MH/vv
04/30/15
Item #26

AN ORDINANCE 2015-04-30-0357

AUTHORIZING AGREEMENTS WITH EL CENTRO DEL BARRIO D/B/A CENTROMED AND THE SAN ANTONIO AIDS FOUNDATION RELATED TO THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S PARTICIPATION IN THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES' REGION 8 MEDICAID 1115 WAIVER TUBERCULOSIS IDENTIFICATION AND TREATMENT PROJECT BEGINNING UPON EXECUTION OF EACH AGREEMENT THROUGH SEPTEMBER 30, 2015; AND AUTHORIZING THE OPTION TO RENEW EACH AGREEMENT FOR AN ADDITIONAL ONE YEAR PERIOD CONTINGENT UPON AVAILABLE FUNDING.

* * * * *

WHEREAS, the San Antonio Metropolitan Health District's (Metro Health) TB Prevention and Control Program (TB Program) provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease; and

WHEREAS, the TB Program also provides screening and preventive medicine for those with a known exposure to TB or those from high risk populations; and

WHEREAS, additional services offered include case management, contact investigation and community intervention with prevention measures in order to reduce the rates and control the spread of TB disease; and

WHEREAS, on June 19, 2014, City Council authorized the acceptance of funding from the Texas Department of State Health (DSHS) for Metro Health's participation in the Tuberculosis Identification and Treatment Project (TB Project) under the Texas Medicaid 1115 Waiver; and

WHEREAS, this project focuses on targeted testing and treatment for latent tuberculosis infection (LTBI) in high risk populations to prevent these cases from evolving into active TB cases; and

WHEREAS, the DSHS TB Project will include increased targeted testing and treatment for high risk populations such as refugees and persons living in congregate settings such as homeless shelters and drug rehabilitation centers; and

WHEREAS, in addition, individuals living with HIV and diabetes will be targeted; and

WHEREAS, El Centro del Barrio d/b/a CentroMed (CentroMed) has been providing healthcare to homeless persons since 1989 and works with various partnering agencies to ensure that homeless persons have access to healthcare services; and

WHEREAS, CentroMed provides integrated mental health and primary care for homeless individuals accessing services at CentroMed's Sarah E. Davidson Clinic on the Haven for Hope campus; and

WHEREAS, the San Antonio AIDS Foundation (SAAF) has a dual mission of providing compassionate medical care and social services to people with Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS), and helping prevent the spread of HIV through education, counseling and testing; and

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WHEREAS, SAAF supports the provision of services without discrimination on any basis, including but not limited to race, ethnicity, age, sex, gender, sexual orientation, marital status, religion, handicap, immigrant status, national origin, drug use, and criminal background; and

WHEREAS, CentroMed's homeless population and SAAF's HIV/AIDS population have higher rates of both infectious and chronic disease, including TB, HIV, pneumonia, chronic obstructive lung disease, and cardiovascular disease; and

WHEREAS, through the proposed agreements, CentroMed and SAAF will provide certain laboratory and medical consultation services, including phlebotomy services for collecting blood samples for T-SPOT®.TB (T-Spot) screening, in high risk populations which will contribute to the early intervention of Tuberculosis infection or disease; **NOW THEREFORE:**

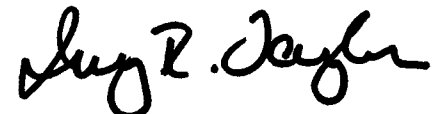
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

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 1) execute agreements with El Centro del Barrio d/b/a CentroMed and the San Antonio AIDS Foundation related to the San Antonio Metropolitan Health District's participation in the Texas Department of State Health Services' Region 8 Medicaid 1115 Waiver Tuberculosis Identification and Treatment Project beginning upon execution of each agreement through September 30, 2015; and 2) without further Council action, renew each agreement for an additional one year period contingent upon available funding. A copy of the each agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I** and **II**.

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 30th day of April, 2015.

