

AN ORDINANCE

2009-12-03-0983

AUTHORIZING THE EXECUTION OF TWO MEMORANDUMS OF AGREEMENT BETWEEN THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT WITH HOPE ACTION CARE, INC. AND WITH BEAT-AIDS, INC. TO FORMALIZE COLLABORATIVE EFFORTS, TO PROVIDE STAFF TRAINING, AND TO SUPPORT CLIENT SERVICES TO REDUCE THE INCIDENCE OF SEXUALLY TRANSMITTED DISEASE (STD) AND HIV IN HIGH-RISK POPULATIONS OF THE COMMUNITY.

* * * * *

WHEREAS, beginning October 1, 2009 the Texas Department of State Health Services mandated that all community based organizations involved in STD/HIV services collaborate with the local health department; and

WHEREAS, the San Antonio Metropolitan Health District (Metro Health) has traditionally collaborated with these two local community based organizations (Hope Action Care, Inc. and BEAT-AIDS, Inc.); and

WHEREAS, each entity serves clients who are at risk for acquiring a communicable disease; and

WHEREAS, specifically, these organizations work with clients who are HIV infected or at high risk for acquiring a sexually transmitted disease; and

WHEREAS, the prevention and treatment of sexually transmitted diseases (STDs), including HIV and AIDS is one of the most pressing health care needs in Texas; and

WHEREAS, individuals exposed to an STD must be informed of their status so that treatment and /or early intervention services can be accessed; and

WHEREAS, as part of informing individuals of their status, Partner Elicitation services are offered with the goal of identifying and gathering information about high risk sexual practices and needle-sharing partners of persons infected with an STD including HIV; and

WHEREAS, these agreements will articulate the roles that Hope Action Care, Inc. and BEAT-AIDS Inc. and the City will perform in connection with Metro Health's STD/HIV Prevention & Control Program; **NOW THEREFORE:**

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

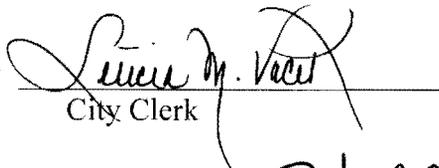
SECTION 1. The City Manager or her designee or the Director of the San Antonio Metropolitan Health District or his designee, is hereby authorized to execute two Memorandums of Agreement with Hope Action Care, Inc. and BEAT-AIDS, Inc. to formalize collaborative

efforts to provide staff training and to support client services to reduce the incidence of sexually transmitted disease (STD) and HIV in high-risk populations of the community. A copy of the agreements in substantially final form are attached hereto and incorporated herein for all purposes as **Attachment I** and **II**.

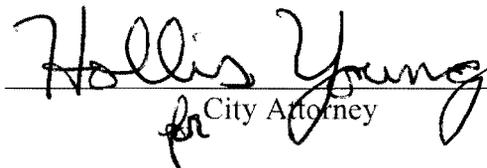
SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 3. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 3rd day of December 2009.

ATTEST:  _____
City Clerk


M A Y O R
for JULIÁN CASTRO

APPROVED AS TO FORM:  _____
for City Attorney

Agenda Item:	35 (in consent vote: 7, 8A, 8B, 10, 11, 13, 15, 16, 17, 18, 21A, 21B, 22, 23, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 25I, 25J, 25K, 25L, 25M, 25N, 25O, 25P, 25Q, 25R, 25S, 25T, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39)						
Date:	12/03/2009						
Time:	11:43:19 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing two separate Memoranda of Agreements with Hope Action Care, Inc. and BEAT-AIDS, Inc. to formalize collaborative efforts, provide staff training, and support client services to reduce the incidence of sexually transmitted disease (STD) and HIV in high-risk populations of the community. [Sharon De La Garza, Assistant City Manager; Dr. Fernando A. Guerra, Director, Health]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

MEMORANDUM OF AGREEMENT

**Between the City of San Antonio on behalf of the San Antonio Metropolitan Health District and
HOPE ACTION CARE, Inc.**

This Memorandum of Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "SAMHD") and HOPE ACTION CARE, Inc. (hereinafter referred to as "HOPE ACTION CARE").

