City of San Antonio
Metropolitan Health District
332 W. Commerce, Suite 108
San Antonio, TX 78205

The Witte Museum
3801 Broadway
San Antonio, TX 78209

Memorandum of Agreement

This Memorandum of Agreement (MOA) 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), pursuant to Ordinance No. _____, and the Witte Museum (the Witte), hereinafter collectively referred to as the Parties.

I. Purpose

1.1 This Agreement between the City of San Antonio on behalf of Metro Health and the Witte outlines the collaboration of the parties with regard to assessing childhood health behavior and bio-metric data through the "H-E-B Body Adventure" interactive exhibit at the Witte.

II. Joint Acknowledgements

2.1 The Parties agree and understand that the City expects to pay all obligations of this Agreement from funds received through the Medicaid 1115 Waiver program. 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, the City will be under no obligation to continue with this Agreement and may terminate same without penalty. The Parties agree that lack of funding will not be considered a breach of this Agreement.

2.2 The Parties agree and understand that the "H-E-B Body Adventure" interactive exhibit (the Exhibit) at the Witte Museum will collect the following data: 1) demographics including age, gender and zip code, 2) bio-metric measures including measured height and weight and 3) self-reported behaviors related to health. The Exhibit will employ electronic pass cards to collect data and communicate health-related messages to children and their families.

2.3 The Parties agree and understand that the Exhibit presents the opportunity to de-identify, aggregate and organize data into a valuable public health database that could be utilized by Metro Health for the public purpose of improving the health of all San Antonio.

III. Term

3.1 This agreement becomes effective October 1, 2016 and will terminate on September 30, 2017. Upon agreement of the parties this Agreement may be renewed for two one year terms on the same terms and conditions. Renewals shall be in writing and signed by the Director of Metro Health without further action by the San Antonio City Council.

3.1 The Witte further agrees and understands that the City expects to pay all obligations of this Agreement from Medicaid 1115 Waiver Program funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to the Witte of such lack of funding, this Agreement will terminate and neither City nor the Witte will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding through the Medicaid 1115 Waiver Program is not and will not be considered a breach of this Agreement.

IV. Responsibilities of the Witte

4.1 The Witte shall provide the following throughout the term of this Agreement:

a) Utilization of funds for costs of selected "Power Pass" Exhibit modules related to the infrastructure necessary to generate visitor health data, including the "Supersize Challenge" for weight, "Pick up Your Pace" for height, and "All About You" for health, attitudes and behavior.

b) Establishing and maintaining communication between IT managers at the Witte and Metro Health to address compatibility and security issues between the Parties' IT systems.

c) Identification of appropriate methods and mechanisms to receive, store and transfer designated de-identified aggregate data reports from the Witte to be used by Metro Health for public health purposes only, including but not limited to the following:

i. The Witte will provide Age, Gender, Zip Code, Height, Weight and responses to the survey questions based on the children's attitudes and behaviors related to health. No personally identifiable information (PII) will be included with the data provided. Data reports will be provided to Metro Health on a quarterly basis beginning on October 1, 2016 and continuing reports to be provided on the first day of the last month of each following quarter (December 1st, March 1st; June 1st; September 1st) through the term of the Agreement. Should the parties renew this agreement, the same month/day deadlines will apply during a renewal period.

ii. The Witte will use its best efforts to inform parents, guardians, and/or adult chaperones that de-identified data will be collected during the use of selected "Power Pass' modules and shared with Metro Health in aggregated/grouped (never individually or personally identifiable) form for public health purposes only including the following:

iii. The Witte Educator Guide used in planning group visits and sent to all area teachers will disclose that de-identified data is being collected, stored and transferred to Metro Health in aggregate form only (not personally identifiable).

iv. The information packet sent to teachers (or chaperones) bringing a group to the Witte will disclose that de-identified data is being collected, stored and transferred

to Metro Health in aggregate form only. The information in the packet is then distributed to parents and guardians of children attending a field trip to the Witte.

v. Appropriate signage at the Power Pass modules will disclose to parents, guardians, and/or adult chaperones of children using the Power Pass modules that de-identified data is being collected, stored and transferred to Metro Health in aggregate form only. (Sample of Signage: To ensure a healthier community, we are collecting anonymous general health information for San Antonio Metro Health).

d) Establishing a timeline for ongoing delivery from the Witte Museum of high quality appropriately organized data in usable formats (Excel, comma delimited or CSV format) via secure FTP in a timely manner through the term of the Agreement.

e) Provide City, and/or Metro Health, with naming opportunity and logo recognition on "All About You" survey stations, an experience package with over 300,000 impressions each year. The Witte will additionally provide donor recognition on the H-E-B Body Adventure donor wall and other associated major donor and partner benefits.

