

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 at San Antonio ("CONTRACTOR"), 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 CONTRACTOR to provide evaluation services for the City's REACH Healthy Neighborhoods Project programming; and

WHEREAS, the CONTRACTOR 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.

"CONTRACTOR" 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 May 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 CONTRACTOR 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 upon notice to CONTRACTOR and neither City nor CONTRACTOR will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

II. SCOPE OF SERVICES

2.1 CONTRACTOR 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). CONTRACTOR shall provide evaluation services for the REACH Healthy Neighborhoods programming. The evaluation will follow the evaluation framework provided by City and will include evaluation on the effectiveness of the REACH Healthy Neighborhoods Project program at achieving its outcomes as well as impact and scalability of the strategies. CONTRACTOR shall submit a detailed Evaluation Plan Draft to include a timeline, agreed upon process measures, and a data collection and management plan to be submitted to Metro Health for approval by May 15th.
- b). CONTRACTOR evaluation services will include an evaluation plan to include, the collection of data for the REACH Healthy Neighborhoods performance measures, milestones, short term indicators, intermediate indicators, and long term indicators. The evaluation plan will be developed by the CONTRACTOR based on feedback from Metro Health, and will be formatted according to Metro Health requirements. CONTRACTOR will include key collaborators in the planning process, identify data sources, and develop a data management plan. CONTRACTOR will perform data analysis on collected data and provide conclusions based on results. Data shared is currently or will be de-identified prior to delivery to, transfer to, or access by CONTRACTOR.
- c) CONTRACTOR will also create a protocol which shall include the development of data collection tools and surveys. The protocol will include a detailed protocol for the evaluation, relevant evaluation tools, de-identified data, and a summary of contract activities. Additional reporting will include quarterly reporting on project milestones.
- d) All deliverables developed by the CONTRACTOR shall be provided to Metro Health in electronic format.

2.2 CONTRACTOR 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 CONTRACTOR hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory to Director. CITY shall have the right to terminate this Agreement, in accordance with Article V. Termination, in whole or in part, should CONTRACTOR's work not be satisfactory to Director; however, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should CITY elect not to terminate.

III. COMPENSATION TO CONTRACTOR

3.1 In consideration of CONTRACTOR'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 CONTRACTOR a fee of SEVENTY NINE THOUSAND TWO HUNDRED DOLLARS (\$79,200.00) as total compensation, to be paid to CONTRACTOR as set out below:

- a. Deliverable #1: Detailed Work Plan Draft- \$12,200.00
- b. Deliverable #2: Evaluation Plan- \$20,000.00
- c. Deliverable #3: Protocol- \$47,000.00

3.2 CITY and CONTRACTOR 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 CONTRACTOR for said services.

3.3 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by CITY. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in section 3.1 and 3.2 above. Total payments to CONTRACTOR 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 CONTRACTOR 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 upon notice to CONTRACTOR and neither CONTRACTOR nor CITY shall have any further obligations hereunder.

3.5 Final acceptance of work products and services require written approval by CITY. The approval official shall be Director. Payment will be made to CONTRACTOR following written approval of the final work products and services by Director. CITY shall not be obligated or liable under this Agreement to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

3.6 CONTRACTOR 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 are unsatisfactory and 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) 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 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.

4.2 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. CITY may, at its election, require CONTRACTOR to return said documents to CITY prior to or at the conclusion of said retention 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 CONTRACTOR receives inquiries regarding documents within its possession pursuant to this Agreement, CONTRACTOR shall within twenty-four (24) hours of receiving the requests forward such requests to CITY for disposition. If the requested information is confidential pursuant to state or federal law, the CONTRACTOR shall submit to CITY the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONTRACTOR's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

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 either party upon thirty (30) calendar days written notice, which notice shall be provided in accordance with the provisions of this Agreement. CITY will pay CONTRACTOR for all work or services provided up to the day of termination, subject to submission of an invoice by CONTRACTOR and approval and acceptance of work by CITY.

5.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with the provisions of this Agreement, either party 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.

5.4 Defaults With Opportunity for Cure. Should CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article XXIV. Notice, to cure such default. If CONTRACTOR fails to cure the default within such ten-day cure period, CITY shall have the right, without further notice, to terminate this Agreement in whole or in part as CITY deems

appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against CONTRACTOR's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 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 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, CONTRACTOR 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 CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by CONTRACTOR in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by City.