WHEREAS, the Parties desire to collaborate efforts to facilitate the testing, diagnosis, counseling and referral of individuals at risk for HIV, AIDS and STDs; and

WHEREAS, HOPE ACTION CARE will provide the service of one qualified staff professional to draw blood samples and assist in processing urine samples for the SAMHD STD/HIV Prevention and Control Program.

NOW THEREFORE this Memorandum of Agreement delineates the Parties' roles in meeting the anticipated needs of HOPE ACTION CARE and the SAMHD HIV/STD Prevention and Control Program.

Term: The term of this Memorandum of Agreement shall begin on October 1, 2009 and terminate on September 30, 2010 unless sooner terminated as hereinafter provided. The Parties hereby agree that either Party may terminate this Memorandum of Agreement with thirty (30) days written notice to the other Party.

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

HOPE ACTION CARE's Responsibilities:

1. HOPE ACTION CARE will, at their expense, provide a staff professional to draw blood samples using appropriate medical protocol and established procedures at the SAMHD's STD/HIV Prevention and Control Program clinic. The dates and time shall be mutually agreed to by HOPE ACTION CARE and the City. HOPE ACTION CARE staff will draw blood with the follow up to be performed by SAMHD staff. HOPE ACTION CARE staff shall label blood samples with accurate patient information and prepare for follow up and evaluation. HOPE ACTION CARE staff will also label urine samples with accurate patient information and prepare for follow up and evaluation by the SAMHD Disease Intervention Specialist (DIS). HOPE ACTION CARE staff shall assist with requested health education regarding STD/HIV prevention in the community
2. HOPE ACTION CARE staff shall comply with standard practices of confidentiality of patient information as required by the SAMHD and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws.

3. HOPE ACTION CARE staff shall perform duties and services under this Memorandum of Agreement in accordance with all relevant local, state, and federal laws and shall comply with standards, guidelines, and policies of the City and the SAMHD.
4. All HOPE ACTION CARE staff performing services under this Memorandum of Agreement shall have undergone a criminal background check, the results of which shall be available to the City prior to HOPE ACTION CARE staff performing any services under this agreement.
5. HOPE ACTION CARE shall provide to City satisfactory evidence that each staff is free from contagious disease and does not otherwise present a health hazard to the SAMHD STD/HIV Prevention and Control Program clinic patients, employees, volunteers or guests prior to his or her participation under this agreement. Such evidence shall include without limitation the results of recent tuberculin skin test, chest x-ray and physical examination and evidence of immunity from rubella and measles. HOPE ACTION CARE shall also be responsible for arranging for participating staff's medical care and/or treatment, if necessary to include transportation in case of illness or injury while performing services under this agreement. In no event shall the City be responsible for HOPE ACTION CARE staff's medical care or treatment.
6. HOPE ACTION CARE understands that the CITY may remove from the premises HOPE ACTION CARE staff should they pose an immediate threat or danger to City personnel or the quality of medical services or for unprofessional behavior.
7. HOPE ACTION CARE agrees and understands that all HOPE ACTION CARE staff while assigned to the SAMHD STD/HIV clinic shall follow the SAMHD protocols regarding needle stick injuries. All HOPE ACTION CARE staff shall have received training regarding federal, state and local laws and SAMHD policies pertaining to blood born pathogens and needle stick injuries prior to providing any services under this agreement.
8. HOPE ACTION CARE agrees that any employees of HOPE ACTION CARE, wherever located, while engaged in the performance of any work agreed to by the City under this Memorandum of Agreement shall be considered employees of HOPE ACTION CARE 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 HOPE ACTION CARE.
9. HOPE ACTION CARE warrants and insures that HOPE ACTION CARE staff providing services at the SAMHD STD/HIV clinic have complied with the requirements set forth in this agreement prior to providing services.
10. As part of its grant mandates, HOPE ACTION CARE will:
 - a). Designate a Risk Reduction Specialist (RRS) or HOPE ACTION CARE staff member to communicate with SAMHD program designee.
 - b). Provide counseling, testing and referrals (CTR) to consenting clients for HIV, and Syphilis, testing, following Protocol Base Counseling (PBC).
 - c). Once HIV or Syphilis HOPE ACTION CARE clients are identified, HOPE ACTION CARE staff will phone designated SAMHD staff within 24 hours of the results being posted/received for a personal evaluation (PE). A HIPPA compliant follow-up email will be made to document successful phone call.
 - d). HOPE ACTION CARE will ensure that each HIV Positive Follow-up Session includes Partner

