

AN ORDINANCE 2019-10-31-0885

APPROVING AN AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S TUBERCULOSIS PREVENTION AND CONTROL PROGRAM IN PARTICIPATION WITH THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TUBERCULOSIS IDENTIFICATION AND TREATMENT PROJECT (DSHS TB PROJECT), A PROJECT OF THE TEXAS MEDICAID 1115 WAIVER TO PROVIDE PHYSICIAN SERVICES FOR AN AMOUNT UP TO \$ 199,052.00 FOR A PERIOD BEGINNING OCTOBER 1, 2019 AND ENDING SEPTEMBER 30, 2021.

* * * * *

WHEREAS, as the local health district for the City of San Antonio and Bexar County, the San Antonio Metropolitan Health District's (Metro Health) Tuberculosis (TB) Clinic operations comprises of patient care for active and latent TB patients; and

WHEREAS, the University of Texas Health Science Center at Tyler (UTHSCT) Heartland National TB Center is one of four Centers of Excellence in the United States, and is the only one in Texas funded by the Center for Disease Control and Prevention's Division of TB Elimination, to provide medical and technical consultation services related to various aspects of TB control; and

WHEREAS, as such, the UTHSCT is the only entity with this level of expertise available within the state to provide these services; and

WHEREAS, Metro Health has contracted with UTHSCT for physician services related to the treatment of patients with Latent Tuberculosis Infection (LTBI) previously; and

WHEREAS, on February 14, 2019 City Council authorized the acceptance of funding from the Texas Department of State Health (DSHS) for Metro Health's participation in the Tuberculosis Identification and Treatment Project (TB Project) under the Texas Medicaid 1115 Waiver; and

WHEREAS, this project focuses on targeted testing and treatment for LTBI in high risk populations to prevent these infections from evolving into active TB cases; and

WHEREAS, this agreement will provide TB physician services for high risk individuals identified as having LTBI through increased targeted TB testing; **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 hereby authorized to negotiate and execute an agreement with the University of Texas Health Science Center at Tyler for the San Antonio Metropolitan Health

District's Tuberculosis Prevention and Control Program in participation with the Texas Department of State Health Services Tuberculosis Identification and Treatment Project (DSHS TB Project), a project of the Texas Medicaid 1115 Waiver to provide physician services for an amount up to \$199,052.00 for a period beginning October 1, 2019 and ending September 30, 2021. 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. The City Manager or designee, or the Director of the San Antonio Metropolitan Health District or designee, is further authorized to execute any and all necessary documents to effectuate said agreement.


SECTION 3. Fund 2201636070 entitled "TB Medicaid Waiver 20," Internal Order 136000000795 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 \$99,526.00 for professional contractor services related to the testing and treatment of patients with latent TB infection. Payment not to exceed the budgeted amount is authorized to University of Texas Health Science Center at Tyler upon issuance of a purchase order.

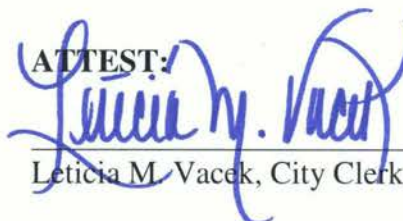
SECTION 4. The remaining \$99,526.00 for a total of up to \$199,052.00 is contingent upon the award of the FY2021 TB Medical Waiver grant funding. A new fund and IO will be created upon receipt of the new grant funding.

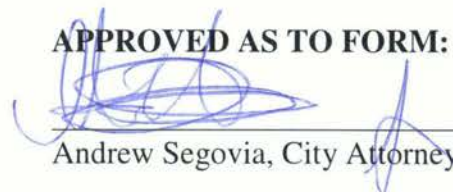
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 31st day October, 2019.


M A Y O R
Ron Nirenberg

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

| | | | | | | | |
|------------------------|---|--------------------|------------|------------|----------------|---------------|---------------|
| Agenda Item: | 17 (in consent vote: 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23A, 23B, 24A, 24B, 24C, 24D) | | | | | | |
| Date: | 10/31/2019 | | | | | | |
| Time: | 10:12:36 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | Ordinance approving an agreement with the University of Texas Health Science Center at Tyler for the San Antonio Metropolitan Health District's Tuberculosis Prevention and Control Program in participation with the Texas Department of State Health Services Tuberculosis Identification and Treatment Project (DSHS TB Project), a project of the Texas Medicaid 1115 Waiver to provide physician services for an amount up to \$ 199,052.00 for a period beginning October 1, 2019 and ending September 30, 2021 [Colleen M. Bridger, MPH, PhD, Assistant City Manager; Jennifer Herriot, MPH, Interim Director, Health] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Ron Nirenberg | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | x | |
| Jada Andrews-Sullivan | District 2 | | x | | | | x |
| Rebecca Viagran | District 3 | | x | | | | |
| Adriana Rocha Garcia | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Melissa Cabello Havrda | District 6 | | x | | | | |
| Ana E. Sandoval | District 7 | | x | | | | |
| Manny Pelaez | District 8 | | x | | | | |
| John Courage | District 9 | | x | | | | |
| Clayton H. Perry | District 10 | | x | | | | |

MH
10/31/2019
Item No. 17

ATTACHMENT I

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS

§
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§

CITY OF SAN ANTONIO

COUNTY OF BEXAR

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District (hereafter referred to as "Metro Health"), acting by and through the Director of Metro Health, pursuant to Ordinance _____, and The University of Texas Health Science Center at Tyler (hereinafter referred to as "CONTRACTOR"), an institution of The University of Texas System ("System") and an agency of the State of Texas, City and CONTRACTOR may be referred to herein collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WHEREAS, the City's Tuberculosis (TB) Prevention and Control Program within Metro Health provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease and latent TB infections (LTBI); and

WHEREAS, Metro Health has received funding from the Texas Department of State Health Services (DSHS) in order to provide support services for the DSHS' Health Services Region 8 TB Waiver Project for the prevention and control of TB; and

WHEREAS, CONTRACTOR is one of five regional training-and medical consultation universities in the United States funded by the Center for Disease Control and Prevention's Division of TB Elimination; and

WHEREAS, CONTRACTOR provides medical and technical consultation services related to various aspects of TB control; and

NOW THEREFORE, this Agreement defines the terms between the City and CONTRACTOR for the provision of services by CONTRACTOR primarily related to LTBI associated with the DSHS' Health Services Region 8 TB Waiver Project.

I.
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.

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

"CONTRACTOR" is defined in the preamble of this Agreement and has an address of 2303SE Military Drive, San Antonio, Texas 78223 and includes its successors.

"Director" shall mean the director of City's San Antonio Metropolitan Health District.

"DSHS" shall be defined as the Texas Department of State Health Services, the agency that funds and oversees the Health Services Region 8 TB Waiver Project.

"Projector Program" shall mean the general scope of services of this Agreement.

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

"System Agency" means Health and Human Services Commission (HHSC) or any of the agencies of the

State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of the those agencies. These agencies include: HHSC and the Department of State Health Services.

"Tuberculosis (TB) Waiver Project Grant" shall be defined as the DSHS' Health Services Region 8 TB Waiver Project which is the funding source for this contract.

II. **TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2019 and shall terminate on September 30, 2021.

2.2 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 funds 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 funds to pay obligations under this Agreement, then this Agreement shall terminate and neither CONTRACTOR nor City shall have any further obligations hereunder.

2.3 CONTRACTOR further agrees and understands that the City expects to pay all obligations of this Agreement from the TB Waiver Project Grant. Accordingly, if TB Waiver Project Grant 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.

III. **SCOPE OF SERVICES**

3.1 CONTRACTOR agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 CONTRACTOR agrees to provide a Licensed Medical Physician (Physician) specializing in the diagnosis and treatment of TB to provide services at the Metro Health City Chest Clinic (Clinic) as described in this Article III. CONTRACTOR may change Physicians, but shall ensure one of its Physicians is available to provide the services herein.

CONTRACTOR agrees to perform the following specific services:

3.2.1 CONTRACTOR shall provide through the services of Physician specializing in the diagnosis and treatment of TB the following services to include:

- a. Performing initial clinical evaluation to determine latent TB infection (LTBI) or active TB disease among clients screened and found to have a positive interferon gamma release assay (IGRA) result.
- b. Treating clients with a positive IGRA and ensuring clients receive a chest x ray and has it read by a radiologist.
- c. Referring clients with an abnormal chest x ray to the Clinic and provide routine treatment for LTBI through a 12 dose, 12 week regimen administered by directly observed therapy (DOT) to improve client adherence and completion of treatment For clients diagnosed with LTBI (positive IGRA and normal CXR), CONTRACTOR shall draw blood for baseline labs including a complete metabolic panel (CMP) and a complete blood count (CBC) and send to the designated Metro Health laboratory.
- d. Providing alternate recognized treatment regimens for treating LTBI may be used if the 12 dose,

12 week regimen is not appropriate.

