

AN ORDINANCE      2013 - 09 - 19 - 0654

**AUTHORIZING AGREEMENTS RELATED TO THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S (METRO HEALTH) ORAL HEALTH PROGRAM WITH DR. JENNIFER BANKLER FOR AN AMOUNT UP TO \$120,000.00 FOR A TERM BEGINNING OCTOBER 1, 2013 TO SEPTEMBER 30, 2014 AND THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO DENTAL SCHOOL FOR AN AMOUNT UP TO \$112,921.00 FOR A TERM BEGINNING ON SEPTEMBER 1, 2013 AND ENDING AUGUST 31, 2014 FOR THE PROVISION OF DENTAL SERVICES; AND AUTHORIZING AGREEMENTS WITH AVANCE, FAMILY SERVICE ASSOCIATION AND PARENT CHILD INCORPORATED WHICH WILL PROVIDE A CUMULATIVE AMOUNT OF UP TO \$188,060.00 TO METRO HEALTH FOR THE PROVISION OF ORAL HEALTH SERVICES TO HEAD START ENROLLEES BEGINNING OCTOBER 1, 2013 AND TERMINATING JANUARY 31, 2015 WITH AN IN-KIND MATCH REQUIREMENT IN SERVICES TOTALING \$47,015.00.**

\* \* \* \* \*

**WHEREAS**, on an annual basis, the San Antonio Metropolitan Health District (Metro Health) Oral Health Program provides diagnostic and preventive care to more than 12,000 children living in poverty by providing services in non-traditional settings such as Head Start, Early Head Start and on campuses of local Title I elementary schools; and

**WHEREAS**, through these programs, many children are identified with additional dental treatment needs beyond the scope of Metro Health services; and

**WHEREAS**, case management services are provided by Metro Health dental staff to assist participating children to receive needed treatment and to connect families to a source of ongoing care in the community; and

**WHEREAS**, through a contract with Dr. Jennifer Bankler, Dr. Bankler will continue to provide clinical care for Metro Health patients as well as professional consultation services related to Metro Health's dental clinic operations and community outreach programs; and

**WHEREAS**, through an agreement with the University of Texas Health Science Center at San Antonio (UTHSCSA) Dental School, Metro Health has developed a cost-effective means of providing access to high quality dental care for children throughout the community who are uninsured or underinsured, identified through City outreach programs who have extensive dental needs beyond the scope of services offered by Metro Health; and

**WHEREAS**, the renewal agreement with the UTHSCSA Dental School will be a paid on a fee-for service basis in an amount up to \$112,921.00; and

**WHEREAS**, through dental services agreements with Parent Child Incorporated (PCI), Family Services Association, and Avance San Antonio, Metro Health will provide oral health assessments and preventive care; including fluoride varnish applications, for children enrolled in the Head Start Program; and

**WHEREAS**, Metro Health is requesting authorization to execute agreements related to its Oral Health Program with Dr. Jennifer Bankler, the UTHSCSA Dental School, Parent Child Incorporated, Family Services Association and Avance San Antonio; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee or the Director of the San Antonio Metropolitan Health District (Metro Health) or his designee is authorized to execute agreements related to Metro Health's Oral Health Program with Dr. Jennifer Bankler for an amount up to \$120,000.00 for a term beginning October 1, 2013 to September 30, 2014 with options to renew for two one year terms, and the University of Texas Health Science Center at San Antonio (UTHSCSA) Dental School for an amount up to \$112,921.00 for a term beginning on September 1, 2013 and ending August 31, 2014 for the provision of dental services, and is further authorized to execute agreements with Avance, Family Service Association (FSA) and Parent Child Incorporated (PCI) which will provide a cumulative amount of up to \$188,060.00 to Metro Health for the provision of oral health services to Head Start enrollees beginning October 1, 2013 and terminating January 31, 2015. An in-kind match requirement in services totaling \$47,015.00 is authorized to be provided by the City. A copy of said contracts in substantially final form are attached hereto and incorporated herein for all purposes as **Attachments I-V**.

**SECTION 2.** The sum of \$232,921.00 is appropriated in the below funds and payment is authorized to Jennifer Bankler and UTHSCSA for the above amounts upon issuance of a Purchase Order.

<b>Amount</b>	<b>Cost Center</b>	<b>GL No</b>	<b>Fund No</b>	<b>Internal Order</b>
\$120,000.00	3618010004	5201040	11001000	
\$112,921.00		5201030	2601636125	1360000614
Subtotal \$232,921.00				

**SECTION 3.** Upon approval of this ordinance, a new fund and internal order will be created, upon which the sum of up to \$188,060.00 from service agreements with Avance, FSA and PCI will be appropriated. The proposed budgets which are attached hereto and incorporated herein for all

purposes as **Attachments VI-VIII** for the three agencies are approved and adopted for entry in the City books.

Amount	Cost Center	GL No	Fund No	Internal Order
\$38,850.00		4501000	26xxx	1360000xxx
\$12,950.00	3618010004	5201040	11001000	
\$74,895.00		4501000	26xxx	1360000xxx
\$24,965.00	3618010004	5201040	11001000	
\$27,300.00		4501000	26xxx	1360000xxx
\$9,100.00		5201040	11001000	
Subtotal \$188,060.00				

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

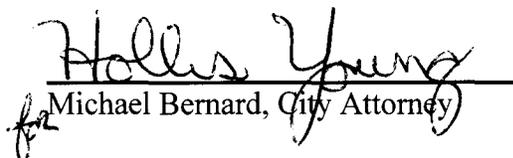
PASSED AND APPROVED this 19th day of September, 2013.

  
M A Y O R  
Julián Castro

**ATTEST:**

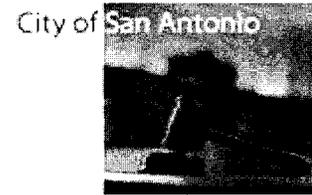
  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
Michael Bernard, City Attorney



Request for  
**COUNCIL**  
ACTION



### Agenda Voting Results - 18

<b>Name:</b>	4, 5, 6, 7, 8, 9, 10A, 10B, 11, 12, 14A, 14B, 15, 16, 17, 18, 19, 20, 21, 22A, 22B, 23A, 23B, 23C, 23D, 24A, 24B, 24C, 24D						
<b>Date:</b>	09/19/2013						
<b>Time:</b>	09:33:06 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing agreements related to the San Antonio Metropolitan Health District's Oral Health Program with Dr. Jennifer Bankler for an amount up to \$120,000.00 for a term beginning October 1, 2013 to September 30, 2014 and the University of Texas Health Science Center at San Antonio Dental School for an amount up to \$112,921.00 for a term beginning on September 1, 2013 and ending August 31, 2014 for the provision of dental services; and authorizing agreements with Avance, Family Service Association and Parent Child Incorporated which will provide a cumulative amount of up to \$188,060.00 to Metro Health for the provision of oral health services to Early Head Start enrollees beginning October 1, 2013 and terminating January 31, 2015 with an in-kind match requirement in services totaling \$47,015.00. [Gloria Hurtado, Assistant City Manager; Dr. Thomas L. Schlenker, Public Health Director]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

**CITY OF SAN ANTONIO  
PROFESSIONAL HEALTH CARE  
SERVICES AGREEMENT  
Public Health Dentist**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_, and Jennifer Meyer Bankler, D.D.S. (hereinafter referred to as “Contractor”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. 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.

“Director” shall mean the director of City’s San Antonio Metropolitan Health District (SAMHD).

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2013 and terminate on September 30, 2014.

2.2 The City shall have the option to renew and extend the term of this Agreement for two periods, with each period being one year in length.

2.3 Contractor agrees and understands that City has projected costs for this Agreement and that City expects to pay all obligations of this Agreement from projected revenue sources. Accordingly, if City shall fail to appropriate sums to pay any of City’s obligations under the terms of this Agreement, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, then this Agreement shall terminate and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. Payment for services performed by Contractor through the effective date of termination shall be made pursuant to Article 7.6 herein.

2.4 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 funds 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 funds to pay obligations under this Agreement, then this Agreement shall terminate and neither Contractor nor City shall have any further obligations hereunder.

### **III. SCOPE OF SERVICES**

3.1 Under general administrative direction, the Dental Director is responsible for oversight of clinical services provided by the San Antonio Metropolitan Health District's Oral Health Program. The Dental Director also provides oral health expertise to the Department and aids in the formulation of recommendations and community-based interventions that aim to improve the oral health of Bexar County residents of all ages through the development and implementation of evidence-based strategies designed to reduce the burden of oral disease and promote healthy behaviors.

3.2 Specific duties of the Dental Director include:

- a. Provides clinical services through the SAMHD Oral Health Program;
- b. Recruits and retains a competent community health dentists, dental hygienists and dental support staff;
- c. Ensures SAMHD Oral Health Program clinic staff is in compliance with federal and state rules and regulations, as well as credentialing requirements pertaining to the practice of dentistry;
- d. Conducts clinical staff training;
- e. Oversees quality management activities related to clinical services provide through the Oral Health Program and serves as a member of the Department's Quality Management Committee;
- f. Maintains prescribed and acceptable standards in dental quality assurance, infection control, radiation safety procedures, HIPPA and OSHA requirements;
- g. Monitors daily clinical operations to ensure maximization of resources. Assists with tracking clinic productivity;
- h. Ensures appropriate policies and protocols are maintained for records management;
- i. Oversees the tracking and management of Oral Health Program medication and inventory in accordance Class D Pharmacy and clinical programs' medication policies and procedures and serves as a member of the Department's Quality Management Committee;
- j. Performs inspections of SAMHD Oral Health Program mobile equipment to ensure it is in proper working condition to support quality dental care;
- k. Develops, updates, and manages dental budgets, contractual agreements, policies, and operating procedures, protocols, objectives, measurements, and associated projections;

- l. Assesses SAMHD dental resources in consideration of currency and adequacy to meet community needs and demands;
- m. Works closely with community partners, academic institutions, agencies, groups, and individuals to maximize and leverage oral health services with an emphasis on disease prevention;
- n. Serves as clinical supervisor for dental hygiene students and pre-doctoral dental students from the UT Health Science Center Dental School, as well as Dental Public Health residents;
- o. Projects community dental health needs utilizing updated knowledge of City and county demographics;

3.3 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 VII. 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.

3.4 Contractor and Director or his designee shall engage in an annual quality assurance evaluation for the purpose of: 1) maintaining the highest standards of clinical care, appropriate for the public health program; 2) ensuring compliance with clinical licensure regulations and Medicaid guidelines and recommendations; and 3) other matters of interest raised by Contractor or Director.

#### **IV. COMPENSATION TO CONTRACTOR**

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services, activities, duties and responsibilities set forth in this Agreement, City agrees to pay Contractor a fee of \$75 per hour up to an amount not to exceed ONE HUNDRED TWENTY THOUSAND AND NO/100THS (\$120,000.00) for the term of this Agreement.

4.2 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, with appropriate documentation as required by City, from Contractor for said services.

4.3 City and Contractor agree that the City will provide the clinical staff support and supplies necessary for Contractor to manage patient care.

4.4 City and Contractor understand and agree that all Medicaid and third party insurances will be billed by the SAMHD for clinical services at SAMHD facilities and that all revenues received by the SAMHD for said billing shall be the property of City.

4.5 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.

4.6 The Contractor further agrees to accept reimbursement from the City as set forth in Article 4.1 above as payment in full for the services provided and shall seek no additional reimbursement for the services from the patient.

4.7 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City other than as specified in Article 4.1 or 4.7 above.

#### **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents, dental records, or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement shall be the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents, dental records, and information, City has the right to use all such writings, documents, dental records, and information as City desires. Contractor agrees to comply with the Health Insurance Portability and Accountability Act (HIPAA). Contractor has entered into a Business Associate Agreement with the City that is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.

#### **VI. RECORD REQUESTS**

6.1 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced in Article V. Ownership of Records herein. Contractor understands and agrees that City will process and handle all such requests, regarding records that are owned or possessed by the City.

#### **VII. TERMINATION**

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

7.2 Termination Without Cause. This Agreement may be terminated by City or by Contractor upon thirty (30) calendar days written notice to the other party, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, 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:

7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this Article 7.4 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 fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-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.

7.4.1 Failing to perform or failing to comply with any covenant herein required

7.4.2 Performing unsatisfactorily as determined by Director

7.5 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.

7.6 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.

7.7 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.

7.8 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.

## VIII. NOTICE

8.1 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:

City Clerk  
City of San Antonio

P.O. Box 839966  
San Antonio, Texas 78283-  
3966

**AND** City of San Antonio  
San Antonio Metropolitan Health District,  
Director  
332 W. Commerce, Suite 307  
San Antonio, Texas 78205

If intended for Contractor, to:

Jennifer Bankler D.D.S.  
110 Irongate  
San Antonio, Texas, 78213

## IX. CONFIDENTIALITY

9.1 Contractor shall establish a method to secure the confidentiality of records and other information that Contractor may have access to, in accordance with applicable Federal statutes, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA), State and Local laws, regulations, and rules.

9.2 Contractor shall comply and shall cause its employees and/or subcontractors performing services hereunder to comply with applicable provisions of HIPAA to the extent such law and regulations apply regarding patient and medical record confidentiality.

9.3 Nothing contained herein shall limit the CITY's right of access to documents produced or maintained in accordance with this Contract.

## X. INSURANCE REQUIREMENTS

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the San Antonio Metropolitan Health District, which shall be clearly labeled "Public Health Dentist" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's San Antonio Metropolitan Health District. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

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

Dental Malpractice Liability	\$200,000 per claim/\$600,000 aggregate; to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
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10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall

pay any costs incurred resulting from said changes.

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

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

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

10.11 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

## XI. INDEMNIFICATION

11.1 **CONTRACTOR** 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 **CONTRACTOR'S** activities under this Agreement, including any acts or omissions of **CONTRACTOR**, any agent, officer, director, representative, employee, consultant or subcontractor of **CONTRACTOR**, 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**, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR 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.**

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

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by **CONTRACTOR** in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. **CONTRACTOR** shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If **CONTRACTOR** fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and **CONTRACTOR** shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 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 Council, as evidenced by passage of an ordinance. 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.

12.2 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 VII. 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.

## **XIII. INDEPENDENT CONTRACTOR**

13.1 Contractor covenants and agrees that he or she 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 respondent 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.

#### **XIV. CONFLICT OF INTEREST**

14.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 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: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City Contract, a partner or a parent or subsidiary business entity.

14.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XV. AMENDMENTS**

15.1 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 subject to approval by the City Council, as evidenced by passage of an ordinance.

#### **XVI. SEVERABILITY**

16.1 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 Contract 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.

#### **XVII. LICENSES/CERTIFICATIONS**

17.1 Contractor warrants and certifies 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.

### **XVIII. COMPLIANCE**

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

### **XIX. NONWAIVER OF PERFORMANCE**

19.1 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 XV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

### **XX. LAW APPLICABLE**

**20.1 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.**

20.2 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.

### **XXI. LEGAL AUTHORITY**

21.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he 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.

**XXII. PARTIES BOUND**

22.1 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.

**XXIII. CAPTIONS**

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

**XXIV. ENTIRE CONTRACT**

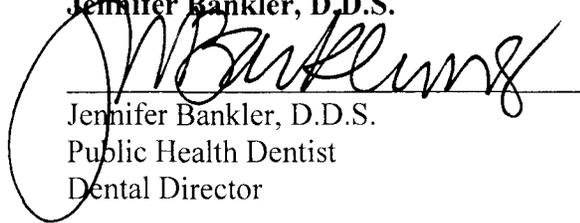
24.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other Contracts, oral or otherwise, regarding the subject matter of this Agreement shall 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 XV. Amendments. This Agreement shall supercede any and all prior written and oral agreements between the City and Contractor.

**EXECUTED and AGREED** to this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**City:**  
**CITY OF SAN ANTONIO**

**Contractor:**  
**Jennifer Bankler, D.D.S.**

\_\_\_\_\_  
Thomas Schlenker M.D., M.P.H.  
Director of Health

  
\_\_\_\_\_  
Jennifer Bankler, D.D.S.  
Public Health Dentist  
Dental Director

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Michael D. Bernard  
City Attorney

## Attachment I - Business Associate Agreement

This Business Associate Agreement (“Agreement”) dated October 1, 2013 (the “Effective Date”), is entered into by and between the City of San Antonio (“Health Care Provider”) and Jennifer Bankler, D.D.S. (“Business Associate”).

**WHEREAS**, Health Care Provider is receiving and Business Associate is providing services (“Business Arrangement”) that may require Business Associate to access health information that is protected by state and/or federal law;

**WHEREAS**, Business Associate and Health Care Provider desire that Business Associate obtain access to such information in accordance with the terms specified herein;

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Definitions.** Unless otherwise specified in this Business Associate Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms shall have the definitions as set forth herein below:

"Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information as codified in 45 CFR Parts 160 and 164.

"Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information as codified in 45 CFR Parts 160 and 164.

"Protected Health Information" or “PHI” shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term in the Privacy Standards and in the Security Standards.

2. **Business Associate Obligations.** Business Associate may receive from Health Care Provider health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or the Security Standards if the PHI were used or disclosed by Health Care Provider in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

3. **Use of PHI.** Business Associate may use PHI only (i) for the purpose of performing services for Health Care Provider as such services are defined in Business Arrangement, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Health Care Provider shall retain all rights in the PHI not granted herein.