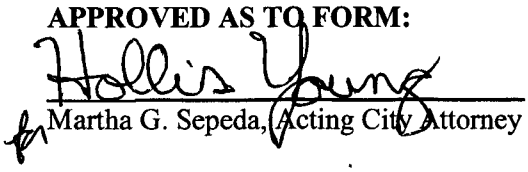


M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**26 (in consent vote: 6, 7, 8, 9, 11, 12, 13, 14, 15A, 15B, 16A, 16B, 16C, 16D, 17, 18, 19A, 19B, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30)**
Date:	04/30/2015
Time:	11:00:22 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing agreements with CentroMed and the San Antonio AIDS Foundation related to the San Antonio Metropolitan Health District's participation in the Texas Department of State Health Services' Region 8 Medicaid 1115 Waiver Tuberculosis Identification and Treatment Project beginning upon execution of each agreement through September 30, 2015; and authorizing the option to renew each agreement for an additional one year period contingent upon available funding. [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				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x			x	

Attachment I

MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN ANTONIO ON BEHALF OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT AND EL CENTRO DE BARRIO d/b/a CENTROMED

This Memorandum of Agreement ("Agreement") is entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "Metro Health") and El Centro del Barrio d/b/a CentroMed (hereinafter referred to as "CentroMed"), a Texas non-profit corporation, (hereinafter collectively referred to as the "Parties").

WHEREAS, the City's Tuberculosis (TB) Prevention and Control Program (hereinafter referred to as the "Program") within the Metro Health provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease; and

WHEREAS, the Program also provides screening and preventive medicine for those with a known exposure to TB or those from high risk populations; and

WHEREAS, additional services offered include case management, contact investigation and community intervention with prevention measures in order to reduce the rates and control the spread of TB disease; and

WHEREAS, Metro Health has received funding from the Texas Department of State Health Services (DSHS) in order to provide support services for the DSHS' Health Services Region 8 TB Waiver Project for the prevention and control of TB; and

WHEREAS, CentroMed has been providing healthcare to homeless person since 1989 and works with various partnering agencies to ensure than homeless persons have access to healthcare services; and

WHEREAS, CentroMed provides integrated mental health and primary care for homeless individuals accessing services at CentroMed's Sarah E. Davidson Clinic on the Haven for Hope campus; and

WHEREAS, CentroMed expects the provision of this care will result in improved physical and mental health, improved satisfaction with care, and more appropriate use of emergency services, thus reducing system costs; and

WHEREAS, CentroMed's homeless population have higher rates of both infectious and chronic disease, including TB, HIV, pneumonia, chronic obstructive lung disease, and cardiovascular disease; and

WHEREAS, this Agreement defines the terms between the City and CentroMed for the provision of certain laboratory and medical consultation services by the Program which will contribute to the early intervention of Tuberculosis infection or disease; and

NOW THEREFORE this Agreement delineates the Parties' responsibilities in meeting the anticipated needs of CentroMed and the City's TB Prevention and Control Program.

I. Term and Termination

1.1 **Term:** The term of this Agreement shall begin on execution by the Parties and terminate on September 30, 2015 unless sooner terminated as hereinafter provided.

1.2 **Termination for Cause:** Either Party may terminate this Memorandum of Agreement, immediately upon written notice, for any of the following:

A. Neglect or failure by either Party to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or of any amendment between the Parties provided;

B. Violation by either Party of any rule, regulation, or law to which the Parties are bound under the terms of this Agreement.

1.3 **Termination without Cause:** Either Party may terminate this Agreement at any time upon 30 days written notice to the other Party.

II. CentroMed's Responsibilities

2.1 CentroMed shall coordinate with Metro Health on operational research and educational activities related to TB prevention and management in the community at its Sarah E. Davidson Clinic on the Haven for Hope campus.

2.2 CentroMed shall assist with and provide input on contact investigations, if requested, to the Metro Health Contact Investigation team.

2.3 CentroMed shall provide phlebotomy services for collecting blood samples for T-Spot screening.

2.4 CentroMed shall batch sample (maximum 25 per day) for delivery to Metro Health Laboratory Services by 2:00 pm for next day results.

2.5 CentroMed shall comply with standard practices of confidentiality of patient information as required by the Metro Health and mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. CentroMed will enter into a Business Associate Agreement with the City that is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.

