

BLOOD SERVICES AGREEMENT

This Blood Services Agreement ("Agreement") is made and entered into effective as of September 1, 2018 ("Effective Date"), by and between South Texas Blood & Tissue Center, a Texas not-for-profit organization ("STBTC"), and the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through Erik Walsh, Deputy City Manager. STBTC and City are referred to herein individually as "party" or collectively as "parties".

STBTC's Obligations. STBTC will:

(a) Provide scheduled delivery service for blood, blood components (referred to herein as "Blood"), and other supplies or materials furnished by STBTC, the quantities of which will be mutually determined from time to time by the San Antonio Fire Department's (SAFD's) management and STBTC, subject to availability during community blood shortages. Delivery fees, if any, are set forth on Exhibit A hereto.

(b) Provide the reference and consultation services listed on Exhibit A hereto.

(c) Conduct periodic blood banking educational programs and inservices for SAFD's personnel as reasonably requested, at mutually agreeable dates and times.

(d) Provide literature and other support material for community relations concerning blood banking and donor recruitment, physician and medical staff education, and general blood banking information, as reasonably requested.

(e) Notify SAFD within three calendar days after STBTC determines that it has supplied Blood collected from a donor who tested negative at the time of donation and subsequently tests reactive for Human Immunodeficiency Virus ("HIV") or Hepatitis C Virus ("HCV") infection on a later donation, or subsequently is determined to be at increased risk for transmitting HIV or HCV.

1. SAFD's Obligations. SAFD will:

(a) Store and handle Blood in accordance with the laws, regulations, and standards set forth by the Center for Biologics Evaluation and Research of the Food and Drug Administration ("FDA") and the AABB (formerly known as the American Association of Blood Banks).

(b) Use blood products delivered to it for transfusion to its patients, in connection with SAFD's ground services medical program. SAFD will not sell, distribute or transfer any of STBTC's blood products to any person or entity, business or individual, other than one of its patients undergoing transfusion treatment.

(c) Allow periodic inspection of SAFD's blood service by STBTC, at mutually agreed upon dates and times.

(d) Make available to STBTC copies of its Standard Operating Procedures ("SOP") for transfusion of Blood.

(e) Perform blood utilization reviews in accordance with the requirements set forth by the AABB.

3. Service Fees.

(a) STBTC will invoice City twice monthly for its delivery of Blood and ancillary blood services provided to the SAFD, in accordance with the price list attached hereto as Exhibit A. City shall pay amounts due to STBTC upon receipt of the invoice payable within thirty (30) days of the date of the invoice. City agrees to pay interest on past due amounts in accordance with the Texas Prompt Payment Act. All payments shall be made in immediately available funds by check, wire transfer or ACH deposit.

(b) STBTC may increase its fees provided for on Exhibit A for reasons which include, but are not limited to, the following: (i) STBTC implements or is required to contract for new tests or processes that (a) are mandated by the FDA, another applicable regulatory agency, or by a standard setting organization such as the AABB, (b) become "standard of care", or (c) are specifically requested by the SAFD; (ii) if the cost of the supplies or the costs of testing services provided to STBTC increases due to an increase in the cost of testing supplies by more than the change in the average of the medical care commodities and medical care services Consumer Price Index – U.S. City Average for All Urban Consumers (CPI-U) published by the U.S. Department of Labor's Bureau of Labor Statistics in any year, STBTC may appropriately increase the fees for supplies and testing services to directly reflect those price increases on both a per product and per sample basis; or (iii) an increase in the average of the medical care commodities and medical care services CPI-U. If the CPI-U is no longer reported, then the successor index reported by the same agency shall be used, and if there is no successor index reported, the parties will select an inflationary index that most closely tracks the changes in prices tracked by the CPI-U for the stated categories.

(c) The total expenditure by City under this contract cannot exceed \$50,000 without action by the San Antonio City Council.

