

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

**CITY OF SAN ANTONIO  
PROFESSIONAL SERVICES  
AGREEMENT**

This Professional Services Agreement (Agreement) is entered into between the City of San Antonio (“CITY”), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (“Metro Health”), and The University of Texas Health Science Center at San Antonio on behalf of its Center for Research to Advance Community Health (ReACH) (“Institution”), hereinafter collectively referred to as the “Parties.”

**WHEREAS**, the U.S. Department of Health and Human Services’ (DHHS) Racial and Ethnic Approaches to Community Health (REACH) Healthy Neighborhoods Project’s purpose is to expand the existing Healthy Neighborhoods Program to promote tobacco-free living, improved nutrition, and community-clinical strategies among African American and Latino communities on the near East, South, and West sides of San Antonio; and

**WHEREAS**, CITY desires Institution to develop and evaluate the effectiveness of policies related to tobacco cessation in a healthcare setting in order to promote the mission of SAMHD’s Healthy Neighborhoods Program; and

**WHEREAS**, the Institution represents that it possesses the knowledge, ability, professional skills, and qualifications to perform this work in an expeditious and economical manner consistent with CITY’s interests:

**NOW THEREFORE**, in consideration of the promises, mutual covenants, and agreements contained herein, the parties agree as follows:

**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.

“Institution” is defined in the preamble of this Agreement and includes its successors and assigns.

“Director” shall mean the director of Metro Health.

“Racial and Ethnic Approaches to Community Health (REACH) Healthy Neighborhoods Project grant” shall mean the U.S. Department of Health and Human Services’ (DHHS) grant which provides funding for this Agreement.

**I. TERM**

1.1 The term of this Agreement shall commence on April 1, 2019 and end on September 29, 2019. Upon agreement of the parties and availability of funding this Agreement may be renewed for four, one-year terms on the same terms and conditions. Renewals shall be in writing and

signed by the Director without further action by the San Antonio City Council.

1.2 Institution further agrees and understands that the City expects to pay all obligations of this Agreement from DHHS REACH Healthy Neighborhoods Project Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor Institution will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

## **II. SCOPE OF SERVICES**

2.1 Institution agrees to provide the following services during the term of the agreement described in this Article II entitled Scope of Services in exchange for the compensation described in Article III Compensation:

- a) Institution will develop and evaluate the effectiveness of policies related to tobacco cessation in a healthcare setting, specifically, a University Health System clinic. The deliverables will include a work plan, tobacco cessation data update, clinic policy evaluation, and community health worker training, certification, and continuing education program.
- b) Institution shall submit a detailed work plan to Metro Health for feedback and approval by April 12th. The work plan shall provide contract timelines and agreed upon process measures.
- c) Institution shall develop and implement a tobacco screening and referral policy and train clinic staff (to include data on the percent of staff completing the training) to be completed by September 1st. Institution shall select a clinic to implement a tobacco screening and referral system; administer an assessment of the current status of the clinical referral policy at the selected clinic; develop an implementation plan that includes a strategy for measuring compliance, integration with EMR, and referral processes (Quit texts vs. replacement therapy vs. cessation classes); and submit a final report at the end of the project year (September 1st) that documents compliance with policy and recommendations for improvement.
- d) Institution shall develop a community health worker training program to be completed by September 1st. By September 1<sup>st</sup>, Institution shall develop a curricula of topics relevant to the community health workers in the REACH Healthy Neighborhoods Project which shall be offered by Institution for continuing education credit through the Institution's Project ECHO (Extension of Community Health Outcomes) telementoring model.
- e) Institution will develop a limited number (4) of culturally appropriate messages to

promote the use of Quitxt, a text-based program designed to encourage smokers to quit smoking. These messages can be used by Metro Health and its collaborators to reach high risk populations regarding tobacco prevention and cessation to be completed by September 1st. Quitxt is evidence-based program and available in both English and Spanish. Quitxt will be made available to patients at no-cost. Institution will provide Metro Health reports detailing enrollment numbers and other descriptive information.