2.6 CentroMed shall perform duties and services under this Agreement in accordance with all relevant local, state, and federal laws and shall comply with standards, guidelines, and policies of the City and the Metro Health.

2.7 City policies regarding authorization for access to confidential information and review of medical records will be followed by CentroMed. CentroMed assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

2.8 CentroMed shall not use any City data or information collected, obtained or observed during the term of this Agreement for publication, or reviews or presentations unless approval is obtained in writing from the City.

III. City Responsibilities

3.1 Metro Health will provide and supply green top tubes for T-Spot blood collection.

3.2 Metro Health will provide professional courier pick-up and delivery services for T-Spot specimens collected under this program.

3.3 Metro Health will cover the cost of the T-Spot Test in-house (Approximately $69.00 per test).

3.4 Metro Health will perform testing Monday thru Thursday except for regularly scheduled holiday interruptions.

3.5 Metro Health will process a total of 25 samples maximum per day.

3.6 Metro Health will provide written laboratory results within 24 hours in most cases.

3.7 Metro Health will phone any positive T-Spot IGRA results to clinical staff immediately.

3.8 Metro Health will provide examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease and latent TB infections.

3.9 Metro Health will provide tangible reinforcements for residents participating in the Medicaid Waiver program as funding resources allow.

3.10 Metro Health will provide social service opportunities as funding resources allow for eligible residents.

3.11 Metro Health will provide ongoing communication with CentroMed regarding any changes, difficulties or problems that may arise related to this MOA.

3.12 Upon request by CentroMed, subject to City staff availability, Metro Health may assist with local TB health education presentations at the Courtyard.

IV. Insurance and Indemnification

4.1 **Liability and Insurance:** CentroMed is solely responsible for professional insurance for its employees for the events set out within this Agreement, and further acknowledges that any claims for injury by one of its employees during the events described herein shall be handled by CentroMed worker's compensation coverage.

4.2 **Indemnification:** CentroMed hereby agrees to indemnify and hold City harmless from any injury, expense, damage, liability or claim imposed on City by any person whosoever whether due to claims for injuries to the person or property, when such injury, expense, damage, liability or claim results either directly or indirectly from the negligent acts or omissions, willful misconduct or breach of any provisions of this Agreement by CentroMed, its agents, servants, or employees. CentroMed further agrees to reimburse City for any costs or expenses, including court costs and reasonable attorney's fees, which City may incur in investigating, handling or litigating any such claims.

V. Administration of Agreement

5.1 CentroMed agrees to comply with all the terms and conditions that the City must comply with in its award of funds from the Medicaid 1115 Waiver Program. A copy of program requirements and documentation is available upon request to Metro Health.

5.2 CentroMed shall make available to City, State Medicaid Program officials, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to CentroMed's facility and CentroMed's personnel for the purpose of interview and discussion related to such documents. CentroMed shall, upon request, transfer certain records to the custody of City or State Medicaid Program officials when the City or State determines that the records possess long-term retention value.

5.3 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by Metro Health shall be submitted by CentroMed to City within five (5) working days of the request. The parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. Furthermore, CentroMed ensures that all information contained in all required reports or information submitted to City is accurate.

VI. General Provisions

6.1 **Confidentiality:** CentroMed acknowledges that in connection with the services to be performed under this Agreement by CentroMed, CentroMed and its employees may be acquiring and making use of certain confidential information of the City and Metro Health which includes, but is not limited to, management reports, financial statements, internal

memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, CentroMed and its employees shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event CentroMed receives a request or demand for the disclosure of Confidential Information, CentroMed shall promptly provide written notice to the City of such request or demand, including a copy of any written element of such request or demand. CentroMed further agrees to adequately instruct its employees, physicians 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 CentroMed and with all federal and state laws and regulations regarding patient and medical record confidentiality. CentroMed assumes full responsibility for any breach of confidence by its employees or its staff with regard to the provision of services under this Agreement.

6.2 **Compensation**: No fees or expenses shall be exchanged between the City and CentroMed for the activities set out under this Agreement. The City will not be charged for any services performed by CentroMed in connection with the activities covered by this Agreement or have any obligation to pay the salaries or expenses of any CentroMed personnel.