Services by a SAMHD Disease Intervention Specialist (DIS). The SAMHD Disease Intervention Specialist (DIS) will be invited to results session already agreed upon by client during initial session. During the initial session, all clients will be asked if they have ever been tested positive for Syphilis or HIV. Client name and any other used alias, where, and when results were given will be documented in justification space on lab sheet. HIV positive result session will be conducted with the initial session RRS and a SAMHD DIS together or in tandem, at the same setting and result session.

e). In the event that a DIS cannot be available for a joint result session, copies of all Partner Based Counseling (PBC) test paperwork will be made available to SAMHD STD/HIV Prevention & Control Program. HOPE ACTION CARE will maintain the original paperwork, including follow-up session documentation. HOPE ACTION CARE will forward client information to the SAMHD STD/HIV Prevention & Control Program in the event that Partner Services are referred for SAMHD DIS follow up at a later time. Partner elicitation session is to take place within 3 days of the RRS Follow-up session. Results of the Partner Services session are to be shared with HAC for their records. The SAMHD DIS intends to provide HAC the number of persons that were elicited but not the names of the persons elicited.

f). HOPE ACTION CARE will ensure that clients testing positive receive their results. All efforts will be made by HOPE ACTION CARE to follow-up with clients testing positive who have missed their scheduled appointment to receive results. In the event that a person, who has tested positive, does not receive their results on or by their return appointment date, HOPE ACTION CARE will refer this client to SAMHD for notification.

g). If the Initial session HOPE ACTION CARE RRS is not available to conduct the follow-up session, or any other event occurs that makes the result session untenable for HOPE ACTION CARE, HOPE ACTION CARE supervisory staff will request the entire follow up session and Partner Services be conducted by a SAMHD DIS. HOPE ACTION CARE will forward Copies of all PBC Initial test, including positive test results paperwork to the SAMHD STD/HIV Prevention & Control Program and the SAMHD will provide copies of follow-up PBC paperwork be given to HAC for their records.

h). HOPE ACTION CARE will work with the client to complete and confirm medical and service provider referrals for positive testing clients.

i). This Agreement outlines a mutual collaboration to coordinate Partner Services with SAMHD when HOPE ACTION CARE receives an HIV Positive laboratory report. The exceptions to this rule are: clients that have opted for anonymous testing and clients that are known to be HIV positive. With these exceptions HOPE ACTION CARE will be responsible for completion of Partner Services.

City Responsibilities:

1. SAMHD will provide ongoing communication with HOPE ACTION CARE regarding any changes, difficulties or problems that may arise related to HOPE ACTION CARE staff and their performance while on assignment at the SAMHD HIV/STD Prevention and Control Program Clinic.
2. City will designate staff/point of contact to communicate with HOPE ACTION CARE

3. Once HIV or Syphilis clients are identified by HOPE ACTION CARE, SAMHD staff will arrange PE by phone with designated HOPE ACTION CARE staff within 24 hours of the results being received.
4. SAMHD will conduct PE after HOPE ACTION CARE Risk Reductions Specialist (RRS) completes the results counseling session.
5. If the SAMHD Disease Intervention Specialist (DIS) cannot interview the client immediately following the results session, the DIS will interview the client within 72 hours of the results counseling session.
6. City will collaborate with HOPE ACTION CARE's RRS from start to finish as an opportunity to build trust between agencies and provide modeling for RRS.
7. SAMHD will provide HOPE ACTION CARE with an annual surveillance report and regular reports on high prevalence areas for outreach.
8. SAMHD will provide phlebotomy training to HOPE ACTION CARE field staff.
9. SAMHD will provide Syphilis and HIV testing for up to 1300 blood samples drawn and submitted by HOPE ACTION CARE. HOPE ACTION CARE agrees and understands City's ability to provide laboratory screening services for Syphilis and HIV testing is contingent upon City receiving funding and test kits from the Texas Department of State Health Services. Any additional tests requested shall be paid for by HOPE ACTION CARE at the rate to be determined by the SAMHD.