4. Sole Source Provider. City agrees that during the term of this Agreement, it shall use STBTC exclusively for the SAFD's requirements for Blood. If there are community shortages, STBTC will work with other blood providers to meet SAFD's requirements.

5. Term. This Agreement shall commence on the Effective Date ascribed above, and will remain in effect for one (1) calendar year, terminating on August 31, 2019, unless terminated for cause as provided herein.

If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in this section is subject to and contingent upon subsequent appropriation.

6. Termination for Cause by Either Party. A party may terminate this Agreement: (a) immediately, if the other party materially breaches the terms or conditions of this Agreement, and the breaching party does not cure such breach within thirty (30) days after receiving notice of such breach from the non-breaching party, or (b) upon thirty (30) days written notice to the other party (i) upon the other party becoming insolvent or making an assignment for the benefit of its creditors, (ii) upon appointment of a trustee or receiver for such party or all or substantially all of its property, or (iii) upon the filing of a voluntary or involuntary petition by or against such party under the United States Bankruptcy Code, or any similar law which is not dismissed within sixty (60) days. The foregoing notwithstanding, if City fails to make any payment due under this Agreement within five (5) business days of the due date, STBTC may immediately terminate or suspend services under this Agreement upon written notice to City.

7. Independent Contractor.

(a) STBTC is an Independent Contractor and not an employee, officer, or agent of, nor a partner with, City. STBTC has the unrestricted right to perform like services for other customers during the term of this Agreement. Due to the Independent Contractor relationship, neither party shall have any power to bind the other, beyond the terms ascribed under this Agreement.

(b) STBTC agrees to immediately disclose to City any debarment, exclusion, or other event that makes the undersigned or any individual employed by the undersigned an Ineligible Person. For the purposes of this Agreement, an "Ineligible Person" shall be any individual or entity who (i) is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment or ineligibility.

8. Insurance. STBTC will maintain liability insurance of at least \$1 million per occurrence/ \$2 million in the aggregate. STBTC shall provide the SAFD with a certificate of insurance upon request; provided, however, upon written notice to SAFD, STBTC may request to the City Risk Manager to lower the foregoing insurance to such amount that is available in the insurance markets at commercially feasible premiums, or may provide the foregoing insurance through a self-insurance program. City will maintain self-insurance as a political sub-division of Texas. City shall provide STBTC with a letter of self-insurance upon request.

9. Confidentiality.

(a) During the term of this Agreement, each party may, directly or indirectly, disclose Confidential Information to the other party. Confidential Information includes all non-public, proprietary or confidential information furnished by or on behalf of one party to the other party (irrespective of the forms or means of communication), including, but not limited to: (i) all information concerning the business operations of a party and its affiliates, including financial statements and information, marketing strategies, pricing/fees, business plans and forecasts; (ii) any technology, trade secrets, design, scientific or technical information; (iii) any concepts and know-how; (iv) any information relating to a party's employees, customers, suppliers and vendors; and (v) the fees charged by STBTC hereunder as set forth on Exhibit A. Notwithstanding the foregoing, Confidential Information shall not include information: (a) that is in the public domain or generally available to the public (through no fault of the receiving party); (b) that was in the possession of or disclosed to the receiving party prior to the date hereof, free of any obligation to keep the same confidential; and (c) that is lawfully acquired by the other from a third party under no obligation of confidence to the disclosing party. Any information deemed to be confidential by STBTC should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by STBTC may not be considered confidential under Texas law, or pursuant to a Court order.

(b) To the extent permitted by law, the parties agree not to disclose to any third party any Confidential Information. However, a party may disclose Confidential Information to its employees, agents and consultants who reasonably need to know such information in connection with their employment or consultant duties, provided that they personally agree, in writing, to be bound by the terms of this confidentiality covenant, or are otherwise bound by such terms as a condition of their employment. This confidentiality covenant shall survive the termination of this Agreement for five (5) years. The foregoing and subsequent confidentiality clauses of this Section do not limit or prevent STBTC from disclosing Confidential Information to debt collectors or accounts receivable collection

agencies in order for them or STBTC to collect from City any unpaid amounts that are payable by City under this Agreement.