6.3 **Notice:** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

City:	**CentroMed**
City of San Antonio San Antonio Metropolitan Health District	CentroMed
Attn: Director	Attn: Ernesto Gomez President & CEO
332 W. Commerce, Suite 307	3750 Commercial Avenue
San Antonio, TX 78205	San Antonio, Texas 78221

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

6.5 **Amendments:** Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and CentroMed.

6.6 **Licenses/Certifications:** CentroMed warrants and certifies that CentroMed 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.

6.7 **Compliance:** CentroMed shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

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

6.9 **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.

6.10 **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.

6.11 **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.

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

----------THIS SECTION INTENTIONALLY LEFT BLANK----------

WITNESS OF WHICH this Memorandum of Agreement has been executed on this the _____ day of _____, 2014.

City of San Antonio
San Antonio Metropolitan Health District

_____
Thomas L. Schlenker, MD, MPH
Director of Health

_____
Date

CentroMed

_____
BY: Ernesto Gomez,
TITLE: President & CEO

11/25/14
Date

Approved as to form:

_____
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 El Centro del Barrio d/b/a CentroMed, 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 in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable 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) "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.

(4) "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.

(5) "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.

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

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

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

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 Rule;

(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 Privacy Rule 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 Privacy Rule 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 or contract start date of October 1, 2013, whichever is later. 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 Privacy Rule and HIPAA.

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 Privacy Rule.

J. **Regulatory References**. A reference in this Agreement to a section in the Privacy Rule 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 WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

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.

To be effective upon execution by the Parties' representatives below.

COVERED ENTITY
By City of San Antonio

By: _____

Print Name: Thomas Schlenker, M.D., M.P.H.

Print Title: Director,

San Antonio Metropolitan Health District

Date: _____

BUSINESS ASSOCIATE:

By: _____

Print Name: Ernesto Gomez, Ph.D.

Print Title: President and CEO

Date: 11/25/14

APPROVED AS TO FORM:

_____
City Attorney

Attachment II

MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN ANTONIO ON BEHALF OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT AND THE SAN ANTONIO AIDS FOUNDATION
d/b/a SAAF

This Memorandum of Agreement ("Agreement") is entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "Metro Health") and the San Antonio AIDS Foundation (hereinafter referred to as "SAAF"), a Texas non-profit corporation, (hereinafter collectively referred to as the "Parties").

WHEREAS, the City's Tuberculosis (TB) Prevention and Control Program (hereinafter referred to as the "Program") within the Metro Health provides examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease; and

WHEREAS, the Program also provides screening and preventive medicine for those with a known exposure to TB or those from high risk populations; and

WHEREAS, additional services offered include case management, contact investigation and community intervention with prevention measures in order to reduce the rates and control the spread of TB disease; and

WHEREAS, Metro Health has received funding from the Texas Department of State Health Services (DSHS) in order to provide support services for the DSHS' Health Services Region 8 TB Waiver Project for the prevention and control of TB; and

WHEREAS, SAAF has a dual mission of providing compassionate medical care and social services to people with Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS), and to help prevent the spread of HIV through education, counseling and testing; and

WHEREAS, SAAF supports the provision of services without discrimination on any basis, including but not limited to race, ethnicity, age, sex, gender, sexual orientation, marital status, religion, handicap, immigrant status, national origin, drug use, and criminal background; and

WHEREAS, SAAF expects the provision of this care will result in improved physical and mental health, improved satisfaction with care, and more appropriate use of emergency services, thus reducing system costs; and

WHEREAS, SAAF's HIV/AIDS population have higher rates of both infectious and chronic disease, including TB, HIV, pneumonia, chronic obstructive lung disease, and cardiovascular disease; and

WHEREAS, this Agreement defines the terms between the City and SAAF for the provision of certain laboratory and medical consultation services by the Program which will contribute to the early intervention of Tuberculosis infection or disease; and

NOW THEREFORE this Agreement delineates the Parties' responsibilities in meeting the anticipated needs of SAAF and the City's TB Prevention and Control Program.