Confidentiality: HOPE ACTION CARE acknowledges that in connection with the services to be performed under this Agreement by HOPE ACTION CARE, HOPE ACTION CARE and its employees may be acquiring and making use of certain confidential information of the City and the SAMHD which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, HOPE ACTION CARE and its employees shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event HOPE ACTION CARE receives a request or demand for the disclosure of Confidential Information, HOPE ACTION CARE shall immediately provide written notice to the City of such request or demand, including a copy of any written element of such request or demand.

HOPE ACTION CARE agrees to adequately instruct its employees and all personnel that may provide services pursuant to this Agreement regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the City and with all federal and state laws and regulations regarding patient and medical record confidentiality. HOPE ACTION CARE assumes full responsibility for any breach of confidence by its employees or its staff with regard to the provision of services under this agreement.

Compensation: No fees or expenses shall be charged by HOPE ACTION CARE nor be payable by City under this Memorandum of Agreement. HOPE ACTION CARE shall pay City for all Syphilis and HIV tests requested above the 1300 tests at the rate to be determined by the SAMHD.

Insurance: Prior to the commencement of any work under this Agreement, HOPE ACTION CARE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District, which shall be clearly labeled "HOPE ACTION CARE Memorandum of Agreement" 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.

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.

HOPE ACTION CARE's financial integrity is of interest to the City; therefore, subject to HOPE ACTION CARE's right to maintain reasonable deductibles in such amounts as are approved by the City, HOPE ACTION CARE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at HOPE ACTION CARE'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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Professional Liability or Medical Malpractice	\$500,000 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.

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). HOPE ACTION CARE 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. HOPE ACTION CARE 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

HOPE ACTION CARE agrees that with respect to the above required insurance, all insurance

policies are to contain or be endorsed to contain the following provisions:

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- 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.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, HOPE ACTION CARE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend HOPE ACTION CARE'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.

In addition to any other remedies the City may have upon HOPE ACTION CARE'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 HOPE ACTION CARE to stop work hereunder, and/or withhold any payment(s) which become due to HOPE ACTION CARE hereunder until HOPE ACTION CARE demonstrates compliance with the requirements hereof.

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

It is agreed that HOPE ACTION CARE'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.

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

HOPE ACTION CARE and any Subcontractors are responsible for all damage to their own equipment and/or property.

Indemnification: HOPE ACTION CARE 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 HOPE ACTION CARE's activities under this Agreement, including any acts or omissions of HOPE ACTION CARE, any agent, officer, director, representative, employee, consultant or subcontractor of HOPE ACTION CARE, 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 HOPE ACTION CARE 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.

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. HOPE ACTION CARE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or HOPE ACTION CARE known to HOPE ACTION CARE related to or arising out of HOPE ACTION CARE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at HOPE ACTION CARE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving HOPE ACTION CARE of any of its obligations under this paragraph.

Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by HOPE ACTION CARE in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. HOPE ACTION CARE 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 HOPE ACTION CARE fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and HOPE ACTION CARE 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.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of HOPE ACTION CARE, 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 HOPE ACTION CARE or any subcontractor under worker's compensation or other employee benefit acts.

Notices: 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
San Antonio Metropolitan Health District
Attn: Fernando A. Guerra, MD, MPH
Director of Health
332 West Commerce, Suite 307
San Antonio, Texas 78205

HOPE ACTION CARE, Inc.