5.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by CONTRACTOR to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

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 CONTRACTOR 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 CONTRACTOR pursuant to the provisions of this Agreement (the "Project Materials") is the exclusive property of CONTRACTOR; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CITY. CITY reserves the non-exclusive right, including in each and every copyright, to use and reproduce Project Materials and reserves the right to authorize others to use or reproduce such Project Materials. CITY understands that under CONTRACTOR policies, copyright ownership in any works authored by CONTRACTOR's faculty belongs to that author and not CONTRACTOR. Therefore, CONTRACTOR does not exercise any authority to bind its faculty to any copyright use or transfer agreement. CITY also acknowledges that local governmental records are public records and as such, CONTRACTOR cannot transfer or otherwise confer any right to CITY in these materials. Nothing herein is intended nor shall it be construed to prohibit CONTRACTOR or its faculty access to the Project Materials, or to transfer any ownership in CONTRACTOR's best practice and benchmarking information to the CITY.

6.2 City understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, CONTRACTOR has the right to use all such writings, documents and information as CONTRACTOR desires, without restriction. CONTRACTOR has the right to use Project Materials and documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONTRACTOR ("Research Results") for its own internal non-commercial research and educational purposes. It is further understood by the Parties, that CONTRACTOR retains the right to use Research Results to produce scholarly works for publication. In the event that CONTRACTOR or its faculty contributors publishes the Research Results or uses any of the Project Materials for educational activities, or permits any third party to do so, CONTRACTOR or its faculty contributors shall acknowledge CITY's contribution to the Project in any such publication.

6.3 Any intellectual property created by CONTRACTOR under this agreement, including but not limited to artwork, logos and designs, shall be the property of the CONTRACTOR and is not a "work-for-hire."

6.4 Each party 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

CONTRACTOR acknowledges that funds for this Agreement are from the U.S. Department of Health and Human Services' REACH Healthy Neighborhoods Project Grant. CONTRACTOR agrees to comply with applicable terms and conditions as may be required by the REACH Healthy Neighborhoods Project Grant, to include but not limited to 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 CONTRACTOR and the CITY each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

8.2 With respect to CONTRACTOR, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000.00 for each person and \$500,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

IX. INDEMNIFICATION

9.1 CONTRACTOR 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 CONTRACTOR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be considered the employees or contractors of CONTRACTOR.

10.2 It is CITY's understanding that this Agreement is made in reliance thereon that CONTRACTOR 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 CONTRACTOR. CITY shall in no event be obligated to any third party, including any subcontractors of

CONTRACTOR, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the CITY.

10.4 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer, or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or any other means, without the consent of the CITY. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee, or subcontractor.

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 CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title, or interest in this Agreement, CITY may, at its option, cancel this Agreement and all rights, titles, and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with Article V. Termination, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to CITY, which CITY sustains as a result of such violation.

XI. INDEPENDENT CONTRACTOR

11.1 CONTRACTOR covenants and agrees that it is an independent contractor and not an officer, agent, servant, or employee of CITY; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of *respondeat superior* shall not apply as between CITY and CONTRACTOR, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint venturers between CITY and CONTRACTOR. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the CITY.

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 CONTRACTOR warrants and certifies as follows:

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

12.3 CONTRACTOR acknowledges that City’s reliance on the above warranties 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 CONTRACTOR, 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 CONTRACTOR represents that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license, and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVI. COMPLIANCE AND MONITORING

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

16.2 CONTRACTOR agrees that CITY may carry out reasonable monitoring and evaluation activities, and CONTRACTOR shall provide reasonable access to CITY for such activities, so as to ensure compliance by CONTRACTOR 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. CONTRACTOR agrees that no funds provided from or through the CITY shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

17.2 CONTRACTOR agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

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 CONTRACTOR 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 CONTRACTOR, 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 Unless disclosure is authorized by the CITY, CONTRACTOR agrees to maintain in confidence all information pertaining to this Agreement or other information and materials prepared for, provided by, or obtained from CITY including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. CONTRACTOR shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, CONTRACTOR shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the CITY's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, CONTRACTOR shall return to CITY all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

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

XVIII. NONDISCRIMINATION POLICY

18.1 Non-Discrimination. As a party to this contract, CONTRACTOR understands and agrees 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 CONTRACTOR shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, CONTRACTOR agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403, as amended, on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

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

XIX. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY

19.1 Non-discrimination. As a condition of entering into this Agreement, CONTRACTOR represents and warrants 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, CONTRACTOR 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

CONTRACTOR retaliate against any person for reporting instances of such discrimination. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all of the terms, conditions, provisions, and obligations herein contained.

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 CONTRACTOR, to:

The University of Texas at San Antonio
ATTN: Dr. Erica Sosa
One UTSA Circle
San Antonio, TX 78249

XXV. DEBARMENT

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

2.2 CONTRACTOR 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, CONTRACTOR 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

Jennifer Herriott, MPH
Interim Director
San Antonio Metropolitan Health District

Date: _____

Approved as to Form:

City Attorney

**THE UNIVERSITY OF TEXAS
AT SAN ANTONIO**



Michelle Stevenson, Ph.D., CCEP
Associate Vice President of Research
Administration

Date: 4/5/2019