4. **Disclosure of PHI.** Business Associate may disclose PHI as necessary to perform its obligations under the Business Arrangement and as permitted by law, provided that Business

Associate shall in such case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to immediately notify Health Care Provider of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards or the Security Standards; and (c) obtain reasonable assurances that all disclosures of PHI are subject to the principle of “minimum necessary use and disclosure,” i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. In addition, Business Associate may disclose PHI as required by law. If Business Associate discloses PHI received from Health Care Provider, or created or received by Business Associate on behalf of Health Care Provider, to agents, including a subcontractor (collectively, “Recipients”), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Health Care Provider any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Health Care Provider in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI in violation of this Agreement.

5. **Individual Rights.** If Business Associate maintains a Designated Record Set on behalf of Health Care Provider, Business Associate shall (a) permit an individual to inspect or copy PHI contained in that set about the individual under conditions and limitations required under 45 CFR § 164.524, as it may be amended from time to time, and (b) amend PHI maintained by Business Associate as requested by Health Care Provider. Business Associate shall respond to any request from Health Care Provider for access by an individual within five (5) days of such request and shall make any amendment requested by Health Care Provider within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Business Associate shall accommodate an individual’s right to have access to PHI about the individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 CFR § 164.526, as it may be amended from time to time, unless the regulation provides for a denial or an exception expressly applies. Health Care Provider shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Health Care Provider within five (5) days of receipt of any request for access or amendment by an individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set.

6. **Accounting of Disclosures.** Business Associate shall make available to Health Care Provider in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Health Care Provider’s request. Such accounting must be provided without cost to the individual or to Health Care Provider if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Health Care Provider and the Health Care Provider informs the individual in advance of the fee,

and the individual is afforded an opportunity to withdraw or modify the request. Such accounting shall be provided as long as Business Associate maintains PHI.

7. **Withdrawal of Consent or Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and (i) the individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

8. **Records and Audit.** Business Associate shall make available to Health Care Provider and to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Health Care Provider for the purpose of determining Health Care Provider's compliance with the Privacy Standards and the Security Standards or any other health oversight agency, in a timely a manner designated by Health Care Provider or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Health Care Provider immediately upon receipt by Business Associate of any and all requests served upon Business Associate for information or documents by or on behalf of any and all government authorities.

9. **Notice of Privacy Practices.** Health Care Provider shall provide to Business Associate its Notice of Privacy Practices ("Notice") when adopted and any amendments thereafter. Business Associate agrees that it will abide by the limitations of any Notice published by Health Care Provider of which it has knowledge. An amended Notice shall not affect permitted uses and disclosures on which Business Associate has relied prior to the receipt of such Notice.

10. **Confidentiality.** Business Associate shall take any steps required to (i) protect PHI from unauthorized uses or disclosures and (ii) maintain the confidentiality and integrity of PHI. Prior to any permitted disclosure of PHI, Business Associate shall require the person or entity to which it intends to disclose PHI to assume all of the same duties with respect to PHI that Business Associate has under this Agreement.

11. **Security.** Business Associate will: implement administrative, physical, and technical safeguards that reasonably and appropriate protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Health Care Provider; ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the information; and report any security incidents to the Health Care Provider, in accordance with the Security Standards.

12. **Term and Termination.**

12.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 12, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

12.2 Health Care Provider shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

12.3 Health Care Provider, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

- (a) Business Associate shall fail to observe or perform any material covenant or agreement contained in this Agreement for ten (10) days after written notice thereof has been given to Business Associate by Health Care Provider; or
- (b) A violation by Business Associate of any provision of the Privacy Standards, Security Standards, or other applicable federal or state privacy law.

12.4 Upon the termination of the Business Arrangement, either party may terminate this Agreement by providing written notice to the other party.

12.5 Upon termination of this Agreement for any reason, Business Associate agrees either to return to Health Care Provider or to destroy all PHI received from Health Care Provider or otherwise through the performance of services for Health Care Provider, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the covenants in this Agreement with respect to such PHI and shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this Agreement shall be cause for Health Care Provider to terminate the Business Arrangement.

13. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

<b>Health Care Provider:</b>	<b>Business Associate</b>
City Clerk	Jennifer Bankler, D.D.S.
City of San Antonio	110 Irongate
P.O. Box 839966	San Antonio, Texas 78213
San Antonio, Texas 78283-3966	
AND	
City of San Antonio	
San Antonio Metropolitan Health District, Director	
332 W. Commerce, Suite 307	
San Antonio, Texas 78205	

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

15. **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Health Care Provider shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Health Care Provider, without the prior approval of Business Associate.

16. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Health Care Provider relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangement or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangement comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

17. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

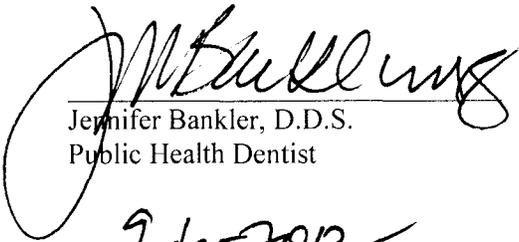
19. **Indemnification.** BUSINESS ASSOCIATE WILL INDEMNIFY, DEFEND AND HOLD HEALTH CARE PROVIDER AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR SIMILAR BREACH BY RECIPIENTS ("CLAIM"). IF BUSINESS ASSOCIATE ASSUMES THE DEFENSE OF A CLAIM, HEALTH CARE PROVIDER SHALL HAVE THE RIGHT, AT ITS EXPENSE, TO PARTICIPATE IN THE DEFENSE OF SUCH CLAIM, AND BUSINESS ASSOCIATE SHALL NOT TAKE ANY FINAL ACTION WITH RESPECT TO SUCH CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF HEALTH CARE PROVIDER.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

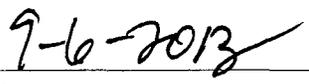
Health Care Provider:  
CITY OF SAN ANTONIO  
San Antonio Metropolitan Health District

Business Associate:  
Jennifer Bankler, D.D.S.

\_\_\_\_\_  
Thomas Schlenker, M.D., M.P.H.  
Director of Health

  
\_\_\_\_\_  
Jennifer Bankler, D.D.S.  
Public Health Dentist

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Michael D. Bernard  
City Attorney

STATE OF TEXAS	§	PROFESSIONAL SERVICES
	§	
COUNTY OF BEXAR	§	AGREEMENT

THIS PROFESIONAL SERVICES AGREEMENT (the Agreement) is made and entered into by and between the CITY OF SAN ANTONIO (“CITY”), a Texas Home Rule Municipality, on behalf of the San Antonio Metropolitan Health District (“HEALTH DISTRICT”) pursuant to Ordinance No. \_\_\_\_\_, passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_ 2013, and the UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO (UTHSCSA) DENTAL SCHOOL on behalf of its Department of Developmental Dentistry. CITY and UTHSCSA shall collectively be referred to as “the Parties.”

**WITNESSETH**

WHEREAS, CITY provides dental services for children at non-traditional setting such as Head Start and Early Head Start Centers and elementary schools; and

WHEREAS the Department of Developmental Dentistry is part of the UTHSCSA Dental School; and

WHEREAS, the CITY does not have the capacity or resources to meet the demand for dental services for children that require comprehensive dental treatment; and

WHEREAS, the CITY believes it is in the best interest of the CITY for UTHSCSA to provide children with quality dental care in an appropriate clinical and/or surgical environment;

NOW THEREFORE, in consideration of the mutual covenants and agreements stated herein, the Parties agree as follows:

**ARTICLE I**  
**PURPOSE/DEFINITIONS**

1.1 The purpose of this Agreement is to establish the terms and conditions under which UTHSCSA will provide CITY with certain specified dental health services for uninsured or underinsured children eligible for care through the Title V Maternal Child Health Block Grant for Dental Services. This Agreement shall also establish the CITY’s and UTHSCSA’s obligations, costs, and the manner and method of payment for provided services.

1.2 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.

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

“Director” shall mean the Director of the San Antonio Metropolitan Health District.

“TDSHS” shall be defined as the Texas Department of State Health Services, the agency that funds, oversees the statewide Title V Maternal Child Health Block Grant, and evaluation efforts.

“Title V Grant” shall be defined as the TDSHS Title V Maternal Child Health Block Grant for Dental Services Contract which is the funding source for this contract.

“SAO,” shall be defined as the Texas State Auditor’s Office.

“OIG,” shall be defined as the Office of the Inspector General.

“CGUS,” shall be defined as the Comptroller General of the United States.

## **ARTICLE II**

### **TERM**

2.1 The term of this Agreement commences on September 1, 2013 and terminates on August 31, 2014. The Parties may mutually agree to a maximum of three (3) additional one-year renewal terms. Either Party may terminate the contract by giving thirty (30) days written notice to the other Party.

2.2 UTHSCSA acknowledges that City has projected costs for this Agreement and that City expects to pay all obligations of this Agreement from projected revenue sources, but that all obligations of City are subject to funding from the United States Department of Health and Human Services (HHS) and annual appropriation by the Texas Department of State Health Services. Accordingly, if HHS or Texas DSHS should fail to appropriate sums to pay any of City’s obligations under the terms of this Agreement this Agreement shall terminate upon thirty (30) days written notice to UTHSCSA and neither UTHSCSA nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. Payment for services performed by UTHSCSA through the effective date of termination shall be made pursuant to Article VI herein.

## **ARTICLE III**

### **DESIGNATED REPRESENTATIVES**

3.1 UTHSCSA hereby appoints Kevin Donly, D.D.S., M.S., Chairman of the Department of Developmental Dentistry, as its designated representative with regard to the services to be

performed herein. UTHSCSA may change its designated representative at any time and must provide CITY with written notice of the change pursuant to Article X, Section 11.01.

3.2 CITY hereby appoints Jennifer Bankler, D.D.S., Dental Director, San Antonio Metropolitan Health District, as its designated representative with regard to the services to be performed herein. CITY may change its designated representative at any time and must provide UTHSCSA with written notice of the change pursuant to Article XI, Section 11.01.

#### **ARTICLE IV** **CITY'S OBLIGATIONS**

4.1 In conjunction with its public health dental program activities, Metro Health will perform Title V eligibility screening and program intake documentation for children in need of dental care.

4.2 Metro Health will refer eligible children to UT Health Science Center Dental School, Pediatric Dental Clinics for further evaluation and treatment when appropriate.

4.3 CITY agrees to pay UTHSCSA for services provided as outlined in the TDSHS Title V Fee Schedule.

#### **ARTICLE V** **UTHSCSA'S SERVICES**

5.1 Upon referral by SAMHD, UTHSCSA shall:

- 5.1.1 Provide diagnostic and preventive care for each referred child and determine treatment plan of care;
- 5.1.2 Determine the family's income eligibility for sliding scale/reduced fees based on the established protocol at the Ricardo Salinas Dental Clinic;
- 5.1.3 Waive all co-payments for procedures covered by the program and assess fees for non-covered procedures based on the established sliding scale based on family income;
- 5.1.4 Provide required dental treatment for each child in an outpatient setting through the Ricardo Salinas Dental Clinic and/or other facilities designated by the UT Health Science Center Dental School for pediatric dental patients;
- 5.1.5 Communicate on an ongoing basis with SAMHD Case Managers regarding treatment plan/plan of care for each referred through the program;

5.1.6 Adhere to all subcontractor requirements for TDSHS Title V Grant subcontractors and provide related documentation upon request.

5.2 UTHSCSA understands and agrees that the services to be provided under this agreement are expected to have a total value of \$141,151.00, but that the cumulative total for all invoices presented by UTHSCSA under this Agreement shall not exceed a total amount of \$112,921.00.

5.3 All work performed by UTHSCSA hereunder shall be performed to the satisfaction of the Director of the SAMHD (Director). The determination made by the Director shall be final, binding, and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by UTHSCSA, which is not satisfactory to Director. CITY shall have the right to terminate this Agreement, in whole or in part, should UTHSCSA'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.

5.4 UTHSCSA and the Director or his designee shall engage in an annual quality assurance evaluation for the purpose of: 1) maintaining the highest standards of clinical care, appropriate for the public health program; 2) ensuring compliance with clinical licensure regulations 3) other matters of interest raised by UTHSCSA or the Director.

5.5 UTHSCSA agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the FY14 Statement of Work for the TDSHS' Title V Maternal Child Health Block Grant and the FY14 TDSHS Contract General Provisions attached hereto and incorporated herein for all purposes as **Attachment I**.

## **ARTICLE VI CONSIDERATION**

6.1 In consideration of UTHSCSA's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services, activities, duties and responsibilities set forth in this agreement, CITY agrees to pay UTHSCSA as set out below:

6.1.1 CITY shall pay an amount up to a maximum of \$112,921.00.

6.1.2 The maximum amount to be paid by CITY and the cumulative total of all invoices from UTHSCSA shall not exceed the amount of \$112,921.00 (ONE HUNDRED TWELVE THOUSAND NINE HUNDRED TWENTY AND 00/100THS DOLLARS).

6.2 UTHSCSA shall submit patient receipts/encounter forms with detailed description of services rendered within 30 days from the date of service. CITY shall pay UTHSCSA within thirty days of receipt of the invoice.

**ARTICLE VII**  
**PAYMENT FOR SERVICES**

7.1 UTHSCSA shall issue a monthly invoice to CITY addressed to the San Antonio Metropolitan Health District, Dental Health Services at 332 West Commerce, Suite 300, San Antonio, Texas 78205. Such invoice shall separately detail the amount of compensation due for services. CITY shall make its payment within thirty (30) days of receipt of each invoice. If any amount set out in any invoice is disputed by CITY, then CITY agrees to notify UTHSCSA in writing of the disputed amount, and the basis for the dispute, within fifteen (15) days of receipt of such invoice. The Parties agree that only the disputed amount may be retained by CITY until the disputed matter is resolved, and that the undisputed balance must be paid in accordance with the terms of this Section.

7.2 CITY and UTHSCSA will determine fees for additional services by mutual agreement through an amendment(s) of this Agreement. In the event the Parties agree that UTHSCSA is to provide additional services and also agree as to the basis for calculating the compensation for such services, the CITY agrees to pay for such services in accordance with the terms of this Agreement.

**ARTICLE VIII**  
**TERMINATION**

8.1 For purposes of this Agreement, “termination” of this Agreement shall mean termination by expiration of the Agreement term or earlier termination pursuant to any of the provisions hereof.

8.2 **TERMINATION BY NOTICE:** The Agreement may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

8.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this Agreement, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this Agreement shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

8.4 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.

8.5 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), UTHSCSA shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this Agreement through the effective date of termination.

8.6 In the event that through action or no action initiated by the City of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of this contract and has no funds to do so from other sources, this contract may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send UTHSCSA written notice stating that the City of San Antonio failed to appropriate funds. Lack of funding is not and shall not be considered a breach of this Agreement.

#### **ARTICLE IX** **INDEPENDENT CONTRACTOR**

9.1 It is expressly understood and agreed that UTHSCSA shall be responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

9.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.

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

#### **ARTICLE X** **INSURANCE**

10.1 UTHSCSA and 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 their respective employees.

**ARTICLE XI**  
**NO INDEMNIFICATION BY PARTIES**

11.1 UTHSCSA and CITY acknowledge they are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices 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 accidents, injuries or deaths.

**ARTICLE XII**  
**STATISTICS AND DOCUMENTATION**

12.1 CITY and UTHSCSA will follow medical records standards in exchanging client care information. Applicable confidentiality statutory provisions and rules, including the Health Insurance Portability and Accountability Act (HIPAA) requirements.

**ARTICLE XIII**  
**AUDIT**

13.1 UTHSCSA shall keep at all times during the term of this Agreement complete financial records documenting the services provided to City. Authorized representatives of CITY shall have the right to examine all financial records of UTHSCSA pertaining to the services rendered for CITY. The written request for an audit, which shall list with specificity all records CITY desires to examine during a particular audit, must be submitted to the Director of External Relations for the City of San Antonio and the UTHSCSA at least ten (10) days prior to the requested date of examination by CITY representatives. CITY agrees to provide UTHSCSA with a copy of City's final report regarding each audit within thirty (30) days of completion. UTHSCSA shall maintain all pertinent financial records for the term of this Agreement and for four (4) years after termination of this Agreement, or as required by law, whichever is longer.

**ARTICLE XIV.**  
**NOTICES**

14.1 All notices to be given under this Agreement shall be in writing and shall either be personally delivered or sent by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below or at such other address as the Parties may designate.

If intended for City, to:

City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-  
3966

**AND** City of San Antonio  
San Antonio Metropolitan Health District, Director  
332 W. Commerce, Suite 307  
San Antonio, Texas 78205

If intended for Contractor, to:

Contractor:

University of Texas Health Science Center  
Dental School  
Department of Developmental Dentistry  
Attn: Dr. Kevin Donly, Chair  
San Antonio, Texas 78220-3900

#### **ARTICLE XV** **ASSIGNMENT**

15.1 Neither Party may assign its rights, privileges or obligations under this Agreement, in whole or in part, without the written consent of the other Party. Any attempt to assign without such approval shall be void.