(c) Both parties agree to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d ("HIPAA") and any current and future regulations promulgated there under including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), the federal standards for electronic transactions contained in 45 C.F.R. parts 160 and 162, and state privacy law, as codified in Texas Health & Safety Code Chapter 181, Sections 181.001 et seq. ("Texas Privacy Law") and any regulations thereto, all collectively referred to herein as "HIPAA Requirements". Both parties agree not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. Sections 1320d and Texas Privacy Law), other than as permitted by HIPAA Requirements and the terms of this Agreement.

10. Indemnification and Hold Harmless. STBTC covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to STBTC'S activities under this Agreement, including any acts or omissions of STBTC, any agent, officer, director, representative, employee, consultant or subcontractor of STBTC, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT STBTC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. Neither party is responsible for special, indirect, consequential, or other non-foreseeable damages, including lost profits or punitive damages.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. STBTC shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or STBTC known to STBTC related to or arising out of STBTC's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at STBTC's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving STBTC of any of its obligations under this paragraph.

11. Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by elements beyond that party's reasonable control and occurring without its own fault or negligence, including, and without limitation to, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement; provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

12. Notices. All notices or other communications that are required or permitted to be given to the parties under this Agreement shall be in writing and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

If intended for City, to:

City of San Antonio
Attn: San Antonio Fire Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for STBTC, to:

South Texas Blood & Tissue Center
Attn: Elizabeth Waltman, SVP/Chief Operating Officer
6211 IH-10 West
San Antonio, TX 78201

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without application of any conflict of laws rules that may apply the laws of another jurisdiction. All obligations of the Parties created hereunder are performable in Bexar County, Texas. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Mandatory and exclusive venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in San Antonio, Bexar County, Texas.

14. Waiver of Jury Trial. Each party hereby waives, to the fullest extent permitted by Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement. Each party (a) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that the other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 14. The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees

15. Assignment. Neither party may sell, assign, assign, pledge, transfer or convey any interest directly or indirectly, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, STBTC may assign this Agreement without consent to an affiliate of STBTC or any entity to which STBTC transfers all or substantially all of STBTC's blood banking operations; provided that, STBTC provide prompt written notice to the City of the transfer. STBTC may assign or sell accounts receivable or rights to receive payment from City to third parties without City consent.

16. Severability Clause. Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Texas, or illegal or unenforceable under present or future federal, state or local laws, 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.

17. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes. Signatures transmitted by facsimile or PDF email scan will be binding to the same extent as an original and City and STBTC each agree that this transaction may be conducted by electronic means, as authorized by Chapter 322, Texas Business & Commerce Code, known as the Uniform Electronic Transactions Act.

18. Entire Agreement. This Agreement, together with its authorizing ordinance and its exhibits, if any, constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements between the parties, whether written or oral, concerning the subject matter hereof. No person shall be deemed to be a third party beneficiary hereof. This Agreement may not be amended except pursuant to writing signed by both parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

19. Injunctive Relief. City acknowledges that any breach or threatened breach of this Agreement may cause irreparable harm to STBTC for which monetary damages alone may be inadequate, and that in addition to all other remedies available to STBTC at law or in equity, STBTC shall be entitled to injunctive relief to enforce its rights without the necessity of posting bond.

(Signatures appear on next page)

SIGNED by the parties hereto, in force as of the Effective Date ascribed above.

CITY:

City of San Antonio

By: 

Name: Erik Walsh

Title: Deputy City Manager

Date: 9/28/18

Address: San Antonio Fire Department
P.O. Box 839966
San Antonio, TX 78283

STBTC:

South Texas Blood & Tissue Center

By: 

Name: Elizabeth Waltman

Title: SVP / Chief Operating Officer

Date: 9/08/18

Address: 6211 IH-10 West
San Antonio, TX 78201