2.2 Institution agrees to provide any and all documentation required by the CITY for inclusion in any report concerning the CITY's REACH Healthy Neighborhoods Project. All work performed by Institution 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 Institution, which is not satisfactory to Director. CITY shall have the right to terminate this Agreement, in accordance with Article V. Termination, in whole or in part, should Institution'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.

### **III. COMPENSATION TO INSTITUTION**

3.1 In consideration of Institution's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Agreement, City agrees to pay Institution a fee of THIRTY FIVE THOUSAND DOLLARS (\$35,000.00) as total compensation, to be paid to Institution as set out below:

- a. Deliverable #1: Detailed work plan - \$5,000.00
- b. Deliverable #2: Completion of tobacco screening and referral policy including clinic staff training - \$9,000.00
- c. Deliverable #3: Completion of community health worker training program - \$12,000.00
- d. Deliverable #4: Completion of tested tobacco messaging - \$9,000.00

3.2 CITY and Institution agree that reimbursement for eligible services shall be made within thirty (30) days after the date on which CITY receives an invoice which will be submitted after submission, review and approval of each deliverable listed above, with appropriate documentation as required by CITY, from Institution for said services.

3.3 No additional fees or expenses of Institution shall be charged by Institution nor be payable by CITY. The parties hereby agree that all compensable expenses of Institution have been provided for in the total payment to Institution as specified in section 3.1 and 3.2 above. Total payments to Institution cannot exceed that amount set forth in section 3.1 and 3.2 above, without prior approval and agreement of all parties evidenced in writing and approved consistent with appropriate City policy.

3.4 It is expressly understood and agreed by the CITY and Institution that CITY's obligations under this Agreement are contingent upon the actual receipt of adequate grant funds from the U.S. Department of Health and Human Services' REACH Healthy Neighborhoods

Project Grant 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 grant funds to pay obligations under this Agreement, then this Agreement shall terminate and neither Institution nor CITY shall have any further obligations hereunder.

3.5 Final acceptance of work products and services require written approval by CITY which shall not be unreasonably withheld. The approval official shall be Director. Payment will be made to Institution 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 Institution, for the payment of any monies or the provision of any goods or services.

3.6 Institution agrees to provide any and all documentation required for inclusion in any report concerning the REACH Healthy Neighborhoods Project. All services required under this Agreement will be performed to CITY's satisfaction, and CITY will not be liable for any payment under this Agreement for services which have not been approved by CITY. The payment for services provided hereunder will not be paid until required reports, data, and documentation have been received and approved by the CITY.

3.7 Invoices shall include Purchase Order number provided by City and submit via email to City's Accounts Payable inbox ([ap@sanantonio.gov](mailto:ap@sanantonio.gov)) or by mail at the following address:

City of San Antonio  
Attn: Accounts Payable  
PO Box 839976  
San Antonio, TX 78283-3976

#### **IV. RECORDS RETENTION**

4.1 Institution 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 mutually agreeable and reasonable times during normal business hours and as reasonably 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.

4.2 Institution 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, Institution shall retain the records until the resolution of such litigation or other such questions. Institution acknowledges and agrees that CITY shall have access to any and all such documents during Institution's normal operating hours at mutually agreeable times as deemed necessary by CITY, during said retention period. CITY may, at its

election, require Institution to return said documents to CITY prior to or at the conclusion of said retention period.

4.3 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 Institution receives inquiries regarding documents within its possession pursuant to this Agreement, Institution 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 Institution shall submit to CITY the list of specific statutory authority mandating confidentiality no later than three (3) business days of Institution'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.

## **V. TERMINATION**

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

5.2 Termination Without Cause. This Agreement may be terminated by CITY upon 30 calendar days written notice, which notice shall be provided in accordance with the provisions of this Agreement. CITY will pay Institution for all work or services provided up to the day of termination, subject to submission of an invoice by Institution and approval and acceptance of work by CITY.

5.3 CITY's Termination For Cause. Upon written notice, which notice shall be provided in accordance with the provisions of this Agreement, 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:

- 5.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article IX. Assignment and Subcontracting.
- 5.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

5.4 Defaults With Opportunity for Cure. Should Institution default in the performance of this Agreement in a manner stated in this section 5.4 below, same shall be considered an event of default. CITY shall deliver written notice of said default specifying such matter(s) in default.