#### **ARTICLE XVI** **XVI. SPECIAL PROVISIONS**

UTHSCSA acknowledges that funds for this agreement are from the TDSHS Title V Maternal Child Health Block Grant. UTHSCSA agrees to comply with all terms and conditions associated with said funds as directed by the City or as required by this Agreement, including but not limited to:

#### **Retention**

16.1 Retention. UTHSCSA shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, UTHSCSA shall retain and preserve all other records, including financial records that are generated or collected by UTHSCSA under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. UTHSCSA shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for UTHSCSA may extend beyond the retention

schedules established in this section. UTHSCSA shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.1 (b) and (c) or other applicable statutes, rules and regulations governing medical information. UTHSCSA shall include this provision concerning records retention in any subcontract it awards. If UTHSCSA ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the City and TDSHS upon the City or TDSHS' request for at least four (4) years from the date UTHSCSA ceases business or from the date this Contract terminates, whichever is sooner. UTHSCSA shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

### **Access and Inspection**

16.2 Access. In addition to any right of access arising by operation of law, UTHSCSA, and any of UTHSCSA's affiliate or subsidiary organizations or subcontractors shall permit the City and TDSHS or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and UTHSCSA's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of UTHSCSA's governing body, staff, volunteers, participants and clients concerning the Contract, UTHSCSA's business and client services. If deemed necessary by the City or TDSHS or the OIG, for the purpose of investigation or hearing, UTHSCSA shall produce original documents related to this Contract. The City, TDSHS and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of the City, TDSHS and HHSC to recover excessive or illegal payments. UTHSCSA shall make available to the City and DSHS information collected, assembled or maintained by UTHSCSA relative to this Contract for the City or TDSHS to respond to requests that it receives under the Public Information Act. UTHSCSA shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

16.3 State Auditor's Office. UTHSCSA shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. UTHSCSA understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. UTHSCSA shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by UTHSCSA to its subcontractors, and UTHSCSA shall include this provision concerning the SAO's authority to

audit and the requirement to cooperate, in any subcontract UTHSCSA awards.

### **Assurances and Certifications**

16.4 UTHSCSA certifies by execution of this Agreement to the following:

- a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;
- b) 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);
- c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d) it is not subject to an outstanding judgment in a suit against UTHSCSA for collection of the balance of a debt;
- e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with UTHSCSA;
- f) that no person who has an ownership or controlling interest in UTHSCSA or who is an agent or managing employee of UTHSCSA has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
- g) neither it, nor its principals have within the three(3)-year period preceding this Agreement, 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 UTHSCSA or its principals;
- h) 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 enumerated in subsection g) of this section; and

- i) neither it, nor its principals within a three (3) year period preceding this Agreement has had one or more public transaction (federal, state or local) terminated for cause or default.

UTHSCSA shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where UTHSCSA is unable to certify to any of the statements in this Article, UTHSCSA shall submit an explanation to the contract manager assigned to the Program Attachment. If UTHSCSA's status with respect to the items certified in this Article changes during the term of this Contract, UTHSCSA shall immediately notify the contract manager assigned to the Program Attachment.

16.5 Child Support Delinquencies. As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, UTHSCSA shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

16.6 Authorization. UTHSCSA certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of UTHSCSA'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 UTHSCSA to act in connection with this Contract and to provide such additional information as may be required.

16.7 Gifts and Benefits Prohibited. UTHSCSA certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a TDSHS or HHSC official or employee in connection with this Contract.

16.8 Ineligibility to Receive the Contract. (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, UTHSCSA is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from TDSHS to participate in developing, drafting or preparing the specifications, requirements, statement(s) of work or Solicitation Document on which this Contract is based. UTHSCSA certifies that neither UTHSCSA, nor its employees, nor anyone acting for UTHSCSA has received compensation from TDSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, UTHSCSA is ineligible to receive this Contract, if UTHSCSA or any person who would have financial participation in this

Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) UTHSCSA certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

16.9 Antitrust. Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. UTHSCSA that neither UTHSCSA, nor anyone acting for UTHSCSA has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in UTHSCSA's line of business for the purpose of substantially lessening competition in such line of business.

16.10 Initiation and Completion of Work. UTHSCSA certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

### **Conflict of Interest**

16.11 Conflict of Interest. UTHSCSA represents to the TDSHS that it and its subcontractors, if any, do not have nor shall UTHSCSA or its subcontractors knowingly acquire or retain, any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between UTHSCSA (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the TDSHS or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. UTHSCSA shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, UTHSCSA or any of its subcontractors has a conflict of interest or potential conflict of interest, UTHSCSA shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when UTHSCSA becomes aware of the existence of the actual or potential conflict of interest. UTHSCSA shall require each of its subcontractors to report to UTHSCSA any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

### **Transactions Between Related Parties**

16.12 Transactions Between Related Parties. UTHSCSA shall identify and report to TDSHS

any transactions between UTHSCSA and a related party that is part of the work that the TDSHS is purchasing under this Contract before entering into the transaction or immediately upon discovery. UTHSCSA shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to UTHSCSA and the work the related party will perform under this Contract. A related party is a person or entity related to UTHSCSA by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. UTHSCSA, for purposes of reporting transactions between related parties, includes the entity contracting with the TDSHS under this Contract as well as the chief executive officer, chief financial officer and program director of UTHSCSA. UTHSCSA shall comply with Tex. Gov. Code Chapter 573. UTHSCSA shall maintain records and supply any additional information requested by the TDSHS, regarding a transaction between related parties, needed to enable the DSHS to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR§ 215.42, and UGMS.

### **Lobbying**

16.13 UTHSCSA shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, UTHSCSA shall not use funds paid under this Agreement, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state 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 contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Agreement exceeds \$100,000 of federal funds, UTHSCSA shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of UTHSCSA in connection with this Agreement, a certification that none of the funds provided by DSHS have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom UTHSCSA has an agreement. UTHSCSA shall file the declaration, certification, and disclosure at the time of application for this Agreement; upon execution of this Agreement unless UTHSCSA previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. UTHSCSA shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. UTHSCSA shall also comply, as

applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. UTHSCSA shall include this provision in any subcontracts.

#### **Status of Contractor**

16.14 UTHSCSA certifies that it is not delinquent on any repayment agreements; has not had a required license or certification revoked; and has not had a contract terminated by the TDSHS. UTHSCSA further certifies that it has not voluntarily surrendered within the past three (3) years any license by the TDSHS.

#### **ARTICLE XVII COMPLIANCE WITH LAWS AND ORDINANCES**

17.1 The Parties hereby agree to comply with all federal, state, and local laws and ordinances applicable to the work or services to be performed under this Agreement.

#### **ARTICLE XVIII LICENSES/CERTIFICATIONS**

18.1 UTHSCSA warrants and certifies that UTHSCSA faculty 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.

18.2 UTHSCSA faculty and any other person designated to provide services must carry an original of his/her license/credentials and shall present said license/credentials for posting at their designated work station under this agreement.

18.3 UTHSCSA faculty and any other person designated to provide services must have current CPR certification and have a hepatitis B vaccination or be made aware of its availability and has declined it.

#### **ARTICLE XIX TEXAS LAW TO APPLY**

19.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas. The Parties agree that venue for any action is proper in Bexar County, Texas.

#### **ARTICLE XX PRIOR AGREEMENTS SUPERSEDED**

20.1 This Agreement constitutes the sole and only agreement of the Parties and supersedes all prior understandings or written or oral agreements between the Parties regarding the subject matter of the Agreement.

**ARTICLE XXI**  
**AMENDMENT**

21.1 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the City and Consultant. The Director may execute contract amendments on behalf of City in the following circumstances a) no cost extensions up to one year, b) modifications to the scope of service listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and c) changes in state or federal regulations mandated by the funding agency.

**ARTICLE XXII**  
**MULTIPLE COUNTERPARTS**

22.1 This Agreement may be executed in several counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and such separate counterparts shall constitute but one and the same instrument.

**ARTICLE XXIII**  
**PARTIES BOUND**

23.1 This Agreement shall be binding upon and inure only to the benefit of the Parties hereto and their respective successors and assigns where permitted by this Agreement. There are no third-party beneficiaries to this Agreement.

**ARTICLE XXIV**  
**LEGAL CONSTRUCTION**

24.1 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF SAN ANTONIO**

**THE UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT SAN ANTONIO**  
[vendor id no. 1018367]

\_\_\_\_\_  
**Thomas Schlenker, M.D., M.P.H.**  
**Director, San Antonio Metropolitan  
Health District**

\_\_\_\_\_  
**William W. Dodge, D.D.S.**  
**Dean, Ad Interim**  
**UTHSCSA Dental School**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Michael D. Bernard**  
**City Attorney**

\_\_\_\_\_  
**Gary F. Guest, D.D.S.**  
**Interim Associate Dean for Patient Care**  
**UTHSCSA Dental School**

\_\_\_\_\_  
**Kevin Donly, D.D.S., M.S.,**  
**Chair, Department of Developmental Dentistry**  
**UTHSCSA Dental School**

\_\_\_\_\_  
**Andrea M. Marks, MBA, CPA**  
**Vice President & Chief Financial Officer**  
**UTHSCSA**

CONTRACT NO. 2014-044723  
PROGRAM ATTACHMENT NO. 001  
PURCHASE ORDER NO. 0000398145

CONTRACTOR: SAN ANTONIO METROPOLITAN HEALTH DISTRICT

DSHS PROGRAM: CHS - TITLE V - CHILD HEALTH SERVICES

TERM: 09/01/2013 THRU: 08/31/2014

SECTION I. STATEMENT OF WORK:

Contractor shall provide or assure the provision of child health and/or child dental services that include screening and eligibility determination, direct clinical and/or dental services, laboratory services, Title V Children and Pregnant Women (Title V CPW) case management and appropriate referrals as necessary. Contractor shall provide services approved in the Contractor's application or shall have an established referral relationship with a qualified provider of each approved service, which it does not provide.

Contractor shall comply with all applicable federal and state laws, rules, regulations, standards and guidelines in effect on the beginning date of this Program Attachment unless amended, including but not limited to:

- Title V of the Social Security Act, 42 USC § 701, *et seq.*

The following documents are incorporated by reference and made a part of this Program Attachment. These include:

- DSHS FY14 Competitive Request for Proposal (RFP) for Title V Fee for Services Contracts Child Health, Child Dental, Prenatal Medical and Prenatal Dental Services;
- Contractor's Response to FY14 Competitive RFP for Title V Fee for Services Contracts Child Health, Child Dental, Prenatal Medical and Prenatal Dental Services, and any revisions;
- Current Policies and Procedures Manual for Title V Maternal and Child Health Fee for Services for Child Health, Dental, and Prenatal;
- DSHS *Department of State Health Services Standards for Public Health Clinic Services*, revised August 2004, or latest revision;
- DSHS Core Tool On-Site Evaluation Report, revised for 2013, and Core Tool Monitoring Instructions, FY2013; or latest revision; and
- DSHS Title V Maternal and Child On-site Evaluation Report, revised for 2013, and Title V Tool Monitoring Instructions, FY2013; or latest revision.

Within thirty (30) days of receipt of an amended standard(s) or guideline(s), Contractor shall inform DSHS Program, in writing, if it shall not continue performance under this Program Attachment in compliance with the amended standard(s) or guideline(s). DSHS may terminate the

Program Attachment immediately or within a reasonable period of time as determined by DSHS.

All activities must be performed in accordance with Contractor's final approved work plan.

DSHS Health Service Regional Director or designee, as coordinator of regional services, will assist DSHS staff in providing direction to Contractor. DSHS personnel may, from time to time, provide technical assistance and training to Contractor. Contractor shall cooperate with DSHS staff to attain the goals of policy application, coordinated services, and quality assurance.

Eligible Population:

To be eligible for Title V Child Health Services, an individual must be:

- An infant not more than eleven (11) months of age,
- A child or adolescent one (1) through twenty-one (21) years of age,
- A Texas resident,
- In financial need based on a gross family income at or below 185% of the most recent Federal Poverty Level, and
- Ineligible for other programs/benefits providing the same services.

Children and adolescents, who would otherwise meet Title V eligibility requirements, shall also be regarded as potentially Title V eligible. Individual client eligibility will be determined on an annual basis, and at other times as necessary, based upon change in pregnancy status or income.

Service Area: Bexar

Location: Multiple clinic locations identified through the DSHS website at: <http://www.txclinics.com>.

DSHS reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. DSHS Program will monitor Contractor's expenditures on a quarterly basis. If projected expenditures are below the total contract amount, Contractor's budget may be subject to a decrease for the remainder of the Program Attachment term. Vacant positions existing after ninety (90) days may result in a decrease in funds.

## SECTION II. PERFORMANCE MEASURES:

The following performance measure(s) will be used to assess, in part, the Contractor's effectiveness in providing the services described in this Program Attachment, without waiving the enforceability of any of the other terms of the contract.

Performance of Contractor, including compliance with DSHS Program procedures, policies and

guidance, contractual conditions, attainment of performance measures, maintenance of adequate staff, and submission of required data and narrative reports, if applicable, will be regularly assessed. Failure to comply with stated requirements and contractual conditions may result in the immediate loss of contract funds at the discretion of DSHS.

- Contractor shall provide child health and/or child dental services to at least 600 unduplicated clients.
- Contractor shall screen 100% of individuals considered for Title V eligibility with a DSHS-approved screening process, and refer to other programs and funding sources as appropriate.

### SECTION III. SOLICITATION DOCUMENT: RFP # CHS/TV-0554.1

### SECTION IV. RENEWALS:

Contract renewals are contingent upon satisfactory performance and continued availability of funding. The contract may be renewed for up to four (4) additional twelve- (12) month periods.

### SECTION V. PAYMENT METHOD: Fee-for-Service

### SECTION VI. BILLING INSTRUCTIONS:

Within 30 days following the end of the month, Contractor shall request payment using the Monthly Reimbursement Request (MRR), for Title V Fee for Service Program (Form #EF21-12005). With each MRR, contractor shall submit the following acceptable supporting documentation for reimbursement of the required services/deliverables:

- Title V Maternal-Child Services Report (Child Health & Dental) – (Form EF21-12005);
- Monthly Aggregate Activity Report (Form EF21-12005). Each report shall detail the total unduplicated number of clients seen for the first time within a service category type during the contract period by age, and race/ethnicity. Billing requests will not be processed for payment by DSHS unless accompanied by a complete corresponding aggregate report.

MRRs and supporting documentation shall either be emailed to the Family and Community Health Services Division, Performance Management Unit, Contract Development & Support Branch (CDSB) at [cdsb@dshs.state.tx.us](mailto:cdsb@dshs.state.tx.us), or faxed to CDSB at: (512) 776-7521.

MRRs shall be emailed also to the DSHS Claims Processing Unit (CPU) at [invoices@dshs.state.tx.us](mailto:invoices@dshs.state.tx.us), or faxed to CPU at (512) 776-7442.

MRRs shall be submitted each month even if there are zero expenditures. MRRs are submitted each month for actual expenditures of the program even if the contract limit has been reached.

Contractor shall request payment from DSHS as directed by the Policies and Procedures Manual for Title V Maternal and Child Health Fee for Service for Child Health, Dental and Prenatal whether via voucher or a web-based system.

Contractor shall submit a "Financial Reconciliation Report" (Form GC-10) no later than sixty (60) days after the end of the attachment term. This report must be signed and marked "Final" and shall be scanned and emailed to CDSB at the email address listed above. The GC-10 may also be faxed to CDSB at (512) 776-7521. The original, signed version shall also be mailed to the DSHS CPU at:

Department of State Health Services  
Claims Processing Unit, Mail Code 1940  
P.O. Box 149347  
Austin, TX 78714-9347

SECTION VII. BUDGET: Fee for Service

SOURCE OF FUNDS: CFDA # 93.994.000

DUNS NUMBER: 066428400

Contractor shall adhere to the current schedule of allowable services and rates as referenced in the Policies and Procedures Manual for Title V Maternal and Child Health Fee for Service for Child Health, Dental and Prenatal.

Total payments will not exceed \$141,151.00.

SECTION VIII. SPECIAL PROVISIONS:

For purposes of this Program Attachment only, the following provisions shall apply:

General Provisions, **Compliance and Reporting** Article I, is revised to include:

Contractor shall report to DSHS using established reports as directed by the Policies and Procedures Manual for Title V Maternal and Child Fee for Service for Child Health, Dental and Prenatal, and other data and/or reports deemed necessary by DSHS, upon reasonable notice to Contractor.

**Eligibility:** All individuals considered for Title V eligibility must be screened and determined eligible using a DSHS or Title V program-approved screening process as updated in the spring of each year when federal poverty levels and eligibility determination forms are revised.

General Provisions, **Services** Article II, is revised to include:

**Co-pay:** Contractor may assess a co-pay from clients who receive services under this Program Attachment. A co-pay shall not be assessed from such clients if their family

income is at or below 100% of the most recently defined federal poverty level. A co-pay assessment shall not exceed 25% of the authorized and approved reimbursement amount for allowed services. A client shall not be denied services due to inability to pay.

Contractor shall make reasonable efforts to investigate and apply for all other sources of third party funding available to, or identified by, the client before submitting claims for allowable costs.

General Provisions, **Funding** Article III, is revised to include:

Program Income may be collected and retained by Contractor so long as it is used to provide services specified in the scope of work detailed in this Program Attachment. The use of Program Income shall be reported on the monthly billing vouchers for services provided to Title V eligible clients.

General Provisions, **Payment Methods and Restrictions** Article IV, Section 4.02 **Billing Submission**, is revised to include:

Contractor's contract amount under this Program Attachment is a ceiling against which it may bill, on a fee-for-service basis, for the provision of allowable services to Title V eligible clients. Only allowable services provided to Title V eligible clients may be billed against this ceiling. The current schedule of allowable services and rates, as well as Title V eligibility requirements, may be modified at the sole discretion of DSHS with thirty (30) days written notice to Contractor. The notice will provide Contractor with an opportunity to terminate this Program Attachment should the modification include a reduction in rates. Contractor shall have thirty (30) days from receipt of this notice to exercise the option for termination. If the Contractor does not exercise the option during the thirty (30) day time period, Contractor shall be deemed to have waived the option.

A Request for "Financial Reconciliation Report", Form GC-10, or the form specified in the Contractor's Financial Procedures Manual, is due no later than sixty (60) days after the end of the Program Attachment term. This report shall be marked "Final".