- e. Providing monthly toxicity screening for client's being treated for LTBI.
- f. Providing review and input related to policy development utilizing an Isoniazid-Rifapentine Regimen for 3 months (3HP) with weekly Direct Observation Therapy (DOT) to treat latent Mycobacterium tuberculosis infections to improve patient adherence and completion of LTBI therapy.
- g. Providing recommendations for protocols to increase targeted testing in homeless, refugee, diabetic, substance-abuse user, and other high-risk populations.
- h. Providing LTBI activities associated with the TB Waiver Project Grant to include meeting and consulting with local outside collaborating agencies as needed in order to
1) address referrals being made to the City's TB Prevention and Control Program 2) promote a change in screening tests from tuberculin skin testing (TST) to IGRA testing, and 3) assist in strategically enhancing Metro Health's TB services with local agencies.
- i. Maintaining and updating Metro Health patient records.
- j. Administrative time associated with the completion of time keeping records (Grant Time Sheet) and reporting documentation (Physician Activity Log) for the purpose of satisfying this Agreement for compensation as described in Article IV.

3.3 CONTRACTOR agrees to perform all activities in accordance with the DSHS Contract Statement of Work and Uniform Terms and Conditions for the TB Waiver Project Grant which are attached hereto and incorporated herein for all purposes as **Attachment I**.

3.4 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 VII 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.

IV. **COMPENSATION TO CONTRACTOR**

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay CONTRACTOR an amount not to exceed ONE HUNDRED NINETY NINE THOUSAND FIFTY TWO DOLLARS (\$199,052.00) which is budgeted for such payment, as set forth in a comprehensive budget which is affixed hereto and incorporated herein for all purposes as **Attachment II**, and compensated according to the terms set out in section 4.2 of this Agreement. CONTRACTOR agrees that it shall not invoice the City more than NINETY NINE THOUSAND FIVE HUNDRED TWENTY SIX DOLLARS (\$99,526.00) during each year of the Agreement.

4.2 CONTRACTOR agrees that it shall not invoice the City more than NINETY NINE THOUSAND FIVE HUNDRED TWENTY SIX DOLLARS (\$99,526.00) during each year of the Agreement. CONTRACTOR agrees to submit quarterly invoices during the term of this Agreement on the following dates: January 6, 2020, April 6, 2020, July 6, 2020, October 8, 2020, January 6, 2021, April 6, 2021, July 6, 2021, and October 8, 2021. Each invoice shall show documented itemized costs in accordance with the attached sample invoice attached hereto and incorporated herein for all purposes as **Attachment III**. Reimbursement of eligible expenses, as determined by the City, shall be made according to standard procedures followed by City,

as requested upon receipt of billing invoices from CONTRACTOR.

4.2.1 With every invoice submitted, CONTRACTOR shall attach the following:

- A. A monthly time sheet for every Physician providing services described in Article III of this Agreement signed by the Physician, City TB Health Program Manager and CONTRACTOR'S Physician Supervisor. CONTRACTOR shall include copies of payments made to its Physicians providing services under this Agreement to include copies of employee pay stubs as applicable. City will pay CONTRACTOR based on work performed in accordance with a percentage of the CONTRACTOR Physician's annual pay rate at the time services were provided.

$$\text{Reimbursement} = \frac{1115 \text{ hours worked}}{2080} \times \text{Annual Pay (\$)}$$
$$\sum 1115 \text{ Total hours worked} \leq 2080$$

- B. A monthly reporting worksheet for each Physician which satisfies the reporting requirements set out in Attachment I.
- C. Provide a copy of the current indirect cost agreement.

4.2.2 CONTRACTOR understands that due to the requirements of the funding agency, invoices submitted for reimbursement that are received by the City more than 30 calendar days following the end of the six month reporting period may be rejected by City or the Funder and not be subject to reimbursement.

4.2.3 Invoices shall include Purchase Order number provided by City and submit via email to City's Accounts Payable inbox (ap@sanantonio.gov) and San Antonio Metropolitan Health District's Department Fiscal Administrator, Roslynn S. De Luna (Roslynn.Deluna@sanantonio.gov) or by mail at the following address:

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

4.3 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 4.1 above. Total payments to CONTRACTOR cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 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.

4.5 Due to the requirements of the funding agency, an invoice documenting annual expenses associated with the Agreement shall be submitted to the City by no later than October 8, 2020 and October 8, 2021. Additional documentation requirements of costs associated with this Agreement may be amended by City as needed. CONTRACTOR agrees to provide any and all documentation required for inclusion in any report concerning the TB Waiver Project Grant. All services required under this Agreement shall be performed to City's satisfaction, and City shall 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 shall not be paid until required reports, data, and documentation have been received and approved by the City.

V.
OWNERSHIP OF DOCUMENTS

5.1 City and DSHS reserve a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable license to use any Intellectual Property invented or created by CONTRACTOR in the performance of the project including each and every copyright, to use and reproduce all reports, data and materials delivered pursuant to this Agreement (the Project Materials) and reserve the right to authorize others to use or reproduce such Project Materials asset out in the attached **Attachment I**. Nothing herein is intended nor shall it be construed to prohibit CONTRACTOR or its faculty access to the Project Materials or to transfer any ownership in CONTRACTOR's best practice and benchmarking information to the City.

5.2 Subject to the provisions set out in **Attachment I**, CONTRACTOR has the right to use Project Materials to produce scholarly works for publication. In the event that CONTRACTOR or its faculty contributors publishes the results or uses any of the Project Materials for educational activities, or permits any third party to do so, CONTRACTOR or its faculty contributors shall acknowledge City and DSHS' contribution to the Project in any such publication.

5.3 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Contract shall be the subject of any copyright or proprietary claim by CONTRACTOR.

VI.
REQUESTS FOR and RETENTION of RECORDS

6.1 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.

6.2 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") 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.

6.3 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 Contract, 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.

VII. **TERMINATION**

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

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, 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:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this Agreement in a manner stated in this section 7.4 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 VIII. 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.

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required;

7.4.4 Performing unsatisfactorily as determined by City;

7.4.5 The failure to meet reporting requirements of the TB Waiver Project Grant as setout and determined by City;

7.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

7.5 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, any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, CONTRACTOR shall affect 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 VI. 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

7.7 Within thirty (30) 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 thirty (30) 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.

7.8 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.

7.9 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.

VIII. NOTICE

8.1 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 conflicted 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:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

AND

Director
City of San Antonio
San Antonio Metropolitan Health District
111 Soledad, Suite 1000
San Antonio, Texas 78205

If intended for CONTRACTOR, to:

Jeff Levin, MD
Vice President for Clinical and Academic Affairs
c/o Heartland National TB Center
2303 S.E. Military Drive
San Antonio, Texas 78223

IX. CONTRACT PROVISIONS REQUIRED BY DSHS

CONTRACTOR acknowledges that funds for this Agreement come from the DSHS Tuberculosis Waiver Project Grant. As such, CONTRACTOR agrees to comply with all terms and conditions associated with said funds as directed by the City or as required by this Agreement, to include but not limited to:

Access to records, books, and documents

In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

Response/compliance with audit or inspection findings

Contractor must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Contractor or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of the System Agency.

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

SAO Audit

Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

Requirements for pass-through entities per OMB Circular, section 200.331

Contractor acknowledges that this agreement constitutes a subaward from the DSHS Health Services Region 8 TB Waiver Project Grant for which the following data elements apply. If any of these data elements change or are currently unavailable, City will subsequently provide Contractor changes and updated information.

Subrecipient Name - The University of Texas Health Science Center at Tyler
Subrecipient's Unique Entity - Vendor #1046356
Federal Award Date - 10/1/2016
Period of Performance - 10/1/2019 through 9/30/2021

Funds Obligated - \$199,052.00.

Total Amount Obligated - \$199,052.00

Total Amount of Federal Award Committed - \$199,052.00

Federal Award Project Description – DSRIP 1115 Waiver Project initiative by developing and providing services and associated activities for the prevention and control of tuberculosis (TB) in accordance with Center for Medicare and Medicaid Services (CMS) funding requirements.

