

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**CONTRACTUAL DENTAL
SERVICES AGREEMENT**

This AGREEMENT is entered into by and between the City of San Antonio (hereinafter referred to as (“City”) ACTING BY AND THROUGH THE San Antonio Metropolitan health District (“Metro Health”), pursuant to Ordinance No. 2020-_____ passed and approved on _____, 2020, and Parent/Child Incorporated, (“PCI”), acting by and through its designated representative, Dr. Sharon Small, Chief Executive Officer, both of which may be referred to as “Parties” or singularly as “Party.”

I. STATEMENT OF PURPOSE

- 1.1 PCI provides services in connection with the Head Start Program.
- 1.2 Head Start is a federally-funded program whereby PCI provides education, child development, nutrition and social services, health and disability assessment and parent involvement, both on a full and part-time basis.
- 1.3 The City, through Metro Health, will provide dental services including limited oral evaluations and fluoride varnish applications for up to eight hundred sixteen (816) funded enrolled children in PCI Head Start program (“PCI enrollees”). These evaluations are required by federal Head Start Program Performance Standards. These evaluations are necessary to ensure that the children assessed are referred into an appropriate health care resource to resolve any health concerns found in the evaluation.

II. PERFORMANCE BY CITY

City agrees:

- 2.1 The City, through Metro Health, will provide each participating child with an on-site limited oral evaluation and fluoride varnish application performed by a dentist, which will be conducted within 90 calendar days of the initial startup of the Head Start program school year.
- 2.2 Metro Health staff will provide case management and referral services for all children identified with "urgent" dental needs (Class I cases).
- 2.3 As needed, staff will provide additional support to program staff to ensure that all children with unmet dental needs are connected to a dental home in the community.
- 2.4 Through leverage of Title V Child Dental Health Services grant funding and collaborative agreements with the UT Health Science Center Department of Developmental Dentistry, Metro Health will facilitate care for Head Start children who are uninsured or underinsured for necessary dental treatment. Metro Health will provide all required documentation to the UT Health Dental School to ensure enrolled children have access to designated services.
- 2.5 Metro Health will provide oral health education for PCI Head Start program staff, including Teachers, Center Directors, Family Service Workers, and Health Coordinators.

- 2.6 Metro Health will provide PCI Head Start teachers and staff with ongoing training and technical assistance regarding oral health performance standards and the importance of good oral health for Head Start children and families.
- 2.7 Metro Health will provide PCI Head Start Center Directors and Family Service Workers with an Oral Health Training Manual, outlining all oral health performance standards, internal policies and protocols and Oral Health Program forms.
- 2.8 Metro Health will document all service activities provided under this agreement, to include but not limited to, updating its health record database and completing a Dental Evaluation & Fluoride Varnish Form for all enrolled children attached hereto and incorporated herein for all purposes as **Attachment I**.
- 2.9 To provide written referral and/or correspondence to the enrollee's parent explaining findings of the dental evaluation. This document of the child's oral health status, along with contact information for Metro Health staff, will be given to the appropriate PCI staff to be forwarded to parents/care giver.
- 2.10 Metro Health will make best efforts to provide each participating enrollee who has provided parental consent, two on-site limited oral evaluations and fluoride varnish applications during the school year.

III. PERFORMANCE BY PCI

PCI agrees:

- 3.1 To coordinate with Metro Health to ensure all funded enrolled of up to eight hundred sixteen (816) children in program receive oral health services.
- 3.2 To conduct basic administrative functions to support program services and objectives including but not limited to the following patient information: name, home address, home telephone number, and parent's work number, medical history, and Medicaid/CHIP number.
- 3.3 Providing monthly reports on status of follow-up of referrals and allowing regular audits of dental charts as determined to be necessary by Metro Health to verify that follow-ups were performed.
- 3.4 To defer to the dentist for determination of the appropriate timeframe for follow-up care as indicated in the referral information.
- 3.5 To obtain required consent forms for program participation, to include Dental Evaluation and Fluoride Varnish Form from the parent or legal guardian for funded enrollment of up to eight hundred sixteen (816) children, enabling Metro Health to administer the dental services required, and to have these forms present at the time of exam or treatment.
- 3.6 To obtain from each enrollee's parent or legal guardian pertinent documentation of the child's medical history, including a history of all past and current illness, current medications and any allergies to food, drugs or latex prior to the time services are rendered by Metro Health.