**Billing Requirements:** Contractor shall bill DSHS on a monthly basis for allowable services provided to Title V eligible clients. Bills for all allowable services shall be submitted as aggregate activity reports with a DSHS Monthly Reimbursement Request and shall not refer to or identify individual clients. Contractor shall bill within thirty (30) days after the end of the month in which services were provided or within sixty (60) days in cases of potentially Medicaid eligible individuals who are denied eligibility by the Health and Human Services Commission. All bills shall be submitted within sixty (60) days of the end of the Program Attachment term.

In billing DSHS, Contractor shall certify that all billed services have been provided only to individuals who have been determined to be eligible for Title V services. DSHS will pay Contractor for all acceptable vouchers submitted up to Contractor's contract ceiling amount.

Billing vouchers submitted outside of the timeframes indicated above shall be subject to disallowance.

**Billing Activity:** DSHS shall distribute funds in a way that will maximize the delivery of authorized services to eligible clients. DSHS will monitor Contractor's billing activity. If utilization is below that projected in Contractor's contract ceiling amount, shown in SECTION VII. BUDGET, Contractor's ceiling may be subject to a decrease for the remainder of the Program Attachment period. Contractor may be subject to contract ceiling amount decreases if Contractor's billing activity is less than projected.

DSHS may pay for additional services as specified in this Program Attachment if provided by Contractor during the term of this Program Attachment (but not otherwise paid during the term of this Program Attachment) if it is in the best interest of the State and the DSHS Program to do so, and if funds are available. If Contractor exceeds the ceiling amount of the Program Attachment, Contractor shall continue to bill DSHS for the services provided. DSHS may pay for these additional services if funds become available at a later date.

General Provisions, **Terms and Conditions of Payment** Article V, is replaced with the following:

Contractor shall accept reimbursement or payment from DSHS and any applicable fees from clients for clinical health services as payment in full for services or goods provided to clients. Contractor shall not seek additional reimbursement or payment for services or goods from clients other than applicable fees for clinical health services.

General Provisions, **Access and Inspection** Article IX, is revised to include:

Contractor shall allow DSHS to conduct on-site quality assurance reviews as deemed necessary by DSHS. Unsatisfactory review findings may result in implementation of General Provisions, **Breach of Contract and Remedies for Non-Compliance** Article XIV.

General Provisions, **Assurances and Certifications** Article XI, is revised to include:

If appropriate, Contractor certifies that neither the Contractor, nor any individual who has a direct or indirect ownership or controlling interest of 5% or more of the Contracting Agency, nor any officer, director, agent or managing employee (e.g. general manager, business manager, administrator, director, or like individual who exercises operational or managerial control over the Contractor or who directly or indirectly conducts the day-to-day business of the Contractor is an entity or individual who:

- Has been convicted of any offense under 42 U.S.C. § 1320a-7(b)(1)-(3);
- Has had a civil monetary penalty assessed under 42 U.S.C. § 1320a and/or 42 U.S.C. § 1320a-8; or,
- Has been excluded from participation in a program under 42 U.S.C. § 1395 *et seq.*; or under a State health care program.

If the foregoing statement is not true, Contractor shall submit a disclosure/ownership form to DSHS. Contractor shall immediately notify the DSHS in writing, in the event that the foregoing statement changes during the term of this Program Attachment. A false statement regarding Contractor's status will be treated as a material misrepresentation.

General Provisions, **General Business Operations of Contractor** Article XII, is revised to include:

Contractor shall notify the Contract Development and Support Branch in writing of any clinic site information changes, e.g., changes in contact person, hours of operation, address, Texas Provider Identification (TPI) number, National Provider Identification (NPI) number, the closure, relocation, and/or opening of clinic site(s).

General Provisions, **ARTICLE XIII, GENERAL TERMS, Section 13.15, Amendment**, is amended to include the following:

Contractor must submit all amendment and revision requests in writing to the Family and Community Health Services (FCHS) Division Performance Management Unit at least 90 days prior to the end of the term of this Program Attachment.

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## ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the Department's rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The Department rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document, if any, (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department and shall provide any other information requested by the Department in the format required by DSHS. Failure to submit any required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.04 **Client Financial Eligibility.** Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 1.05 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, this Contract will be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit will be Travis County, Texas.

Section 1.06 **Applicable Laws and Regulations Regarding Funding Sources.** Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars (as codified in Title 2 of the Code of Federal Regulations), the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Comptroller of Public Accounts, Texas Procurement and Support Services Division. UGMA and UGMS can be located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtml>. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §\_\_14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be

located through web links on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

**Section 1.07 Statutes and Standards of General Applicability.** Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

- a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion: 1) Title VI of the Civil Rights Act of 1964, 42 USC §§2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a); 4) the Americans with Disabilities Act of 1990, 42 USC §§12101 et seq.; 5) Age Discrimination Act of 1975, 42 USC §§ 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246; 9) Tex. Lab. Code Chapter 21; 10) Food Stamp Act of 1977 (7 USC § 200 et seq.; 11) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations; 12) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse; 13) Public Health Service Act of 1912, §§523 and 527, 42 USC § 290dd-2, and 42 CFR Part 2, relating to confidentiality of alcohol and drug abuse patient records; 14) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and 15) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b) Immigration Reform and Control Act of 1986, 8 USC § 1324a, and Immigration Act of 1990, 8 USC 1101 et seq., regarding employment verification; and Illegal Immigration Reform and Immigrant Responsibility Act of 1996;
- c) Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
- d) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
- e) Hatch Political Activity Act, 5 USC §§1501-1508 and 7324-28, which limits the political activity of employees whose employment is funded with federal funds;
- f) Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
- g) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
- h) Texas Workers' Compensation Act, Tex. Lab. Code Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
- i) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
- j) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin. Code Chapter 96 regarding safety standards for handling blood borne pathogens;
- k) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
- l) environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2)

Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;" 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961; 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234); 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.; 6) Federal Water Pollution Control Act, 33 USC §1251 et seq.; 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j; 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.; 9) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§7401 et seq.; 10) Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271 et seq.) related to protecting certain rivers system; and 11) Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;

- m) Intergovernmental Personnel Act of 1970 (42 USC §§4278-4763) regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F);
- n) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
- o) Davis-Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally-assisted construction subagreements;
- p) National Historic Preservation Act of 1966, §106 (16 USC § 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
- q) financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations;"
- r) Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
- s) Executive Order, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of the Contract; and
- t) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a federal grant or cooperative agreement, additional state or federal requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference. Contractor may obtain a copy of any applicable Notice of Grant Award from the contract manager assigned to the Program Attachment.

**Section 1.08 Applicability of General Provisions to Interagency and Interlocal Contracts.** Certain sections or portions of sections of these General Provisions will not apply to Contractors that are State agencies or units of local government; and certain additional provisions will apply to such Contractors.

- a) The following sections or portions of sections of these General Provisions will not apply to interagency or interlocal contracts:
  - 1) Hold Harmless and Indemnification, Section 13.19;
  - 2) Independent Contractor, Section 12.15 (delete the third sentence in its entirety; delete the word "employees" in the fourth sentence; the remainder of the section applies);
  - 3) Insurance, Section 12.03;
  - 4) Liability Coverage, Section 12.05;
  - 5) Fidelity Bond, Section 12.04;

- 6) Historically Underutilized Businesses, Section 12.10 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity);
  - 7) Debt to State and Corporate Status, Section 3.01;
  - 8) Application of Payment Due, Section 3.02; and
  - 9) Article XV Claims against the Department (This Article is inapplicable to interagency contracts only).
- b) The following additional provisions will apply to interagency contracts:
    - 1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov. Code Chapter 771;
    - 2) The Parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the affected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder; and
    - 3) DSHS certifies that it has the authority to enter into this Contract granted in Tex. Health & Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.
  - c) The following additional provisions will apply to interlocal contracts:
    - 1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Gov. Code Chapter 791;
    - 2) Payments made by DSHS to Contractor will be from current revenues available to DSHS; and
    - 3) Each Party represents that it has been authorized to enter into this Contract.
  - d) Contractor agrees that Contract Revision Requests (pursuant to the Contractor's Request for Revision to Certain Contract Provisions section), when signed by a duly authorized representative of Contractor, will be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing body.

**Section 1.09 Civil Rights Policies and Complaints.** Upon request, Contactor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (10) calendar days after Contractor's receipt of the claim. Notice must be directed to –

Civil Rights Office  
 Health and Human Services Commission  
 701 W. 51st St., Mail Code W206  
 Austin, Texas 78751  
 (888) 388-6332 or (512) 438-4313  
 TTY Toll-free (877) 432-7232  
 HHSCivilRightsOffice@hhsc.state.tx.us

**Section 1.10 Licenses, Certifications, Permits, Registrations and Approvals.** Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract

and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

Section 1.11 **Funding Obligation.** This Contract is contingent upon the availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendment of the Appropriations Act, health and human services agency consolidation, or any other disruptions of current appropriated funding for this Contract, DSHS may restrict, reduce or terminate funding under this Contract. Notice of any restriction or reduction will include instructions and detailed information on how DSHS will fund the services and/or goods to be procured with the restricted or reduced funds.

## ARTICLE II SERVICES

Section 2.01 **Education to Persons in Residential Facilities.** If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and who are twenty-two (22) years of age or younger, have access to educational services as required by Tex. Educ. Code § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by Tex. Educ. Code § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor’s residential facility.

Section 2.02 **Disaster Services.** In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or as a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas: community evacuation; health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Contractor shall carry out disaster services in the manner most responsive to the needs of the emergency, be cost-effective, and be least intrusive on Contractor’s primary services.

Section 2.03 **Consent to Medical Care of a Minor.** If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, Contractor shall not provide treatment of a minor unless informed consent to treatment is obtained pursuant to Tex. Fam. Code Chapter 32, relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with Tex. Fam. Code Chapter 32, federal law supersedes state law.

Section 2.04 **Telemedicine Medical Services.** Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using a protocol approved by Contractor’s medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

- a) clinical oversight by Contractor’s medical director or designated physician responsible for medical leadership;
- b) contraindication considerations for telemedicine use;
- c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
- d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- e) use by credentialed licensed providers providing clinical care within the scope of their licenses;

- f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- g) priority in scheduling the system for clinical care of individuals;
- h) quality oversight and monitoring of satisfaction of the individuals served; and
- i) management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites.

Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under Rule § 448.911.

**Section 2.05 Fees for Personal Health Services.** Contractor may develop a system and schedule of fees for personal health services in accordance with the provisions of Tex. Health & Safety Code § 12.032, DSHS Rule §1.91 covering Fees for Personal Health Services, and other applicable laws or grant requirements. The amount of a fee must not exceed the actual cost of providing the services. No client may be denied a service due to inability to pay. Any charges assessed to individuals for screenings must be accounted for as Program Income in accordance with the DSHS Contractor’s Financial Procedure Manual. The Contractor shall not charge for screening if an individual becomes a DSHS client.

**Section 2.06 Cost Effective Purchasing of Medications.** If medications are funded under this Contract, Contractor shall make needed medications available to clients at the lowest possible prices and use the most cost effective medications purchasing arrangement possible.

**Section 2.07 Services and Information for Persons with Limited English Proficiency.** Contractor shall take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities. Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter. Contractor shall make every effort to avoid use of any persons under the age of eighteen (18) or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client’s confidentiality and the client is advised that a free interpreter is available.

### **ARTICLE III FUNDING**

**Section 3.01 Debt to State and Corporate Status.** Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State’s office. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor’s delinquent franchise tax is paid in full.

**Section 3.02 Application of Payment Due.** Contractor agrees that any payments due under this Contract will be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

Section 3.03 **Use of Funds.** Contractor shall expend Department funds only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

Section 3.04 **Use for Match Prohibited.** Contractor shall not use funds provided through this Contract for matching purposes in securing other funding unless directed or approved by the Department in writing.

Section 3.05 **Program Income.** Gross income directly generated from Department funds through a project or activity performed under a Program Attachment and/or earned only as a result of a Program Attachment during the term of the Program Attachment are considered program income. Unless otherwise required under the terms of the grant funding this Contract, Contractor shall use the addition alternative, as provided in UGMS § \_\_.25(g)(2), for the use of program income to further the program objectives of the state or federal statute under which the Program Attachment was made, and Contractor shall spend the program income on the same Program Attachment project in which it was generated. Contractor shall identify and report this income in accordance with the Compliance and Reporting Article of these General Provisions, the Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm> and the provisions of the Program Attachment(s). Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Contractor shall refund program income not expended in the term in which it is earned to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified in this Contract.

Section 3.06 **Nonsupplanting.** Contractor shall not supplant (i.e., use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract) but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity. Contractor shall make a good faith effort to maintain its current level of support. Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

#### ARTICLE IV PAYMENT METHODS AND RESTRICTIONS

Section 4.01 **Payment Methods.** Except as otherwise provided by the provisions of the Program Attachment(s), the payment method for each Program Attachment will be one of the following methods:

- a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and acceptable submission of a request for reimbursement; or
- b) unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service, as stated in the Program Attachment(s) and acceptable submission of all required documentation, forms and/or reports.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless otherwise specified in the Program Attachment(s) or permitted under the Third Party Payors section of this Article, Contractor shall submit requests for reimbursement or payment monthly by the last business day of the month following the end of the month covered by the bill. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

Section 4.03 **Final Billing Submission.** Unless otherwise provided by the Department, Contractor shall submit a reimbursement or payment request as a final close-out bill not later than sixty (60) calendar days following the end of the term of the Program Attachment for goods received and services rendered during the term. If necessary to meet this deadline, Contractor may submit reimbursement or payment requests by facsimile transmission. Reimbursement or payment requests received in DSHS's offices more than sixty (60)

calendar days following the end of the applicable term will not be paid. Consideration of requests for an exception will be made on a case-by-case basis, subject to the availability of funding, and only for an extenuating circumstance, such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations or causes damage or destruction of a place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement must be submitted for review and approval to the DSHS Accounting Section.

Section 4.04 **Working Capital Advance.** If allowed under this Contract, a single one-time working capital advance per term of the Program Attachment may be granted at the Department’s discretion. Contractor must submit documentation to the contract manager assigned to the Program Attachment to justify the need for a working capital advance. Contractor shall liquidate the working capital advance as directed by the Department. The requirements for the documentation justifying the need for an advance and the directions for liquidating the advance are found in the Contractor’s Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtml>.

Section 4.05 **Third Party Payors.** A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided. Third party payors include, but are not limited to, commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in this Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. Contractor shall (a) enroll as a provider in Children’s Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs, and bill those programs for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients who are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted, in which case the thirty (30)-day requirement in the Billing Submission section will be extended until all such appeals have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

## ARTICLE V                      TERMS AND CONDITIONS OF PAYMENT

Section 5.01 **Prompt Payment.** Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments and reimbursements are contingent upon a signed Contract and will not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment or reimbursement only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (Tex. Gov. Code Chapter 2251). Contractor shall comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department will not constitute acceptance or approval of Contractor’s performance, and all invoices and Contractor’s performance are subject to audit or review by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures, disallowed costs, or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the date(s) due. Department may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor’s repayment obligations.

Section 5.03 **Condition Precedent to Requesting Payment.** Contractor shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including any advance payments from Department.

Section 5.04 **Acceptance as Payment in Full.** Except as permitted in the Fees for Personal Health Services section of the Services Article of these General Provisions or under 25 Tex. Admin. Code § 444.413, Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients or participants, and Contractor shall not seek additional reimbursement or payment for services or goods from clients or participants or charge a fee or make a profit with respect to the Contract. A fee or profit is considered to be an amount in excess of actual allowable costs that are incurred in conducting an assistance program.

**ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS**

Section 6.01 **Allowable Costs.** For services satisfactorily performed, and sufficiently documented, pursuant to this Contract, DSHS will reimburse Contractor for allowable costs. Contractor must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. DSHS will determine whether costs submitted by Contractor are allowable and eligible for reimbursement. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within thirty (30) calendar days of the date of this written notice. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor’s repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220)	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	48 CFR Part 31, Contract Cost Principles Procedures, or uniform cost accounting standards	OMB Circular A-133 and UGMS	UGMS and applicable Federal awarding agency common rule

	that comply with cost principles acceptable to the federal or state awarding agency		
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A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

**Section 6.02 Independent Single or Program-Specific Audit.** If Contractor within Contractor’s fiscal year expends a total amount of at least \$500,000 in federal funds awarded, Contractor shall have a single audit or program-specific audit in accordance with the Office of Management and Budget (OMB) Circ. No. A-133, the Single Audit Act of 1984, P L 98-502, 98 Stat. 2327, and the Single Audit Act Amendments of 1996, P L 104-156, 110 Stat. 1396. The \$500,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Contractor within Contractor’s fiscal year expends a total amount of at least \$500,000 in state funds awarded, Contractor must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Contractors whose expenditures meet or exceed the federal and/or state expenditure thresholds stated above shall follow the guidelines in OMB Circular A-133 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Contractor to complete the Single Audit Status Registration Form. If Contractor fails to complete the Single Audit Status Form within thirty (30) calendar days after notification by OIG to do so, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the DSHS website at <http://www.dshs.state.tx.us/contracts/links.shtm>. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every six (6) years.

**Section 6.03 Submission of Audit.** Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Contractor shall submit one copy to the Department’s Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services  
Contract Oversight and Support, Mail Code 1326  
P.O. Box 149347  
Austin, Texas 78714-9347

Health and Human Services Commission  
Office of Inspector General  
Compliance/Audit, Mail Code 1326  
P.O. Box 85200  
Austin, Texas 78708-5200

If Contractor fails to submit the audit report as required by the Independent Single or Program-Specific Audit section within thirty (30) calendar days of receipt by Contractor of an audit report, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract.