Institution shall have ten (10) business days after receipt of the written notice, in accordance with Article XXIV. Notice, to cure such default. If Institution 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 Institution's future or unpaid invoice(s) made under this Agreement, subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 5.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article X. Assignment and Subcontracting;
- 5.4.2 Bankruptcy or selling substantially all of company's assets;
- 5.4.3 Failing to perform or failing to comply with any covenant herein required;
- 5.4.4 Performing unsatisfactorily as determined by City;
- 5.4.5 The failure to meet reporting requirements of the REACH Healthy Neighborhoods Project, as set out and reasonably determined by City;
- 5.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

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

5.6 Regardless of how this Agreement is terminated, Institution shall effect 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 Institution, or provided to Institution, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Institution in accordance with Article IV. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City. Payment of compensation due or to become due to Institution is conditioned upon delivery of all such documents, if requested by City.

5.7 Within sixty (60) calendar days of the effective date of completion, or termination or expiration of this Agreement, Institution 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.

5.8 Upon the effective date of expiration or termination of this Agreement, Institution shall cease all operations of work being performed by Institution or any of its subcontractors pursuant to this Agreement.

5.9 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 Institution for any default hereunder or other action.

## **VI. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

6.1 Any and all writings, documents or information in whatsoever form and character produced by Institution pursuant to the provisions of this Agreement is the exclusive property of CITY. Institution shall retain the right to use all such writings, documents, or information for its own research and educational purposes.

6.2 Institution understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, CITY has the right to use all such writings, documents and information as CITY desires, without restriction.

6.3 Any intellectual property created by Institution under this agreement, including but not limited to artwork, logos and designs, shall be the property of the CITY. If requested, Institution shall execute any documents necessary to assign the intellectual property rights to the CITY subsequent to the execution of this agreement. Institution shall retain the right to use all such intellectual property for its own research and educational purposes.

6.4 Institution agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

## **VII. SPECIAL PROVISIONS**

Institution acknowledges that funds for this Agreement are from the U.S. Department of Health and Human Services' REACH Healthy Neighborhoods Project Grant. Institution agrees to comply with the following terms and conditions associated with said funds as directed by the City or as required by this Agreement:

### **ASSURANCES AND CERTIFICATIONS**

- I. a. Certification. Contractor certifies the following and will include such in all of its subcontracts:
  - i. It is not disqualified under 2 CFR § 376.935 or ineligible for participation in federal or state assistance programs;
  - ii. 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);

- iii. It has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- iv. It is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- v. It is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with the Contractor;
- vi. 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;
- vii. Neither it, nor its principals have within the three year period preceding this Contract, 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;
- viii. 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 in subsection (g) above; and
- ix. Neither it, nor its principals within a three year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

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 City.

b. Authorization. Contractor certifies that it possesses legal authority to contract for the services described in this Contract and if applicable, 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.

II. The undersigned certifies, to the best of his or her knowledge and belief, that:



(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **VIII. INSURANCE**

8.1 Institution and the City each maintain a self-insurance fund for general liability and workers' compensation claims and causes of action to meet their statutory obligations to each party's employees.

8.2 With respect to Institution, as a member of System, as an agency of the State of Texas and is self-insured pursuant to The University of Texas System Professional Medical Malpractice Self-insurance Plan, under the authority of Section 59, Texas Education Code. Institution has and will maintain in force during the term of this Agreement adequate insurance to cover its indemnification obligations hereunder. Furthermore, as a component of The University of Texas System and an agency of the State of Texas, Institution will address issues of general liability in accordance with the Texas Civil Practice and Remedies Code, Chapter 101 (the Texas Tort Claims Act, with limits of coverage generally \$250,000 per person and \$500,000 per occurrence) and Chapter 104 (State Liability for Conduct of Public Servants, with indemnity limits generally of \$100,000 per person, \$300,000 per occurrence). Institution will maintain Workers' Compensation insurance in the amounts required by state and federal law.

