MH/vv
06/18/15
Item #40

AN ORDINANCE 2015-06-18-0566

AUTHORIZING AN AGREEMENT WITH THE UNIVERSITY OF TEXAS AT SAN ANTONIO TO PROVIDE EVALUATION SERVICES FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S CENTERS FOR DISEASE CONTROL AND PREVENTION SODIUM REDUCTION IN COMMUNITIES GRANT IN AN AMOUNT UP TO $52,613.00 FOR THE PERIOD BEGINNING AUGUST 1, 2015 THROUGH SEPTEMBER 29, 2016.

* * * * *

WHEREAS, approximately 90% of Americans consume too much sodium, increasing their risk of having high blood pressure; and

WHEREAS, because nearly 400,000 deaths each year are attributed to high blood pressure, decreasing sodium intake could prevent thousands of deaths annually; and

WHEREAS, the purpose of the Sodium Reduction in Communities grant is to reduce sodium intake to limits recommended by the 2010 U.S. Dietary Guidelines for Americans, US2010, which is a program of research on changes in American society in the recent past, led by project director John Logan, professor of sociology at Brown University; and

WHEREAS, the grant expects to achieve at least two of the following short-term outcomes by the end of the project period: 1) increased availability of lower sodium food products (i.e., presence of lower sodium foods in the environment), 2) increased accessibility of lower sodium food products (i.e., presence of lower sodium foods available in a form, location, price and time that facilitates their consumption) and 3) increased purchase/selection of lower sodium food products; and

WHEREAS, in April 2015, the San Antonio Metropolitan Health District in coordination with the Finance Department's Purchasing Division issued a Request for Proposals (RFP) for professional consulting services to evaluate program performance of the Centers for Disease Control and Prevention Sodium Reduction in Communities grant project; and

WHEREAS, the evaluation committee recommended the University of Texas at San Antonio; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the San Antonio Metropolitan Health District or his designee is hereby authorized to execute an agreement with the University of Texas at San Antonio to provide evaluation services for the San Antonio Metropolitan Health District's Centers for Disease Control and Prevention Sodium Reduction in Communities grant in an amount up to $52,613.00 for the period beginning August 1, 2015 through September 29, 2016.

A copy of the agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. The sum of $52,613.00.00 is hereby appropriated in the designated fund below and will be disbursed from GL 5201040. Payment is authorized to the University of Texas at San Antonio upon issuance of a Purchase Order.

Amount	Fund	Internal Order	GL
$52,613.00	2602236048	136000000636	5201040

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 is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 18th day of June, 2015.

Ivy R. Taylor

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:	**40**
Date:	06/18/2015
Time:	10:09:30 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an agreement with the University of Texas at San Antonio to provide evaluation services for the San Antonio Metropolitan Health District's Centers for Disease Control and Prevention Sodium Reduction in Communities grant in an amount up to $52,613.00 for the period beginning August 1, 2015 through September 29, 2016. [Erik Walsh, Deputy City Manager; Dr. Thomas L. Schlenker, Director of Public Health]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor				x		
Roberto C. Trevino	District 1		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				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

Attachment I

PROFESSIONAL SERVICES AGREEMENT

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 (hereafter referred to as "Metro Health"), acting by and through the Director of the Metro Health, pursuant to Ordinance No. _____ and The University of Texas at San Antonio (UTSA), (hereinafter referred to as "Contractor"), an institution of The University of Texas System ("System") and an agency of the State of Texas. City and Contractor may be referred to herein collectively as the "Parties."

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

I.
DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's San Antonio Metropolitan Health District.

"Project or Program" shall mean the general scope of services of this Agreement as defined in Article III.

II.
TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on August 1, 2015 and shall terminate on September 29, 2016.

2.2 It is expressly understood and agreed by the City and Contractor that City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet the City's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If City does not receive adequate funds to pay obligations under this Agreement, then this Agreement shall terminate and neither Contractor nor City shall have any further obligations hereunder. It is further understood by the Parties, Contractor shall not initiate Project prior to the receipt of written notification City has received adequate funding to pay obligations as defined herein.