**ARTICLE VII CONFIDENTIALITY**

**Section 7.01 Maintenance of Confidentiality.** Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and

client records that contain protected health information (PHI), and any other information that discloses confidential personal information or identifies any client served by DSHS, in accordance with applicable federal and state laws, rules and regulations, including but not limited to 7 CFR Part 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Tex. Health & Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Tex. Occ. Code Chapters 56 and 159 and all applicable rules and regulations.

**Section 7.02 Department Access to PHI and Other Confidential Information.** Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program, and for purposes permitted under applicable state and federal confidentiality and privacy laws.

**Section 7.03 Exchange of Client-Identifying Information.** Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Tex. Health & Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable laws or rules. Contractor shall disclose information described in Tex. Health & Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Tex. Health & Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

**Section 7.04 Security of Patient or Client Records.** Contractor shall maintain patient and client records in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if care or treatment is transferred to another DSHS-funded contractor.

**Section 7.05 HIV/AIDS Model Workplace Guidelines.** If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, Policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Tex. Health & Safety Code § 85.112-114. A link to the Model Workplace Guidelines can be found at <http://www.dshs.state.tx.us/hivstd/policy/policies.shtm>.

## ARTICLE VIII RECORDS RETENTION

**Section 8.01 Retention.** Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin.

Code Title 22, Part 9, § 165.1(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the Department upon Department's request for at least four (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

## **ARTICLE IX            ACCESS AND INSPECTION**

Section 9.01    **Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor shall make available to the Department information collected, assembled or maintained by Contractor relative to this Contract for the Department to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

Section 9.02    **State Auditor's Office.** Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 9.03    **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records or during an inspection of Contractor's site(s) will be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program or management review or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to resolve the deficiency. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance Article of these General Provisions.

## ARTICLE X NOTICE REQUIREMENTS

Section 10.01 **Child Abuse Reporting Requirement.** This section applies to mental health and substance abuse contractors and contractors for the following public health programs: Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD); Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and Women, Infants and Children (WIC) Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Tex. Fam. Code Chapter 261 relating to investigations of reports of child abuse and neglect. Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. Contractor shall use the DSHS Child Abuse Reporting Form as required by the Department located at [www.dshs.state.tx.us/childabuserreporting](http://www.dshs.state.tx.us/childabuserreporting). Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 10.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the contract manager assigned to the Program Attachment significant incidents involving substantial disruption of Contractor's program operation, or affecting or potentially affecting the health, safety or welfare of Department-funded clients or participants within seventy-two (72) hours of discovery.

Section 10.03 **Litigation.** Contractor shall notify the contract manager assigned to the Program Attachment of litigation related to or affecting this Contract and to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, including environmental and civil rights matters, professional liability, and employee litigation. Notification must include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 10.04 **Action Against the Contractor.** Contractor shall notify the contract manager assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three (3) working days of the suspension or termination. Such notification must include the reason for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the contract; and the contract or case reference number. If Contractor, as an organization, has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information within three (3) working days of the surrender, suspension or revocation to the contract manager assigned to the Program Attachment by submitting a one-page description that includes the reason(s) for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the license action; and a license or case reference number.

Section 10.05 **Insolvency.** Contractor shall notify in writing the contract manager assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of determination that Contractor is insolvent or incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify in writing the contract manager assigned to the Program Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by Contractor's governing body.

Section 10.06 **Misuse of Funds and Performance Malfeasance.** Contractor shall report to the contract manager assigned to the Program Attachment, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures

related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the SAO at <http://sao.fraud.state.tx.us>, and to the HHS Office of Inspector General at <http://www.oig.hhs.gov/fraud/hotline/> no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

**Section 10.07 Criminal Activity and Disciplinary Action.** Contractor affirms that no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the contract manager assigned to the Program Attachment if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that would constitute a criminal offense equal to or greater than a Class A misdemeanor or if such activity would reasonably constitute grounds for disciplinary action by a state or federal regulatory authority, or has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Contractor shall not permit any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed by DSHS.

**Section 10.08 Retaliation Prohibited.** Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

**Section 10.09 Documentation.** Contractor shall maintain appropriate documentation of all notices required under these General Provisions.

## **ARTICLE XI                      ASSURANCES AND CERTIFICATIONS**

**Section 11.01 Certification.** Contractor certifies by execution of this Contract to the following:

- a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;
- b) 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);
- c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;

- f) 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;
- g) neither it, nor its principals have within the three(3)-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;
- h) 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 enumerated in subsection g) of this section; and
- i) neither it, nor its principals within a three(3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. 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 contract manager assigned to the Program Attachment.

**Section 11.02 Child Support Delinquencies.** As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

**Section 11.03 Authorization.** Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that 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.

**Section 11.04 Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

**Section 11.05 Ineligibility to Receive the Contract.** (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications,

requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 11.06 **Antitrust.** Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Section 11.07 **Initiation and Completion of Work.** Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

## ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 12.01 **Responsibilities and Restrictions Concerning Governing Body, Officers and Employees.** Contractor and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not-for-profit organizations. Each member of Contractor's governing body shall be accountable for all funds and materials received from Department. The responsibility of Contractor's governing body shall also include accountability for compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff. Staff members, including the executive director, shall not serve as voting members of Contractor's governing body. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Tex. Gov. Code Chapter 573) to the member of the governing body or the officer or any employee authorized to employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two (2) years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers and employees of Contractor's subcontractors. Ignorance of any Contract provisions or other requirements contained or referred to in this Contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 12.02 **Management and Control Systems.** Contractor shall comply with all the requirements of the Department's Contractor's Financial Procedures Manual, and any of its subsequent amendments, which is available at the Department's web site: <http://www.dshs.state.tx.us/contracts/cfpm.shtm>. Contractor shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications

are met during the term of the contract through the completion of the closeout procedures. Contractor shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in Department's Contractor's Financial Procedures Manual. Those requirements and procedures include, at a minimum, the following:

- a) financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
- b) financial management systems that include accurate accounting records that are accessible and identify the source and application of funds provided under each Program Attachment of this Contract, and original source documentation substantiating that costs are specifically and solely allocable to the Program Attachment and are traceable from the transaction to the general ledger; and
- c) effective internal and budgetary controls; comparison of actual costs to budget; determination of reasonableness, allowableness, and allocability of costs; timely and appropriate audits and resolution of any findings; billing and collection policies; and a mechanism capable of billing and making reasonable efforts to collect from clients and third parties.

Section 12.03 **Insurance.** Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds. Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the contract manager assigned to the Program Attachment to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 12.04 **Fidelity Bond.** For the benefit of DSHS, Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to \$100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance must provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment. The bond or insurance acquired under this section must include coverage for third party property. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the fidelity bond or insurance.

Section 12.05 **Liability Coverage.** For the benefit of DSHS, Contractor shall at all times maintain liability insurance coverage, referred to in Tex. Gov. Code § 2261.102, as "director and officer liability coverage" or similar coverage for all persons in management or governing positions within Contractor's organization or with management or governing authority over Contractor's organization (collectively "responsible persons"). Contractor shall maintain copies of liability policies on site for inspection by DSHS and shall submit copies of policies to DSHS upon request. This section applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department in the event an actionable act or omission by a responsible person damages Department's interests. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the insurance.

Section 12.06 **Overtime Compensation.** Except as provided in this section, Contractor shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any

compensation paid to an individual in addition to the employee's normal rate of pay for hours worked in excess of normal working hours. Funds provided under this Contract may be used to pay the premium portion of overtime only under the following conditions: 1) with the prior written approval of DSHS; 2) temporarily, in the case of an emergency or an occasional operational bottleneck; 3) when employees are performing indirect functions, such as administration, maintenance, or accounting; 4) in performance of tests, laboratory procedures, or similar operations that are continuous in nature and cannot reasonably be interrupted or otherwise completed; or 5) when lower overall cost to DSHS will result.

**Section 12.07 Program Site.** Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

**Section 12.08 Cost Allocation Plan.** Contractor shall submit a Cost Allocation Plan in the format provided in the Department's Contractor's Financial Procedures Manual to the Department's Contract Oversight and Support Section, at Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, or by email to <mailto:coscap@dshs.state.tx.us> no later than the 60<sup>th</sup> calendar day after the effective date of the Contract, except when a Contractor has a current Cost Allocation Plan on file with the Department. Contractor shall implement and follow the applicable Cost Allocation Plan. If Contractor's plan is the same as the plan previously submitted to DSHS, by signing this Contract, Contractor certifies that its current Cost Allocation Plan for the current year is the same as the plan previously submitted. If the Cost Allocation Plan changes during the Contract term, Contractor shall submit a new Cost Allocation Plan to the Contract Oversight and Support Section within thirty (30) calendar days after the effective date of the change. Cost Allocation Plans must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at <http://www.dshs.state.tx.us/contracts/cfpm.shtm>.

**Section 12.09 No Endorsement.** Other than stating the fact that Contractor has a contract with DSHS, Contractor and its subcontractors are prohibited from publicizing the contractual relationship between Contractor and DSHS, and from using the Department's name, logo or website link in any manner that is intended, or that could be perceived, as an endorsement or sponsorship by DSHS or the State of Texas of Contractor's organization, program, services or product, without the express written consent of DSHS.

**Section 12.10 Historically Underutilized Businesses (HUBs).** If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Program Attachment, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Tex. Gov. Code Chapter 2161 and 34 Tex. Admin. Code § 20.10 et seq. Contractors may obtain a list of HUBs at <http://www.window.state.tx.us/procurement/prog/hub>. If Contractor has filed a HUB subcontracting plan, the plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval from the Department's HUB Coordinator of the revised plan before proposed changes will be effective under this Contract. Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity, in accordance with 34 Tex. Admin. Code § 20.16(b).

**Section 12.11 Buy Texas.** Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Tex. Gov. Code § 2155.4441.

**Section 12.12 Contracts with Subrecipient and Vendor Subcontractors.** Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into a subrecipient agreement equaling or exceeding \$100,000, Contractor shall obtain written approval from DSHS. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan.

Contractor shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.

Contracts with all subcontractors, whether vendor or subrecipient, must be in writing and include the following:

- a) name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
- b) a detailed description of the services to be provided;
- c) measurable method and rate of payment and total not-to-exceed amount of the contract;
- d) clearly defined and executable termination clause; and
- e) beginning and ending dates that coincide with the dates of the applicable Program Attachment(s) or that cover a term within the beginning and ending dates of the applicable Program Attachment(s).

Contractor is responsible to DSHS for the performance of any subcontractor. Contractor shall not contract with a subcontractor, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs; or if the subcontractor would be ineligible under the following sections of these General Provisions: Ineligibility to Receive the Contract section (Assurances and Certifications Article); or the Conflict of Interest or Transactions Between Related Parties sections (General Terms Article).

**Section 12.13 Status of Subcontractors.** Contractor shall require all subcontractors to certify that they are not delinquent on any repayment agreements; have not had a required license or certification revoked; and have not had a contract terminated by the Department. Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three (3) years any license issued by the Department.

**Section 12.14 Incorporation of Terms in Subrecipient Subcontracts.** Contractor shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor), (1) the certifications stated in the Assurances and Certifications Article; (2) the requirements in the Conflicts of Interest section and the Transaction Between Related Parties section of the General Terms Article; and (3) a provision granting to DSHS, SAO, OIG, and the Comptroller General of the United States, and any of their representatives, the right of access to inspect the work and the premises on which any work is performed, and the right to audit the subcontractor in accordance with the Access and Inspection Article in these General Provisions. Each subrecipient subcontract contract must also include a copy of these General Provisions and a copy of the Statement of Work and any other provisions in the Program Attachment(s) applicable to the subcontract. Contractor shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor. No provision of this Contract creates privity of contract between DSHS and any subcontractor of Contractor. If a subcontractor is unable to certify to any of the statements in Section 12.13 or any of the certifications stated in the Assurances and Certifications Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If the subcontractor's status with respect to the items certified in Section 12.13 or the assurances stated in the Assurances and Certifications Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

**Section 12.15 Independent Contractor.** Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture

participants or agents will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 12.16 **Authority to Bind.** The person or persons signing this Contract on behalf of Contractor, or representing themselves as signing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 12.17 **Tax Liability.** Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. If the Department discovers that Contractor has failed to remain current on a liability to the IRS, this Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. If the Contract is terminated under this section, the Department will not enter into a contract with Contractor for three (3) years from the date of termination.

Section 12.18 **Notice of Organizational Change.** Contractor shall submit written notice to the contract manager assigned to the Program Attachment within ten (10) business days of any change to the Contractor's name; contact information; key personnel, officer, director or partner; organizational structure, such as merger, acquisition or change in form of business; legal standing; or authority to do business in Texas. A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the Amendments section of these General Provisions.

Section 12.19 **Quality Management.** Contractor shall comply with quality management requirements as directed by the Department.

Section 12.20 **Equipment.** Equipment means an article of nonexpendable, tangible personal property having a useful lifetime of more than one year and an acquisition cost of \$5,000 or more. Contractors shall inventory all equipment, and report the inventory on the Contractors Property Inventory Form or Form GC-11 as required under Section 12.23. Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter of the Program Attachment must be submitted to the contract manager assigned to the Program Attachment.

Section 12.21 **Supplies.** Supplies are defined as consumable items necessary to carry out the services under this Contract including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above. Tangible personal property includes controlled assets, including firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of \$500 or more, but less than \$5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment are also considered Supplies. Prior approval by DSHS of the purchase of controlled assets is not required, but such purchases must be reported on the Contractors Property Inventory Form or Form GC-11 as detailed under Section 12.23.

Section 12.22 **Changes to Equipment List.** All items of equipment to be purchased with funds under this Contract must be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment. Contractor shall submit to the contract manager assigned to the Program Attachment, a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, Department will

acknowledge its approval by means of a written amendment or by written acceptance of Contractor's Contract Revision Request, as appropriate; or, in the case of minor changes to Contractor's approved equipment list, by email in accordance with the Contractor's Financial Procedures Manual.

**Section 12.23 Property Inventory and Protection of Assets.** Contractor shall maintain an inventory of equipment, supplies defined as controlled assets, and property described in the Other Intangible Property section of Article XIII and submit an annual cumulative report of the equipment and other property on Form GC-11 (Contractor's Property Inventory Report) to the Department's Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than October 15<sup>th</sup> of each year. The report is located on the DSHS website at <http://www.dshs.state.tx.us/contracts/forms.shtm>. Contractor shall maintain, repair, and protect assets under this Contract to assure their full availability and usefulness. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained under this Contract, Contractor shall use the proceeds to repair or replace those assets.

**Section 12.24 Bankruptcy.** In the event of bankruptcy, Contractor shall sever Department property, equipment, and supplies in possession of Contractor from the bankruptcy, and title must revert to Department. If directed by DSHS, Contractor shall return all such property, equipment and supplies to DSHS. Contractor shall ensure that its subcontracts, if any, contain a specific provision requiring that in the event the subcontractor's bankruptcy, the subcontractor must sever Department property, equipment, and supplies in possession of the subcontractor from the bankruptcy, and title must revert to Department, who may require that the property, equipment and supplies be returned to DSHS.

**Section 12.25 Title to Property.** At the conclusion of the contractual relationship between the Department and Contractor, for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

**Section 12.26 Property Acquisitions.** Department funds must not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

**Section 12.27 Disposition of Property.** Contractor shall follow the procedures in the American Hospital Association's (AHA's) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersede or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than \$5,000. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than \$5,000) will be controlled by the requirements of UGMS. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than \$5,000, Contractor shall request disposition approval and instructions in writing from the contract manager assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor shall ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

**Section 12.28 Closeout of Equipment.** At the end of the term of a Program Attachment that has no additional renewals or that will not be renewed (Closeout) or when a Program Attachment is otherwise terminated, Contractor shall submit to the contract manager assigned to the Program Attachment, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment. All equipment purchased with Department funds must be secured by Contractor at the time of Closeout or

termination of the Program Attachment and must be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at Contractor's expense.

Section 12.29 **Assets as Collateral Prohibited.** Contractors on a cost reimbursement payment method shall not encumber equipment purchased with Department funds without prior written approval from the Department.

### ARTICLE XIII GENERAL TERMS

Section 13.01 **Assignment.** Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 13.02 **Lobbying.** Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state 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 contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Contract exceeds \$100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Contract; upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

Section 13.03 **Conflict of Interest.** Contractor represents to the Department that it and its -subcontractors, if any, do not have nor shall Contractor or its subcontractors knowingly acquire or retain, any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the Department or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or

potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

**Section 13.04 Transactions Between Related Parties.** Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR § 215.42, and UGMS.

**Section 13.05 Intellectual Property.** Tex. Health & Safety Code § 12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

- a) "Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.
- b) For purposes of this Contract intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use is "work made for hire." DSHS owns works made for hire unless it agrees otherwise by contract. To the extent that title and interest to any such work may not, by operation of law, vest in DSHS, or such work may not be considered a work made for hire, Contractor irrevocably assigns the rights, title and interest therein to DSHS. DSHS has the right to obtain and hold in its name any and all patents, copyrights, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.
- c) If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any intellectual property developed under this Contract, including any subcontract; and (2) any rights of copyright to which a Contractor purchases ownership with contract funds. Contractor shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment must be to the effect that "This publication was made possible by grant number \_\_\_\_\_ from (federal awarding agency)" or "The project described was supported by grant number \_\_\_\_\_ from (federal awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency)."
- d) If the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1)

the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.

- e) If the results of the contract performance are subject to copyright law, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Program Attachment.

**Section 13.06 Other Intangible Property.** At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs, software licenses with a value of \$500 or more, etc. Contractor shall inventory all such non-copyrightable intangible property. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision will survive the termination or expiration of this Contract.

**Section 13.07 Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

**Section 13.08 Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract will be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

**Section 13.09 Successors.** This Contract will be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

**Section 13.10 Headings.** The articles and section headings used in this Contract are for convenience of reference only and will not be construed in any way to define, limit or describe the scope or intent of any provisions.