Name of Federal Awarding Agency – Health and Human Services Commission

(HHSC) - Department of State Health Services (DSHS)

CFDA # -93.363

R&D - N/A

Indirect Cost Rate: 25.94%

X. AUDIT

10.1 As an agency of the State of Texas, CONTRACTOR is subject to the auditing requirements of the State of Texas including Statewide Single Audit, a copy of which is available through the <http://www.sao.state.tx.us/reports/Default.aspx>.

10.2 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement during normal business hours with advanced written notice as 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.

10.3 CONTRACTOR shall during normal business hours with advance written notice, 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.

10.4 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.

10.5 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 thirty (30) 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 undisputed claims from subsequent reimbursements under this Agreement; 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 thirty (30) 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 undisputed claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

10.6 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. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

XI.

ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS

11.1 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, CONTRACTOR agrees to permit City and/or State 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.

11.2 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, 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) bylaw or (ii) by order of a governmental agency or court of competent jurisdiction, CONTRACTOR shall, where possible, give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR certifies that it has established specific procedures designed to meet the obligations of this Article, including, but not limited to execution of agreements regarding the treatment of 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 State's or the City's or its 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 for the period noted above. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations. The foregoing shall not apply when, after and to the extent the Confidential Information disclosed, as documented by competent evidence:

- (i) Is not disclosed in writing or reduce do writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure;
- (ii) is already in the recipient party's possession at the time of disclosure as evidenced by written records in the possession of the receiving party prior to such time;
- (iii) is or later becomes part of the public domain through no fault of the recipient party;
- (iv) is received from a third party having no obligations of confidentiality to the disclosing party;
- (v) is independently developed by the recipient party by its personnel having no access to the Confidential Information.

CONTRACTOR shall comply with standard practices of confidentiality of patient information as required by Metro Health and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and

Texas State privacy laws. The parties agree that

- (a) CONTRACTOR and Metro Health are covered entities for purposes of the Health Insurance Portability and Accountability Act (HIPAA) and subject to 45 C.F.R. Parts 160 and 164 ("the HIPAA Privacy Regulation");
- (b) to the extent that CONTRACTOR faculty, staff and employees are providing services to Metro Health pursuant to this Agreement, CONTRACTOR faculty, staff and employees will:
 - 1. be considered part of the Metro Health workforce for HIPAA compliance purposes in accordance with 45 CFR §164.103, but will not be construed to be employees of Metro Health;
 - 2. receive training by Metro Health on, and subject to compliance with, all of Metro Health's privacy policies adopted pursuant to the Regulations; and
 - 3. not disclose any Protected Health Information, as that term is defined by 45CFR §160.103, to CONTRACTOR which CONTRACTOR faculty, staff or employees accessed through provision of services to Metro Health that has not first been de-identified as provided in 45 CFR§164.514(a).

City policies regarding authorization for access to confidential information and review of medical records will be followed by CONTRACTOR. CONTRACTOR assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

11.3 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.

11.4 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.

11.5 The prohibitions set forth in Sections 11.3 and 11.4 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; registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
- (B) 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
- (C) 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.

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

11.7 Sections 11.4 through 11.8 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.

11.8 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONTRACTOR agrees to that 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.

XII. INSURANCE

12.1 CONTRACTOR and the City each maintain a self-insurance fund for general liability and worker's compensation claims and cause of action to meet their statutory obligations to each party's employees.

12.2 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.

XIII. INDEMNIFICATION

13.1 CONTRACTOR and the City acknowledge they are political subdivisions of the State of Texas and 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. CONTRACTOR and City shall each promptly notify the other in writing of any claim or demand that become known against them in relation to or arising out of activities under this Agreement.

XIV. SMALL MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

14.1 CONTRACTOR is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees that it will adhere to its established policies regarding small, minority, or women-owned business policy regarding procurement, construction and professional service contracts.

14.2 In the event that the CONTRACTOR utilizes subcontractors to perform any part of this agreement the CONTRACTOR will ensure that each subcontractor is aware that they must comply with the City of San Antonio's Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City.

XV. ASSIGNMENT AND SUBCONTRACTING

15.1 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 the employees or subcontractors of CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

15.2 It is City's understanding that this Agreement is made in reliance there on that CONTRACTOR does not intend to use subcontractors in the performance of this Agreement.

15.3 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 subcontractor 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 Council.

15.4 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 Council, as evidenced by passage of an ordinance. 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.

15.5 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 VII. 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.

XVI. **INDEPENDENT CONTRACTOR**

16.1 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, collaborators 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.

XVII. **NONDISCRIMINATION POLICY**

17.1 CONTRACTOR hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small, women, African American, and minority-owned business enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. CONTRACTOR agrees that CONTRACTOR shall not discriminate against any individual or group 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 and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.

17.2 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 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 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.

XVIII. CONFLICT OF INTEREST

18.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 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: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a collaborator or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, CONTRACTOR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CONTRACTOR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX. AMENDMENTS

19.1 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 both City and

CONTRACTOR.

**XX.
SEVERABILITY**

20.1 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 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.

**XXI.
LICENSES/CERTIFICATIONS**

21.1 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.

**XXII.
COMPLIANCE**

22.1 CONTRACTOR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

**XXIII.
NONWAIVER OF PERFORMANCE**

23.1 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 XIX. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

**XXIV.
LAW APPLICABLE**

24.1 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.

24.2 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.

XXV.

LEGAL AUTHORITY

25.1 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.

**XXVI.
PARTIES BOUND**

26.1 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.

**XXVII.
CAPTIONS**

27.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

**XXVIII.
DEBARMENT**

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

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

**XXIX.
ENTIRE AGREEMENT**

29.1 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 XIX. Amendments.

EXECUTED and AGREED to this the _____ day of _____.

CITY OF SAN ANTONIO

UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT TYLER
[Vendor Identification number: 175601354A1]

Jennifer Herriott, MPH
Interim Director
San Antonio Metropolitan Health District

Kris Kavasch
Vice President, Finance, Chief Financial Officer

Date

Date

APPROVED AS TO FORM:

City Attorney

ATTACHMENT I

ATTACHMENT A GRANT STATEMENT OF WORK

I. GRANTEE RESPONSIBILITIES

- A. Grantee, with guidance from the Department of State Health Services (DSHS) and in collaboration with other project contractors or partners, will focus on the development and execution of activities to support achievement of goals and metrics of Delivery System Reform Incentive Payment (DSRIP) 1115 Medicaid Waiver Project 133257904.2.1 (the "Project"). The Project's long-term goal is to reduce tuberculosis (TB) disease by increasing regional capacity to identify TB through targeted screening of high-risk populations using interferon gamma release assay (IGRA) and engaging those with identified tuberculosis infection (TBI) into treatment.
- B. Grantee will implement the following activities:
1. Work with the DSHS and other Project subcontractors or partners in the systematic identification of, outreach to and enrollment of Project subcontractors or partners to provide TBI testing for populations at high risk for TB and treatment to persons with confirmed TBI. Examples of subcontractors or partners that should be targeted for participating in the Project include: Federally Qualified Health Centers (FQHCs), rural health centers, rural hospitals, clinics, dialysis centers, drug rehabilitation facilities, mental health and substance abuse centers, and other facilities that serve persons at high risk for developing TB (collectively referred to herein as "providers", "subcontractors" or "partners").
 2. Educate potential and existing subcontractors and partners about the benefits of IGRA tests to minimize false positives in Bacillus Calmette-Guérin (BCG) vaccinated individuals as well as the benefits of the new shortened TBI regimens such as the 12 week doses of isoniazid and rifapentine (3HP) and the continued use of traditional regimens for those not eligible for 3HP. Tuberculin skin testing may be used for patients not eligible for IGRA testing.
 3. Grantee and its subcontractors or partners will target their TB testing activities on those at high risk for TB disease. Generally, persons at high risk for developing TB disease fall into two categories: 1) persons who have been recently infected with TB bacteria; and, 2) persons with medical conditions that weaken the immune system. The following sites describe these populations:
<http://www.cdc.gov/tb/topic/basics/risk.htm>;
<http://www.cdc.gov/tb/topic/populations/>; and,
<https://www.cdc.gov/mmwr/preview/mmwrhtml/00001642.htm>.
 4. Increase targeted testing for TBI in high-risk populations. Targeted population will include populations residing in congregate settings such as homeless shelters or drug rehabilitation centers, individuals living with HIV and diabetes, the homeless, refugees or persons in high-risk groups seeking TB testing from Grantee.