III.
SCOPE OF SERVICES

3.1 CONTRACTOR 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 CONTRACTOR agrees to perform the following specific services:

3.2.1 *SPAT Analysis.* CONTRACTOR shall provide evaluation services for City on the *SPAT (Sodium Practices Assessment Tool)* data. City will provide SPAT data to CONTRACTOR. CONTRACTOR shall import data from City's files into data analysis software, conduct a thorough quality analysis, and analyze the data for changes in procurement policies and practices; food nutrition information availability; and product inventory. CONTRACTOR will provide a report to the City with results for (1) meals for congregate populations and (2) meals for worksite employees. The report shall also include recommendations based on CONTRACTOR's analysis.

3.2.2 *Food Service Managers Survey.* CONTRACTOR shall produce a report on data regarding existing policies/practices/guidelines and compliance. CONTRACTOR will develop and conduct a short survey to collect data from food service managers from a sub-sample of sites, analyze data using qualitative methodology, and provide results to the City in the final report.

3.2.3 *Food Service Employees Survey.* CONTRACTOR shall produce a report on employee's knowledge, awareness, and behavior regarding sodium reduction. CONTRACTOR will ask Food Service Managers from a sub-sample of sites about their perceptions regarding their food service employees' knowledge, awareness and behaviors related to sodium reduction. CONTRACTOR will analyze data using qualitative methodology, and provide results to the City in the final report.

3.2.4 *Healthy Item Availability Analysis.* CONTRACTOR shall produce a report on the number of healthy versus unhealthy items available across vendors and food sites. City will provide menu inventory, food item inventory data to CONTRACTOR. CONTRACTOR shall import data from City's files into data analysis software, conduct a thorough quality analysis, and analyze the data for trends in healthy availability across sites and vendors. CONTRACTOR will provide results in the final report to the City for (1) meals for congregate populations and (2) meals for worksite employees. The report shall also include recommendations based on CONTRACTOR's analysis.

3.2.5 *Food Satisfaction Survey of Employees and Consumers.* CONTRACTOR shall produce a report on employees and consumers' food satisfaction. CONTRACTOR will develop and conduct a short survey with employees/consumers from a sub-sample of sites, analyze data using qualitative methodology, and provide results to

the City in the final report.

3.2.6 *Meals/Foods Served and/or Sold Analysis.* CONTRACTOR shall set up a plan to collect meal records from a sub-sample of participating sites as well as prices for sodium-reduced items. CONTRACTOR shall develop a plan, collect the initial data and assist the City in ongoing data collection, analyze data for trends in the number of meals/foods served and the number of meals/foods sold. Comparison of food cost before and after sodium modification will also be calculated by CONTRACTOR. CONTRACTOR shall include results in the final report.

3.2.7 *Final Report.* CONTRACTOR shall deliver a final report to the City by September 29, 2016. The final report should include a description of the methodology used for data collection and analysis; the results; and recommendations for the overall project based on findings. The final report will also include data the City can use to highlight success stories

3.2.8 *Consultation.* CONTRACTOR shall provide consulting services to the City regarding this specific project. Consultation includes participation in monthly conference calls, meeting with City staff monthly to discuss findings including suggested strategies for sodium reduction, and providing updates throughout the evaluation to City staff.

3.3 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII Termination, in whole or in part, should CONTRACTOR's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV.
COMPENSATION TO CONTRACTOR

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay CONTRACTOR an amount not to exceed FIFTY-TWO THOUSAND SIX HUNDRED THIRTEEN DOLLARS ($52,613.00) as total compensation to be paid to CONTRACTOR in the manner set forth in Section 4.2.

4.2 City agrees to pay CONTRACTOR upon receipt of an invoice submitted in accordance with this section. CONTRACTOR shall submit invoices throughout the term of this Agreement, as listed below. Each invoice shall outline the work completed during the previous period in accordance with the stated scope of work for the contract term described in Article III above and the amount due and owing. City shall pay any invoice from CONTRACTOR within 30 days of

submission to the City. The total payments hereunder shall not exceed the amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.

