

AN ORDINANCE 2018-03-29-0208

AUTHORIZING AN AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER FOR PHYSICIAN SERVICES RELATED TO THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S TUBERCULOSIS PREVENTION AND CONTROL PROGRAM IN AN AMOUNT UP TO \$209,451.00 FOR A PERIOD ENDING SEPTEMBER 30, 2019.

* * * * *

WHEREAS, as the local health department for the City of San Antonio and Bexar County, the San Antonio Metropolitan Health District's (Metro Health) 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 Regional Training and Medical Consultation Centers (RTMCCs) 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, on September 29, 2016, City Council authorized an agreement with UTHSCT for TB physician services for high risk individuals identified as having latent tuberculosis infection (LTBI) through increased targeted TB testing for a term ending on December 30, 2017; 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; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee or the Director of the San Antonio Metropolitan Health District or her designee is hereby authorized to execute an agreement with the University of Texas Health Science Center at Tyler for physician services related to the San Antonio Metropolitan Health District's Tuberculosis Prevention and Control Program in an amount up to \$209,451.00 for a period ending September 30, 2019. A copy of the agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. For the budget period January 1, 2018 through September 30, 2018, funding is available from General Ledger 5201040, and Internal Order Number 136000000741 and Fund 2201636034 of the TB Medical Waiver 2018-19 grant, for a total amount up to \$89,765.00.


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 3. For the budget period October 1, 2018 through September 30, 2019, the balance of \$119,686.00 will be appropriated in General Ledger 5201040, and a new Internal Order Number and new Fund number will be created per the Tuberculosis Waiver Project Contract. Payment not to exceed the budgeted amount is authorized to University of Texas Health Science Center at Tyler, and should be encumbered with a purchase order.

SECTION 4. 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 5. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 29th day March, 2018.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	25 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28A, 28B)						
Date:	03/29/2018						
Time:	09:47:34 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving an agreement with the University of Texas Health Science Center at Tyler for physician services for the San Antonio Metropolitan Health District's Tuberculosis Prevention and Control Program in an amount up to \$209,451.00 for a period ending September 30, 2019. [Erik Walsh, Deputy City Manager; Colleen M. Bridger, MPH, PhD, Director of Health]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	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
03/29/2018
Item No. 25

Attachment I

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS	§	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 four Centers of Excellence 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.

"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 January 1, 2018 and shall terminate on September 30, 2019.

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 General Provisions 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 TWO HUNDRED NINE THOUSAND FOUR HUNDRED FIFTY-ONE DOLLARS (\$209,451.00) 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.

4.2 CONTRACTOR agrees to submit four invoices during the term of this Agreement on the following dates: April 6, 2018, October 8, 2018, April 8, 2019 and October 8, 2019. 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, Amy Cowley (amy.cowley@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 final expenses associated with the Agreement shall be submitted to the City by no later than October 8, 2019. 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 the non-exclusive right, including each and every copyright, to use and reproduce all reports, data and materials delivered pursuant to this Agreement (the Project Materials) and 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
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 TB 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:

Retention

9.1 Retention. Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.1 (b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the DSHS upon DSHS' request for at least four (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

Access and Inspection

9.2 Access: In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the DSHS or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the DSHS or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The DSHS and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of DSHS and HHSC to recover excessive or illegal payments. Contractor shall make available to the DSHS information collected, assembled or maintained by Contractor relative to this Contract for the DSHS to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

State Auditor's Office. Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its success or in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Assurances and Certifications

9.3 Contractor certifies by execution of this Agreement to the following:

- a) it is not disqualified under 2 C.F. R §376.935 or ineligible for participation in federal or state assistance programs;

- b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);
- c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
- f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
- g) neither it, nor its principals have within the three (3)-year period preceding this Agreement, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contractor or its principals;
- h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
- i) neither it, nor its principals within a three (3) year period preceding this Agreement has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Child Support Delinquencies. As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Authorization. Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including

all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and to provide such additional information as may be required.

Gifts and Benefits Prohibited. Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Ineligibility to Receive the Contract. (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Antitrust. Pursuant to 15 USC § 1; et seq. and Tex. Bus. & Comm. Code, § 15.01, et seq. Contractor that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Initiation and Completion of Work. Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

Status of Contractor

9.4 Status of Subcontractors. Contractor certifies that it is not delinquent on any repayment agreements; has not had a required license or certification revoked; and has not had a contract terminated by the DSHS. Contractor further certifies that they have not voluntarily surrendered within the past three (3) years any license issued by the DSHS.

Conflict of Interest

9.5 Conflict of Interest. Contractor represents to the DSHS that it and its subcontractors, if any, do not have nor shall Contractor or its subcontractors knowingly acquire or retain, any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the DSHS or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of

interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest

Transactions Between Related Parties

9.6 Transactions Between Related Parties. Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the DSHS is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and, telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract.

A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the DSHS under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional information requested by the DSHS, regarding a transaction between related parties, needed to enable the DSHS to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 C.F.R. part 74, OMB Circ. No. A-110, 2 C.F.R. § 215.42, and UGMS.

Lobbying

9.7 Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Agreement, either directly or indirectly, or support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Agreement exceeds \$100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Agreement, a certification that none of the funds provided by DSHS have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Agreement; upon execution of this Agreement unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR § 215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

Compliance and Reporting

9.8 Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the DSHS rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as

they may be lawfully amended. The DSHS rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

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

9.9 Contractor acknowledges that this agreement constitutes a subaward from the TDSHS 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 - 1/1/2018 through 9/30/19

Funds Obligated - \$209,451.00.

Total Amount Obligated - \$209,451.00

Total Amount of Federal Award Committed - \$209,451.00

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 COWRACTOR 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 20USC 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.

**XIX.
AMENDMENTS.**

Not act or omission by a Party shall in y 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 TFIE 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 beard 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]

Colleen Bridger, MPH, PhD.
Health Director
San Antonio Metropolitan Health District

Kris Kavasch
Vice President, Finance, Chief Financial Officer

Date

Date

APPROVED AS TO FORM:

City Attorney