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5. Focus on working with providers who serve persons who are covered by Medicaid or are low-income or are uninsured.
- C. To support successful implementation of IGRA testing, treatment for TBI, and reporting by subcontractors and partners, Grantee will implement the following training and technical assistance activities:
1. Educate and train subcontractors or partners and their staffs on the following topics: TBI and TB disease and its management; available regimens; benefits of IGRA tests; Project logistics; referral processes for treatment of those with TBI; and Project data reporting processes. Educational and training needs of subcontractors should be systematically identified and documented.
 2. Assist with development and documentation of processes necessary for successful implementation of IGRA testing at Grantee and partner testing sites.
 3. Provide follow-up training or assistance as requested by subcontractors or partners or as identified by Grantee.
 4. Encourage subcontractors to participate in Project Learning Collaborative activities.
 5. Monitor, document and report subcontractor or partner performance to assure established screening processes systematically identify persons at risk for TBI using IGRA tests as well as work with subcontractors/partners to correct identified performance issues.
 6. Provide testing supplies for collecting blood for IGRAs and for placing TB skin tests (TST). The cost to run the test and medications will be covered by DSHS. Grantee or their subcontractor may charge a fee for performing phlebotomy.
 7. Use incentives (“tangible reinforcement”) to encourage patient participation and retention in treatment only as permitted under applicable federal or state law.
- D. Grantee will ensure that TBI in patients identified through screening activities is appropriately treated and managed. Grantee will:
1. Ensure that patients with a positive IGRA receive a chest x-ray that is read by a radiologist. DSHS will reimburse x-ray and reading costs.
 2. Ensure that patients with an abnormal chest x-ray are referred to San Antonio Metropolitan Health District’s Chest Clinic if Bexar County residents or the DSHS Region 8 TB Program if not residents of Bexar County.

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3. Perform clinical evaluation to determine TBI or active TB disease among persons screened and found to have a positive IGRA result.
 4. Refer patients with active TB that cannot be successfully treated as an outpatient to DSHS for hospitalization.
 5. Ensure that for patients diagnosed with TBI (positive IGRA and normal chest x-ray), blood is drawn for baseline labs including a) a complete metabolic panel (CMP) and b) a complete blood count (CBC). These samples should be sent to the South Texas Lab. DSHS will provide reimbursement associated with supplies and lab fees.
 6. Ensure that patients being treated for TBI receive monthly toxicity screening.
 7. Provide routine treatment for TBI through a 12 dose, 12-week regimen administered by directly observed therapy (DOT) to improve patient adherence and completion of treatment.
 8. Alternate recognized treatment regimens for treating TBI may be used if the 12 dose, 12-week regimen is not appropriate.
- E. Grantee will collect, data-enter, quality assure and manage data collected during Grantee Project activities. Data collected and managed may be from Grantee testing activities or from partner organizations activities. Grantee will:
1. Collect and submit monthly data sets to the Region 8 Project Manager. Grantee must assure that data submitted has been quality assured in accordance with processes established by DSHS and the Project data Grantee. Grantee will receive formal communications related to identified problems associated with Grantee's data and is expected to assure that data issues are corrected and processes put in place to assure that issues are not recurring.
- The DSHS Project Manager will provide direction and guidance on Project data structure, content/data elements and format(s). Grantee understands that Project data structure, content, and elements are subject to change based on evolving Project needs.
2. Manage Project data in a manner that assures protection of protected health and personal participant information.
 3. Provide quality and timely reports on schedules and in formats specified by DSHS. These reports may include but are not limited to: monthly data reports used to plan and assess Project performance; special or ad hoc reports needed to address

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ATTACHMENT A GRANT STATEMENT OF WORK

emerging Project questions or to support dissemination activities; or, reports needed for DSRIP-related reporting.

- F. Grantee agrees to participate in and support the following Project activities:
1. Meetings;
 2. Annual work plan development;
 3. Evaluation and cost studies;
 4. Sustainability planning;
 5. Continuous Quality Improvement (CQI);
 6. Learning Collaborative(s); and
 7. Dissemination.
- G. Grantee agrees that the data and findings gathered and obtained through activities supported by this Contract are the exclusive intellectual property of DSHS.
- H. Grantee agrees that Grantee-initiated dissemination activities associated with this Project should be reviewed and approved by DSHS prior to submission. All disseminated products should note that this is a DSHS project and cite DSHS as the funding source.
- I. Grantee will not exceed the total amount of this Contract without DSHS prior approval and the Parties executing a written amendment.
- J. Grantee will comply with all applicable federal and state laws, rules, and regulations including, but not limited to, the following, as amended:
1. Texas Tuberculosis Code, Health and Safety Code, Chapter 13, Subchapter B;
 2. Communicable Disease Prevention and Control Act, Texas Health and Safety Code, Chapter 81; and,
 3. Texas Administrative Code (TAC), Title 25, Part 1, Chapter 97, Subchapter A, Control of Communicable Diseases.
- K. Grantee will comply with all applicable regulations, standards and guidelines in effect on the beginning date of the term of this Contract. Grantee will provide the services outlined above in compliance with guidance found at:

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ATTACHMENT A GRANT STATEMENT OF WORK

1. DSHS TB Control Standards
<https://www.dshs.texas.gov/idcu/disease/tb/policies/>
 2. Diagnostic Standards and Classification of Tuberculosis in Adults and Children, American Journal of Respiratory and Critical Care Medicine, Vol. 161, pp. 1376-1395, 2000: <http://ajrccm.atsjournals.org/cgi/reprint/161/4/1376>;
 3. Treatment of Tuberculosis (ATS/CDC/IDSA), 2003:
<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5211a1.htm>;
 4. Targeted Tuberculin Testing and Treatment of Latent TB Infection (LTBI), Morbidity and Mortality Weekly Report, Vol. 49, No. RR-6, 2000:
<https://www.cdc.gov/mmwr/pdf/rr/rr4906.pdf>;
 5. Updated: Adverse Event Data and Revised ATS/CDC Recommendations Against the Use of Rifampin and Pyrazinamide for Treatment of Latent Tuberculosis Infection – United States, 2003, MMWR 52 (No. 31):
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5231a4.htm>;
 6. Controlling Tuberculosis in the United States, MMWR, Vol. 54, No. RR-12, 2005: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5412a1.htm>; and
 7. Guidelines for the Prevention and Treatment of Opportunistic Infections Among HIV- Exposed and HIV-Infected Children:
<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6244a6.htm>
- L. Grantee must receive written approval from DSHS before varying from the procedures outlined herein and must update its implementation documentation within forty-eight (48) hours of making approved changes so that staff working on activities under this Contract knows of the change(s).
- M. Grantee will adhere to reporting requirements documented in the CDC Tuberculosis Surveillance Data Training Report of Verified Case of Tuberculosis (RVCT) Instruction Manual, available at <http://www.cdc.gov/tb/programs/rvct/InstructionManual.pdf>.
- N. Grantee will develop, implement and maintain a timekeeping system for accurately documenting staff time and salary expenditures for all staff funded through this Contract, including partial full-time employees and temporary staff.
- O. Grantee will not use DSHS funds for:
1. Entertainment; or

ATTACHMENT I

ATTACHMENT A GRANT STATEMENT OF WORK

2. Sectarian worship, instruction, or proselytization.
- P. Grantee activities will take place in Bexar County, which is one of 20 1115 Waiver Regional Healthcare Partnership 6 (RHP 6) counties. RHP 6 boundaries can be found at: <https://www.hhsc.state.tx.us/1115-docs/Regions-Map-Aug12.pdf>.
- Q. Grantee will submit a monthly report to the DSHS HSR 8 Project Manager and the assigned DSHS Contract Manager by the 20th of every month. Format and content will be specified by DSHS and is subject to change based on evolving Project needs.
- R. Grantee will submit financial and any other reports that DSHS determines necessary to accomplish the objectives of this Contract and to monitor compliance. If Grantee is legally prohibited from providing such reports, Grantee will immediately notify DSHS in writing.
- S. Grantee will provide services in Regional Healthcare Partnership 6 (RHP6) counties or additional counties that may be approved by HHSC or DSHS.
- T. DSHS reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. DSHS will monitor Grantee's expenditures on a quarterly basis. If expenditures are below that projected in Grantee's total Contract amount, Grantee's budget may be subject to a decrease for the remainder of the term of the Contract. If applicable, vacant positions existing after ninety days may result in a decrease in funds.

II. PERFORMANCE MEASURES

The System Agency will monitor the Grantee's performance of the requirements in Attachment A and compliance with the Contract's terms and conditions.