	Deliverable	Due Date	
4.2.1	Evaluation summary: description of progress, achievements and evaluation findings for work completed to date.	February 27, 2016	$5,000.00
4.2.2	Customer Satisfaction survey	April 30, 2016	$7,000.00
4.2.3	Stakeholder Interviews	April 30, 2016	$2,000.00
4.2.4	Evaluation Status report: Describe the status of the evaluation, e.g. data collection, analysis, and reporting baseline and follow-up measures.	April 30, 2016	$5,000.00
4.2.5	Food Satisfaction survey of Employees and Consumers Report	April 30, 2016	$2,000.00
4.2.6	Meals/Foods Served and/or sold analysis	April 30, 2016	$5,000.00
4.2.7	Evaluation results: Specify evaluation results for the work completed to date, including data about baseline and follow-up values for short-term and intermediate outcome performance measures.	July 15, 2016	$7,000.00
4.2.8	Consultation; bi-monthly conference calls and monthly CDC calls August 1, 2015 – September 29, 2016	September 29, 2016	$4,613.00
4.2.9	Final Report to CDC summarizing evaluation status and results over three year project period	September 29, 2016	$15,000.00
	Total		$52,613.00

4.3 Invoices shall include Purchase Order number and submit to: City of San Antonio, San Antonio Metropolitan Health District P.O. Box 839966, San Antonio, TX 78283-3966.

4.4 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by City. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in Section 4.1 above. Total payments to CONTRACTOR 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.

4.5 Final acceptance of work products and services require written approval by City, as determined by the Director as the City's approval official. Payment will be made to CONTRACTOR following written approval of the final work products and services by Director.

Approval shall not be unreasonably withheld. City shall not be obligated or liable under this Agreement to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.6 The CONTRACTOR agrees to submit statements showing itemized costs to the City associated with this Agreement as set forth in the deliverables-based invoice schedule outlined in Section 4.2. Reimbursement of eligible expenses, as determined by the City, will be made according to standard procedures followed by City, as requested upon receipt of billing from the CONTRACTOR.

4.7 All services required under this Agreement will be performed to City's satisfaction, and City will 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 will not be paid until required reports, data, and documentation have been received and approved by the City, as determined by the Director as the City's approval official.

V.
CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS

5.1 Unless disclosure is authorized by the City subject to this Article V, CONTRACTOR agrees for a period of three (3) years from termination to maintain in confidence all information received from City pertaining to the Project, including, without limitation, reports, information, project evaluation, project designs, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. CONTRACTOR shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, CONTRACTOR shall, where possible, give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR certifies that it has established procedures designed to meet the obligations of this Article. This Article shall not be construed to limit the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement for the period noted above. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations. The foregoing shall not apply when, after and to the extent the Confidential Information disclosed, as documented by competent evidence:

(i) is not disclosed in writing or reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure;
(ii) is already in CONTRACTOR'S possession at the time of disclosure as evidenced by written records in the possession of the CONTRACTOR prior to such time;
(iii) is or later becomes part of the public domain through no fault of the CONTRACTOR;

(iv) is received from a third party having no obligations of confidentiality to the City;
(v) is independently developed by the CONTRACTOR by its personnel having no access to the Confidential Information.

5.2 Within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all reports, data and materials required to be delivered pursuant to this Agreement (the Project Materials) to City. City reserves the non-exclusive right, including each and every copyright, to use and reproduce Project Materials and reserves the right to authorize others to use or reproduce such Project Materials. City understands that under CONTRACTOR policies, copyright ownership in any works authored by CONTRACTOR's faculty belongs to that author and not CONTRACTOR. Therefore, CONTRACTOR does not exercise any authority to bind its faculty to any copyright use or transfer agreement. City also acknowledges that local governmental records are public records and as such, CONTRACTOR cannot transfer or otherwise confer any right to City in these materials. Nothing herein is intended nor shall it be construed to prohibit CONTRACTOR or its faculty access to the Project Materials, or to transfer any ownership in CONTRACTOR's best practice and benchmarking information to the City.

5.3 CONTRACTOR has the right to use Project Materials and documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONTRACTOR ("Research Results") for its own internal non-commercial research and educational purposes. It is further understood by the Parties, CONTRACTOR retains the right to use Research Results to produce scholarly works for publication. In the event that CONTRACTOR or its faculty contributors publishes the Research Results or uses any of the Project Materials for educational activities, or permits any third party to do so, CONTRACTOR or its faculty contributors shall acknowledge City's contribution to the Project in any such publication.

