

AN ORDINANCE 2008-12-04-1100

APPROVING PROFESSIONAL SERVICES AGREEMENTS TOTALING \$394,071.00 WITH THE FOLLOWING: THE AMERICAN CANCER SOCIETY, THE AMERICAN LUNG ASSOCIATION OF THE CENTRAL STATES, UNIVERSITY HEALTH SYSTEM, UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO, SOUTH CENTRAL AREA HEALTH EDUCATION CENTER, SAN ANTONIO COUNCIL ON ALCOHOL AND DRUG ABUSE, AND THE BOYS & GIRLS CLUB OF SAN ANTONIO FOR SERVICES TO THE SAN ANTONIO TOBACCO PREVENTION AND CONTROL COALITION WITHIN THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR THE PERIOD SEPTEMBER 1, 2008 THROUGH AUGUST 31, 2009.

* * * * *

WHEREAS, the Texas Department of State Health Services (TDSHS) offered the San Antonio Metropolitan Health District (SAMHD) a grant contract in an amount up to \$825,336.00 in renewal funding for the implementation of the San Antonio Tobacco Prevention and Control Coalition for the period beginning September 1, 2008 and ending August 31, 2009; and

WHEREAS, this funding was authorized and accepted through Ordinance 2008-10-02-0878; and

WHEREAS, as required by the TDSHS grant contract, the SAMHD is developing professional services agreements totaling no more than \$394,071.00 with seven community organizations assisting in the implementation of the San Antonio Tobacco Prevention and Control Coalition: American Cancer Society, American Lung Association of the Central States, Boys & Girls Club of San Antonio, San Antonio Council on Alcohol and Drug Abuse, South Central Area Health Education Center, University Health System, and University of Texas Health Science Center at San Antonio; and

WHEREAS, these professional services agreements are required and necessary to achieve stated outcome measures provided by TDSHS through the grant contract; **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 authorized to execute professional services agreements totaling \$394,071.00 with the following: The American Cancer Society, The American Lung Association of the Central States, University Health System, University of Texas Health Science Center at San Antonio, South Central Area Health Education Center, San Antonio Council on Alcohol and Drug Abuse, and the Boys & Girls Club of San Antonio for services to the San Antonio Tobacco Prevention and Control Coalition within the San Antonio Metropolitan Health District for the period September 1, 2008 through August 31, 2009.

Contracts will be executed with the proposed program collaborators in order to address the program's objectives as identified in **Attachment I** which is attached hereto and incorporated herein for all purposes. Professional services agreements with the proposed collaborating organizations will be negotiated and executed using the template attached hereto and incorporated herein for all purposes as **Attachment II**.

SECTION 2. Fund 2601636024 entitled "Tobacco Community Coalition" and Internal Order 136000000406, are hereby designated for use in the accounting for the fiscal transaction of these contracts.

SECTION 3. The sum of \$394,071.00 is hereby appropriated in the above designated fund and will be disbursed from GL 5201040 "Fees to Professional Contractors". Payment is authorized to the agencies listed in Section 1 of this ordinance per the terms of their contract and should be encumbered with a purchase order.

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 shall be effective on and after December 14, 2008.

PASSED AND APPROVED this 4th of December, 2008.


M A Y O R

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 39

Name:	7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 29, 31, 32, 33, 34, 38, 39, 40, 41, 43B, 43C, 43D, 43E, 43F, 43G, 43H, 43I, 43J, 43K, 43L, 45, 46, 47, 48A, 48B, 49, 51, 52, 53, A, B, C, D
Date:	12/04/2008
Time:	01:50:29 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving professional services agreements totaling \$394,071.00 with the following: The American Cancer Society, The American Lung Association of the Central States, University Health System, University of Texas Health Science Center at San Antonio, South Central Area Health Education Center, San Antonio Council on Alcohol and Drug Abuse, and the Boys & Girls Club of San Antonio for services to the San Antonio Tobacco Prevention and Control Coalition within the San Antonio Metropolitan Health District for the period September 1, 2008 through August 31, 2009. [Frances A. Gonzalez, Assistant City Manager; Dr. Fernando A. Guerra, Director, Health]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1	x					
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6	x				x	
Justin Rodriguez	District 7	x					x
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9	x					
John G. Clamp	District 10		x				

Attachment I

FY2009 Sub-Contractors for Tobacco Prevention & Control Grant

*University of Texas Health Science Center at San Antonio-
Institute for Health Promotion Research*

Plan and assist in conducting program evaluation, lead coalition's Community Evaluation Workgroup, attend state Community Evaluation Workgroup meetings, create media plan and assessment measures, place media for broadcast, create materials to market community coalition, create materials to implement interpersonal communications campaign.

South Central Area Health Education Center

Participate in consultations with health care offices and worksites to promote tobacco cessation among clients, create service learning program to develop workforce for healthcare provider and worksite outreach, coordinate Texas Tobacco Free Kids Day events.

American Cancer Society

Participate in consultations with health care offices and worksites to promote tobacco cessation among clients, conduct Great American Smokeout activities.

University Health System- Texas Diabetes Institute

Participate in consultations with health care offices to promote tobacco cessation among clients, conduction tobacco cessation information sessions for adults, increase referrals for adults to cessation services.

American Lung Association

Provide train-the-trainer sessions on youth Not-On-Tobacco curriculum, deliver Not-On-Tobacco curriculum to targeted youth, serve as coalition's educational material clearinghouse.

San Antonio Council on Alcohol and Drug Abuse

Identify and target youth and adults for presentations and education regarding tobacco use and prevention, create service learning program to develop workforce for youth and adult outreach, assist in educating retailers about tobacco sales laws, coordinate youth trip to Texas Tobacco Conference.

Boys & Girls Club of San Antonio

Conduct tobacco prevention courses for youth, coordinate Texas Tobacco Free Kids Day events.

TOTAL \$394,071

**PROFESSIONAL SERVICES AGREEMENT FOR YEAR TWO OF
THE SAN ANTONIO TOBACCO PREVENTION AND CONTROL COALITION WITH
(CONTRACTOR)**

STATE OF TEXAS § CITY OF SAN ANTONIO
 §
COUNTY OF BEXAR § PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District ("SAMHD"); acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on _____, and the _____ by and through its Executive Director, _____ (hereafter referred to as "_____"), 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.

"_____" 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.

"SA-TPCC" shall be defined as the San Antonio Tobacco Prevention and Control Coalition.

"Tobacco Program staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day program oversight with funding from the Texas Department of State Health Services (DSHS).

"CEW" shall be defined as the Community Evaluation Workgroup, the team of coalition members and sub-contractors that collect, organize and report data related to the work of the program and coalition.

"DSHS" shall be defined as the Texas Department of State Health Services, the agency that funds, oversees the statewide grant, tobacco prevention and control programming, and evaluation efforts.

"Target Area," shall be defined as Bexar County, or smaller areas to be determined by the SA-TPCC in the future.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 1, 2008 and terminate on August 31, 2009.

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

2.3 City will have the option to renew and extend the term of this Agreement once for a term of one year, subject to acceptance by _____. The renewal or extension will be evidenced by passage of a subsequent City ordinance.

2.4 _____ further agrees and understands that the City expects to pay all obligations of this Agreement from cooperative agreement funding. Accordingly, if cooperative agreement funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor _____ will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

III. SCOPE OF SERVICES

3.1 _____ agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 All work performed by _____ 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 _____, 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 _____'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, subject to Sec. 7.4.

3.3 _____ shall select specific individuals as primary and secondary representatives to the SA-TPCC. Both representatives may participate in the coalition concurrently, but at least one representative will be present at all coalition meetings and relevant planning sessions. This participation is required for coordination of SA-TPCC activities including but not limited to community assessment, strategic planning, outreach, evaluation planning, and other events. _____ will supply contact information to SA-TPCC and SAMHD staff regarding both representatives, and both representatives will be tasked by _____ to ensure full representation and participation of _____. In the event that there is a change in the individuals assigned by _____ as representative(s) to the SA-

TPCC, _____ will notify SA-TPCC and SAMHD staff within 5 business days of the time such change has taken place.

3.4 _____ shall comply with the guidelines regarding the use of the SAMHD and City names and logos, and will also comply with brand and identity guidelines determined for the SA-TPCC, once developed.

3.5 _____ will submit detailed monthly activity reports to the SA-TPCC CEW and SAMHD for the purposes of program evaluation and reporting. _____ will supply the reports in the format requested by the SA-TPCC to the CEW by the 5th day of each month to report performance for the preceding month. In addition, _____ will provide any other progress reports or summaries requested by the SA-TPCC as needed.

3.5 _____ representative(s) will attend and participate in any DSHS technical assistance training sessions or statewide coalition meetings as directed by DSHS. Costs to attend these meetings will be identified in the budget in Attachment II which is attached hereto and incorporated herein for all purposes, and compensated according to the terms of this Agreement.

3.6 In addition to the above mentioned items from Section III, _____ shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City at all times and in compliance with the attached Work Plan affixed hereto and incorporated herein for all purposes as Attachment I.

IV. COMPENSATION

4.1 In consideration of _____ performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay _____ an amount not to exceed _____ dollars (\$ _____) as total compensation, which is budgeted for such payment, as set forth and incorporated herein for all purposes in the budget, which is attached as Attachment II.

4.2 No additional fees or expenses of _____ shall be charged by _____ nor be payable by City. The parties hereby agree that all compensable expenses of _____ have been provided for in the total payment to _____ as specified in section 4.1 above. Total payments to _____ cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

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

4.4 _____ agrees to submit statements showing monthly itemized costs and documented in-kind expenses to the City associated with this Agreement. Reimbursement of

eligible expenses, as determined by the City, will be made monthly according to standard procedures followed by City, as requested upon receipt of billing invoices from _____. Invoices will be due on a monthly basis eight (8) calendar days after the end of each monthly reporting period.

4.4.1 _____ understands that due to the requirements of the funding agency, invoices submitted for reimbursement that are received by the City more than 30 calendar days following the end of the monthly reporting period may be rejected by City or the funding agency and not be subject to reimbursement.

4.4.2 _____ understands that detailed monthly activity reports are to be submitted by the 5th of each month to City for reimbursement as stated in Article 3.5 above. Non submittal or late submittal of required monthly activity reports are grounds for delaying reimbursement of corresponding invoices or possible rejection of said invoices should the activity reports be submitted more than 30 days following the end of the monthly reporting period.

4.4.3 _____ understands that documentation of a minimum 20% in-kind expense over the life of this Agreement is a requirement for payment associated with this Agreement. _____ further understands that the format for said documentation of in-kind expenses is set at the discretion of Tobacco Program staff. Each invoice submitted must document in-kind expenses that keep the overall total of the in-kind expense match to at least 20% of the total amount reimbursed.

4.5 Due to the requirements of the funding agency, an invoice documenting final expenses associated with the Agreement shall be submitted to the City by no later than _____. Additional documentation requirements of costs and documented in-kind expenses associated with this Agreement may be amended by Tobacco Program staff as needed. All services required under this Agreement shall be performed to City's satisfaction, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder shall not be paid until required reports, data, and documentation have been received and approved by the City.

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

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

6.2 _____ shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, _____ shall retain the records until the resolution of such litigation or other such questions. _____ acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require _____ to return said documents to City prior to or at the conclusion of said retention.

6.3 _____ shall notify City, immediately, in the event _____ receives any requests for information from a third party, which pertain to the documentation and records referenced herein. _____ understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement 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 either party upon 30 calendar days written notice, 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 XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should _____ default in the performance of this Agreement in a manner stated in this section 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. _____ shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If _____ 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. City shall also have the right to offset the cost of said new Agreement with a new contractor against _____'s future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

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

7.4.3 Performing unsatisfactorily

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 Regardless of how this Agreement is terminated, _____ shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by _____, or provided to _____, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by _____ in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at _____'s sole cost and expense. Payment of compensation due or to become due to _____ is conditioned upon delivery of all such documents, if requested.

7.7 Due to the requirements of the funding agency, by no later than close of business on Friday, September 9, 2009, _____ 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 _____ to submit its claims by no later than close of business on Friday, September 9, 2009 shall negate any liability on the part of City and constitute a **Waiver** by _____ of any and all right or claims to collect moneys that _____ may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall

such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue _____ 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	AND City of San Antonio
City of San Antonio	Director, San Antonio Metropolitan Health District
P.O. Box 839966	332 W. Commerce, Suite 307
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

If intended for _____, to:

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, _____ shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "San Antonio Tobacco Prevention and Control Coalition" 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 Health Department.

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 _____'s financial integrity is of interest to the City; therefore, subject to _____'s right to maintain reasonable deductibles in such amounts as are approved by the City, _____ shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at _____'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 ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent in Umbrella or Excess Liability Coverage.
** Alternate Plans Must Be Approved by Risk Management	

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). _____ 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. _____ shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: San Antonio Metropolitan Health District
332 West Commerce St.
San Antonio, Texas 78205

10.5 _____ 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 insured 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 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.

10.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, _____ shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend _____'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 _____'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 _____ to stop work hereunder, and/or withhold any payment(s) which become due to _____ hereunder until _____ demonstrates compliance with the requirements hereof.

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

10.9 It is agreed that _____'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 _____ and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 _____ 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 _____'S activities under this Agreement, including any acts or omissions of _____, any agent, officer, director, representative, employee, consultant or subcontractor of _____, 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 _____ 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. _____ shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or _____ known to _____ related to or arising out of _____'s activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at _____'s cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving _____ 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 _____ in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. _____ 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 _____ fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and _____ 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 _____, 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 _____ or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 _____ shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of _____. _____, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon that _____ intends to use the following subcontractors in the performance of this Agreement: none. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of _____. City shall in no event be obligated to any third party, including any subcontractor of _____, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, _____ 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, _____ 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.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should _____ 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 _____ 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 _____ shall in no event release _____ from any obligation under the terms of this Agreement, nor shall it relieve or release _____ from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 _____ covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that _____ 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 contractors; that the doctrine of respondent superior shall not apply as between City and _____, its officers, agents, employees, contractors, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and _____. 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 _____ under this Agreement and that _____ has no authority to bind the City.

XIV. NONDISCRIMINATION POLICY

14.1 _____ hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small, women, African American, and minority-owned business enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. _____ agrees that _____ will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. _____ further agrees that _____ will abide by all applicable terms and provisions of City's Non-Discrimination Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

XV. CONFLICT OF INTEREST

15.1 _____ 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.

15.2 Pursuant to the subsection above, _____ 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. _____ further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XVI. AMENDMENTS

16.1 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 _____. The Director may execute contract amendments on behalf of City in the following circumstances a) no cost extensions up to two years, b) budget adjustments authorized by the Director so long as the total dollar amount of the budget remains unchanged, c) modifications to the performance measures 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 d) changes in state or federal regulations mandated by the funding agency.

XVII. SEVERABILITY

17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

18.1 _____ warrants and certifies that _____ 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.

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. 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.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

22.1 Each signer of this Agreement, for either City or _____, represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of either City or _____ and to bind either City or _____ to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

23.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

24.1 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.

XXV. DEBARMENT

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

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

CONTRACTOR and
SA-TPCC Community Collaboration Workplan and Timeline
WORK PLAN:

Objective 1: Participate in cessation training consultation with healthcare providers and worksites				
	Activity/Task	Measure/Outcome	Start & End Dates	Cost Details

Objective 2: Participate in outreach to the public

	Activity/Task	Measure/Outcome	Start & End Dates	Cost Details
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CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 39
Council Meeting Date: 12/4/2008
RFCA Tracking No: R-4213

DEPARTMENT: Health Department

DEPARTMENT HEAD: Fernando Guerra MD

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Tobacco Prevention and Control Coalition Agreements

SUMMARY:

This ordinance authorizes the Director of the San Antonio Metropolitan Health District to execute professional services agreements totaling \$394,071.00 with seven (7) community organizations (The American Cancer Society, The American Lung Association of the Central States, University Health System –Texas Diabetes Institute, University of Texas Health Science Center at San Antonio-Institute for Health Promotion Research, South Central Area Health Education Center, San Antonio Council on Alcohol and Drug Abuse, and the Boys & Girls Club of San Antonio) in support of the San Antonio Tobacco Prevention and Control Coalition within the San Antonio Metropolitan Health District (SAMHD) for the period September 1, 2008 through August 31, 2009. In addition, the ordinance authorizes payment for said services.

In addition, the ordinance authorizes the Director of the San Antonio Metropolitan Health District to execute any necessary documents for the efficient maintenance and delivery of program services through these agreements, to initiate annual renewals as warranted, and to execute contract amendments pertaining to these agreements, to include: a) carry-over funds, when ascertained and approved by the funding agency through a revised notice of award; b) budget adjustments, funding terms and personnel complements authorized by the funding agency, up to 10% of the total dollar amount of the budget; c) modifications to the performance measures authorized by the funding agency and listed in the agreements so long as the terms of the amendment stay within the general parameters of the intent of the grant; and d) changes in state regulations mandated by the funding agency.

BACKGROUND INFORMATION:

The Texas Department of State Health Services (TDSHS) offered the San Antonio Metropolitan Health District (Metro Health) a grant contract in an amount up to \$825,336.00 in renewal funding for the implementation of the *San Antonio Tobacco Prevention and Control Coalition* for the period beginning September 1, 2008 and ending August 31, 2009. This funding was authorized and accepted through Ordinance 2008-10-02-0878.

As required by the TDSHS grant contract, the SAMHD is developing professional services agreements totaling no more than \$394,071.00 with seven (7) community organizations

assisting in the implementation of the *San Antonio Tobacco Prevention and Control Coalition*:

- American Cancer Society
- American Lung Association of the Central States
- Boys & Girls Club of San Antonio
- San Antonio Council on Alcohol and Drug Abuse
- South Central Area Health Education Center
- University Health System - Texas Diabetes Institute
- University of Texas Health Science Center at San Antonio - Institute for Health Promotion Research

ISSUE:

These Professional Services Agreements are required and necessary to achieve stated outcome measures provided by TDSHS through the grant contract approved by Ordinance 2008-10-02-0878.

ALTERNATIVES:

San Antonio Metro Health was selected by TDSHS to receive these grants because of its performance with previous grant programs. If these agreements are not executed, monies for this program would be diverted to other communities in Texas, required outcome measures will not be achieved, and San Antonio residents will not benefit from the potential positive outcomes of this program. In addition, Metro Health may not be considered for future funding opportunities due to not achieving assigned program outcomes.

FISCAL IMPACT:

Execution of these agreements will place no demand on the City General Fund as the funding is provided through the grant from TDSHS.

RECOMMENDATION:

Staff recommends approval of the agreements to augment Metro Health's efforts to address the health needs of the San Antonio community.

ATTACHMENT(S):

File Description	File Name
Attachment 1	List of Subcontractors - RFCA.doc
Attachment II	SACADA Tobacco Contract 08-09 draft v1 - SAMPLE TEMPLATE - RFCA.DOC
Voting Results	
Ordinance/Supplemental Documents	200812041100.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Bryan Alsip Assistant Director Health Department

APPROVED FOR COUNCIL CONSIDERATION:

Frances A. Gonzalez Assistant City Manager