- 3.7 To certify that all costs herein provided for reimbursement to Metro Health are allowable costs under the grant guidelines.
- 3.8 To pay for all services rendered by the City within 30 calendar days of receiving a valid and approved Request for Payment.
- 3.9 To designate a PCI staff member to schedule and coordinate on-site clinics in all Head Start Centers.
- 3.10 To notify Metro Health staff at least 48 hours in advance of any cancellations or changes in scheduling.
- 3.11 To provide adequate staff, as outlined by the Texas Department of Family and Protective Services (TDFPS) guidelines for adult-to-child ratio, and to provide one staff person per clinic to supervise children during delivery of care.

IV. TERM

- 4.1 This contract shall commence on September 1, 2020 and shall terminate on August 31, 2021 unless extension or earlier termination shall occur pursuant to the terms of this contract. This Agreement may be renewed by mutual consent of the parties for one successive, one year term. Any renewals shall be in writing and signed by the parties. The City Manager or designee, or the Director of Metro Health shall have the authority to execute renewals on behalf of the City without further City Council action.

V. LOCATION

- 5.1 Services to be provided under this agreement will be provided at the appropriate PCI Head Start Centers or Metro Health Clinic facility as agreed upon by mutual consent of the City and PCI. The type of services to be provided by Metro Health shall dictate at which location said services are to be administered.
- 5.2 In the event that a PCI enrollee needs to be transported to a specific location to receive a certain service, PCI shall arrange for said transportation.

VI. BILLING

- 6.1 PCI agrees that it will pay up to an amount of FORTY-EIGHT THOUSAND NINE HUNDRED SIXTY DOLLARS (\$48,960.00) to City for services provided under this agreement.
- 6.2 The City will bill PCI on a monthly basis for expenses incurred as determined by the City.
- 6.3 The City will provide in-kind services in an amount up to NINE THOUSAND SEVEN HUNDRED NINETY-TWO DOLLARS (\$9,792.00) for the period of the agreement.
- 6.4 PCI shall remain liable for the payment of services rendered under this agreement until all such payments are made and received by City. PCI's liability is not reduced or diminished by any amount by a third party's failure to pay for services rendered hereunder.

VII. COMPLIANCE

- 7.1 City and PCI agree to comply with all federal and state laws regarding nondiscrimination in

the execution of this agreement. In accordance therewith, City and PCI shall ensure that no person is denied benefits hereunder on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.

VIII. AMENDMENT

- 8.1 Amendments or modifications to this agreement may be initiated by either party hereto provided a ten (10) day written notice is given to the other party. No amendment, modification or alteration of the terms of this agreement shall be binding unless same be in writing, dated subsequent to the date hereof and duly executed and mutually agreed to by the parties to this agreement

IX. ASSIGNING INTEREST

- 9.1 Both parties shall not transfer or assign any interest in this agreement without the prior written consent of the other party and approval by the San Antonio City Council by means of an ordinance.

X. INDEMNITY

- 10.1 **PCI covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to PCI'S activities under this Agreement, including any acts or omissions of PCI, any agent, officer, director, representative, employee, consultant or subcontractor of PCI, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PCI AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. PCI shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or PCI known to PCI related to or arising out of PCI's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at PCI's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving PCI of any of its obligations under this paragraph.
- 10.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by PCI in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. PCI shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If PCI fails to retain Counsel within such time

period, City shall have the right to retain defense counsel on its own behalf and PCI shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XI. RELATIONSHIP OF THE PARTIES

- 11.1 City and PCI mutually agree that PCI acts in the capacity as an independent contractor and that nothing contained herein shall be construed by either party hereto or by any third party as creating the relationship of principal and agent, partners, joint venture or any other similar such relationship between the parties hereto.
- 11.2 City and PCI understand and agree that neither party to this agreement has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XII. TERMINATION

- 12.1 City and PCI understand and mutually agree that this agreement may be terminated by either party upon giving thirty (30) days' written notice, by certified mail, to the other party. Notice is said to be given when the written notice is received by the other party. The parties agree that the failure to secure adequate funding by PCI to meet the obligations set out within this agreement shall be grounds for immediate termination of this agreement by City.
- 12.2 Termination of this agreement for any cause shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination.

XIII. INSURANCE

- 13.1 A) Prior to the commencement of any work under this Agreement, PCI shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio Metropolitan Health District, which shall be clearly labeled "*Head Start Dental Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Manager and the San Antonio Metropolitan Health District. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk. A Contractor's financial integrity is of interest to the City; therefore, subject to PCI's right to maintain

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

TYPE	AMOUNTS
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises /Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000

C) PCI agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of PCI herein, and provide a certificate of insurance and endorsement that names the PCI and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies; Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

K) PCI and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. ACCESS TO RECORDS

- 14.1 Subject to federal, state and local laws, PCI, City or any duly authorized representative of each shall have access to any records, data or other information directly related to or generated as a result of the services provided hereunder for the purpose of conducting audits or examination.