Attn: Robert Herrera
Chief Executive Officer
132 W. Grayson St.
San Antonio, TX 78212

Independent Contractor: HOPE ACTION CARE is an independent contractor and neither HOPE ACTION CARE nor any of its agents, representatives, staff or employees shall be considered agents,

representatives, or employees of the City. In no event shall this agreement be construed as establishing a partnership or joint venture or similar relations between the parties hereto. HOPE ACTION CARE shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits. City shall not provide HOPE ACTION CARE staff any salaries, insurance or other benefits.

Amendments: 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 HOPE ACTION CARE.

Licenses/Certifications: HOPE ACTION CARE warrants and certifies that HOPE ACTION CARE 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.

Compliance: HOPE ACTION CARE shall provide and perform all services required under this agreement in compliance with all applicable federal, state and local laws, rules and regulations.

Assignment: This Memorandum of Agreement is not assignable by HOPE ACTION CARE without the prior written consent of the City. Any assignment without such written consent shall be void.

Captions: 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.

Texas Law to Apply/Venue: This agreement shall be construed under and in accordance with the laws of the United States and the State of Texas, and all obligations of the parties are performable and venue shall lie in Bexar County, Texas.

Legal Construction: 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 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.

Entire Agreement: The final and entire Memorandum of 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.

By signing below the representatives agree they have read, understood and agree to the contents set forth above and they are duly authorized by their respective agencies to enter into agreement.

WITNESS OF WHICH this Agreement has been executed on this the ____ day of _____, 2009.

City of San Antonio

HOPE ACTION CARE, Inc.

Fernando A. Guerra, M.D., M.P.H.
San Antonio Metropolitan
Health District

HOPE ACTION CARE, Inc.
Robert Herrera, Chief Executive
Officer

Date

Date

APPROVED AS TO FORM:

Michael Bernard
City Attorney

Memorandum of Agreement

Between the City of San Antonio on behalf of the San Antonio Metropolitan Health District and
BEAT AIDS, Inc.

This Memorandum of Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "SAMHD") and BEAT AIDS, Inc. (hereinafter referred to as "BEAT AIDS").

WHEREAS, the Parties desire to collaborate efforts to facilitate the testing, diagnosis, counseling and referral of individuals at risk for HIV, AIDS, TB, Hepatitis and STDs; and

WHEREAS, BEAT AIDS will provide the service of one qualified staff professional to draw blood samples and assist in processing urine samples for the SAMHD STD/HIV Prevention and Control Program; and

NOW THEREFORE this Memorandum of Agreement delineates the Parties' roles in meeting the anticipated needs of BEAT AIDS and the SAMHD HIV/STD Prevention and Control Program.

Term: The term of this Memorandum of Agreement shall begin on _____ and terminate on _____ unless sooner terminated as hereinafter provided. The Parties hereby agree that, notwithstanding any other language to the contrary, either Party may terminate this Memorandum of Agreement with thirty (30) days written notice to the other Party.

BEAT AIDS' Responsibilities:

1. BEAT AIDS will, at their expense, provide a staff professional to draw blood samples using appropriate medical protocol and established procedures at the SAMHD's STD/HIV Prevention and Control Program clinic. The dates and time shall be mutually agreed to by BEAT AIDS and the City. BEAT AIDS staff will draw blood with the follow up to be performed by SAMHD staff. BEAT AIDS staff shall label blood samples with accurate patient information and prepare for follow up and evaluation. BEAT AIDS staff will also label urine samples with accurate patient information and prepare for follow up and evaluation by the SAMHD Disease Intervention Specialist (DIS). BEAT AIDS staff shall assist with requested health education regarding STD/HIV prevention in the community
2. BEAT AIDS staff shall comply with standard practices of confidentiality of patient information as required by the SAMHD and mandated by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws.
3. BEAT AIDS staff shall perform duties and services under this Memorandum of Agreement in accordance with all relevant local, state, and federal laws and shall comply with standards, guidelines, and policies of the City and the SAMHD.
4. All BEAT AIDS staff performing services under this Memorandum of Agreement shall have undergone a criminal background check, the results of which shall be available to the City prior to BEAT AIDS staff performing any services under this agreement.

