

AGREEMENT TO USE FUNDS
OF THE CITY OF SAN ANTONIO

THIS AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation (City) acting by and through its City Manager or designee, pursuant to Ordinance No. 2013-10-___-_____ passed and approved on October ___, 2013, and the Southwest Texas Regional Advisory Committee (hereinafter referred to as STRAC, or Recipient) by and through its Executive Director, **WITNESSETH:**

WHEREAS, the City intends that the San Antonio Metropolitan Health District (SAMHD) provide \$10,000.00 and the Office of Emergency Management (OEM) provide \$30,000.00 in funding provided by the State of Texas should be provided to STRAC for the purchase of a license for Visual DX diagnostic and training tool and that STRAC should further provide training to area physicians and medical responders in the use of the diagnostic tool; and

WHEREAS, City Council hereby finds that such expenditure serves a municipal public purpose in that it will benefit the City's public health and safety; **NOW THEREFORE:**

For and in consideration of the following mutual promises and obligations, and for the benefit of the citizens of the City of San Antonio, the parties herein agree as follows:

1. This Agreement shall commence immediately upon execution and shall terminate on August 31, 2014.
2. Recipient agrees and understands that the City expects to pay all obligations of this Agreement from funds the City will receive from the State of Texas. Accordingly, if such 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 Recipient will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.
3. In consideration of Recipient's performance, in a satisfactory and efficient manner as determined by City, of all services and activities set forth in this Agreement, City agrees to reimburse Recipient in an amount not to exceed \$40,000.00, for the purchase of a license for the Visual Dx diagnostic and training tool from Logical Images Inc.

Recipient shall further:

- a. Provide web-based Visual Dx software to all Bexar County hospitals and physicians via the Bexar County Medical Society (BCMS);
- b. Train physicians and medical responders on how to utilize Visual Dx to rapidly identify and diagnose patients that present themselves to hospital emergency departments and physician offices;
- c. Expand the availability and training related to Visual Dx to all Bexar County physicians via the BCMS.

4. Recipient understands and agrees to abide by and adhere to all applicable federal, state and local, laws, rules and regulations in the use of the funds, including all bidding requirements that the City is required to perform pursuant to Chapter 252 of the Local Government Code, as applicable. Recipient agrees to provide City with invoices for the expenditures under this Agreement no later than thirty (30) days from the date that Recipient makes such expenditures. All requests for reimbursement shall be submitted to the following address:

City of San Antonio
Accounts Payable
PO Box 839976-3976
San Antonio, TX 78283
5. Accounting records for all expenditures shall be maintained by Recipient in accordance with generally accepted accounting practices. Recipient further agrees to maintain records verifying the use of the equipment for public health support purposes for each year throughout the term of this Agreement. All of the above-described records shall be subject to audit by the City or its contracted auditor.
6. Any literature, signs, or print advertising of any type appearing on any medium which refers to, or which is paid for by funds received as a result of this Agreement shall contain the words, "Paid for by The City of San Antonio."
7. This Agreement is not assignable and funds received as a result hereof shall only be used by the parties stated herein.
8. In the event that Recipient fails to meet any of its obligations under this Agreement, fails to use the funds for the purposes set out herein, or the Recipient no longer uses the equipment described in this Agreement in connection with Recipient's programs, Recipient shall refund to the City the total amount provided under this Agreement. Recipient shall pay City such funds no later than thirty (30) days from the date City requests such funds from Recipient.
9. None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.
10. **INSURANCE**

Recipient shall be responsible for insuring its employees and sub-recipients for Worker's Compensation or Alternative Plan. If a Worker's Compensation Policy is maintained, then for the duration of this Agreement, Recipient will attach a waiver of subrogation in favor of the City. Recipient shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the City be required to maintain any insurance coverage for Recipient.

11. **INDEMNITY**

Any and all of the employees of Recipient, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of Recipient only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Recipient.

Recipient indemnifies, saves, and holds harmless the City against all claims, demands, actions or causes of action of whatsoever nature or character, as permitted by law, arising out of or by reason of the execution or performance of the work provided for herein and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any Workers' Compensation claim of whatsoever character arising herein.

12. Recipient 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.

13. For purposes of this Agreement, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City: Thomas Schlenker, M.D., MPH,
Director, San Antonio Metropolitan Health District
332 W. Commerce
San Antonio, Texas 78205

Recipient: Eric Epley,
Director, Southwest Texas Regional Advisory Committee
7500 Highway 90 West, Suite 200
San Antonio, TX 78227

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

14. If any provision of this Agreement is for any reason held to be unconstitutional, void, or invalid, the remaining provisions or sections contained herein shall remain in effect and the section so held shall be reformed to reflect the intent of the parties.

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

16. This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

IN WITNESS OF WHICH this Agreement has been executed on this ____ day of _____, 2013.

CITY OF SAN ANTONIO

SOUTHWEST TEXAS ADVISORY COMMITTEE

By: _____
Thomas Schlenker, M.D., MPH
Director

By: _____
Eric Epley
Director

APPROVED AS TO FORM:

City Attorney