XV. RETENTION OF RECORDS

- 15.1 City agrees to maintain financial records of or concerning the services provided hereunder for a period of three (3) years from the date of termination of this agreement.
- 15.2 City agrees to maintain health records on PCI enrollees served hereunder until said person's twenty-first birthday.

XVI. CONFIDENTIAL INFORMATION

- 16.1 Both parties agree to maintain confidentiality of client records in accordance with all City, State, and Federal laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) as amended. City and PCI will enter into a business associate agreement concerning transfer of client medical record information which is attached hereto and incorporated herein for all purposes as **Attachment II**.
- 16.2 PCI shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with the applicable Federal and State laws, regulations, and rules. This provision shall not be construed as limiting the City's right of access to recipient case records or other information relating to clients served under this Agreement.

XVII. SUBSTANTIAL INTEREST

- 17.1 PCI acknowledges that it is informed that Texas law prohibits contracts between City and any local public official such as a City officer or employee, and that the prohibition extends to any officer or employee of City boards and commissions and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity.
- 17.2 PCI certifies, and this agreement is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this agreement is an officer or employee of the CITY or any of its agencies, boards or commissions.

XVIII. DEBARMENT

- 18.1 PCI certifies that PCI is not debarred from entering into this agreement as defined by federal debarment guidelines.

XIX. NOTICES

- 19.1 For purposes of this agreement, all official communications and notices between the parties shall be deemed sufficient if in writing, mailed, certified mail, postage prepaid, to the addresses set forth below:

CITY

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

PCI

Parent/Child Incorporated
Attention: Dr. Sharon Small, Ph.D.
7815 Mainland Drive
San Antonio, Texas 78250-5150

XX. FULL AGREEMENT

- 20.1 This agreement constitutes the final and entire agreement between the parties hereto and

contains 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 hereof and duly executed by the parties.

XXI. AUTHORITY

21.1 The signers of this agreement, by placing their signature below, represent and warrant that they have full authority to execute this agreement on behalf of the respective party each represents.

XXII. SEVERABILITY

22.1 In case any one or more of the provisions contained this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties further agree 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.

XXIII. CAPTIONS

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

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW AND SHALL BE EFFECTIVE BEGINNING ON SEPTEMBER 1, 2020.

CITY OF SAN ANTONIO

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

Date

PARENT/CHILD INCORPORATED


[Dr. Sharon Small \(Jul 22, 2020 14:44 CDT\)](#)

Dr. Sharon Small, M.Ed., M.A., Ph.D.
Chief Executive Officer/HS/EHS Director

Jul 22, 2020

Date

APPROVED AS TO FORM:

Andrew Segovia
City Attorney

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (**Agreement**) is entered into by and between the City of San Antonio (“**Covered Entity**”), and Parent/Child Incorporated, a **Business Associate** (“**BA**”), referred to collectively herein as the “**Parties**.”

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

- (1) “Breach” shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:
 - (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
 - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;
 - (c) whether the protected health information was actually acquired or viewed; and
 - (d) the extent to which the risk to the protected health information has been mitigated.
- (2) “Designated Record Set” shall have the same meaning as the term “designated record

set” in 45 C.F.R. 164.501.

- (3) “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
- (4) “Health Information” is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- (5) “Individual” means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- (6) “Individually Identifiable Health Information” is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (7) “Privacy Rule” shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes “Electronic Protected Health Information” or “E PHI” and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.
- (9) "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 45 C.F.R 164.103.
- (10) “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (11) “Security Rules” shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.

- (12) The Health Information Technology for Economic and Clinical Health (“HITECH”) Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
 - (a) does business, and
 - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;
- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity’s compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit

Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

- (11) Immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all Security Rules requirements;
- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) This Agreement becomes effective on the date it is signed by the last Party. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.
- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

- G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.
- I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. Assignment. Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- Q. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

EXECUTED to be effective as of the dates indicated by the **City of San Antonio**, signing by and through its program manager.

COVERED ENTITY
By City of San Antonio

By: _____

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

Date

BUSINESS ASSOCIATE:

By: 

Dr. Sharon Small (Jul 22, 2020 14:44 CDT)

Dr. Sharon Small M.Ed.M.A.Ph.D.
Chief Executive Officer/HS/EHS Director

Jul 22, 2020

Date

APPROVED AS TO FORM:

Andrew Segovia
City Attorney