5. BEAT AIDS shall provide to City satisfactory evidence that each staff is free from contagious disease and does not otherwise present a health hazard to the SAMHD STD/HIV Prevention and Control Program clinic patients, employees, volunteers or guests prior to his or her participation under this agreement. Such evidence shall include without limitation the results of recent tuberculin skin test, chest x-ray and physical examination and evidence of immunity from rubella and measles. BEAT AIDS shall also be responsible for arranging for participating staff's medical care and/or treatment, if necessary to include transportation in case of illness or injury while performing services under this agreement. In no event shall the City be responsible for BEAT AIDS staff's medical care or treatment.
6. BEAT AIDS understands that the CITY may remove from the premises BEAT AIDS staff should they pose an immediate threat or danger to City personnel or the quality of medical services or for unprofessional behavior.
7. BEAT AIDS agrees and understands that all BEAT AIDS staff while assigned to the SAMHD STD/HIV clinic shall follow the SAMHD protocols regarding needle stick injuries. All BEAT AIDS staff shall have received training regarding federal, state and local laws and SAMHD policies pertaining to blood born pathogens and needle stick injuries prior to providing any services under this agreement.
8. BEAT AIDS agrees that any employees of BEAT AIDS, wherever located, while engaged in the performance of any work agreed to by the City under this Memorandum of Agreement shall be considered employees of BEAT AIDS 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 BEAT AIDS.
9. BEAT AIDS warrants and insures that BEAT AIDS staff providing services at the SAMHD STD/HIV clinic have complied with the requirements set forth in this agreement prior to providing services.
10. As part of its grant mandates, BEAT AIDS will:
 - a). Designate a Risk Reduction Specialist (RRS) or BEAT-AIDS staff member to communicate with SAMHD program designee.
 - b). Provide counseling, testing and referrals (CTR) to consenting clients for HIV, Syphilis, and HCV testing, following Protocol Base Counseling (PBC).
 - c). Once HIV or Syphilis BEAT AIDS clients are identified, BEAT-AIDS staff will phone designated SAMHD staff within 24 hours of the results being posted/received for a personal evaluation (PE). A follow-up email will be made to document successful phone call.

The SAMHD Disease Intervention Specialist (DIS) will be invited to results session already agreed upon by client during initial session.

During initial session, all clients will be asked if they have ever been tested positive for Syphilis or HIV. Client name and any other used alias, where, and when results were given will be documented in justification space on lab sheet.
 - d). Access LABWARE- the DSHS electronic lab reporting system, in accordance with DSHS policies, so that the result turnaround time is reduced. LABWARE will allow both BEAT-AIDS and the SAMHD to have access to results at or around the same time frame so that both entities work toward providing the client with a professional seamless service.

e). Provide the result, specialized confidential counseling, referrals, have the RRS introduce the SAMHD DIS and have a PE just before completing the results counseling session.

City Responsibilities:

1. SAMHD will provide ongoing communication with BEAT AIDS regarding any changes, difficulties or problems that may arise related to BEAT AIDS staff and their performance while on assignment at the SAMHD HIV/STD Prevention and Control Program Clinic.
2. City will designate staff/point of contact to communicate with BEAT-AIDS.
3. Once HIV or Syphilis clients are identified by BEAT AIDS, SAMHD staff will arrange PE by phone with designated BEAT-AIDS staff within 24 hours of the results being received.
4. SAMHD will conduct PE after BEAT-AIDS Risk Reductions Specialist (RRS) completes the results counseling session.
5. If the SAMHD Disease Intervention Specialist (DIS) cannot interview the client immediately following the results session, the DIS will interview the client within 72 hours of the results counseling session.
6. City will collaborate with BEAT-AIDS' RRS from start to finish as an opportunity to build trust between agencies and provide modeling for RRS.
7. SAMHD will provide BEAT-AIDS with an annual surveillance report and regular reports on high prevalence areas for outreach.

