

AN ORDINANCE 2009-02-12-0109

AUTHORIZING A CONTRACT WITH THE UNIVERSITY HEALTH SYSTEM FOR UP TO \$40,850.00 TO SUPPORT CHILD INJURY PREVENTION ACTIVITIES CONDUCTED BY THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR UP TO THREE YEARS BEGINNING SEPTEMBER 1, 2008.

* * * * *

WHEREAS, the Texas Department of State Health Services (TDSHS) has awarded the University Health System (UHS) a grant to conduct a child injury prevention initiative entitled Tailored Injury Prevention Program to reduce morbidity and mortality associated with children ages 4 years and under; and

WHEREAS, UHS now desires to enter into a subgrantee agreement with the San Antonio Metropolitan Health District (SAMHD); and

WHEREAS, under this agreement the SAMHD will provide health education expertise to support both curriculum development and health system provider training; and

WHEREAS, according to the Centers for Disease Control and Prevention - National Center for Injury Prevention and Control, injury is a leading cause of death and disability in the United States for both children and young adults; and

WHEREAS, in 2003 and 2004, unintentional injury was the leading cause of death for children under the age of 18 and the fifth leading cause of death for infants under one year; and

WHEREAS, for children between one and 4 years it is the number one cause of death; and

WHEREAS, causes of childhood injuries predominantly include motor vehicle accidents, maltreatment and abuse, poisoning, drowning, playground injuries, burns, brain injuries, suicide, and youth violence; and

WHEREAS, the SAMHD has a history of, and expertise in, health education, curriculum development and training of health providers with appropriate methods for the delivery of injury prevention messages to parents of pediatric patients; and

WHEREAS, the program's goals are to change parents' behaviors by increasing parental awareness of the risks of unintentional injury among children and to encourage injury prevention strategies through tailored information; **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 a contract with the University Health System (UHS) for up to \$40,850.00 to support child injury prevention activities conducted by the San Antonio Metropolitan Health District for up to three years beginning September 1, 2008. A copy of said contract in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

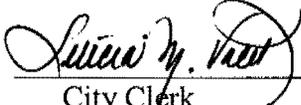
SECTION 2. Fund 26012000 entitled "Misc. Grants" is hereby designated for use in the accounting for the fiscal transaction in the acceptance of this contract and the sum of up to \$40,850.00 from the UHS will be appropriated in said fund.

SECTION 3. 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 4. This ordinance shall be effective on and after February 22, 2009.

PASSED AND APPROVED this 12th day of February, 2009.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

ORIGINAL

THE STATE OF TEXAS § SUBGRANTEE TITLE V CHILD INJURY
 § PREVENTION AGREEMENT WITH
 COUNTY OF BEXAR § SAMHD (Contract No. 2801280-LS)

This Subgrantee Agreement is made and entered into this _____ day of _____, 200__ by and between **Bexar County Hospital District d/b/a University Health System**", a political subdivision of the State of Texas, hereinafter called the "Health System," and the City of San Antonio (hereinafter called the "City") on behalf of the **San Antonio Metropolitan Health District**, hereinafter called "SAMHD."

RECITALS

WHEREAS, the Texas Department of State Health Services (DSHS or the Department) has awarded the Health System a grant for Title V Child Injury Prevention (the "Grant"), which originated under solicitation document DSHS RFP #CHS/POP-0280.1; and

WHEREAS, the Health System desires to enter into a Subgrantee Agreement with the City under which SAMHD shall provide certain services in support of the Grant, and Health System shall pay the City certain funds for SAMHD salaries as allocated to support the Grant; and

WHEREAS, the approved budget for the first year of funding for the salary, fringe benefits, supplies, travel (for training) and indirect costs for a SAMHD health educator is TWENTY ONE THOUSAND FOUR HUNDRED EIGHTY THREE DOLLARS (\$21, 483.00), with a budget for year two of THIRTEEN THOUSAND SEVEN HUNDRED FIVE DOLLARS (\$13,705.00), and the budget for year three of FIVE THOUSAND SIX HUNDRED SIXTY TWO (\$5,662.00);

NOW THEREFORE, it is hereby agreed as follows:

ARTICLE I
PURPOSE

1.01 The purpose of this Agreement is to secure the services of the City through the SAMHD as a provider of health education expertise to develop a curriculum and train Health System health providers with appropriate methods for the delivery of injury prevention messages to pediatric parents.

1.02 The City shall provide services hereunder as an independent contractor. The parties understand that the City performs tasks, the details of which the Health System does not have legal right to control, and no such control is assumed by this Agreement.