Grantee activities will support achievement of DSRIP Project-level measures and metrics specified in the most current approved HHSC DSRIP RHP 6 project plan. These measures are subject to change based on evolving Waiver requirements. DSHS and Grantee will work together to assure that performance targets are met. Contract amendment/s may be required based on state level changes to the Waiver.

III. INVOICE AND PAYMENT

- A. Grantee will request payment by submitting the State of Texas Purchase Voucher (Form B-13) on a monthly basis and acceptable supporting documentation for reimbursement of the required services/deliverables. Additionally, the Grantee will submit the Financial

ATTACHMENT A
GRANT STATEMENT OF WORK

Status Report (FSR-269a) on a quarterly basis. Vouchers, supporting documentation, and Financial Status Reports should be emailed to the addresses below.

B. Department of State Health Services

Claims Processing Unit, MC 1940

1100 West 49th Street

P.O. Box 149347

Austin, TX 78714-9347

FAX: (512) 776-7442

EMAIL: invoices@dshs.texas.gov & yolanda.cantu@dshs.texas.gov

B-13 and supporting documentation should be sent to: invoices@dshs.texas.gov & Yolanda.cantu@dshs.texas.gov

FSRs should be sent to: invoices@dshs.texas.gov, yolanda.cantu@dshs.texas.gov & FSRGrants@dshs.texas.gov

C. Grantee will be paid on a cost reimbursement basis and in accordance with the Budget in Attachment B of this Contract.

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS000068600001
AMENDMENT NO. 1**

The **DEPARTMENT OF STATE HEALTH SERVICES** (“**DSHS**” or **System Agency**”) and **SAN ANTONIO METROPOLITAN HEALTH DISTRICT** (“**Grantee**”), each a “Party” and collectively the “Parties,” to that certain Tuberculosis Waiver Project contract effective January 1, 2018, and denominated **DSHS Contract No. HHS000068600001** (the “Contract”), now desire to amend the Contract.

WHEREAS, the System Agency has chosen to exercise its option to renew the Contract in accordance with Section III, Duration, of the Contract Signature Document;

WHEREAS, the Parties desire to revise the Budget to add funds for the period beginning October 1, 2019, through September 30, 2021 (hereinafter referred to as “Fiscal Year 2020” or “FY2020” and “Fiscal Year 2021” or “FY2021”);

WHEREAS, the Parties desire to revise the Statement of Work; and

WHEREAS, the Parties desire to add to the Supplemental and Special Conditions.

NOW, THEREFORE, the Parties hereby amend and modify the Contract as follows:

1. **SECTION III** of the Signature Document, **DURATION**, is hereby amended to reflect a revised termination date of September 30, 2021.
2. **SECTION IV** of the Signature Document, **BUDGET**, is hereby amended to add **\$2,144,688.00** in state funds. For the budget period October 1, 2019, through September 30, 2020, the amount is not to exceed **\$1,072,344.00**. For the budget period October 1, 2020, through September 30, 2021, the amount is not to exceed **\$1,072,344.00**. The total Contract amount is not to exceed **\$3,971,685.00**. All expenditures under the Contract will be in accordance with **ATTACHMENT B, BUDGET**.
3. **SECTION I.B.1.** of **ATTACHMENT A, STATEMENT OF WORK**, is hereby amended to delete “Bexar County Hospital District dba University Health System.”
4. **SECTION I.C.5.** of **ATTACHMENT A, STATEMENT OF WORK**, is hereby deleted and replaced with the following:
 - “5. Monitor, document and report subcontractor or partner performance to assure established screening processes systematically identify persons at risk for TBI using IGRA tests as well as work with subcontractors/partners to correct identified performance issues.”

5. **SECTION I.E.1.-I.E.3. of ATTACHMENT A, STATEMENT OF WORK**, is hereby deleted and replaced with the following:

"1. Collect and submit monthly data sets to the Region 8 Project Manager. Grantee must assure that data submitted has been quality assured in accordance with processes established by DSHS and the Project data Grantee. Grantee will receive formal communications related to identified problems associated with Grantee's data and is expected to assure that data issues are corrected and processes put in place to assure that issues are not recurring.

The DSHS Project Manager will provide direction and guidance on Project data structure, content/data elements and format(s). Grantee understands that Project data structure, content, and elements are subject to change based on evolving Project needs.

2. Manage Project data in a manner that assures protection of protected health and personal participant information.
 3. Provide quality and timely reports on schedules and in formats specified by DSHS. These reports may include but are not limited to: monthly data reports used to plan and assess Project performance; special or ad hoc reports needed to address emerging Project questions or to support dissemination activities; or, reports needed for DSRIP-related reporting."
6. **SECTION I.F.3. of ATTACHMENT A, STATEMENT OF WORK**, is hereby deleted and replaced with the following:

"3. Evaluation and cost studies;"

7. **SECTION I.K.1.-I.K.3. of ATTACHMENT A, STATEMENT OF WORK**, is hereby deleted and replaced with the following:

"K. Grantee will comply with all applicable regulations, standards and guidelines in effect on the beginning date of the term of this Contract. Grantee will provide the services outlined above in compliance with guidance found at:

1. DSHS TB Control Standards:
[https://www.dshs.texas.gov/idcu/disease/tb/policies/;](https://www.dshs.texas.gov/idcu/disease/tb/policies/)
2. Diagnostic Standards and Classification of Tuberculosis in Adults and Children, American Journal of Respiratory and Critical Care Medicine, Vol. 161, pp. 1376-1395, 2000:
<http://ajrcem.atsjournals.org/cgi/reprint/161/4/1376;>
3. Treatment of Tuberculosis (ATS/CDC/IDSA), 2003:
[http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5211a1.htm;"](http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5211a1.htm;)

8. **SECTION I.Q. of ATTACHMENT A, STATEMENT OF WORK**, is hereby deleted and replaced with the following:

“Q. Grantee will submit a monthly report to the DSHS HSR 8 Project Manager and the assigned DSHS Contract Manager by the 20th of every month. Format and content will be specified by DSHS and is subject to change based on evolving Project needs.”

9. **SECTION II. of ATTACHMENT A, STATEMENT OF WORK**, is hereby deleted and replaced with the following:

“II. PERFORMANCE MEASURES

The System Agency will monitor the Grantee’s performance of the requirements in Attachment A and compliance with the Contract’s terms and conditions.

Grantee activities will support achievement of DSRIP Project-level measures and metrics specified in the most current approved HHSC DSRIP RHP 6 project plan. These measures are subject to change based on evolving Waiver requirements. DSHS and Grantee will work together to assure that performance targets are met. Contract amendment/s may be required based on state level changes to the Waiver.”

10. The Parties agree to add to the Contract **ATTACHMENT B-1, BUDGET SUMMARY**, which is attached to this Amendment and incorporated into the Contract as if fully set forth therein. All FY2020 expenditures shall be made in accordance with **ATTACHMENT B-1**.
11. **ATTACHMENT D, SUPPLEMENTAL AND SPECIAL CONDITIONS**, is hereby amended to add the following new Sections 1.05 and 1.06 under the Special Conditions:

SECTION 1.05 GRANTEE'S CERTIFICATION OF MEETING OR EXCEEDING TOBACCO-FREE WORKPLACE POLICY MINIMUM STANDARDS

Grantee certifies that it has adopted and enforces a Tobacco-Free Workplace Policy that meets or exceeds all of the following minimum standards of:

- a) Prohibiting the use of all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookahs), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco;
- b) Designating the property to which this Policy applies as a "designated area," which must at least comprise all buildings and structures where activities funded under this Contract are taking place, as well as Grantee owned, leased, or controlled sidewalks, parking lots, walkways, and attached parking structures immediately adjacent to this designated area;
- c) Applying to all employees and visitors in this designated area; and
- d) Providing for or referring its employees to tobacco use cessation services.

If Grantee cannot meet these minimum standards, it must obtain a waiver from the System Agency.

SECTION 1.06 CONTRACTOR'S PROPERTY INVENTORY REPORT

Grantee shall maintain an inventory of equipment, supplies defined as Controlled Assets, and real property and submit an annual cumulative report of the equipment and other property on HHS System Agency's Contractor's Property Inventory Report to the assigned DSHS Contract Manager and DSHS Contract Oversight and Support (email address: COSequip@dshs.texas.gov) by electronic mail no later than October 15 of each year. The Grantee's Property Inventory Report may be found at: <http://www.dshs.texas.gov/contracts/forms.shtm>.

