Assignment and Subcontracting;
- 5.4.2 Bankruptcy or selling substantially all of company's assets;
- 5.4.3 Failing to perform or failing to comply with any covenant herein required;
- 5.4.4 Performing unsatisfactorily as determined by City;
- 5.4.5 The failure to meet reporting requirements of the Pathways to Prevention Project Grant, as set out and determined by City;
- 5.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

5.5 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.

5.6 Regardless of how this Agreement is terminated, CONTRACTOR shall effect 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 IV. 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.

5.7 Within forty-five (45) calendar days of 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 forty-five (45) 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.

5.8 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.

5.9 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.

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

VI. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

6.1 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.

6.2 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.

6.3 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 to be 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. Thus, no such local government records produced by or on behalf of CONTRACTOR pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONTRACTOR. Any intellectual property rights associated with the tool or work product developed under this agreement shall be the property of CITY, and CONTRACTOR shall execute any documents necessary to assign said intellectual property rights to CITY. CONTRACTOR further agrees that any tool or work product developed under this agreement shall be a work-for-hire as defined in Title 17 USC Section 201 and any copyright shall be the property of CITY.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under

the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

VIII. INSURANCE

8.1 CONTRACTOR and the 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 each party's employees.

8.2 With respect to CONTRACTOR, it is the stated 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, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for 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. Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000.00 for each person and \$500,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

IX. 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.

X. ASSIGNMENT AND SUBCONTRACTING

10.1 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 considered the employees or contractors of CONTRACTOR.

10.2 It is CITY's understanding that this Agreement is made in reliance thereon that CONTRACTOR does not intend to use subcontractors in the performance of this Agreement.

10.3 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 subcontractors 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.

10.4 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.

10.5 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 V. 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.

XI. INDEPENDENT CONTRACTOR

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, partners, 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.

XII. CONFLICT OF INTEREST

12.1 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.

12.2 CONTRACTOR warrants and certifies as follows:

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

12.3 CONTRACTOR acknowledges that City's reliance on the above warranties and certifications is reasonable.

XIII. AMENDMENTS

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 authorized institutional representatives of both City and CONTRACTOR, and subject to approval by the City Council, as evidenced by passage of an ordinance. The Director may execute contract amendments on behalf of City without the necessity of seeking any further approval by the City Council in the following circumstances a) modifications to the statement of work listed in the contract so long as the terms of the amendment stay within the parameters set forth in the original statement of

work of the agreement and b) changes in state or federal regulations or mandated by the funding agency.

XIV. SEVERABILITY

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.

XV. LICENSES/CERTIFICATIONS

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.

XVI. AUDIT

16.1 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 twenty (120) 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 twenty (20) 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 twenty (20) days upon receipt of said report or upon submission of said corrective action plan to the auditor.

16.2 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 20 calendar days of written notification regarding the need for reimbursement.

16.3 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 ten (10) business days upon the CONTRACTOR's receipt of the report.

16.4 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) 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.

16.5 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.

16.6 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 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.

16.7 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 three (3) 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.

16.8 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.

16.9 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.

16.10 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 ten (10) business 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 ten (10) business 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, cashier's 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 Consultant must use its own funds to maintain the Project.

16.11 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.

16.12 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.

XVII. COMPLIANCE

17.1 CONTRACTOR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations including, as applicable, SAMHSA's Terms and Conditions located at: <https://www.samhsa.gov/grants/grants-management/notice-award-noa/standard-terms-conditions> and the SAMHSA Notice of Funding Opportunity (NOFO), entitled Pathways to Prevention, as may be amended, referred to as the Notice of Award (NoA), terms and condition incorporated either directly or by reference in the grant program legislation and program cited in the NoA, restrictions on the expenditure of federal funds in appropriations acts to the extent restrictions are pertinent to this award, 45 CFR part 75 as applicable, and HHS Grants Policy Statement.

17.2 CONTRACTOR acknowledges that funds for this Agreement are provided by a federal entity. As such, CONTRACTOR agrees to comply with applicable terms and conditions associated with said funds as directed by the federal entity, City or as required in this Agreement, including but not limited to: 2 CFR Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. CONTRACTOR must adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to CONTRACTOR hereunder originated. CONTRACTOR agrees to comply with all terms and conditions associated with said funds as directed by the City or as required in this Agreement and as set out in **Attachment I**.