4.2 All goods, services and work performed by the Witte hereunder shall be performed to the satisfaction of the Director of Metro Health (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 the Witte, which is not satisfactory to the Director. City shall have the right to terminate this Agreement, in accordance with Article VII, in whole or in part, should the Witte's work not be satisfactory to the 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.

V. Responsibilities of the City

5.1 The City will pay the Witte a total amount not to exceed EIGHTY THREE THOUSAND THREE HUNDRED THIRTY THREE AND 33/100THS DOLLARS ($83,333.33) for services set out in Article IV above.

5.2 City will make payment to the Witte of $83,333.33 on January 31, 2017. Should the parties renew this agreement, payment to the Witte of $83,333.33 will be made on January 31st of the applicable renewal term.

5.3 The Parties agree that the total sum of all payments under this Agreement shall not exceed the amount set out in Section 5.1 above.

VI. Requests for Documents and Confidentiality

6.1 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 the Witte receives inquiries regarding documents within its possession pursuant to this Contract, the Witte shall within twenty-four (24) hours of receipt by the designated officer in the Witte's Human Resources Department who handles public information requests ("designated public information liaison") forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the Witte shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of the Witte's designated public information liaison'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.

6.2 Confidentiality. The Parties agree and understand that data will be used in the evaluation process of this project. To protect the identity of individual respondents, a number of safeguards are put in place, to wit: (1) data will be presented in the aggregate with summaries of items and scales; and (2) published reports will not include names of participating students or other personal identification information.

VII. Notice

7.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the City:
Vincent R. Nathan, Ph.D., MPH
Interim Director, San Antonio Metro Health District
111 Soledad, Suite 1000
San Antonio, TX 78205

If to the Witte:
Marise McDermott
President & CEO
3801 Broadway
San Antonio, TX 78209

VIII. Administration of Agreement

8.1 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of Metro Health, as representatives of the City and the parties ultimately responsible for all matters of compliance with the Medicaid 1115 Waiver Program and City rules and regulations, shall have the final authority to render or secure an interpretation.

8.2 Within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, the Witte shall submit all required deliverables to City. The Witte understands and agrees that in conjunction with the submission of the final report, the

Witte shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

8.3 The Witte 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, the Witte shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, the Witte agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

8.4 The Witte shall make available to City, State Medicaid Program officials, 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 the Witte's facility and to the Witte's personnel for the purpose of interview and discussion related to such documents. The Witte shall, upon request, transfer certain records to the custody of City or State Medicaid Program officials when the City or State determines that the records possess long-term retention value.

8.5 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, the Witte agrees to permit City and/or State officials, as applicable, to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess the Witte's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the Witte shall furnish to Metro Health and the Grantor of the Medicaid funding for this Project, 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 Medicaid funding, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. The Witte agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Witte of any liability to the City for failure to comply with the terms of this Agreement.

8.6 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 the Witte, or the Witte's subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

8.7 City agrees that it will present the findings of any such review to the Witte in a timely

manner and will attempt to convey information of Program strengths and weaknesses and assist with Program improvement.

8.8 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by Metro Health shall be submitted by the Witte to City within ten (10) 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 the Witte fails to deliver the required reports or information or delivers incomplete information within the prescribed time period, the City may, upon reasonable notice, suspend payments to the Witte until such reports are delivered to City. Furthermore, the Witte ensures that all information contained in all required reports or information submitted to City is accurate.

8.9 Confidentiality of Information. Unless disclosure is authorized by the City, the Witte 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. The Witte 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, the Witte shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. The Witte 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 the Witte's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the City's, State's, or their 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, the Witte 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.

XII. INSURANCE

12.1 A) Prior to the commencement of any work under this Agreement, the Witte shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "*Medicaid 1115 Waiver Program*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The

City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by Metro Health. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

D) The Witte agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of the Witte herein, and provide a certificate of insurance and endorsement that names the Witte and the City as additional insureds. The Witte shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this

agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of this Agreement for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). The Witte shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. The Witte shall pay any costs incurred resulting from said changes.

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

F) The Witte agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

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

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

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

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

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

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

L) The Witte and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIII. INDEMNIFICATION

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

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

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

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

XI. Applicable Law

11.1 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.

11.2 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.

XII. Severability

12.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Contract 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.

XIII. Legal Authority

13.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIV. Entire Contract

14.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other Contracts, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless the same be in writing, dated subsequent to the date hereto, and duly executed by the parties. This Agreement shall supersede any and all prior written and oral agreements between the City and the Witte as regards to this project.

CITY

_____
Vincent R. Nathan Ph.D., M.P.H.
Interim Health Director
San Antonio Metropolitan Health District

_____
Date

THE WITTE

_____
BY: Marsc McDermott
Title: President and CEO

8/21/16
Date

APPROVED AS TO FORM:

_____
City Attorney