12. The Parties agree to add to the Contract **ATTACHMENT E, DATA USE AGREEMENT**, which is attached to this Amendment and incorporated into the Contract as if fully set forth therein.
13. This Amendment No. 1 shall be effective as of October 1, 2019.
14. Except as amended and modified by this Amendment No. 1, all terms and conditions of the Contract shall remain in full force and effect. In the event of a conflict between the Contract and the terms of this Amendment, the terms of the Amendment shall control.
15. Any further revisions to the Contract shall be by written agreement of the Parties.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR AMENDMENT NO. 1
SYSTEM AGENCY CONTRACT NO. HHS000068600001**

**DEPARTMENT OF STATE HEALTH SERVICES SAN ANTONIO METROPOLITAN HEALTH
DISTRICT**

By: _____

Name: _____

Title: _____

Date of Execution: _____

Date of Execution: _____

**THE FOLLOWING ATTACHMENTS ARE ATTACHED AND INCORPORATED AS PART OF THE
CONTRACT:**

**ATTACHMENT B-1 – BUDGET SUMMARY
ATTACHMENT E – DATA USE AGREEMENT**

**ATTACHMENT B-1
BUDGET SUMMARY**

Organization Name: San Antonio Metropolitan Health District

Program ID: HSR8/TBWVR

| Budget Categories | FY 2018 Funding (01/01/2018 – 09/30/2018) Funds Requested | FY 2019 Funding (10/01/2018 – 09/30/2019) Funds Requested | FY 2020 Funding (10/01/2019 – 09/30/2020) Funds Requested | FY2021 Funding (10/01/2020-09/30/2021) Funds Requested | Total Category Funding |
|----------------------------|---|---|---|--|-------------------------------|
| Personnel | \$257,431.00 | \$354,647.00 | \$391,087.00 | \$410,396.00 | \$1,413,561.00 |
| Fringe Benefits | \$96,059.00 | \$130,261.00 | \$142,735.00 | \$150,779.00 | \$519,834.00 |
| Travel | \$6,193.00 | \$8,597.00 | \$6,646.00 | \$6,646.00 | \$28,082.00 |
| Equipment | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Supplies | \$156,150.00 | \$208,200.00 | \$208,825.00 | \$198,116.00 | \$771,291.00 |
| Contractual | \$137,231.00 | \$182,974.00 | \$182,974.00 | \$167,679.00 | \$670,858.00 |
| Other | \$34,094.00 | \$37,679.00 | \$43,829.00 | \$26,493.00 | \$142,095.00 |
| Sum of Direct Costs | \$687,158.00 | \$922,358.00 | \$976,096.00 | \$960,109.00 | \$3,545,721.00 |
| Indirect Costs | \$91,696.00 | \$125,785.00 | \$96,248.00 | \$112,235.00 | \$425,964.00 |
| Totals (DSHS Share) | \$778,854.00 | \$1,048,143.00 | \$1,072,344.00 | \$1,072,344.00 | \$3,971,685.00 |

HHS DATA USE AGREEMENT

This Data Use Agreement (“DUA”), effective as of the date the Base Contract into which it is incorporated is signed (“Effective Date”), is entered into by and between a Texas Health and Human Services Enterprise agency (“HHS”), and the Contractor identified in the Base Contract, a political subdivision of the State of Texas (“CONTRACTOR).

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information. *45 CFR 164.504(e)(1)-(3)*. This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the following: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq.*) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

“**Authorized Purpose**” means the specific purpose or purposes described in the Statement of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“**Authorized User**” means a Person:

(1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;

(2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and

(3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

“Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR, or that CONTRACTOR may, for an Authorized Purpose, create, receive, maintain, use, disclose or have access to, that consists of or includes any or all of the following:

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (herein “PHI”);
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Individually Identifiable Health Information as related to HIPAA, Texas HIPAA and Personal Identifying Information under the Texas Identity Theft Enforcement and Protection Act;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

“Legally Authorized Representative” of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164; and Estates Code Ch. 752.

ARTICLE 3.

CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

3.01 Obligations of CONTRACTOR

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in

HHS Data Use Agreement 071015HIPAA Omnibus Compliant October, 2015

TACCHO VERSION

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a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. **45 CFR 164.502(b)(1); 45 CFR 164.514(d)**

(B) Except as Required by Law, CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors (as defined in **45 C.F.R. 160.103**) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out CONTRACTOR's obligations in connection with the Authorized Purpose.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. **45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101**

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. **45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)**

(D) CONTRACTOR will not, except as otherwise permitted by this DUA, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. **45 CFR 164.504(e)(2)(ii)(A)**

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. **45 CFR 164.502(d)(2)(i) and (ii)** CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. **45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002**

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information to carry out CONTRACTOR's obligations in connection with the Authorized Purpose on behalf of CONTRACTOR, unless Subcontractor agrees to comply with all applicable laws, rules and regulations. **45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).**

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of

Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. *45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.*

(H) If CONTRACTOR maintains PHI in a Designated Record Set which is Confidential Information and subject to this Agreement, CONTRACTOR will make PHI available to HHS in a Designated Record Set upon request. CONTRACTOR will provide PHI to an Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will release PHI in accordance with the HIPAA Privacy Regulations upon receipt of a valid written authorization. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.524 and 164.504(e)(2)(ii)(E).*

(I) If PHI is subject to this Agreement, CONTRACTOR will make PHI as required by HIPAA available to HHS for review subsequent to CONTRACTOR's incorporation of any amendments requested pursuant to HIPAA. *45 CFR 164.504(e)(2)(ii)(E) and (F).*

(J) If PHI is subject to this Agreement, CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. *45 CFR 164.504(e)(2)(ii)(G) and 164.528.*

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the HIPAA Privacy Regulations. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of PHI and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.504(e)(2).*

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. *45 CFR 164.308; 164.530(c); 1 TAC 202.*

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use PHI for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may disclose PHI for the proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: *45 CFR 164.504(e)(4)(A).*

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D); or

(2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B).**

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if required by law and requested by HHS, use commercially reasonable efforts to use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. **45 CFR 164.504(e)(2)(i)(B)**

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to HHS or Destroy, at HHS's election and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, HHS acknowledges and agrees that CONTRACTOR is not obligated to send to HHS and/or Destroy any Confidential Information if federal law, state law, the Texas State Library and Archives Commission records retention schedule, and/or a litigation hold notice prohibit such delivery or Destruction. If such delivery or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(e)(2)(ii)(J)**

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 1 . The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306.**

(R) CONTRACTOR will establish, implement and maintain reasonable procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. **45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards).**

(S) CONTRACTOR will designate and identify, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. **45 CFR 164.308(a)(2).**

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. **45 CFR 164.502; 164.514(d).**

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Statement of Work. **45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1).**

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR for an Authorized Purpose for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. **45 CFR 164.308; 164.514(d).**

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary of the U.S. Department of Health and Human Services, or other federal or state law. **45 CFR 164.504(e)(2)(i)(I).**

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic Confidential Information in motion includes, but is not limited to, Secure File Transfer Protocol (SFTP) or Encryption at an appropriate level. If required by rule, regulation or law, HHS Confidential Information at rest requires Encryption unless there is other adequate administrative, technical, and physical security. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. **45 CFR 164.312; 164.530(d).**

(Z) For each type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;

- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and

Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

(AA) Notwithstanding anything to the contrary herein, CONTRACTOR will treat any Personal Identifying Information it creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with Texas Business and Commerce Code, Chapter 521 and other applicable regulatory standards identified in Section 3.01(Z), and Individually Identifiable Health Information CONTRACTOR creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with HIPAA and other applicable regulatory standards identified in Section 3.01(Z).

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

4.01 Breach or Event Notification to HHS. 45 CFR 164.400-414.

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's reasonable satisfaction (the "incident response period"). **45 CFR 164.404.**

(C) Breach Notice:

(1) Initial Notice.

(a) For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.

(b) Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. **45 CFR 164.410.**

(c) Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

(2) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: **For (a) - (m) below: 45 CFR 164.400-414.**

(a) The date the Event or Breach occurred;

(b) The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

(c) A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);

(d) A brief description of CONTRACTOR's investigation and the status of the investigation;

(e) A description of the types and amount of Confidential Information involved;

(f) Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the Individual and if applicable the, Legally Authorized Representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

(g) CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

(h) CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;

(i) The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

(j) The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;

(k) Identify, describe or estimate the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

(l) A reasonable schedule for CONTRACTOR to provide regular updates during normal business hours to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

(m) Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

4.02 Investigation, Response and Mitigation. 45 CFR 164.308, 310 and 312; 164.530

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to

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expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the reasonable satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, if required by applicable law, rule, or regulation, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the reasonable satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

ARTICLE 5. STATEMENT OF WORK

“Statement of Work” means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Statement of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

ARTICLE 6. GENERAL PROVISIONS

6.01 Oversight of Confidential Information

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the Confidential Information to confirm that CONTRACTOR is in compliance with this DUA.