1.03 This Agreement does not create an employment relationship, partnership, or joint venture between the City, its subcontractors or employees and the Health System. Neither City nor its subcontractors or employees shall be deemed employees of the Health System for any purpose whatsoever, and neither shall be eligible to participate in any benefit program provided by the Health System.

ARTICLE II
TERM

2.01 The term of this Agreement shall be for a one (1) year period beginning September 1, 2008 and ending August 31, 2009 (the "Initial Term"). This Agreement shall automatically renew for two (2) additional one (1) year terms (each a "Renewal Term") thereafter unless either party otherwise gives notice of non-renewal to the other party not less than thirty (30) days prior to the expiration of the term.

2.02 This Agreement may be terminated by the Health System upon ten (10) days written notice to the City for cause. For the purpose of this agreement, "cause" shall mean the failure of the City to perform in accordance with the scope of work detailed in the grant or failure to comply with materially significant grant regulations or conditions.

2.03 This Agreement shall automatically terminate in the event that the Grant is terminated by the Department or other authorized organization.

2.04 This Agreement may also be terminated by either party upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article VII Notice.

2.05 If this Agreement is terminated by Health System during the initial term or during a renewal term, Health System shall pay City for all services performed prior to City receiving notice of termination and any outstanding invoices within thirty (30) days of the date of termination.

ARTICLE III
SCOPE OF WORK

3.01 The City through the SAMHD hereby agrees to provide health education expertise to support both curriculum development and Health System provider training. SAMHD will also be responsible for disseminating the health education curriculum model to other health organizations as appropriate.

3.02 SAMHD will be responsible for providing the following to the Health System during the term of this Agreement:

- (a) Programming Reports - Monthly time and activity logs that document work plan activities and must include invoices and expenditures
- (b) Financial Reports - Quarterly Reimbursement Requests
- (c) Contractor Performance Reports - Program staff reports regarding Contractor's performance towards meeting deliverables under this Agreement, as well as progress towards meeting Grant program expectations by February 29, 2009.

ARTICLE IV
PERFORMANCE MEASURES

4.01 The City shall upon request, complete and submit to the Health System, written documentation of the professional and administrative services rendered hereunder. The submitted documentation shall contain the information in accordance with the format as provided and requested by the Health System.

ARTICLE V
PAYMENT

5.01 The Health System hereby agrees to reimburse the City an annual maximum amount not to exceed TWENTY ONE THOUSAND FOUR HUNDRED EIGHTY THREE DOLLARS (\$21,483.00) for the Initial Term. Subpayment amounts made monthly during the Initial Term shall be based upon the monthly requests for payment and documentation submitted by the City, with the total sum of such monthly payments for the Initial Term not to exceed the annual maximum amount of TWENTY ONE THOUSAND FOUR HUNDRED EIGHTY THREE DOLLARS (\$21,483.00). The maximum payment amount for the year two Renewal Term shall be THIRTEEN THOUSAND SEVEN HUNDRED FIVE DOLLARS (\$13,705.00), divided into monthly payments amounts based upon City monthly requests for payment. The maximum reimbursement amount for the year three Renewal Term shall be FIVE THOUSAND SIX HUNDRED SIXTY TWO (\$5,662.00), also divided into monthly payments amounts based upon the City monthly requests for payment. In the event the amount of the Grant changes for any Renewal Term(s), this Agreement shall be amended to make an appropriate adjustment to annual maximum payments.

5.02 All requests for payment shall be forwarded by the fifth day of each calendar month to the Health System's attention as follows:

Director, Financial Accounting
University Health System
4502 Medical Drive
San Antonio, Texas 78229-4493

5.03 Actual payment will be made by check drawn against Grant funds, made payable to the City and forwarded as follows:

San Antonio Metropolitan Health District
ATTN: Fernando Guerra, MD
332 W. Commerce
San Antonio, TX 78205

ARTICLE VI
INSURANCE

6.01 City non-physician employees providing services to the Health System pursuant to this Agreement will have liability coverage to the extent provided in Chapter 104 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

6.02 Pursuant to Chapter 59 of the TEXAS EDUCATION CODE, CITY shall provide medical professional liability indemnity coverage for its employees rendering patient care services under this Agreement. The City shall provide the Health System with a current copy of such coverage, annually, and give the Health System thirty (30) days prior written notice of any material change or cancellation in such coverage.