**Section 13.11 Parties.** The Parties represent to each other that they are entities fully familiar with transactions of the kind reflected by the contract documents, and are capable of understanding the terminology and meaning of their terms and conditions and of obtaining independent legal advice pertaining to this Contract.

**Section 13.12 Survivability of Terms.** Termination or expiration of this Contract or a Program Attachment for any reason will not release either Party from any liabilities or obligations in this Contract that (a) the Parties have expressly agreed will survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

**Section 13.13 Direct Operation.** At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by Contractor.

**Section 13.14 Customer Service Information.** If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Tex. Gov. Code Chapter 2114 regarding

Customer Service surveys.

Section 13.15 **Amendment.** The Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this Contract must be in writing and agreed to by both Parties, except as otherwise specified in the Contractor's Notification of Change to Certain Contract Provisions section or the Contractor's Request for Revision to Certain Contract Provisions section of this Article. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the contract manager assigned to the Program Attachment; and if a budget revision or amendment is requested during the last quarter of the Contract or Program Attachment term, as applicable, Contractor's written justification must include a reason for the delay in making the request. Revision or other amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform or produce, and DSHS will not pay for the performance or production of, different or additional goods, services, work or products except pursuant to an amendment of this Contract that is executed in compliance with this section; and DSHS will not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Article.

Section 13.16 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to this Contract without a written amendment or the Department's prior approval:

- a) contractor's contact person and contact information;
- b) contact information for key personnel, as stated in Contractor's response to the Solicitation Document, if any;
- c) cumulative budget transfers that exceed 25% among direct cost categories, other than the equipment category, of cost reimbursement contract Program Attachments of less than \$100,000, provided that the total budget amount is unchanged (This subsection does not apply to contracts funded by funding sources that have different percentage requirements);
- d) minor corrections or clarifications to the Contract language that in no way alter the scope of work, objectives or performance measures; and
- e) a change in Contractor's share of the budget concerning non-DSHS funding other than program income and match, regardless of the amount of the change, provided that in changing the budget, Contractor is not supplanting DSHS funds.

Contractor within ten (10) calendar days shall notify in writing the contract manager assigned to the Program Attachment of any change enumerated in this section, but the contract will not be amended. The notification may be by letter, fax or email. Except for contracts funded by funding sources that have different percentage requirements, cumulative budget line item transfers of 25% or less among direct cost categories, other than equipment, of cost reimbursement contracts of any amount do not require written amendment or prior approval or notification.

Section 13.17 **Contractor's Request for Revision of Certain Contract Provisions.** A Contractor's Revision Request is an alternative method for amending certain specified provisions of this Contract that is initiated by Contractor, but must be approved by DSHS. The following amendments to this Contract may be made through a Contractor's Revision Request, rather than through the amendment process described in the Amendment section of this Article:

- a) cumulative budget transfers among direct cost categories, other than the equipment category, that exceed 25% of Program Attachments of \$100,000 or more, provided that the total budget amount is unchanged (This subsection does not apply to contracts funded by funding sources that have different percentage requirements);
- b) budget transfer to other categories of funds for direct payment to trainees for training allowances;
- c) change in clinic hours or location;

- d) change in the equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget;
- e) changes in the equipment category of a previously approved equipment budget;
- f) changes specified in applicable OMB Circular cost principles as requiring prior approval, regardless of dollar threshold (e.g., foreign travel expenses, overtime premiums, membership fees; and
- g) cumulative budget transfers into or out of the equipment category that do not exceed 10% of any Program Attachment, provided that the total budget amount is unchanged (cumulative transfers from or to the equipment category that equal or exceed 10% of any Program Attachment require an amendment to this Contract as described in the Amendment section of this Article).

In order to request a revision of any of the enumerated provisions, Contractor shall request the change in writing from their assigned contract manager. A separate Contractor Revision Request is required for each Program Attachment to be revised. Circumstances of a requested contract revision may indicate the need for an amendment described in the Amendment section of this Article rather than a contract revision amendment under this section.

**Section 13.18 Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

**Section 13.19 Hold Harmless and Indemnification.** Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments; and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

**Section 13.20 Waiver.** Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract will not constitute a waiver of either Party's rights under this Contract.

**Section 13.21 Electronic and Information Resources Accessibility and Security Standards.** As required by 1 Tex. Admin. Code Chapters 213 and 206, as a state agency, DSHS must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Tex. Admin. Code Chapter 213 and Website Accessibility Standards/Specifications specified in 1 Tex. Admin. Code Chapter 206 (collectively EIR Standards) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If performance under this Contract includes the development, modification or maintenance of a website or other electronic and information resources for DSHS or for the public on behalf of DSHS, Contractor certifies that the website or other electronic and information resources comply with the EIR Standards. Contractor further certifies that any network hardware or software purchased or provided under this Contract has undergone independent certification testing for known and relevant vulnerabilities, in accordance with rules adopted by Department of Information Resources.

**Section 13.22 Force Majeure.** Neither Party will be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of any such cause of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the

cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other by any reasonable method (phone, email, etc.) and, as soon as practicable, must submit written notice with proof of receipt, of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

**Section 13.23 Interim Contracts.** The Parties agree that the Contract and/or any of its Program Attachments will automatically continue as an “Interim Contract” beyond the expiration date of the term of the Contract or Program Attachment(s), as applicable, under the following circumstances: (1) on or shortly prior to the expiration date of the Contract or Program Attachment, there is a state of disaster declared by the Governor that affects the ability or resources of the DSHS contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract or Program Attachment; and (2) DSHS makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. DSHS will notify Contractor promptly in writing if such a determination is made. The notice will specify whether DSHS is extending the Contract or Program Attachment for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Program Attachment for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how DSHS will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

**Section 13.24 Cooperation and Communication.** Contractor shall cooperate with Department staff and, as applicable, other DSHS contractors, and shall promptly comply with requests from DSHS for information or responses to DSHS inquiries concerning Contractor’s duties or responsibilities under this Contract.

#### **ARTICLE XIV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE**

**Section 14.01 Actions Constituting Breach of Contract.** Actions or inactions that constitute breach of contract include, but are not limited to, the following:

- a) failure to properly provide the services and/or goods purchased under this Contract;
- b) failure to comply with any provision of this Contract, including failure to comply with all applicable statutes, rules or regulations;
- c) failure to pay refunds or penalties owed to the Department;
- d) failure to comply with a repayment agreement with the DSHS or agreed order issued by DSHS;
- e) failure by Contractor to provide a full accounting of funds expended under this Contract;
- f) discovery of a material misrepresentation in any aspect of Contractor’s application or response to the Solicitation Document;
- g) any misrepresentation in the assurances and certifications in Contractor’s application or response to the Solicitation Document or in this Contract; or
- h) Contractor is on or is added to the Excluded Parties List System (EPLS).

**Section 14.02 General Remedies and Sanctions.** The Department will monitor Contractor for both programmatic and financial compliance. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more remedies or sanctions for each item of noncompliance and will

determine remedies or sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies or sanctions in this section does not relieve Contractor of any obligations under this Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

- a) terminate this Contract or a Program Attachment of this Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty (30) calendar days before the effective date of the termination in a notice of termination, except for circumstances that require immediate termination as described in the Emergency Action section of this Article. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. Contractor shall not make any claim for payment or reimbursement for services provided from the effective date of termination;
- b) suspend all or part of this Contract. Suspension is an action taken by the Department in which the Contractor is notified to temporarily (1) discontinue performance of all or part of the Contract, and/or (2) discontinue incurring expenses otherwise allowable under the Contract as of the effective date of the suspension, pending DSHS's determination to terminate or amend the Contract or permit the Contractor to resume performance and/or incur allowable expenses. Contractor shall not bill DSHS for services performed during suspension, and Contractor's costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;
- c) deny additional or future contracts with Contractor;
- d) reduce the funding amount for failure to 1) provide goods and services as described in this Contract or consistent with Contract performance expectations, 2) achieve or maintain the proposed level of service, 3) expend funds appropriately and at a rate that will make full use of the award, or 4) achieve local match, if required;
- e) disallow costs and credit for matching funds, if any, for all or part of the activities or action not in compliance;
- f) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
- g) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
- h) declare this Contract void upon the Department's determination that this Contract was obtained fraudulently or upon the Department's determination that this Contract was illegal or invalid from this Contract's inception and demand repayment of any funds paid under this Contract;
- i) request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
- j) delay execution of a new contract or contract renewal with Contractor while other imposed or proposed sanctions are pending resolution;
- k) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more

frequent or more extensive monitoring will be performed by Department than would routinely be conducted;

- l) require Contractor to obtain technical or managerial assistance;
- m) establish additional prior approvals for expenditure of funds by Contractor;
- n) require additional or more detailed, financial and/or programmatic reports to be submitted by Contractor;
- o) demand repayment from Contractor when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices, or failure to comply with Contract terms;
- p) pursue a claim for damages as a result of breach of contract;
- q) require Contractor to prohibit any employee or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any employee, volunteer, officer or governing body member, if the employee, volunteer, officer or member of the governing body has been indicted or convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as reasonably determined by DSHS;
- r) withhold any payments to Contractor to satisfy any recoupment, liquidated damages, match insufficiency, or any penalty (if the penalty is permitted by statute) imposed by DSHS, and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
- s) reduce the Contract term;
- t) recoup improper payments when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices or failure to comply with Contract terms;
- u) assess liquidated damages;
- v) demand repayment of an amount equal to the amount of any match Contractor failed to provide, as determined by DSHS;
- w) impose other remedies, sanctions or penalties permitted by statute.

**Section 14.03 Notice of Remedies or Sanctions.** Department will formally notify Contractor in writing when a remedy or sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the remedies and sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies and sanctions imposed. Other than in the case of repayment or recoupment, Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response must state how Contractor shall correct the noncompliance (corrective action plan) or demonstrate in writing that the findings on which the remedies or sanction(s) are based are either invalid or do not warrant the remedies or sanction(s). If Department determines that a remedy or sanction is warranted, unless the remedy or sanction is subject to review under a federal or state statute, regulation, rule, or guideline, Department's decision is final. Department will provide written notice to Contractor of Department's decision. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the approved corrective action plan. If DSHS determines that repayment is warranted, DSHS will issue a demand letter to Contractor for repayment. If full repayment is not received within the time limit stated in the demand letter, and if recoupment is available, DSHS will recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

**Section 14.04 Emergency Action.** In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny future contract awards, or

delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An “emergency” is defined as the following:

- a) Contractor is noncompliant and the noncompliance has a direct adverse effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or using resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures; or
- b) Contractor is expending funds inappropriately.

Whether Contractor’s conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

## **ARTICLE XV            CLAIMS AGAINST THE DEPARTMENT**

Section 15.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Tex. Gov. Code Chapter 2260 and implemented in Department Rules §§ 4.11-4.24 will be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 15.02 **Notice.** Contractor’s claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS’s Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice must also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Tex. Gov. Code Chapter 2260, subchapter C.

Section 15.03 **Sole Remedy.** The contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is Contractor’s sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by DSHS if the Parties are unable to resolve their disputes under this Article.

Section 15.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract will be considered a waiver of sovereign immunity to suit.

Section 15.05 **Performance Not Suspended.** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

## **ARTICLE XVI            TERMINATION AND TEMPORARY SUSPENSION**

Section 16.01 **Expiration of Contract or Program Attachment(s).** Except as provided in the Survivability of Terms section of the General Terms Article, Contractor’s service obligations stated in each Program Attachment will end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article.

Section 16.02 **Effect of Termination.** Termination is the permanent withdrawal of Contractor’s authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor’s costs

resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable, to DSHS or another entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or the Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS, and except as provided in the Survivability of Terms section of the General Terms Article. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information will survive this Contract.

**Section 16.03 Acts Not Constituting Termination.** Termination does not include the Department's (1) withdrawal of funds awarded on the basis of Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a program attachment; (3) refusal to extend a program attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; (4) non-renewal of a contract or program attachment at Department's sole discretion; or (5) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

**Section 16.04 Termination or Temporary Suspension Without Cause.**

- a) Either Party may terminate this Contract or a Program Attachment, as applicable, with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract or Program Attachment that involves residential client services, Contractor shall give the Department at least ninety (90) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.
- b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
- c) DSHS may temporarily suspend or terminate this Contract or a Program Attachment if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendments to the Appropriations Act, health and human services consolidations, or any disruption of current appropriated funding for this Contract or Program Attachment. Contractor will be notified in writing of any termination or temporary suspension or of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor shall discontinue performance under the Contract as of the effective date of the suspension, for the duration of the suspension.
- d) Department may terminate this Contract or a Program Attachment immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

**Section 16.05 Termination For Cause.** Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

- a) Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
- b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary for the performance or oversight of this Contract;
- c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;

- d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under this Contract or exercise adequate control over expenditures or assets;
- e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;
- f) Department determines that this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements or statement(s) of work or Solicitation Document on which this Contract is based in violation of Tex. Gov. Code § 2155.004; or Department determines that Contractor was ineligible to receive this Contract under Tex. Gov. Code §§ 2155.006 or 2261.053 related to certain disaster response contracts;
- g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:
  - 1) Contractor fails to make payments for debts;
  - 2) Contractor makes an assignment for the benefit of its creditors;
  - 3) Contractor admits in writing its inability to pay its debts generally as they become due;
  - 4) if judgment for the payment of money in excess of \$50,000 (that is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment, or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, or (d) if the execution is stayed, within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required under Generally Accepted Accounting Principles;
  - 5) a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its issuance;
  - 6) Contractor is adjudicated bankrupt or insolvent;
  - 7) Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, or consents to the filing of any case or petition against it under any such law;
  - 8) any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge of the sequestration;
  - 9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, and the petition is not dismissed within thirty (30) calendar days; or
  - 10) Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property;
- h) Contractor's management system does not meet the UGMS management standards; or
- i) Any required license, certification, permit, registration or approval required to conduct Contractor's business or to perform services under this Contract is not obtained or is revoked, is surrendered, expires, is not renewed, is inactivated or is suspended.

Section 16.06 **Notice of Termination.** Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor shall attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

## ARTICLE XVII VOID, SUSPENDED, AND TERMINATED CONTRACTS

Section 17.01 **Void Contracts.** Department may void this Contract upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 17.02 **Effect of Void, Suspended, or Involuntarily Terminated Contract.** A Contractor who has been a party to a contract with DSHS that has been found to be void, or is suspended, or is terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until, in the case of suspension or termination, the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to repayment.

Section 17.03 **Appeals Rights.** Pursuant to Tex. Gov. Code § 2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Tex. Gov. Code Chapter 2001.

## ARTICLE XVIII CLOSEOUT

Section 18.01 **Cessation of Services At Closeout.** Upon expiration of this Contract or Program Attachment, as applicable, (and any renewals of this Contract or Program Attachment) on its own terms, Contractor shall cease services under this Contract or Program Attachment; and shall cooperate with DSHS to the fullest extent possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, Contractor shall immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also shall completely cease providing services under this Contract or Program Attachment by the date specified in the termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of this Contract or Program Attachment, or incur any additional expenses once this Contract or Program Attachment is terminated or has expired. Upon termination, expiration (with no renewal) or non-renewal of this Contract or a Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 18.02 **Administrative Offset.** The Department has the right to administratively offset amounts owed by Contractor against billings.

Section 18.03 **Deadline for Closeout.** Contractor shall submit all financial, performance, and other Closeout reports required under this Contract within sixty (60) calendar days after the Contract or Program Attachment end date. Unless otherwise provided under the Final Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract or Program Attachment end date.

Section 18.04 **Payment of Refunds.** Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 18.05 **Disallowances and Adjustments.** The Closeout of this Contract or Program Attachment does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

**STATE OF TEXAS**           §  
  §  
**COUNTY OF BEXAR**       §

**CONTRACTUAL DENTAL SERVICES  
AGREEMENT**

This AGREEMENT is entered into by and between the City of San Antonio (hereinafter referred to as "City") acting by and through the San Antonio Metropolitan Health District (hereinafter referred to as "SAMHD"), pursuant to Ordinance No. 2013-09-19-\_\_\_\_ passed and approved on September 19, 2013, and Avance, (hereinafter referred to as "AVANCE").

**I. STATEMENT OF PURPOSE**

- 1.1 AVANCE provides services in connection with the Early Head Start Program.
- 1.2 Early Head Start is a federally-funded program whereby AVANCE provides day care, education, child development, nutrition and social services, health and disability assessment and parent involvement, both on a full and part-time basis. These programs are designed to serve children ages 0 to 3 years whose parents' income meets Administration for Child, Youth and Families Guidelines.
- 1.3 The City, through the SAMHD, will provide dental services including dental screenings for children enrolled in the various programs described above (referred to hereinafter as "AVANCE enrollees"). These screenings are required by federal guidelines for such day care and child development service programs. These assessments are necessary to ensure that the children evaluated are channeled into an appropriate health care resource to resolve any health complications found in the assessment. Families utilizing the programs and services described above do not have the financial resources to obtain such health evaluation services through the private medical community.

**II. PERFORMANCE BY CITY**

City agrees:

- 2.1 The City, through the SAMHD, will provide each participating child with an on-site limited oral health assessment performed by a dentist, which will be conducted within 90 calendar days of the initial start up of the Early Head Start program school year.
- 2.2 The SAMHD dental staff will provide case management services and referral services for all children identified with "urgent" dental needs (Class I cases), special circumstances that make dental access more difficult, and those with inadequate funding sources.
- 2.3 As needed, staff will provide additional support to program staff to ensure that all children with unmet dental needs are connected to a dental home in the community.
- 2.4 Through leverage of Title V Maternal Child Health funding and collaborative agreements with the UT Health Science Center Department of Developmental Dentistry, the SAMHD will facilitate care for Head Start children who are uninsured or underinsured for necessary dental treatment. The SAMHD will provide all required documentation to the UT Health Science Center Dental School to ensure enrolled children have access to designated services.