6.02 HHS Commitment and Obligations

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

6.03 HHS Right to Inspection

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

6.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA shall be extended or amended concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.

(C) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require CONTRACTOR to submit to a Corrective Action Plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or
- (4) Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation, the requested corrective action CONTRACTOR may take to cure the alleged violation, and the action HHS intends to take if the alleged violation is not timely cured by CONTRACTOR.

(D) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(E) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

6.05 Governing Law, Venue and Litigation

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

6.06 Injunctive Relief

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

6.07 Responsibility.

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, Subcontractors and agents. HHS shall be solely responsible for its own acts and omissions.

6.08 Insurance

(A) As a governmental entity, and in accordance with the limits of the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will request that HHS be named as an additional insured. HHSC reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

6.08 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

6.09 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract as an amendment thereto and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

6.10 Automatic Amendment and Interpretation

If there is (i) a change in any law, regulation or rule, state or federal, applicable to HIPPA and/or Confidential Information, or (ii) any change in the judicial or administrative interpretation of any such law, regulation or rule,, upon the effective date of such change, this DUA shall be deemed to have been automatically amended, interpreted and read so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such changes. Any ambiguity in this DUA will

be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

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TEXAS

Health and Human Services

Health and Human Services Commission
HHSC Uniform Terms and Conditions - Grant
Version 2.15

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.01 Definitions

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“Deliverable” means the work product(s) required to be submitted to the System Agency including all reports and project documentation.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Grantee” means the Party receiving funds under this Contract, if any. May also be referred to as "Contractor" in certain attachments.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means inventions and business processes, whether or not patentable; works of authorship; trade secrets; trademarks; service marks; industrial designs; and creations that are subject to potential legal protection incorporated in any Deliverable and first created or developed by Grantee, Grantee's contractor or a subcontractor in performing the Project.

“Mentor Protégé” means the Comptroller of Public Accounts' leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the System Agency and Grantee, collectively.

“Party” means either the System Agency or Grantee, individually.

“Program” means the statutorily authorized activities of the System Agency under which this Contract has been awarded.

“Project” means specific activities of the Grantee that are supported by funds provided under this Contract.

“Public Information Act” or “PIA” means Chapter 552 of the Texas Government Code.

“Statement of Work” means the description of activities performed in completing the Project, as specified in the Contract and as may be amended.

“Signature Document” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“Solicitation or "RFA"” means the document issued by the System Agency under which applications for Program funds were requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“Solicitation Response” or “Application” means Grantee’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Texttravel” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“System Agency” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“Technical Guidance Letter” or “TGL” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Grantee.

1.02 Interpretive Provisions

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to

- any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- d. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
 - e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
 - f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
 - g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
 - h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
 - i. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
 - j. Time is of the essence in this Contract.

ARTICLE II PAYMENT METHODS AND RESTRICTIONS

2.01 Payment Methods

Except as otherwise provided by the provisions of the Contract, the payment method will be one or more of the following:

- a. cost reimbursement. This payment method is based on an approved budget and submission of a request for reimbursement of expenses Grantee has incurred at the time of the request;
- b. unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service and acceptable submission of all required documentation, forms and/or reports; or
- c. advance payment. This payment method is based on disbursement of the minimum necessary funds to carry out the Program or Project where the Grantee has implemented appropriate safeguards. This payment method will only be utilized in accordance with governing law and at the sole discretion of the System Agency.

Grantees shall bill the System Agency in accordance with the Contract. Unless otherwise specified in the Contract, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

2.02 Final Billing Submission

Unless otherwise provided by the System Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice not later than forty-five (45) calendar days following the end of the term of the Contract. Reimbursement or payment requests received in the System

Agency's offices more than forty-five (45) calendar days following the termination of the Contract may not be paid.

2.03 Financial Status Reports (FSRs)

Except as otherwise provided in these General Provisions or in the terms of any Program Attachment(s) that is incorporated into the Contract, for contracts with categorical budgets, Grantee shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term for System Agency review and financial assessment. Grantee shall submit the final FSR no later than forty-five (45) calendar days following the end of the applicable term.

2.04 Debt to State and Corporate Status

Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Grantee if Grantee is indebted to the State for any reason, including a tax delinquency. Grantee, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). If tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Grantee's delinquent tax is paid in full.

2.05 Application of Payment Due

Grantee agrees that any payments due under this Contract will be applied towards any debt of Grantee, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

2.06 Use of Funds

Grantee shall expend funds provided under this Contract only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

2.07 Use for Match Prohibited

Grantee shall not use funds provided under this Contract for matching purposes in securing other funding without the written approval of the System Agency.

2.08 Program Income

Income directly generated from funds provided under this Contract or earned only as a result of such funds is Program Income. Unless otherwise required under the Program, Grantee shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of Project income to further the Program, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report this income in accordance with the Contract, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Contract term and may not carry Program Income forward to any succeeding term. Grantee shall refund program income to the System Agency if the Program Income is not expended in the term in which it is earned. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using it for the purposes and under the conditions specified in this Contract.

2.09 Nonsupplanting

Grantee shall not use funds from this Contract to replace or substitute for existing funding from other but shall use funds from this Contract to supplement existing state or local funds currently available. Grantee shall make a good faith effort to maintain its current level of support. Grantee may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.01 Funding

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Grantee will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

3.02 No debt Against the State

The Contract will not be construed as creating any debt by or on behalf of the State of Texas.

3.03 Debt to State

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Grantee acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

3.04 Recapture of Funds

The System Agency may withhold all or part of any payments to Grantee to offset overpayments made to the Grantee. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Grantee understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Grantee further understands and agrees that reimbursement of such disallowed costs will be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Contract.

ARTICLE IV ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.01 Allowable Costs.

System Agency will reimburse the allowable costs incurred in performing the Project that are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. The System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. If the System Agency has paid funds to Grantee for unallowable or ineligible costs, the System Agency will notify Grantee in writing, and Grantee shall return the funds to the System Agency within thirty (30) calendar days of the date of this written notice. The System Agency may withhold all or part of any payments to Grantee to offset reimbursement for any unallowable or ineligible expenditure that Grantee has not refunded to the System Agency, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). The System Agency may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Grantee’s repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

| Applicable Entity | Applicable Cost Principles | Audit Requirements | Administrative Requirements |
|--|---|------------------------------------|-----------------------------|
| State, Local and Tribal Governments | 2 CFR, Part 225 | 2 CFR Part 200, Subpart F and UGMS | 2 CFR Part 200 and UGMS |
| Educational Institutions | 2 CFR, Part 220 | 2 CFR Part 200, Subpart F and UGMS | 2 CFR Part 200 and UGMS |
| Non-Profit Organizations | 2 CFR, Part 230 | 2 CFR Part 200, Subpart F and UGMS | 2 CFR Part 200 and UGMS |
| For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular. | 48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency | 2 CFR Part 200, Subpart F and UGMS | 2 CFR Part 200 and UGMS |

OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.02 Independent Single or Program-Specific Audit

If Grantee, within Grantee's fiscal year, expends a total amount of at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The \$750,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Grantee, within Grantee's fiscal year, expends a total amount of at least \$750,000 in state funds awarded, Grantee must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and UGMS. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or UGMS, as applicable, for their program-specific audits. HHSC Single Audit Services will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the Single Audit Determination Form within thirty (30) calendar days after notification by HHSC Single Audit Services to do so, Grantee shall be subject to the System Agency sanctions and remedies for non-compliance with this Contract. Each Grantee that is required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS.

4.03 Submission of Audit

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit electronically, one copy of the Single Audit or Program-Specific Audit to the System Agency as directed in this Contract and another copy to: single_audit_report@hhsc.state.tx.us

ARTICLE V AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.01 General Affirmations

Grantee certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

5.02 Federal Assurances

Grantee further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Grantee is in compliance with each of the requirements reflected therein.

5.03 Federal Certifications

Grantee further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Grantee is in compliance with each of the requirements reflected therein. **In addition, Grantee certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

ARTICLE VI OWNERSHIP AND INTELLECTUAL PROPERTY

6.01 Ownership

The System Agency will own, and Grantee hereby assigns to the System Agency, all right, title, and interest in all Deliverables.