6.03 The Health System provides no medical or workers' compensation insurance coverage for the City or its employees under this Agreement. The responsibility for covering such risk lies with the City and/or physicians participating in the program.

ARTICLE VII
NOTICE

7.01 Any notices to be given hereunder by either party to the other shall be effected in writing either by personal delivery or delivery by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the following paragraph, until and unless such party changes the specified address by written notice to the other.

7.02 Notice shall be given to each of the parties at the following addresses:

If to the Health System:	President/Chief Executive Officer University Health System 4502 Medical Drive San Antonio, Texas 78229-4493
With copy to:	Virginia Mika Director, Grants and Applied Research MS 45-2 San Antonio, Texas 78229-4493
If to City:	Frances A. Gonzalez Assistant City Manager PO Box 839966 San Antonio, TX 78283
With copy to:	Dr. Fernando Guerra Director of Health, SAMHD 332 W. Commerce Street San Antonio, TX 78205

ARTICLE VIII
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

8.01 This Agreement shall not be construed to establish a "business associates" relationship as that term is defined in and for purposes of the Health Insurance Portability and Accountability Act, and implementing regulations issued pursuant thereto ("HIPAA" herein). This Agreement does not

contemplate or permit disclosure of "protected health information" (as that term is defined under and for purposes of HIPAA and regulations issued thereunder) except for treatment purposes only (45 CFR 164.502(e)(ii)(A)).

ARTICLE IX
GENERAL PROVISIONS

9.01 **Corporate Practice of Medicine.** Nothing contained herein is intended to (a) constitute the use of a medical license for the practice of medicine by anyone other than a licensed physician; (b) aid the Health System or any corporation to practice medicine when in fact such corporation is not licensed to practice medicine; or (c) constitute or result in any other act or create any other arrangements in violation of the Texas Medical Practice Act currently codified in the Texas Occupations Code.

9.02 **Retention of and Access to Records and Reports.** The City agrees to provide Health System and federal, state, and local governmental authorities having jurisdiction, upon request, access to all books, records and other papers (including, but not limited to, medical and financial records) and information relating to this Agreement and to those services rendered by the City pursuant to this Agreement, and to maintain such books, records, papers and information for the longer of six (6) years after termination of this Agreement, or the period required by applicable state law. All requested information shall be supplied within fourteen (14) business days of the receipt of the request, where practicable.

9.03 **General Representations, Warranties And Covenants.** The City represents and warrants that:

- (a) All information, data or reports provided or to be provided to Health System is, shall be, and shall remain complete and materially accurate as of the date shown on the information, data, or report to the best of City's knowledge, and that since said date shown, shall not have undergone any significant change without written notice to the Health System.
- (b) Supporting financial statements (if any) provided or to be provided to the Health System are, shall be, and shall remain complete, accurate, and fairly reflective of the financial condition of the City on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to the Health System, there has been no material change, adverse or otherwise, in the financial condition of the City.
- (c) No litigation or proceedings are presently pending or threatened against the City relating to the Agreement.
- (d) The City has legal authority to enter into this Agreement and to accept payments hereunder, and has taken all necessary measures to authorize such execution of contract and acceptance of payments pursuant to the terms and conditions hereof.

- (e) The City (i) is not currently excluded, debarred, or otherwise ineligible to participate in Federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f) (the "Federal health care programs"); (ii) is not convicted of a criminal offense related to the provision of health care items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in the City being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of this Agreement, and the City shall immediately notify Health System of any change in the status of the representation and warranty set forth in this section. Any breach of this section shall give Health System the right to terminate this Agreement immediately for cause.

9.04 Non-Discrimination. The parties to this Agreement mutually agree to make no distinction among persons employed pursuant to, covered by or served under this Agreement on the basis of race, color, sex, creed, age, national origin, or handicap. For the purpose of this Agreement, distinctions on the grounds of race, color, sex, creed, age, national origin, or handicap include, but are not limited to the following: denying any service or benefit or availability of a facility; providing any service or benefit which is different, or is provided in a different manner, or at a different time from that provided to others under this Agreement; subjecting anyone to segregation or separate treatment in any matter related to receipt of any advantage or privilege enjoyed by others receiving any service or benefit; treating a student or potential student differently from others in determining whether they satisfy any admission, quota, eligibility, membership, or any other requirement or condition which individuals must meet in order to be provided any service or benefit.