## **IX. INDEMNIFICATION**

9.1 Institution and CITY acknowledge they 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.

## **X. ASSIGNMENT AND SUBCONTRACTING**

10.1 Institution 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 considered the employees or contractors of Institution.

10.2 It is CITY's understanding that this Agreement is made in reliance thereon that Institution does not intend to use subcontractors in the performance of this Agreement.

10.3 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 Institution. CITY shall in no event be obligated to any third party, including any subcontractors of Institution, 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.

10.4 Except as otherwise stated herein, Institution 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. As a condition of such consent, if such consent is granted, Institution shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Institution, assignee, transferee or subcontractor.

10.5 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 Institution 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 Institution shall thereupon cease and terminate, in accordance with Article V. Termination, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by Institution shall in no event release Institution from any obligation under the terms of this Agreement, nor shall it relieve or release Institution from the payment of any damages to CITY, which CITY sustains as a result of such violation.

## **XI. INDEPENDENT CONTRACTOR**

11.1 Institution certifies and agrees that it is an independent contractor and not an officer, agent, servant or employee of CITY; that Institution 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 Institution, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between CITY and Institution. 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 Institution under this Agreement and that the Institution has no authority to bind the CITY.

## **XII. CONFLICT OF INTEREST**

12.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

12.2 Institution represents and certifies as follows:

- (i) Institution and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Institution has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

12.3 Institution acknowledges that City’s reliance on the above representations and certifications is reasonable.

## **XIII. AMENDMENTS**

13.1 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 Institution, and, as necessary, subject to approval by the City Council, as evidenced by passage of an Ordinance.

#### **XIV. SEVERABILITY**

14.1 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.

#### **XV. LICENSES/CERTIFICATIONS**

15.1 Institution represents and certifies that Institution 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.

#### **XVI. COMPLIANCE AND MONITORING**

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

16.2 Institution agrees that CITY may carry out reasonable monitoring and evaluation activities, and Institution shall provide reasonable access to CITY for such activities, so as to ensure compliance by Institution with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

#### **XVII. ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS**

17.1 Prohibited Political Activity. Institution 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.

17.2 Institution 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.

17.3 The prohibitions set forth in Sections 17.1 and 17.2 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;
- b) working or directing other personnel to work on any political activity during time paid for with CITY funds, including, but not limited to 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;
- c) 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
- d) 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.

17.4 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the Institution agrees to comply with the following special provisions,

- a) 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; and
- b) The Institution, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the CITY remains unresolved.

17.5 Confidential Information. "Confidential Information" shall mean all information provided by one party to the other and clearly identified as "Confidential" by the transmitting party at the time of disclosure and/or developed or recorded in the conduct of the Agreement. If such transmittal occurs orally, the transmitting party will, within thirty (30) days, reduce such transmittal to writing, mark and identify as confidential, and provide such record to the other party. The receiving party shall, for a period of three (3) years from the expiration or termination of the Agreement, not use any Confidential Information received

from transmitting party for any purpose other than the conduct of the Agreement under which such Confidential Information is disclosed or developed, nor disclose any such Confidential Information, in any way, to any third party. Confidential Information shall be disclosed only to those who have a need to know it in connection with the performance of the Agreement and are bound by this Agreement, including, without limitation, any employees, agents and independent contractors participating in the conduct of this Agreement, and shall be safeguarded with the same care normally afforded confidential information in the possession, custody or control of the party receiving the Confidential Information, but in no event less than a commercially reasonable degree of care. The foregoing shall not apply when, after and to the extent the Confidential Information disclosed, as documented by competent evidence:

- a. is not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure;
- b. 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;
- c. is or later becomes part of the public domain through no fault of the recipient party;
- d. is received from a third party having no obligations of confidentiality to the disclosing party;
- e. is independently developed by the recipient party by its personnel having no access to the Confidential Information; or
- f. is ethically disclosed to patients because of any unforeseen risk identified by either party during or after completion of the Study.

In addition, a party may disclose to third parties Confidential Information of the other party to the minimal extent such disclosure is required to comply with law, statute, or regulation, provided that to the extent possible the party required to make such disclosure shall notify disclosing party and allow disclosing party to assert any exclusions or exemptions that may be available to it and/or seek a protective order with respect thereto.