I. Term and Termination

1.1 **Term:** The term of this Agreement shall begin on execution by the Parties and terminate on September 30, 2015 unless sooner terminated as hereinafter provided.

1.2 **Termination for Cause:** Either Party may terminate this Memorandum of Agreement, immediately upon written notice, for any of the following:

A. Neglect or failure by either Party to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or of any amendment between the Parties provided;

B. Violation by either Party of any rule, regulation, or law to which the Parties are bound under the terms of this Agreement.

1.3 **Termination without Cause:** Either Party may terminate this Agreement at any time upon 30 days written notice to the other Party.

II. SAAF's Responsibilities

2.1 SAAF shall collect T-Spots blood samples from clientele that are at a higher risk for contracting TB to include foreign-born, homeless, preliminary positive for HIV, or substance abuse.

2.2 SAAF will be testing 3 main groups: 1.) potential SAAF nursing clientele, 2.) potential Carson House clientele, and 3.) persons coming to test for HIV at SAAF.

2.3 SAAF shall coordinate with Metro Health on operational research and educational activities related to TB prevention and management in the community at SAAF's main facility.

2.4 SAAF shall assist with and provide input on contact investigations, if requested, to the Metro Health Contact Investigation team.

2.5 SAAF shall provide phlebotomy services for collecting blood samples for T-Spot screening.

2.6 SAAF shall batch sample (maximum 25 per day) for delivery to Metro Health Laboratory Services by 2:00 pm for next day results.

2.7 SAAF shall comply with standard practices of confidentiality of patient information as required by the Metro Health and mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Texas State privacy laws. SAAF will enter into a Business Associate Agreement with the City that is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.

2.8 SAAF shall perform duties and services under this Agreement in accordance with all relevant local, state, and federal laws and shall comply with standards, guidelines, and policies of the City and Metro Health.

2.9 City policies regarding authorization for access to confidential information and review of medical records will be followed by SAAF. SAAF assumes full responsibility for any breach of confidence by its staff or its participating medical professionals with regard to activities under this Agreement.

2.10 SAAF shall not use any City data or information collected, obtained or observed during the term of this Agreement for publication, or reviews or presentations unless approval is obtained in writing from the City.

III. City Responsibilities

3.1 Metro Health will provide and supply green top tubes for T-Spot blood collection.

3.2 Metro Health will provide professional courier pick-up and delivery services for T-Spot specimens collected under this program.

3.3 Metro Health will cover the cost of the T-Spot Test in-house (Approximately $69.00 per test).

3.4 Metro Health will perform testing Monday thru Thursday except for regularly scheduled holiday interruptions.

3.5 Metro Health will process a total of 25 samples maximum per day.

3.6 Metro Health will provide written laboratory results to designated SAAF representatives within 24 hours in most cases.

3.7 Metro Health will phone any positive T-Spot IGRA results to designated SAAF clinical staff immediately.

3.8 Metro Health will provide examination, diagnosis and treatment for individuals suspected or confirmed with active tuberculosis disease and latent TB infections.

3.9 Metro Health will provide social service opportunities as funding resources allow for eligible clientele.

3.10 Metro Health will provide ongoing communication with SAAF regarding any changes, difficulties or problems that may arise related to this MOA.

3.11 Upon request by SAAF, subject to City staff availability, Metro Health may assist with local TB health education presentations at the Carson House or other venues requested by SAAF.

IV. Insurance and Indemnification

4.1 **Liability and Insurance:** SAAF is solely responsible for professional insurance for its employees for the events set out within this Agreement, and further acknowledges that any claims for injury by one of its employees during the events described herein shall be handled by SAAF worker's compensation coverage.

4.2 **Indemnification:** SAAF hereby agrees to indemnify and hold City harmless from any injury, expense, damage, liability or claim imposed on City by any person whosoever whether due to claims for injuries to the person or property, when such injury, expense, damage, liability or claim results either directly or indirectly from the negligent acts or omissions, willful misconduct or breach of any provisions of this Agreement by SAAF, its agents, servants, or employees. SAAF further agrees to reimburse City for any costs or expenses, including court costs and reasonable attorney's fees, which City may incur in investigating, handling or litigating any such claims.