Confidentiality: BEAT AIDS acknowledges that in connection with the services to be performed under this Agreement by BEAT AIDS, BEAT AIDS and its employees may be acquiring and making use of certain confidential information of the City and the SAMHD which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, BEAT AIDS and its employees shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event BEAT AIDS receives a request or demand for the disclosure of Confidential Information, BEAT AIDS shall immediately provide written notice to the City of such request or demand, including a copy of any written element of such request or demand.

BEAT AIDS agrees to adequately instruct its employees and all personnel that may provide services pursuant to this Agreement regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the City and with all federal and state laws and regulations regarding patient and medical record confidentiality. BEAT AIDS assumes full responsibility for any breach of confidence by its employees or its staff with regard to the provision of services under this agreement.

Compensation: No fees or expenses shall be charged by BEAT AIDS nor be payable by City under this Memorandum of Agreement.

Insurance: Prior to the commencement of any work under this Agreement, BEAT AIDS shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's

San Antonio Metropolitan Health District, which shall be clearly labeled "BEAT AIDS Memorandum of Agreement" 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.

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.

BEAT AIDS' financial integrity is of interest to the City; therefore, subject to BEAT AIDS' right to maintain reasonable deductibles in such amounts as are approved by the City, BEAT AIDS shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at BEAT AIDS' 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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Professional Liability or Medical Malpractice	\$500,000 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.

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). BEAT AIDS 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. BEAT AIDS 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

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

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- 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.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, BEAT AIDS shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend BEAT AIDS' 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.

In addition to any other remedies the City may have upon BEAT AIDS' 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 BEAT AIDS to stop work hereunder, and/or withhold any payment(s) which become due to BEAT AIDS hereunder until BEAT AIDS demonstrates compliance with the requirements hereof.

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

It is agreed that BEAT AIDS' 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.

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

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

Indemnification: BEAT AIDS 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 BEAT AIDS' activities under this Agreement, including any acts or omissions of BEAT AIDS, any agent, officer, director, representative, employee, consultant or

subcontractor of BEAT AIDS, 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 BEAT AIDS 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.**

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. BEAT AIDS shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or BEAT AIDS known to BEAT AIDS related to or arising out of BEAT AIDS' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at BEAT AIDS' cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving BEAT AIDS of any of its obligations under this paragraph.

Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by BEAT AIDS in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. BEAT AIDS 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 BEAT AIDS fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and BEAT AIDS 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.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of BEAT AIDS, 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 BEAT AIDS or any subcontractor under worker's compensation or other employee benefit acts.

Notices: 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
San Antonio Metropolitan Health District
Attn: Fernando A. Guerra, MD, MPH
Director of Health
332 West Commerce, Suite 307
San Antonio, Texas 78205

BEAT AIDS, Inc.
Michele Durham
Executive Director
220 W. Cypress
San Antonio, TX 78212

Independent Contractor: BEAT AIDS is an independent contractor and neither BEAT AIDS nor any of its agents, representatives, staff or employees shall be considered agents, representatives, or employees of the City. In no event shall this agreement be construed as establishing a partnership or joint venture or similar relations between the parties hereto. BEAT AIDS shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits. City shall not provide BEAT AIDS staff any salaries, insurance or other benefits.

Amendments: 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 BEAT AIDS.

Licenses/Certifications: BEAT AIDS warrants and certifies that BEAT AIDS 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.

Compliance: BEAT AIDS shall provide and perform all services required under this agreement in compliance with all applicable federal, state and local laws, rules and regulations.

Assignment: This Memorandum of Agreement is not assignable by BEAT AIDS without the prior written consent of the City. Any assignment without such written consent shall be void.

Captions: 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.

Texas Law to Apply/Venue: This agreement shall be construed under and in accordance with the laws of the United States and the State of Texas, and all obligations of the parties are performable and venue shall lie in Bexar County, Texas.

Legal Construction: 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 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.

Entire Agreement: The final and entire Memorandum of 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.