6.02 Intellectual Property

- a. The System Agency and Grantee will retain ownership, all rights, title, and interest in and to, their respective pre-existing Intellectual Property. A license to either Party's pre-existing Intellectual Property must be agreed to under this or another contract.
- b. Grantee grants to the System Agency and the State of Texas a royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable license to use any Intellectual Property invented or created by Grantee, Grantee's contractor, or a subcontractor in the performance of the Project. Grantee will require its contractors to grant such a license under its contracts.

ARTICLE VII RECORDS, AUDIT, AND DISCLOSURE

7.01 Books and Records

Grantee will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Grantee will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

7.02 Access to records, books, and documents

In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Grantee will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Grantee will include this provision concerning

the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

7.03 Response/compliance with audit or inspection findings

- a. Grantee must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Grantee or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance will be solely the decision of the System Agency.
- b. As part of the Services, Grantee must provide to HHSC upon request a copy of those portions of Grantee's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

7.04 SAO Audit

Grantee understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Grantee agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Grantee and the requirement to cooperate is included in any Subcontract it awards.

7.05 Confidentiality

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Grantee agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Grantee. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

7.06 Public Information Act

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Grantee must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

ARTICLE VIII CONTRACT MANAGEMENT AND EARLY TERMINATION

8.01 Contract Management

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;

- b. Requiring the Grantee to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Grantee found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of the Project;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

8.02 Termination for Convenience

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination.

8.03 Termination for Cause

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

a. Material Breach

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Grantee has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Grantee's duties under the Contract. Grantee's misrepresentation in any aspect of Grantee's Solicitation Response, if any or Grantee's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

b. Failure to Maintain Financial Viability

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Grantee no longer maintains the financial viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

8.04 Equitable Settlement

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

ARTICLE IX MISCELLANEOUS PROVISIONS

9.01 Amendment

The Contract may only be amended by an Amendment executed by both Parties.

9.02 Insurance

Unless otherwise specified in this Contract, Grantee will acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Grantee will provide evidence of insurance as required

under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Grantee will secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Grantee must produce renewal certificates for each type of coverage.

These and all other insurance requirements under the Contract apply to both Grantee and its Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

9.03 Legal Obligations

Grantee will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Grantee will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

9.04 Permitting and Licensure

At Grantee's sole expense, Grantee will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or Services required by this Contract. Grantee will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee agrees to be responsible for payment of any such government obligations not paid by its contactors or subcontractors during performance of this Contract.

9.05 Indemnity

TO THE EXTENT ALLOWED BY LAW, GRANTEE WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:

- a. GRANTEE'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF GRANTEE, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- b. ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY GRANTEE, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF GRANTEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF GRANTEE, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR**
- c. EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST GRANTEE, ITS OFFICERS, OR ITS AGENTS; OR**

- d. **WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

GRANTEE WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.

9.06 Assignments

Grantee may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Grantee from its obligations under the Contract.

Grantee understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

9.07 Relationship of the Parties

Grantee is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Grantee or any other Party.

Grantee will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Grantee's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

9.08 Technical Guidance Letters

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in

writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

9.09 Governing Law and Venue

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Grantee irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

9.10 Severability

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

9.11 Survivability

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

9.12 Force Majeure

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

9.13 No Waiver of Provisions

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

9.14 Publicity

Except as provided in the paragraph below, Grantee must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject

matter, including in any promotional or marketing materials, customer lists, or business presentations.

Grantee may publish, at its sole expense, results of Grantee performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

9.15 Prohibition on Non-compete Restrictions

Grantee will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

9.16 No Waiver of Sovereign Immunity

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency.

9.17 Entire Contract and Modification

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the System Agency.

9.18 Counterparts

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

9.19 Proper Authority

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Grantee before this Contract is effective or after it ceases to be effective are performed at the sole risk of Grantee with respect to compensation.

9.20 Employment Verification

Grantee will confirm the eligibility of all persons employed during the contract term to perform duties within Texas and all persons, including subcontractors, assigned by the contractor to perform work pursuant to the Contract.

9.21 Civil Rights

- a. Grantee agrees to comply with state and federal anti-discrimination laws, including:
 1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
 2. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 3. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
 4. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 5. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 6. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and

7. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- c. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhsex.hhsc.texas.gov/system-support-services/civil-rights/publications>
- d. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- e. Upon request, Grantee will provide HHSC Civil Rights Office with copies of all of the Grantee's civil rights policies and procedures.
- f. Grantee must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313

TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

**ATTACHMENT D
GRANT SUPPLEMENTAL & SPECIAL CONDITIONS**

SUPPLEMENTAL CONDITIONS

There are no Supplemental Conditions for this Contract that modifies this Contract's HHS Uniform Terms and Conditions.

SPECIAL CONDITIONS

SECTION 1.01 NOTICE OF CONTRACT ACTION

Grantee shall notify their assigned contract manager if Grantee has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five days of becoming aware of the action and include the following:

- a. Reason for such action;
- b. Name and contact information of the local, state or federal department or agency or entity;
- c. Date of the contract;
- d. Date of suspension or termination; and
- e. Contract or case reference number.

SECTION 1.02 NOTICE OF BANKRUPTCY

Grantee shall notify in writing its assigned contract manager of its plan to seek bankruptcy protection within five days of such action by Grantee.

SECTION 1.03 NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

- a. Grantee shall immediately report in writing to their contract manager when Grantee has knowledge or any reason to believe that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, contractor or volunteer that is providing services under this Contract has:
 1. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
 2. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- b. Grantee shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

SECTION 1.04 GRANTEE'S NOTIFICATION OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL

The Grantee shall notify in writing their contract manager assigned within ten days of any change to the Grantee's Contact Person or Key Personnel.

Attachment II

Contract Allocation – October 2019 through September 2020

| | | |
|--|--|-----------------|
| Regional Training and Medical Consultation Center – UT Tyler Subcontract | Licensed Medical Physician Services – personnel and fringe | \$78,989 |
| UT Tyler Subcontract | Indirect Cost | \$20,537 |
| | | |
| | Total Costs | \$99,526 |

Contract Allocation – October 2020 through September 2021

| | | |
|--|--|-----------------|
| Regional Training and Medical Consultation Center – UT Tyler Subcontract | Licensed Medical Physician Services – personnel and fringe | \$78,989 |
| UT Tyler Subcontract | Indirect Cost | \$20,537 |
| | | |
| | Total Costs | \$99,526 |

ATTACHMENT III

**UTHSC at Tyler
INVOICE FOR COST REIMBURSEMENT
Metro Health/UTHSC at Tyler Contract: Dates**

Cost Period:
Date Submitted:

COSA PO #:

| <i>Personnel Costs and Descriptions</i> | <i>Supporting Documentation (reference numbered attachments)</i> | <i>Amount</i> |
|---|--|---------------|
| Medical Consultant - Lisa Armitige, MD | log/timesheets/paystub | |
| Fringe @26% - Lisa Armitige, MD | fringe @26% | \$ - |
| Personnel Total | | \$ - |

| <i>Local Travel Costs and Descriptions</i> | <i>Supporting Documentation (reference numbered attachments)</i> | <i>Amount</i> |
|--|--|---------------|
| NA | NA | \$ - |
| Local Travel Total | | \$ - |

| <i>Out-of-City Travel Costs and Descriptions</i> | <i>Supporting Documentation (reference numbered attachments)</i> | <i>Amount</i> |
|--|--|---------------|
| NA | NA | \$ - |
| Out-of-City Travel Total | | \$ - |

| <i>Operating & Work Plan Costs and Descriptions</i> | <i>Supporting Documentation (reference numbered attachments)</i> | <i>Amount</i> |
|---|--|---------------|
| NA | NA | \$ - |
| Operating/Work Plan Total | | \$ - |

| <i>Direct Other</i> | <i>Supporting Documentation (reference numbered attachments)</i> | <i>Amount</i> |
|---------------------------|--|---------------|
| NA | NA | \$ - |
| Direct Other Total | | \$ - |

| <i>Indirect Costs</i> | <i>Supporting Documentation (reference numbered attachments)</i> | <i>Amount</i> |
|-----------------------------|--|---------------|
| Indirect Costs | | \$ - |
| Indirect Costs Total | | \$ - |

TOTAL COSTS FOR REIMBURSEMENT **\$ -**

Verification statement:

This invoice represents expenses incurred for the period listed. Supporting evidence of costs is attached to this invoice and is maintained on file at the sub-recipient's office as specified in the contract.

Date

Date

Two certifying signatures are required for each invoice.

ITEMIZATION ON FOLLOWING PAGES