- 2.5 The SAMHD will provide oral health education for AVANCE Head Start program staff, including Teachers, Center Directors, Parent Advocates and Health Coordinators.
- 2.6 The SAMHD will provide AVANCE Head Start teachers and staff with ongoing training and technical assistance regarding oral health performance standards and the importance of good oral health for Head Start children and families.
- 2.7 The SAMHD will provide AVANCE Head Start Center Directors and Parent Advocates with an Oral Health Training Manual, outlining all oral health performance standards, internal policies and protocols, and Oral Health Program forms.
- 2.8 To complete a Dental Examination Form attached hereto and incorporated herein for all purposes as Exhibit "A" for each participating child.
- 2.9 To provide written referral and/or correspondence to the enrollee's parent explaining findings of the dental examination. This document of the child's oral health status, along with contact information for the DEPARTMENT dental staff, will be given to the appropriate AVANCE staff to be forwarded to parents/care giver.
- 2.10 To bill Medicaid, CHIP or other third-party payers, and retain proceeds for all applicable dental services provided to children who are Medicaid or CHIP recipients, or who are covered by other third-party payers.
- 2.11 To comply with any and all other conditions, covenants, provisions and/or requirements contained herein requiring performance by SAMHD.
- 2.12 The SAMHD will make best efforts to provide each participating enrollees with parental consent, two on-site dental evaluations and fluoride varnish applications during the school year.

### **III. PERFORMANCE BY AVANCE**

AVANCE agrees:

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

- 3.7. To provide Medicaid, CHIP or other third-party insurance information on enrollees to the SAMHD, and to make every effort to encourage enrollment of potentially eligible children to third-party funding program. For children who are not enrolled in Medicaid, CHIP, or other third-party insurance, provide social security numbers for identification purposes.
- 3.8. To certify that all costs herein provided for reimbursement to the SAMHD are allowable costs under the grant guidelines.
- 3.9. To pay for services rendered by the City within 30 calendar days of receiving a valid and approved Request for Payment.
- 3.10. To designate a AVANCE staff member to schedule and coordinate on-site clinics in all Early Head Start Centers.
- 3.11. To notify SAMHD staff at least 48 hours in advance of any cancellations or changes in scheduling.
- 3.12. To provide adequate staff, as outlined by the Texas Department of Family and Protective Services (TDFPS) guidelines for adult-to-child ratio, and to provide one staff person per clinic to supervise children during delivery of care.

#### **IV. TERM**

- 4.1. This contract shall commence on October 1, 2013, and shall terminate January 31, 2015 unless extension or earlier termination shall occur pursuant to the terms of this contract.

#### **V. LOCATION**

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

#### **VI. BILLING**

- 6.1. AVANCE agrees that it will pay up to an amount of THIRTY EIGHT THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS AND NO/100THS (\$38,850.00) to City for services provided under this agreement, as follows:
  - 6.1.1. An amount up to \$12,600.00 for the period beginning October 1, 2013 and ending on January 31, 2014; and
  - 6.1.2. An amount up to \$26,250.00 for the period beginning February 1, 2014 and ending on January 31, 2015.
- 6.2. The City will bill AVANCE on a monthly basis for expenses incurred.

- 6.3 The City will bill Medicaid, CHIP or other third-party payers and retain proceeds for all dental services performed on children who are Medicaid recipients, CHIP recipients, or who are covered by other third-party payers.
- 6.4 The City will provide in-kind services in an amount up to \$4,200.00 for the period October 1, 2013 through January 31, 2014; and up to \$8,750.00 for the period February 1, 2014 through January 31, 2015.
- 6.5 AVANCE shall remain liable for the payment of services rendered under this agreement until all such payments are made and received by City. AVANCE's liability is not reduced or diminished by any amount by a third party's failure to pay for services rendered hereunder.

#### VII. COMPLIANCE

- 7.1 City and AVANCE agree to comply with all federal and state laws regarding nondiscrimination in the execution of this agreement. In accordance therewith, City and AVANCE shall ensure that no person is denied benefits hereunder on the basis of race, color, national origin, religion, gender, age, handicap or political affiliation.

#### VIII. AMENDMENT

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

#### IX. ASSIGNING INTEREST

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

#### X. INDEMNITY

- 10.1 **AVANCE 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 AVANCE's activities under this Agreement, including any acts or omissions of AVANCE, any agent, officer, director, representative, employee, consultant or subcontractor of AVANCE, 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 AVANCE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY**

**AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. AVANCE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or AVANCE known to AVANCE related to or arising out of AVANCE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at AVANCE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving AVANCE of any of its obligations under this paragraph.
- 10.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by AVANCE in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. AVANCE shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If AVANCE fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and AVANCE shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of AVANCE, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for AVANCE or any subcontractor under worker's compensation or other employee benefit acts.

**XI. RELATIONSHIP OF THE PARTIES**

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

**XII. TERMINATION**

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

**XIII. INSURANCE**

- 13.1 A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio

Metropolitan Health District, which shall be clearly labeled “*Early Head Start Dental Services*” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Risk Manager and the San Antonio Metropolitan Health District. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

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

TYPE	AMOUNTS
1. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

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

#### **XIV. ACCESS TO RECORDS**

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

#### **XV. RETENTION OF RECORDS**

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

#### **XVI. CONFIDENTIAL INFORMATION**

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

#### **XVII. SUBSTANTIAL INTEREST**

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

#### **XVIII. DEBARMENT**

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

#### **XIX. NOTICES**

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

**CITY**

City of San Antonio  
San Antonio Metropolitan Health District  
332 W. Commerce, Suite 307  
San Antonio, Texas 78205

and

City of San Antonio  
City Clerk  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**AVANCE**

**XX. FULL AGREEMENT**

- 20.1 This agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the parties.

**XXI. AUTHORITY**

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

**XXII. SEVERABILITY**

- 22.1 In case any one or more of the provisions contained this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties further agree that in lieu of each clause or provision of this agreement that is invalid, illegal, or unenforceable, there be added as a part of the agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

----- *Intentionally Left Blank* -----

**XXIII. CAPTIONS**

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

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013 to be effective October 1, 2013.

**CITY OF SAN ANTONIO**

**Avance**

\_\_\_\_\_  
Thomas Schlenker, M.D., M.P.H.  
Director of Health

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Bernard  
City Attorney

**STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §**

**CONTRACTUAL DENTAL SERVICES  
AGREEMENT**

This AGREEMENT is entered into by and between the City of San Antonio (hereinafter referred to as "City") acting by and through the San Antonio Metropolitan Health District (hereinafter referred to as SAMHD), pursuant to Ordinance No. 2013-09-19-\_\_\_\_ passed and approved on September 19, 2013, and Family Service Association Head Start Program, (hereinafter referred to as "FSA").

**I. STATEMENT OF PURPOSE**

- 1.1 FSA provides services in connection with the Early Head Start Program.
- 1.2 Early Head Start is a federally-funded program whereby FSA provides day care, education, child development, nutrition and social services, health and disability assessment and parent involvement, both on a full and part-time basis. These programs are designed to serve children ages 0 to 3 years whose parents' income meets Administration for Child, Youth and Families Guidelines.
- 1.3 The City, through the SAMHD, will provide dental services including dental screenings for children enrolled in the various programs described above (referred to hereinafter as "FSA enrollees"). These screenings are required by federal guidelines for such day care and child development service programs. These assessments are necessary to ensure that the children evaluated are channeled into an appropriate health care resource to resolve any health complications found in the assessment. Families utilizing the programs and services described above do not have the financial resources to obtain such health evaluation services through the private medical community.

**II. PERFORMANCE BY CITY**

City agrees:

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

- 2.6 The SAMHD will provide FSA Head Start Center Directors and Family Service Workers with an Oral Health Training Manual, outlining all oral health performance standards, internal policies and protocols, and Oral Health Program forms.
- 2.7 To complete a Dental Examination Form attached hereto and incorporated herein for all purposes as Exhibit "A" for each participating child.
- 2.8 To provide written referral and/or correspondence to the enrollee's parent explaining findings of the dental examination. This document of the child's oral health status, along with contact information for the DEPARTMENT dental staff, will be given to the appropriate Avance staff to be forwarded to parents/care giver.
- 2.9 To bill Medicaid, CHIP or other third-party payers, and retain proceeds for all applicable dental services provided to children who are Medicaid or CHIP recipients, or who are covered by other third-party payers.
- 2.10 To comply with any and all other conditions, covenants, provisions and/or requirements contained herein requiring performance by SAMHD.
- 2.11 The SAMHD will make best efforts to provide each participating enrollees with parental consent, two on-site dental evaluations and fluoride varnish applications during the school year.

### **III. PERFORMANCE BY FSA**

FSA agrees:

- 3.1 To coordinate with SAMHD to ensure children enrolled in the program receive dental services.
- 3.2 To conduct basic administrative functions to support program services and objectives including but not limited to the following patient information: name, home address, home telephone number, and parent's work number medical history, and Medicaid/CHIP number,
- 3.3. Providing monthly reports on status of follow-up of referrals and allowing regular audits of dental charts as determined to be necessary by the SAMHD to verify that follow-ups were performed.
- 3.4. To defer to the dentist for determination of the appropriate timeframe for follow-up care as indicated in the referral information.
- 3.5. To obtain required consent forms for program participation including, but not limited to, the General Consent and Disclosure and Consent for Dental Services consent for dental examination and care from the parent or legal guardian of enrollees, enabling the to administer the dental services required, and to have these forms present at the time of the exam or treatment.
- 3.6. To obtain from each enrollee's parent or legal guardian pertinent documentation of the child's medical history, including a history of all past and current illness, current medications and any allergies to food, drugs or latex prior to the time services are rendered by the SAMHD.
- 3.7. To provide Medicaid, CHIP or other third-party insurance information on enrollees to the SAMHD, and to make every effort to encourage enrollment of potentially eligible children to third-party funding program. For children who are not enrolled in Medicaid, CHIP, or other third-party insurance, provide social security numbers for identification purposes.

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

#### **IV. TERM**

- 4.1 This contract shall commence on October 1, 2013, and shall terminate January 31, 2015 unless extension or earlier termination shall occur pursuant to the terms of this contract.

#### **V. LOCATION**

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

#### **VI. BILLING**

- 6.1 FSA agrees that it will pay up to an amount of SEVENTY FOUR THOUSAND EIGHT HUNDRED AND NINETY FIVE DOLARS AND NO/100THS (\$74,895.00) to City for services provided under this agreement, as follows:
  - 6.1.1 An amount up to \$24,900.00 for the period beginning October 1, 2013 and ending on January 31, 2014; and
  - 6.1.2 An amount up to \$49,995.00 for the period beginning February 1, 2014 and ending on January 31, 2015.
- 6.2 The City will bill FSA on a monthly basis for expenses incurred.
- 6.3 The City will bill Medicaid, CHIP or other third-party payers and retain proceeds for all dental services performed on children who are Medicaid recipients, CHIP recipients, or who are covered by other third-party payers.
- 6.4 The City will provide in-kind services in an amount up to \$8,300.00 for the period October 1, 2013 through January 31, 2014; and up to \$16,665.00 for the period February 1, 2014 through January 31, 2015.

- 6.5 FSA shall remain liable for the payment of services rendered under this agreement until all such payments are made and received by City. FSA's liability is not reduced or diminished by any amount by a third party's failure to pay for services rendered hereunder.

## VII. COMPLIANCE

- 7.1 City and FSA agree to comply with all federal and state laws regarding nondiscrimination in the execution of this agreement. In accordance therewith, City and FSA shall ensure that no person is denied benefits hereunder on the basis of race, color, national origin, religion, gender, age, handicap or political affiliation.

## VIII. AMENDMENT

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

## IX. ASSIGNING INTEREST

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

## X. INDEMNITY

- 10.1 **FSA 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 FSA's activities under this Agreement, including any acts or omissions of FSA, any agent, officer, director, representative, employee, consultant or subcontractor of FSA, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PCI AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. FSA shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or FSA known to FSA related to or arising out of FSA's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at FSA's cost. The CITY shall

have the right, at its option and at its own expense, to participate in such defense without relieving FSA of any of its obligations under this paragraph.

- 10.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by FSA in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. FSA shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If FSA fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and FSA shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of FSA, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for FSA or any subcontractor under worker's compensation or other employee benefit acts.

## **XI. RELATIONSHIP OF THE PARTIES**

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

## **XII. TERMINATION**

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

## **XIII. INSURANCE**

- 13.1 A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio Metropolitan Health District, which shall be clearly labeled "*Early Head Start Dental Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Manager and the San Antonio

Metropolitan Health District. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

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

TYPE	AMOUNTS
1. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

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

#### **XIV. ACCESS TO RECORDS**

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

## **XV. RETENTION OF RECORDS**

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

## **XVI. CONFIDENTIAL INFORMATION**

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

## **XVII. SUBSTANTIAL INTEREST**

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

## **XVIII. DEBARMENT**

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

## **XIX. NOTICES**

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

### **CITY**

City of San Antonio  
San Antonio Metropolitan Health District  
332 W. Commerce, Suite 307  
San Antonio, Texas 78205

and

City of San Antonio  
City Clerk  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**XX. FULL AGREEMENT**

20.1 This agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the parties.

**XXI. AUTHORITY**

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

**XXII. SEVERABILITY**

22.1 In case any one or more of the provisions contained this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties further agree that in lieu of each clause or provision of this agreement that is invalid, illegal, or unenforceable, there be added as a part of the agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

----- *Intentionally Left Blank* -----

**XXIII. CAPTIONS**

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

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED ON THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 2013 to be effective October 1, 2013.

**CITY OF SAN ANTONIO**

**FSA**

\_\_\_\_\_  
Thomas Schlenker, M.D., M.P.H.  
Director of Health

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Bernard  
City Attorney

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

**CONTRACTUAL DENTAL SERVICES  
AGREEMENT**

This AGREEMENT is entered into by and between the City of San Antonio (hereinafter referred to as "City") acting by and through the San Antonio Metropolitan Health District (hereinafter referred to as SAMHD), pursuant to Ordinance No. 2013-09-19-\_\_\_\_ passed and approved on September 19, 2013, and Parent/Child Incorporated, (hereinafter referred to as "PCI"), acting by and through its designated representative, Dr. Sharon Small, Chief Executive Officer, both of which may be referred to collectively as "Parties" or singularly as "Party".

**I. STATEMENT OF PURPOSE**

- 1.1 PCI provides services in connection with the Early Head Start Program.
- 1.2 Early Head Start is a federally-funded program whereby PCI provides day care, education, child development, nutrition and social services, health and disability assessment and parent involvement, both on a full and part-time basis. These programs are designed to serve children ages 0 to 3 years whose parents' income meets Administration for Child, Youth and Families Guidelines.
- 1.3 The City, through the SAMHD, will provide dental services including dental screenings for children enrolled in the various programs described above (referred to hereinafter as "PCI enrollees"). These screenings are required by federal guidelines for such day care and child development service programs. These assessments are necessary to ensure that the children evaluated are channeled into an appropriate health care resource to resolve any health complications found in the assessment. Families utilizing the programs and services described above do not have the financial resources to obtain such health evaluation services through the private medical community.

**II. PERFORMANCE BY CITY**

City agrees:

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

- 2.6 The SAMHD will provide PCI Head Start teachers and staff with ongoing training and technical assistance regarding oral health performance standards and the importance of good oral health for Head Start children and families.
- 2.7 The SAMHD will provide PCI Head Start Center Directors and Family Service Workers with an Oral Health Training Manual, outlining all oral health performance standards, internal policies and protocols and Oral Health Program forms.
- 2.8 To complete a Dental Examination Form attached hereto and incorporated herein for all purposes as Exhibit "A" for each participating child.
- 2.9 To provide written referral and/or correspondence to the enrollee's parent explaining findings of the dental examination. This document of the child's oral health status, along with contact information for the DEPARTMENT dental staff, will be given to the appropriate PCI staff to be forwarded to parents/care giver.
- 2.10 To bill Medicaid, CHIP or other third-party payers, and retain proceeds for all applicable dental services provided to children who are Medicaid or CHIP recipients, or who are covered by other third-party payers.
- 2.11 To comply with any and all other conditions, covenants, provisions and/or requirements contained herein requiring performance by SAMHD.
- 2.12 The SAMHD will make best efforts to provide each participating enrollees with parental consent, two on-site dental evaluations and fluoride varnish applications during the school year.

### **III. PERFORMANCE BY PCI**

PCI agrees:

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

- 3.7. To provide Medicaid, CHIP or other third-party insurance information on enrollees to the SAMHD, and to make every effort to encourage enrollment of potentially eligible children to third-party funding program. For children who are not enrolled in Medicaid, CHIP, or other third-party insurance, provide social security numbers for identification purposes.
- 3.8. To certify that all costs herein provided for reimbursement to the SAMHD are allowable costs under the grant guidelines.
- 3.9. To pay for services rendered by the City within 30 calendar days of receiving a valid and approved Request for Payment.
- 3.10. To designate a PCI staff member to schedule and coordinate on-site clinics in all Early Head Start Centers.
- 3.11. To notify SAMHD staff at least 48 hours in advance of any cancellations or changes in scheduling.
- 3.12. To provide adequate staff, as outlined by the Texas Department of Family and Protective Services (TDFPS) guidelines for adult-to-child ratio, and to provide one staff person per clinic to supervise children during delivery of care.