V. Administration of Agreement

5.1 SAAF agrees to comply with all the terms and conditions that the City must comply with in its award of funds from the Medicaid 1115 Waiver Program. A copy of program requirements and documentation is available upon request to Metro Health.

5.2 SAAF shall make available to City, State Medicaid Program officials, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to SAAF's facility and SAAF's personnel for the purpose of interview and discussion related to such documents. SAAF shall, upon request, transfer certain records to the custody of City or State Medicaid Program officials when the City or State determines that the records possess long-term retention value.

5.3 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by Metro Health shall be submitted by SAAF to City within five (5) working days of the request. The parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. Furthermore, SAAF ensures that all information contained in all required reports or information submitted to City is accurate.

VI. General Provisions

6.1 **Confidentiality:** SAAF acknowledges that in connection with the services to be performed under this Agreement by SAAF, SAAF and its employees may be acquiring and making use of certain confidential information of the City and Metro Health which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/health information, and other materials or records of a proprietary nature ("Confidential Information"). Therefore, in order to protect the Confidential Information, SAAF and its employees shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event SAAF receives a request or demand for the disclosure of Confidential Information, SAAF shall promptly provide written notice to the City of such request or demand, including a copy of any written element of such request or demand. SAAF further agrees to adequately instruct its employees, physicians 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 SAAF and with all federal and state laws and regulations regarding patient and medical record confidentiality. SAAF assumes full responsibility for any breach of confidence by its employees or its staff with regard to the provision of services under this Agreement.

6.2 **Compensation**: No fees or expenses shall be exchanged between the City and SAAF for the activities set out under this Agreement. The City will not be charged for any services performed by SAAF in connection with the activities covered by this Agreement or have any obligation to pay the salaries or expenses of any SAAF personnel.

6.3 **Notice:** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

City:	**SAAF**
City of San Antonio San Antonio Metropolitan Health District	SAAF
Attn: Director	Attn: David Ewell Executive Director
332 W. Commerce, Suite 307	818 E. Grayson St
San Antonio, TX 78205	San Antonio, Texas 78208

6.4 **Independent Contractor**: SAAF is an independent contractor, and neither SAAF nor any of its agents, representatives, staff or employees shall be considered agents, representatives, or employees of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relations between the parties hereto. SAAF shall be liable for its own debts, obligations, acts and omissions, including the payment of all required

withholding, social security and other taxes or benefits. City shall not provide SAAF staff any salaries, insurance or other benefits.

6.5 **Amendments:** Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and SAAF.

6.6 **Licenses/Certifications:** SAAF warrants and certifies that SAAF 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.

6.7 **Compliance:** SAAF shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

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

6.9 **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.

6.10 **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.

6.11 **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.

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

----------THIS SECTION INTENTIONALLY LEFT BLANK----------

WITNESS OF WHICH this Memorandum of Agreement has been executed on this the _____ day of _____, 2015.

City of San Antonio
San Antonio Metropolitan Health District

_____
Thomas L. Schlenker, MD, MPH
Director of Health

_____
Date

San Antonio AIDS Foundation

_____
By: David Ewell
Title: Executive Director

3-3-2015
_____
Date

Approved as to form:

_____
City Attorney

ATTACHMENT I

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and San Antonio AIDS Foundation, 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 Memorandum of 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 in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable 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) "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.

(4) "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.

(5) "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.

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

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

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

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 Rule;

(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 Privacy Rule 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.

(5) 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 Privacy Rule 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

(3) 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.

(4) 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.

(5) 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 Privacy Rule and HIPAA.

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 Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule 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 WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

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.

EXECUTED to be effective upon execution by the parties' representatives below.

COVERED ENTITY:
By City of San Antonio

By:_____
Print Name: Thomas L. Schlenker MD, MPH
Print Title: Director, San Antonio Metropolitan Health District

Date:_____

BUSINESS ASSOCIATE:

By: David Ewell
Print Name: David Ewell
Print Title: Executive Director

Date: 3-3-2015

APPROVED AS TO FORM:

_____
City Attorney