## **XVIII. NONDISCRIMINATION POLICY**

18.1 Non-Discrimination. As a party to this contract, Institution understands and agrees, to the extent it does not conflict with the requirements handed down to Institution by the State of Texas, to comply with the Non-discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the city code and further, shall not discriminate 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.

18.2 The Institution 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, Institution 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. Institution further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403, as amended, on file in the City Clerk's Office. Additionally, Institution certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VII of the Civil Rights Act of 1964, as amended;
- b) Section 504 of the Rehabilitation Act of 1973, as amended;
- c) The Age Discrimination Act of 1975, as amended;
- d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
- e) Fair Labor Standards Act of 1938, as amended;
- f) Equal Pay Act of 1963, P.L. 88-38; and
- g) All applicable regulations implementing the above laws.

## **XIX. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY**

19.1 Non-discrimination. As a condition of entering into this Agreement, Institution represents and certifies that it will comply with CITY's Commercial Nondiscrimination Policy, as described under Section IILC.1 of the SBEDA Ordinance. As part of such compliance, Institution shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Institution retaliate against any person for reporting instances of such discrimination. Institution shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in CITY's Relevant Marketplace. Institution understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Institution from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Institution shall include this nondiscrimination clause in all subcontracts for the performance of this Agreement.

## **XX. NONWAIVER OF PERFORMANCE**

20.1 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 XIII. Amendments. No act or omission by a Party shall in any manner impair or prejudice any rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXI. LAW APPLICABLE**

**21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXII. LEGAL AUTHORITY**

22.1 The signer of this Agreement for Institution represents, certifies, and assures that they have full legal authority to execute this Agreement on behalf of Institution and to bind Institution to all of the terms, conditions, provisions and obligations herein contained.

22.2 The parties acknowledge as follows: (i) Institution is an agency of the State of Texas and under the Constitution and the laws of the State of Texas, possesses certain rights and privileges; (ii) is subject to certain limitations and restrictions; (iii) only has such authority as is granted to it under the Constitution and laws of the State of Texas; (iv) nothing in this Agreement is intended to be, nor will it be construed to be, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas; (v) notwithstanding the generality or specificity of any provision hereof, the provisions of this Agreement as they pertain to Institution are enforceable only to the extent authorized by the Constitution and laws of the State of Texas; and (vi) accordingly, to the extent any provision hereof conflicts with the Constitution or laws of the State of Texas or exceeds the right, power or authority of Institution to agree to such provision, then that provision will not be enforceable against Institution or the State of Texas.

22.3 This contract may not be construed as creating any debt on behalf of the State of Texas, The University of Texas System, or The University of Texas Health Science Center at San Antonio in violation of Article III, Section 49, of the Texas Constitution.

## **XXIII. PARTIES BOUND**

23.1 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.



## **XXIV. NOTICE**

24.1 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 confirmed 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:

Jennifer Herriott, M.P.H.  
Interim Director  
San Antonio Metropolitan Health District  
111 Soledad St, Suite 1000  
San Antonio, Texas 78205

If intended for Institution, to:

The University of Texas Health Science  
Center at San Antonio  
Office of Sponsored Programs  
7703 Floyd Curl Drive, MSC 7828  
San Antonio, TX 78229-3900  
Attn: Sr. Director

With a copy to:

The University of Texas Health Science  
Center at San Antonio- Center for  
Research to Advance Community Health  
Attn: Dr. Joel Tsevat  
7411 John Smith Dr., Suite 1050  
San Antonio, TX 78229

## **XXV. DEBARMENT**

25.1 Institution 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.

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

## **XXVI. ENTIRE AGREEMENT**

26.1 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 XIII. Amendments.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**THE UNIVERSITY OF TEXAS  
HEALTH SCIENCE CENTER AT SAN  
ANTONIO**

\_\_\_\_\_  
Jennifer Herriott, M.P.H.  
Interim Director  
San Antonio Metropolitan Health District

\_\_\_\_\_  
Chris G. Green, CPA  
Sr. Director, Office of Sponsored Programs

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney