MH/vv
09/17/15
Item #38

**AN ORDINANCE** 2015-09-17-0811

**AUTHORIZING AN AMENDMENT TO A SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT TO INCREASE COMPENSATION PAID TO THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER SAN ANTONIO DENTAL SCHOOL FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S USE OF SMILESMAKER SOFTWARE FOR THE ORAL HEALTH MEDICAID 1115 WAIVER PROJECT BRINGING THE NEW CUMULATIVE AMOUNT OF THE CONTRACT FROM $24,000.00 TO $27,567.00 OVER A THREE YEAR PERIOD.**

* * * * *

**WHEREAS,** SmilesMaker is a data entry program designed for use by community dental programs to collect personal health information, such as dental screening and sealant data; and

**WHEREAS,** the software was developed as part of the Oral Health Workforce Grant, a collaborative project between the University of Texas Health Science Center San Antonio (UTHSCSA) Dental School and the San Antonio Metropolitan Health District (Metro Health) which began September 1, 2010 and ended on August 31, 2013; and

**WHEREAS,** the SmilesMaker software captures data specific to the field of oral health, including but not limited to the performance of limited oral evaluations, prescribed treatments and case management; and

**WHEREAS,** on April 10, 2014, City Council authorized the execution of software agreements with the UTHSCSA Dental School for Metro Health's use of the SmilesMaker software for data collection and reporting for the Oral Health Program (Oral Health) through Ordinance number 2014-04-10-0234; and

**WHEREAS,** authorization of this amendment to increase compensation paid to the UTHSCSA Dental School will allow Metro Health to increase the number of server licenses for Oral Health staff utilizing the software; and

**WHEREAS,** program staff utilizes this software on a year round basis for conducting school based clinics in local school districts; and

**WHEREAS,** oral health information captured through this system is then used for data collection and reporting for the Medicaid 1115 Waiver; and

**WHEREAS,** this amendment would take effect during the final renewal extension period which is scheduled to commence on October 1, 2015 and end September 30, 2016; **NOW THEREFORE:**

MH/vv
09/17/15
Item #38

**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 an amendment to a software support and maintenance agreement to increase compensation paid to the University of Texas Health Science Center San Antonio Dental School for the San Antonio Metropolitan Health District's use of SmilesMaker software for the Oral Health Medicaid 1115 Waiver Project bringing the new cumulative amount of the contract from $24,000.00 to $27,567.00 over a three year period. A copy of the amendment is attached hereto and incorporated herein for all purposes as **Attachment I.**

**SECTION 2.** Funding for this ordinance in the amount of $13,167.00 is contingent upon approval of the Fiscal Year 2016 Budget for Fund 29658000, Internal Order 836000000011 and General Ledger 5201040.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to the University of Texas Health Science Center San Antonio Dental School 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 is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 17th day of September, 2015.

**M A Y O R**
Ivy R. Taylor

**ATTEST:**

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

for Martha G. Sepeda, Acting City Attorney

| | |
|---|---|
| **Agenda Item:** | **38 ( in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22A, 22B, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43 )** |
| **Date:** | 09/17/2015 |
| **Time:** | 10:02:11 AM |
| **Vote Type:** | Motion to Approve |
| **Description:** | An Ordinance authorizing an amendment to a software support and maintenance agreement to increase compensation paid to the University of Texas Health Science Center San Antonio School of Dentistry for the San Antonio Metropolitan Health District's use of SmilesMaker software for the Oral Health Medicaid 1115 Waiver Project bringing the new cumulative amount of the contract from $24,000.00 to $27,567.00 over the three year period. [Erik Walsh, Deputy City Manager; Dr. Vincent Nathan, Director, Public Health] |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Ivy R. Taylor | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | | x |
| Alan Warrick | District 2 | | x | | | | |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | x | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Joe Krier | District 9 | | x | | | | |
| Michael Gallagher | District 10 | | x | | | | |

**Attachment I**

# RENEWAL AND EXTENSION
# OF
# SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT

This Renewal and Extension is entered into by and between the City of San Antonio, a Texas Municipal Corporation, acting by and through the San Antonio Metropolitan Health District ("Customer"), and The University of Texas Health Science Center at San Antonio Dental School, an institution of higher education and Texas state agency ("Licensor"), 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.

**WHEREAS,** the San Antonio City Council authorized software agreements with the Licensor on April 10, 2014 for the San Antonio Metropolitan Health District's use of the SmilesMaker™ software and documentation; and

**WHEREAS,** the Customer entered into a Software Support and Maintenance Agreement ("Agreement") with the Licensor for the support and maintenance of the SmilesMaker™ software licensed to Customer by Licensor; and

**WHEREAS,** the Agreement may be renewed for two additional one-year periods upon mutual written agreement of the parties; and

**WHEREAS,** the Parties mutually agree to renew and extend the term of the Agreement for an additional one-year period;

**NOW THEREFORE:**

Parties agree to amend the Agreement as follows:

1. Section A is amended by replacing the entirety of the section with the following:

   **A. Term.** This agreement is effective as of the date of execution and shall terminate on September 30, 2016.

2. Section D is amended by replacing the entirety of the section with the following:

   **D. Payments.** Customer shall pay the support and maintenance fees of $9,600.00 for 300 hours of software support in United States funds without deductions for taxes, assessments, fees, or charges of any kind. An additional charge of $850.00 for FileMaker server licenses will be included. A rate of 26% of the total will be assessed in accordance with University policy for Facilities and Administrative costs. **Fees for services in total will be $13,167.00.** Payments cover services in attached "Exhibit A" in conjunction with chosen tier-level of support. Support is provided until September 29th, 2016 after which all software support will be terminated, excluding any error correction. Checks shall be made payable within 60 days of invoice receipt to Licensor and shall be forwarded to the Office at Licensor as follows:

The University of Texas Health Science Center at San Antonio
Department of Comprehensive Dentistry
Dental School, Mail Code 7917
Attention: Annaliese Cothron
7703 Floyd Curl Drive
San Antonio, TX 78253

a. Taxes and Other Charges. Customer shall be responsible for paying all (i) sales, use, excise, value-added, or other tax or governmental charges imposed on the licensing or use of the Software or Documentation hereunder, (ii) freight, insurance and installation charges, and (iii) import or export duties or like charges.

b. All Software Support and Maintenance fees are non-refundable.

2. All other terms, conditions, covenants and provisions of the Agreement are hereby continued and shall remain in effect in their original form, except for the provisions modified by this Renewal and Extension.

Executed this the _____ day of _____, 2015.

**The University of Texas Health Science Center at San Antonio**

Annaliese Cothron, MS
Biostatistician
Department of Comprehensive Dentistry

Spencer Redding, DDS, Med
Professor and Chair
Department of Comprehensive Dentistry

David Cappelli, DMD, MPH, PhD
Director, Dental Public Health Residency
Department of Comprehensive Dentistry

William Dodge, DDS
Dean, ~~Dental~~ School of Dentistry
UTHSCSA

Andrea Marks, MBA, CPA
Vice-President and Chief Financial Officer
UTHSCSA

**San Antonio Metropolitan Health District**

~~Thomas Schlenker, MD, MPH~~
Interim Director, Dr. Vincent Nathan
San Antonio Metropolitan Health District

~~Robert F. Greenblum~~ Martha Sepeda
City Attorney

# HIPAA BUSINESS ASSOCIATE AGREEMENT

**This HIPAA Business Associate Agreement** is entered into by and between the City of San Antonio ("Covered Entity"), and the University of Texas Health Science Center at San Antonio, a Business Associate ("BA").

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of a Professional Services Agreement, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract and to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated there under and any applicable state confidentiality laws.; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "HIPAA Rules" shall mean The Privacy Rule and the Security Rule and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."

(3) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(5) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(6) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(7) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(8) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(9) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the HIPAA Rules and such action compromises the security or privacy of the PHI.

(10) "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as

directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy HIPAA Rules;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

(11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the

possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the HIPAA Rules.

J. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. INDEMNIFICATION. BA acknowledges that it is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Any indemnification shall be to the extent authorized by the Constitution and laws of the State of Texas.

M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach caused solely by BA or any of BA's subcontractors, and proportionally with Covered Entity to the extent that Covered Entity caused any part of such PHI breach. BA shall not be responsible for any costs when a PHI breach was caused solely by Covered Entity.

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

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

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

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

This agreement is effective as of the date of execution and shall be for a period of one year. It may be renewed upon mutual written agreement of the parties.

Executed this the _____ day of _____, 2015.

**BUSINESS ASSOCIATE:**
**The University of Texas Health Science Center at San Antonio**

Annaliese Cothron, MS
Biostatistician
Department of Comprehensive Dentistry

Spencer Redding, DDS, Med
Professor and Chair
Department of Comprehensive Dentistry

David Cappelli, DMD, MPH, PhD
Director, Dental Public Health Residency
Department of Comprehensive Dentistry

William Dodge, DDS
Dean, ~~Dental~~ School of Dentistry
UTHSCSA

Andrea Marks, MBA, CPA
Vice-President and Chief Financial Officer
UTHSCSA

**COVERED ENTITY:**
**San Antonio Metropolitan Health District**

**APPROVED AS TO FORM:**

Vincent R. Nathan, PhD
Interim Director of Health

City Attorney