5.4 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Agreement shall be the subject of any copyright or proprietary claim by CONTRACTOR.

5.5 Upon termination or expiration of this Agreement, CONTRACTOR shall return to City all copies of materials related to the Project, including the Confidential Information provided to CONTRACTOR within a period not to exceed sixty (60) days after the expiration, or termination hereof. Notwithstanding the foregoing, CONTRACTOR shall have the right to retain one (1) copy of Confidential Information in a secure location for the sole purpose of determining any continuing obligations of confidentiality under this Agreement.

VI.
REQUESTS FOR and RETENTION of RECORDS

6.1 CONTRACTOR shall properly, accurately and completely maintain all documents, papers, records, books, reports, policies and procedures 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. This right also includes timely and reasonable access to CONTRACTOR's facility and to CONTRACTOR's personnel for the purpose of interview and discussion related to such documents. CONTRACTOR shall, upon request, transfer certain documents to the custody of City, when City determines that the documents possess long-term retention value.

6.2 CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the Project in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer (hereafter referred to as "retention period") following the date of termination of the Agreement. Notwithstanding the foregoing, CONTRACTOR shall maintain all Agreement and Project related documents for no less than four (4) years following the end of the term of this Agreement. If, at the end of the retention period, there is an audit, litigation, or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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 CONTRACTOR to return said documents to City prior to or at the conclusion of said retention.

6.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.

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 CONTRACTOR 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. CONTRACTOR shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR fails to cure the default within such ten-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 CONTRACTOR'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 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any material obligation herein required;

7.4.4 Not performing to the reasonable satisfaction of City;

7.4.5 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

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, CONTRACTOR shall provide or return all completed or partially completed Project Materials and Research Results to City in accordance with Article V.

7.7 Within thirty (30) calendar days following the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination or expiration hereof. Failure by CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.9 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 CONTRACTOR for any default hereunder or other action.

VIII.
NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City Clerk City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966	**AND**	City of San Antonio Director, San Antonio Metropolitan Health District 332 W. Commerce, Suite 307 San Antonio, Texas 78205

If intended for CONTRACTOR, to:

Can (John) Saygin, Ph.D.
Assistant Vice President for Research Administration

The University of Texas at San Antonio
One UTSA Circle
San Antonio, TX 78249-1644

IX.
RESERVED

X.
AUDIT

10.1 As an agency of the State of Texas, CONTRACTOR is subject to the auditing requirements of the State of Texas including Statewide Single Audit, a copy of which is available through the http://www.sao.state.tx.us/reports/Default.aspx

10.2 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement during normal business hours with advanced written notice as deemed necessary by City, not to exceed two times per 12 month period. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, CONTRACTOR agrees to make available to City all accounting and Project records. CONTRACTOR acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine.

10.3 CONTRACTOR shall during normal business hours with advance written notice, and not to exceed two times per twelve month period by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the CONTRACTOR shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by CONTRACTOR in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

10.4 When an audit or examination determines that the CONTRACTOR has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the CONTRACTOR shall be notified and provided an opportunity to address the questioned expenditure or costs.

10.5 Should any expense or charge that has been reimbursed be subsequently disapproved or

disallowed as a result of any site review or audit, the CONTRACTOR will promptly refund such amount to the City no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such undisputed claims from subsequent reimbursements under this Agreement; however, in the absence of prior notice by City of the exercise of such option, CONTRACTOR shall provide to City a full refund of such amount no later than thirty (30) business days from the date of notification of such disapproval or disallowance by the City. If CONTRACTOR is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by check, cashier's check or money order. Should the City, at its sole discretion, deduct such undisputed claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

10.6 CONTRACTOR agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by CONTRACTOR shall be the sole responsibility of the CONTRACTOR and shall not be paid from any Project funds received by the CONTRACTOR under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

XI.
ADMINISTRATION OF AGREEMENT and RESTRICTIONS ON USE OF FUNDS

11.1 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of Metro Health.

11.2 Prohibited Political Activity. CONTRACTOR agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

11.3 CONTRACTOR agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

11.4 The prohibitions set forth in Sections 11.3 and 11.4 above include, but are not limited to, the following:

(A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

(B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;

(C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

(D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

11.5 CONTRACTOR agrees that in any instance where an investigation of the above is ongoing or has been confirmed, salaries paid to the CONTRACTOR under this Agreement may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the CONTRACTOR's personnel is terminated.

11.6 Sections 11.4 through 11.8 shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, CONTRACTOR and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

11.7 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this Agreement, the CONTRACTOR agrees to that under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

XII.
INSURANCE

12.1 CONTRACTOR and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

12.2 With respect to CONTRACTOR, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this

chapter is limited to money damages in a maximum amount of $250,000.00 for each person and $500,000.00 for each single occurrence for bodily injury or death and $100,000.00 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

XIII.
INDEMNIFICATION

13.1 CONTRACTOR and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply 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. CONTRACTOR and City shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this Agreement.

XIV.
SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

14.1 CONTRACTOR is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees that it will adhere to its established policies regarding small, minority, or women-owned business policy regarding procurement, construction and professional service contracts.

14.2 In the event that the CONTRACTOR utilizes subcontractors to perform any part of this agreement the CONTRACTOR will ensure that each subcontractor is aware that they must comply with the City of San Antonio's Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City.

XV.
ASSIGNMENT

15.1 CONTRACTOR 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 of CONTRACTOR. CONTRACTOR, its employees shall perform all necessary work.

15.2 It is City's understanding that CONTRACTOR does not intend to use subcontractors under this Agreement. If CONTRACTOR has a need to use subcontractor it will obtain prior approval from the City.

15.3 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder,

by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.

15.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to City, which City sustains as a result of such violation.

XVI.
INDEPENDENT CONTRACTOR

16.1 CONTRACTOR certifies and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, collaborators or joint venturers between City and CONTRACTOR. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the City.

XVII.
NONDISCRIMINATION POLICY

17.1 CONTRACTOR 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. CONTRACTOR agrees that CONTRACTOR shall not discriminate against any individual or group on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein 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, sexual orientation, gender identity, veteran status, age or disability.

17.2 The CONTRACTOR shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, CONTRACTOR agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. As a party to this contract, Contractor understands and agrees to comply with the Non-discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the city code and further, shall not discriminate on the basis of race, color, religion, national origin, sex sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. CONTRACTOR further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

a) Title VII of the Civil Rights Act of 1964, as amended;

b) Section 504 of the Rehabilitation Act of 1973, as amended;

c) The Age Discrimination Act of 1975, as amended;

d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);

e) Fair Labor Standards Act of 1938, as amended;

f) Equal Pay Act of 1963, P.L. 88-38; and

g) All applicable regulations implementing the above laws.

XVIII.
CONFLICT OF INTEREST

18.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a collaborator or a parent or subsidiary business entity.

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

XIX.
AMENDMENTS

19.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and CONTRACTOR. The Director of Metro Health 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 funding agency 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.

XX.
SEVERABILITY

20.1 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.

XXI.
LICENSES/CERTIFICATIONS

21.1 CONTRACTOR represents and certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII.
COMPLIANCE

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

XXIII.
NONWAIVER OF PERFORMANCE

23.1 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.

XXIV.
LAW APPLICABLE

24.1 **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.**

24.2 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.

XXV.
LEGAL AUTHORITY

25.1 CONTRACTOR represents and certifies the signer of this Agreement for CONTRACTOR is authorized to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all of the terms, conditions, provisions and obligations herein contained.

XXVI.
PARTIES BOUND

26.1 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.

XXVII.
CAPTIONS

27.1 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.

XXVIII.
DEBARMENT

28.1 CONTRACTOR certifies to the best of its knowledge and after reasonable inquiry 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.

28.2 CONTRACTOR 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, CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXIX.
ENTIRE AGREEMENT

29.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIX. Amendments.

EXECUTED and **AGREED** to this the _____ day of _____, 2015.

CITY OF SAN ANTONIO		**UTSA**	
_____		_____	
Printed Name:	Thomas L. Schlenker M.D., M.P.H.	Printed Name:	C. Mauli Agrawal, Ph.D., P.E.
Title:	Director of Health	Title:	Vice President for Research
Date:	_____	Date:	_____

Approved as to Form:

_____

City Attorney