17.3 Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the HHS Office of Inspector General (OIG), all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subrecipients must disclose, in a timely manner, in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to the awarding agency and to the HHS OIG at the following addresses:

U.S. Department of Health and Human Services Office of Inspector General ATTN: Mandatory Grant Disclosures, Intake Coordinator 330 Independence Avenue, SW, Cohen Building Room 5527
Washington, DC 20201
Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or email: MandatoryGranteeDisclosures@oig.hhs.gov

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (see 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

XVIII. ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS

18.1 CONTRACTOR agrees to comply with all the terms and conditions that the City must comply with as a recipient of Pathways to Prevention Project Grant funding.

18.2 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, as representatives of the City and the parties ultimately responsible for all matters of compliance with Pathways to Prevention Project Grant funding and City rules and regulations, shall have the final authority to render or secure an interpretation.

18.3 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.

18.4 Within a period not to exceed thirty (30) calendar days after the expiration, or early termination, date of the Agreement, Consultant 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.

18.5 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 related documents for no less than three (3) 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 three (3) year period, CONTRACTOR agrees to maintain the records until the end of the audit, litigation, or other action is completed, whichever is later.

18.6 CONTRACTOR shall make available to City, the State, funding agency 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, or funding agency when City, or State or funding agency determines that the records possess long-term retention value.

18.7 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general, state or federal funds, including the Project covered by this Agreement. Therefore, CONTRACTOR agrees to permit City and/or State and/or the federal funding agency 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.

18.8 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.

18.9 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.

18.10 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.

18.11 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. 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 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 funding agency's, State's or the City's 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.

18.12 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.

18.13 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.

18.14 The prohibitions set forth in Sections 18.12 and 18.13 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.

18.15 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.

18.16 CONTRACTOR agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements 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.

18.17 Sections 18.12 through 18.16 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.

18.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to these funds, 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.

XIX. NONDISCRIMINATION POLICY

19.1 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.

19.2 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, as amended, 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; and
- g) All applicable regulations implementing the above laws.

XX. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY

Non-discrimination. As a condition of entering into this Agreement, CONTRACTOR represents and warrants that it will comply with CITY's Commercial Nondiscrimination Policy, as described under Section IIIC.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 CONTRACTOR retaliate against any person for reporting instances of such discrimination. CONTRACTOR 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 CITY's Relevant Marketplace. CONTRACTOR 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 CONTRACTOR 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 shall include this nondiscrimination clause in all subcontracts for the performance of this Agreement.

XXI. NONWAIVER OF PERFORMANCE

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 XIII. Amendments. No act or omission by a Party shall in any manner impair or prejudice any rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXII. LAW APPLICABLE

22.1 **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.**

22.2 Unless this Agreement provides otherwise, all claims, 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.

22.3 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXIII. LEGAL AUTHORITY

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.

XXIV. PARTIES BOUND

24.1 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.

XXV. NOTICE

25.1 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 intended for CITY, to:

Sandra Guerra, MD, MPH
Interim Deputy Public Health Director
San Antonio Metropolitan Health District
111 Soledad St, Suite 1000
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

The University of Texas at San Antonio
Attn: Thankam Sunil
1 UTSA Circle
San Antonio, TX 78249

XXVI. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

26.1 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.

26.2 "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.

26.3 "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.

26.4 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.

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

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 Consultant'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.

XXVIII. ENTIRE AGREEMENT

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 XIII. Amendments.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

**THE UNIVERSITY OF TEXAS AT
SAN ANTONIO**

Colleen M. Bridger, MPH, PhD
Assistant City Manager/Interim Director
San Antonio Metropolitan Health District

Jennifer Silver
Business Official

Date: _____

Date: _____

Approved as to Form:

City Attorney

ATTACHMENT I- FEDERAL FUNDING PROVISIONS

CONTRACTOR agrees that CONTRACTOR shall comply with the Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as applicable to the funds received by CONTRACTOR as a subaward and are incorporated by reference. CONTRACTOR must adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to CONTRACTOR hereunder originated. CONTRACTOR agrees to comply with all terms and conditions associated with said funds as directed by the City or as required in this Agreement, including but not limited to the following provisions and certifications, as applicable:

1. Subrecipient name- University of Texas at San Antonio: Institute for Health Disparities Research
2. Subrecipient's unique entity identifier- 800189185
3. Federal Award Identification Number (FAIN)- H79SP082118
4. Federal Award Date of award to the recipient by the Federal agency- June 9, 2020
5. Subaward Period of Performance Start and End Date- August 31, 2020 – August 30, 2021
6. Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient- \$90,000
7. Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation- \$90,000
8. Total Amount of the Federal Award committed to the subrecipient by the pass-through entity- \$90,000
9. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)- Funding allocated to provide training and education around the risks of substance misuse, provide education on HIV/AIDS, and provide needed linkages to service provision for individuals with HIV.
10. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity- U.S. Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA)
11. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement- 93.243 HIV Prevention Navigator Program in the amount of \$200,000.00 per year for 5 years.
12. Identification of whether the award is R&D- N/A
13. Indirect cost rate for the Federal award- 26%

1. Clean Air Act and the Federal Water Pollution Control Act

CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended. CONTRACTOR agrees to report each violation to City and understands that City will, in turn, report each violation as required to the federal agency providing funds for this Agreement and the appropriate EPA Regional Office. CONTRACTOR agrees to include these requirements in each subcontract to this Agreement exceeding \$150,000 financed in whole or in part with federal funds.

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 prompt 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.

3. **Patent Rights Contract Clause (Small Businesses & Nonprofits)**

(a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) *Subject invention* means any invention of CONTRACTOR conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other CONTRACTOR of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.

501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

CONTRACTOR may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which CONTRACTOR retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by CONTRACTOR

(1) CONTRACTOR will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to CONTRACTOR personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, CONTRACTOR will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by CONTRACTOR.

(2) CONTRACTOR will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) CONTRACTOR will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. CONTRACTOR will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title

CONTRACTOR will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If CONTRACTOR fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of CONTRACTOR to disclose or elect within the specified times.

(2) In those countries in which CONTRACTOR fails to file patent applications within the times specified in (c) above; provided, however, that if CONTRACTOR has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, CONTRACTOR shall continue to retain title in that country.

(3) In any country in which CONTRACTOR decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *CONTRACTOR* and Protection of *CONTRACTOR* Right to File

(1) *CONTRACTOR* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *CONTRACTOR* fails to disclose the invention within the times specified in (c), above. *CONTRACTOR*'s license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which *CONTRACTOR* is a party and includes the right to grant sublicenses of the same scope to the extent *CONTRACTOR* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of *CONTRACTOR*'s business to which the invention pertains.

(2) *CONTRACTOR*'s domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which *CONTRACTOR* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent *CONTRACTOR*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish *CONTRACTOR* a written notice of its intention to revoke or modify the license, and *CONTRACTOR* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by *CONTRACTOR*) after the notice to show cause why the license should not be revoked or modified. *CONTRACTOR* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *CONTRACTOR* Action to Protect the Government's Interest

(1) *CONTRACTOR* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which *CONTRACTOR* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) *CONTRACTOR* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by *CONTRACTOR* each subject invention made under *contract* in order that *CONTRACTOR* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. *CONTRACTOR* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *CONTRACTOR* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) CONTRACTOR agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) CONTRACTOR will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for CONTRACTOR in this clause, and CONTRACTOR will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) CONTRACTOR will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by the Department of Treasury.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and CONTRACTOR agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

CONTRACTOR agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by CONTRACTOR or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by CONTRACTOR, and such other data and information as the *agency* may reasonably specify. CONTRACTOR also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of CONTRACTOR.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, CONTRACTOR agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by CONTRACTOR or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

CONTRACTOR agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require CONTRACTOR, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if CONTRACTOR, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because CONTRACTOR or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by CONTRACTOR, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by CONTRACTOR, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations

If CONTRACTOR is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as CONTRACTOR;

(2) CONTRACTOR will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by CONTRACTOR with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if CONTRACTOR determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that CONTRACTOR is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of CONTRACTOR. However, CONTRACTOR agrees that the Secretary may review the CONTRACTOR's licensing program and decisions regarding small business applicants, and CONTRACTOR will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that CONTRACTOR could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

4. **Procurement of Recovered Materials**

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.

5. **Certification Regarding Lobbying**

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-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, which can be found at <https://www.state.gov/documents/organization/149465.pdf>.
- (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.C. 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.

Signature of CONTRACTOR's Authorized Official

Name and Title of CONTRACTOR's Authorized Official

Date