#### **IV. TERM**

- 4.1. This contract shall commence on October 1, 2013, and shall terminate January 31, 2015 unless extension or earlier termination shall occur pursuant to the terms of this contract.

#### **V. LOCATION**

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

#### **VI. BILLING**

- 6.1. PCI agrees that it will pay up to an amount of TWENTY SEVEN THOUSAND THREE HUNDRED DOLLARS AND NO/100THS (\$27,300.00) to City for services provided under this agreement, as follows:
  - 6.1.1. An amount up to \$10,500.00 for the period beginning October 1, 2013 and ending on January 31, 2014; and
  - 6.1.2. An amount up to \$16,800.00 for the period beginning February 1, 2014 and ending on January 31, 2015.
- 6.2. The City will bill PCI on a monthly basis for expenses incurred.
- 6.3. The City will bill Medicaid, CHIP or other third-party payers and retain proceeds for all dental services performed on children who are Medicaid recipients, CHIP recipients, or who are covered by other third-party payers.

- 6.4 The City will provide in-kind services in an amount up to \$3,5000.00 for the period October 1, 2013 through January 31, 2014; and up to \$5,600.00 for the period February 1, 2014 through January 31, 2015.
- 6.5 PCI shall remain liable for the payment of services rendered under this agreement until all such payments are made and received by City. PCI's liability is not reduced or diminished by any amount by a third party's failure to pay for services rendered hereunder.

#### VII. COMPLIANCE

- 7.1 City and PCI agree to comply with all federal and state laws regarding nondiscrimination in the execution of this agreement. In accordance therewith, City and PCI shall ensure that no person is denied benefits hereunder on the basis of race, color, national origin, religion, gender, age, handicap or political affiliation.

#### VIII. AMENDMENT

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

#### IX. ASSIGNING INTEREST

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

#### X. INDEMNITY

- 10.1 **PCI covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to PCI'S activities under this Agreement, including any acts or omissions of PCI, any agent, officer, director, representative, employee, consultant or subcontractor of PCI, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PCI AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. PCI shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or PCI known to PCI related to or arising out of PCI's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at PCI's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving PCI of any of its obligations under this paragraph.
- 10.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by PCI in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. PCI shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If PCI fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and PCI shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of PCI, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for PCI or any subcontractor under worker's compensation or other employee benefit acts.

## **XI. RELATIONSHIP OF THE PARTIES**

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

## **XII. TERMINATION**

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

## **XIII. INSURANCE**

- 13.1 A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio Metropolitan Health District, which shall be clearly labeled "*Early Head Start Dental Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The

certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Manager and the San Antonio Metropolitan Health District. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

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

TYPE	AMOUNTS
1. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

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

#### **XIV. ACCESS TO RECORDS**

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

#### **XV. RETENTION OF RECORDS**

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

#### **XVI. CONFIDENTIAL INFORMATION**

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

#### **XVII. SUBSTANTIAL INTEREST**

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

#### **XVIII. DEBARMENT**

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

#### **XIX. NOTICES**

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

**CITY**

City of San Antonio  
San Antonio Metropolitan Health District  
332 W. Commerce, Suite 307  
San Antonio, Texas 78205

and

City of San Antonio  
City Clerk  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**PCI**

Parent/Child Incorporated  
Attention: Dr. Sharon Small  
P.O. Box 830407  
San Antonio, Texas 78283-0407

**XX. FULL AGREEMENT**

20.1 This agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the parties.

**XXI. AUTHORITY**

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

**XXII. SEVERABILITY**

22.1 In case any one or more of the provisions contained this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties further agree that in lieu of each clause or provision of this agreement that is invalid, illegal, or unenforceable, there be added as a part of the agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

----- *Intentionally Left Blank* -----

**XXIII. CAPTIONS**

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

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013 to be effective October 1, 2013.

**CITY OF SAN ANTONIO**

**PARENT/CHILD INCORPORATED**

\_\_\_\_\_  
Thomas Schlenker, M.D., M.P.H.  
Director of Health

\_\_\_\_\_  
Dr. Sharon Small  
Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Bernard  
City Attorney

**ATTACHMENT II**  
**Avance San Antonio Head Start Oral Health Program**  
**Fund 260\*\***  
**Functional Area 3600\*\***  
**Proposed Budget for Period: 10/1/2013-1/31/2014**

<u>ESTIMATED REVENUES</u>	<u>SAP GL</u>		<u>ORIG</u>
	<u>No.</u>		<u>BUDGET</u>
Cost Reimbursement Agreement	4501000	\$	12,600
In-Kind	6500000		4,200
Total Estimated Revenues		<u>\$</u>	<u>16,800</u>

**APPROPRIATIONS**

**Avance San Antonio Head Start Oral Health Program**  
**Period: 10/01/2013-1/31/2014**

Cost Center 36xxxx

Internal Order 136000000xxx

			<u>ORIG</u>
			<u>BUDGET</u>
1 Regular Salaries & Wages	5101010		0
1 Temporary Salaries	5101015		0
1 Language Skill Pay	5101050		0
1 Retiree Payout Salary	5101070		0
2 Social Security/FICA	5103005		0
2 Temporary Soc Sec/FICA	5103007		0
2 Life Insurance	5103010		0
1 Personal Leave Buy Back Pay	5103035		0
1 Transportation Allowance	5103056		0
2 Group Health Insurance	5104030		0
2 TMRS	5105010		0
6 Education	5201025		0
5 Fees to Professional Contractors	5201040		7,000
5 Other Contractual	5201030		800
6 Binding, Printing, and Reproduction	5203060		500
3 Travel - Official	5207010		0
4 Office Supplies	5302010		500
4 Chems Meds & Drugs	5304040		3,800
8 In Kind Fees to Professional Cont	6601040		4,200
<b>Total</b>			<b>16,800</b>

<b>Categorical Budget</b>	
1 Personnel	-
2 Fringe Benefits	-
3 Travel	-
7 Equipment	
4 Supplies	4,300
5 Contractual	7,800
6 Other	500
Total Direct Charges	<b>12,600</b>
8 In Kind	4,200
<b>Total Project Request</b>	<b>16,800</b>

**PERSONNEL COMPLEMENT:**

<u>Class</u>	<u>Title</u>	<u>Current</u>
		<u>Positions</u>
Activity 36-xx-xx		
Cost Center 36xxxx		
Internal Order 136000000xxx		0
Total 36-xx-xx		0.00

**ATTACHMENT III**  
**Avance San Antonio Head Start Oral Health Program**  
**Fund 260\*\***  
**Functional Area 3600\*\***  
**Proposed Budget for Period: 2/1/2014-1/31/2015**

<u>ESTIMATED REVENUES</u>	<u>SAP GL</u> <u>No.</u>	<u>ORIG</u> <u>BUDGET</u>
Cost Reimbursement Agreement	4501000	\$ 26,250
In-Kind	6500000	8,750
Total Estimated Revenues		<u>\$ 35,000</u>

**APPROPRIATIONS**

**Avance San Antonio Head Start Oral Health Program**  
**Period: 2/1/2014-1/31/2015**  
 Cost Center 36xxxx  
 Internal Order 136000000xxx

		<u>ORIG</u> <u>BUDGET</u>
1 Regular Salaries & Wages	5101010	0
1 Temporary Salaries	5101015	0
1 Language Skill Pay	5101050	0
1 Retiree Payout Salary	5101070	0
2 Social Security/FICA	5103005	0
2 Temporary Soc Sec/FICA	5103007	0
2 Life Insurance	5103010	0
1 Personal Leave Buy Back Pay	5103035	0
1 Transportation Allowance	5103056	0
2 Group Health Insurance	5104030	0
2 TMRS	5105010	0
6 Education	5201025	0
5 Fees to Professional Contractors	5201040	17,550
5 Other Contractual	5201030	1,600
6 Binding, Printing, and Reproduction	5203060	1,200
3 Travel - Official	5207010	300
4 Office Supplies	5302010	400
4 Chems Meds & Drugs	5304040	5,200
8 In Kind Fees to Professional Cont	6601040	8,750
<b>Total</b>		<b>35,000</b>

<b>Categorical Budget</b>	
1 Personnel	-
2 Fringe Benefit	-
3 Travel	300
7 Equipment	
4 Supplies	5,600
5 Contractual	19,150
6 Other	1,200
Total Direct C	<b>26,250</b>
8 In Kind	8,750
<b>Total Project</b>	<b>35,000</b>

**PERSONNEL COMPLEMENT:**

<u>Class</u>	<u>Title</u>	<u>Current</u> <u>Positions</u>
Activity 36-xx-xx		
Cost Center 36xxxx		
Internal Order 136000000xxx		0
	Total 36-xx-xx	0.00

**ATTACHMENT III**  
**Family Services Association Head Start Oral Health Program**  
**Fund 260\*\***  
**Functional Area 3600\*\***  
**Proposed Budget for Period: 10/01/2013-1/31/2014**

<u>ESTIMATED REVENUES</u>	<u>SAP GL</u> <u>No.</u>	<u>ORIG</u> <u>BUDGET</u>
Cost Reimbursement Agreement	4501000	\$ 24,900
In-Kind	6500000	8,300
Total Estimated Revenues		<u>\$ 33,200</u>

**APPROPRIATIONS**

**Family Services Association Head Start Oral Health Program**

**Period: 10/01/2013-1/31/2014**

Cost Center 36xxxx

Internal Order 136000000xxx

		<u>ORIG</u> <u>BUDGET</u>
1 Regular Salaries & Wages	5101010	0
1 Temporary Salaries	5101015	0
1 Language Skill Pay	5101050	0
1 Retiree Payout Salary	5101070	0
2 Social Security/FICA	5103005	0
2 Temporary Soc Sec/FICA	5103007	0
2 Life Insurance	5103010	0
1 Personal Leave Buy Back Pay	5103035	0
1 Transportation Allowance	5103056	0
2 Group Health Insurance	5104030	0
2 TMRS	5105010	0
6 Education	5201025	0
5 Fees to Professional Contractors	5201040	17,000
5 Fees to Governmental Contractors	5201030	1,500
6 Binding, Printing, and Reproduction	5203060	1,000
3 Travel - Official	5207010	0
4 Office Supplies	5302010	400
4 Chems Meds & Drugs	5304040	5,000
8 In Kind Fees to Prof Contractors	6601040	8,300
<b>Total</b>		<b>33,200</b>

<b>Categorical Budget</b>	
1 Personnel	-
2 Fringe Benefit	-
3 Travel	-
7 Equipment	
4 Supplies	5,400
5 Contractual	18,500
6 Other	1,000
Total Direct C	<b>24,900</b>
8 In Kind	8,300
<b>Total Project</b>	<b>33,200</b>

**PERSONNEL COMPLEMENT:**

<u>Class</u>	<u>Title</u>	<u>Current</u> <u>Positions</u>
Activity 36-xx-xx		
Cost Center 36xxxx		
Internal Order 136000000xxx		0
	<b>Total 36-xx-xx</b>	<b>0.00</b>

**ATTACHMENT II**  
**Family Services Association Head Start Oral Health Program**  
**Fund 260\*\***  
**Functional Area 3600\*\***  
**Proposed Budget for Period: 2/1/2014-1/31/2015**

<u>ESTIMATED REVENUES</u>	<u>SAP GL</u> <u>No.</u>	<u>ORIG</u> <u>BUDGET</u>
Cost Reimbursement Agreement	4501000	\$ 49,995
In-Kind	6500000	16,665
Total Estimated Revenues		<u>\$ 66,660</u>

**APPROPRIATIONS**

**Family Services Association Head Start Oral Health Program**

**Period: 2/1/2014-1/31/2015**

Cost Center 36xxxx

Internal Order 136000000xxx

		<u>ORIG</u> <u>BUDGET</u>
1 Regular Salaries & Wages	5101010	0
1 Temporary Salaries	5101015	0
1 Language Skill Pay	5101050	0
1 Retiree Payout Salary	5101070	0
2 Social Security/FICA	5103005	0
2 Temporary Soc Sec/FICA	5103007	0
2 Life Insurance	5103010	0
1 Personal Leave Buy Back Pay	5103035	0
1 Transportation Allowance	5103056	0
2 Group Health Insurance	5104030	0
2 TMRS	5105010	0
6 Education	5201025	0
5 Fees to Professional Contractors	5201040	36,595
5 Fees to Governmental Contractors	5201030	2,000
6 Binding, Printing, and Reproduction	5203060	1,500
3 Travel - Official	5207010	400
4 Office Supplies	5302010	500
4 Chems Meds & Drugs	5304040	9,000
8 In Kind Fees to Prof Contractors	6601040	16,665
<b>Total</b>		<b>66,660</b>

<b>Categorical Budget</b>	
1 Personnel	-
2 Fringe Benefits	-
3 Travel	400
7 Equipment	-
4 Supplies	9,500
5 Contractual	38,595
6 Other	1,500
Total Direct Charges	<b>49,995</b>
8 In Kind	16,665
<b>Total Project Request</b>	<b>66,660</b>

**PERSONNEL COMPLEMENT:**

<u>Class</u>	<u>Title</u>	<u>Current</u> <u>Positions</u>
Activity 36-xx-xx		
Cost Center 36xxxx		
Internal Order 136000000xxx		0
	Total 36-xx-xx	0.00

**ATTACHMENT II**  
**Parent Child Incorporated Head Start Program**  
**Fund 260\*\***  
**Functional Area 3600\*\***  
**Proposed Budget for Period: 10/1/2013-1/31/2014**

<u>ESTIMATED REVENUES</u>	<u>SAP GL</u> <u>No.</u>	<u>ORIG</u> <u>BUDGET</u>
Cost Reimbursement Agreement	4501000	\$ 10,500
In-Kind	6500000	3,500
Total Estimated Revenues		<u>\$ 14,000</u>

**APPROPRIATIONS**

**Parent Child Incorporated Head Start Oral Health Project**

**Period: 10/01/2013-1/31/2014**

Cost Center 36xxxx

Internal Order 136000000xxx

	<u>ORIG</u> <u>BUDGET</u>
1 Regular Salaries & Wages	5101010 0
1 Temporary Salaries	5101015 0
1 Language Skill Pay	5101050 0
1 Retiree Payout Salary	5101070 0
2 Social Security/FICA	5103005 0
2 Temporary Soc Sec/FICA	5103007 0
2 Life Insurance	5103010 0
1 Personal Leave Buy Back Pay	5103035 0
1 Transportation Allowance	5103056 0
2 Group Health Insurance	5104030 0
2 TMRS	5105010 0
6 Education	5201025 0
5 Fees to Professional Contractors	5201040 6,100
5 Fees to Governmental Contractors	5201030 800
6 Binding, Printing, and Reproduction	5203060 1,000
3 Travel - Official	5207010 0
4 Office Supplies	5302010 300
4 Chems Meds & Drugs	5304040 2,300
8 In Kind Fees to Prof Contractors	6601040 3,500
<b>Total</b>	<b>14,000</b>

<b>Categorical Budget</b>	
1 Personnel	-
2 Fringe Benefits	-
3 Travel	-
7 Equipment	
4 Supplies	2,600
5 Contractual	6,900
6 Other	1,000
Total Direct Charges	<b>10,500</b>
8 In Kind	3,500
<b>Total Project Request</b>	<b>14,000</b>

**PERSONNEL COMPLEMENT:**

<u>Class</u>	<u>Title</u>	<u>Current</u> <u>Positions</u>
Activity 36-xx-xx		
Cost Center 36xxxx		
Internal Order 136000000xxx		0
	Total 36-xx-xx	0.00

ATTACHMENT III  
 Parent Child Incorporated Head Start Program  
 Fund 260\*\*  
 Functional Area 3600\*\*  
 Proposed Budget for Period: 2/1/2014-1/31/2015

<u>ESTIMATED REVENUES</u>	<u>SAP GL</u> <u>No.</u>	<u>ORIG</u> <u>BUDGET</u>
Cost Reimbursement Agreement	4501000	\$ 16,800
In-Kind	6500000	5,600
Total Estimated Revenues		<u>\$ 22,400</u>

**APPROPRIATIONS**

Parent Child Incorporated Head Start Oral Health Project  
 Period: 2/1/2014-1/31/2015

Cost Center 36xxxx

Internal Order 136000000xxx

		<u>ORIG</u> <u>BUDGET</u>
1 Regular Salaries & Wages	5101010	0
1 Temporary Salaries	5101015	0
1 Language Skill Pay	5101050	0
1 Retiree Payout Salary	5101070	0
2 Social Security/FICA	5103005	0
2 Temporary Soc Sec/FICA	5103007	0
2 Life Insurance	5103010	0
1 Personal Leave Buy Back Pay	5103035	0
1 Transportation Allowance	5103056	0
2 Group Health Insurance	5104030	0
2 TMRS	5105010	0
6 Education	5201025	0
5 Fees to Professional Contractors	5201040	11,300
5 Other Contractual	5201030	800
6 Binding, Printing, and Reproduction	5203060	1,000
3 Travel - Official	5207010	200
4 Office Supplies	5302010	400
4 Chems Meds & Drugs	5304040	3,100
8 In Kind Fees to Prof Contractors	6601040	5,600
<b>Total</b>		<b>22,400</b>

<b>Categorical Budget</b>	
1 Personnel	-
2 Fringe Benefit	-
3 Travel	200
7 Equipment	
4 Supplies	3,500
5 Contractual	12,100
6 Other	1,000
Total Direct C	<b>16,800</b>
8 In Kind	5,600
<b>Total Project</b>	<b>22,400</b>

**PERSONNEL COMPLEMENT:**

<u>Class</u>	<u>Title</u>	<u>Current</u> <u>Positions</u>
Activity 36-xx-xx		
Cost Center 36xxxx		
Internal Order 136000000xxx		0
	Total 36-xx-xx	0.00