9.05 Certification and Regulatory Compliance. The City shall comply, and upon request, the City shall submit evidence of such compliance, with all State and federal certifications, regulations, or licensure requirements pertaining to the services provided hereunder, including, but not limited to, applicable rules, policies, procedures and requirements of the Joint Commission ("JCAHO") regardless of whether the City or its facilities are JCAHO accredited. Evidence of such compliance shall be submitted to Health System consistent with JCAHO standards. The City agrees to give immediate notice to Health System in the case of suspension or revocation, or initiation of any proceeding that could result in suspension or revocation, of licensure or of any circumstance that would cause the City to be noncompliant with any such statutes, rules, regulations, standards, or directives. Further, the City shall provide all services in accordance with applicable Medicaid and Medicare requirements.

9.06 Covenant Against Contingent Fees. The City warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the City for the purpose of securing business. For breach or violation of this warranty, Health System shall have the right to terminate this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

9.07 **Assignments.** This Agreement is not assignable by either party without the prior written consent of the other. Any assignment without such written consent shall be void.

9.08 **Waiver of Performance.**

- (a) No waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall 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 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.
- (b) No act or omission of either party shall in any manner impair or prejudice any right, power, privilege or remedy available to the other party hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.
- (c) No representative or agent of either party may waive the effect of the provisions of this Section.

9.09 **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.

9.10 **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.

9.11 **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.

9.12. **Stark Law, Anti-Kickback Statute, and Texas Prohibition Against the Solicitation of Patients.** The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable federal, state, and local law, including but not limited to the federal Stark law, the federal anti-kickback statute, and the Texas prohibition against the solicitation of patients. Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of the Stark law, anti-kickback statute, or the Texas prohibition against the solicitation of patients. The City acknowledges and agrees that this Agreement does not require, and shall not be construed to require (either directly or indirectly, explicitly or implicitly), use by the City

or any physicians, of the University Hospital, or any other facility or service related to the Health System, or the admission or referral of any patients treated by SAMHD to the University Hospital or other facilities related to the Health System.

9.13 Confidentiality.

- (a) The City acknowledges that in connection with the services to be performed under this Agreement by the City, the City and its employees may be acquiring and making use of certain confidential information of the Health System which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, the City 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 Health System consents in writing to such use or divulgence or disclosure is required by law. In the event the City receives a request or demand for the disclosure of Confidential Information, the City shall immediately provide written notice to the Health System of such request or demand, including a copy of any written element of such request or demand.
- (b) The City 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 Health System and with all federal and state laws and regulations regarding patient and medical record confidentiality.

9.14 Amendment. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, be dated subsequent to the date hereof and duly executed by the parties hereof. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA (the Health Insurance Portability and Accountability Act, Texas Health and Safety Code Chapter 181, and implementing regulations issued pursuant thereto - collectively "HIPAA" herein) and other applicable laws relating to the security or confidentiality of Protected Health Information. Upon either party's request, the parties agree to promptly enter into negotiations with each other concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA or other applicable laws. Failure to enter into negotiations may be considered a material breach of this Agreement, invoking the right to terminate this Agreement for default.

9.15 Gender. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

9.16 **Hold Harmless.** [Intentionally deleted].

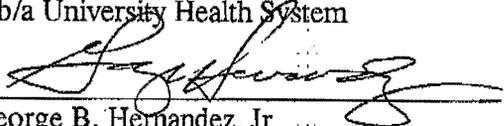
9.17 **Report of Fraudulent Activities.** The City will report to the University Health System Integrity Office any suspected or known "fraudulent activities" that may come to its attention. "Fraudulent Activities" shall have the same meaning as defined in University Health System Policy No. 2.10 "Fraud" as may be revised or amended from time-to-time. A copy of Policy No. 2.10 shall be available from the Purchasing Department or the Integrity Office on the 1st Floor of University Hospital. The City may at its option choose to report Fraudulent Activities through the Integrity Hotline 1-877-225-7152.

9.18 **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

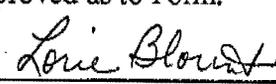
9.19 **Entire Agreement.** This Agreement constitutes the final and entire agreement between the parties hereto and contains all terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto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

EXECUTED ON THE DATE FIRST WRITTEN ABOVE.

Bexar County Hospital District
d/b/a University Health System


George B. Hernandez, Jr.
President/Chief Executive Officer

Approved as to Form:


Lorie Blount
Attorney, Legal Services

City of San Antonio

Dr. Fernando A. Guerra
Director of Health

Date

ATTEST:

Leticia M. Vacek

Date

APPROVED AS TO FORM:

Michael D. Bernard
City Attorney