MH/mgc
06/03/10
Item# 29

AN ORDINANCE 2010-06-03-0492

AUTHORIZING THE ACCEPTANCE AND EXECUTION OF A PROFESSIONAL SERVICE RENEWAL AGREEMENT FOR HEAD START DENTAL SERVICES WITH MICHELLE LANDRUM, R.D.H. FOR THE TERM JUNE 1, 2010 THROUGH MARCH 31, 2013, AT THE HOURLY COMPENSATION AND CONTRACT CEILING OF $38.00 PER HOUR, NOT TO EXCEED $108,832.00 OVER THE TERM OF THE CONTRACT.

* * * * *

WHEREAS, the San Antonio Metropolitan Health District (SAMHD) operates two public health dental clinics that provide dental examinations and treatment for low-income children and adults; and

WHEREAS, on an annual basis, the SAMHD Dental Division provides more than 5,000 clinical visits and reaches more than 10,000 residents through outreach activities; and

WHEREAS, through operation of its school-based sealant program, the SAMHD provides diagnostic and preventive care for more than 2,500 economically disadvantaged elementary school-aged children utilizing portable dental equipment; and

WHEREAS, the SAMHD Dental Division currently operates an oral health outreach program for all children enrolled in Head Start San Antonio and Bexar County and infants, children and expectant mothers participating in Parent Child Incorporated's Early Head Start Program; and

WHEREAS, Ms. Landrum has played a key role in the development and implementation of the existing oral health program for Head Start enrolled children; and

WHEREAS, this agreement will allow for ongoing consultation and coordination of care for more than 6,800 economically disadvantaged children; and

WHEREAS, currently, there is only one City-employed registered dental hygienist on staff; and

WHEREAS, contract dental hygienists are utilized to meet the demand for services of existing programs, which allows the SAMHD a cost-efficient means to provide outstanding clinical care; and

WHEREAS, this prospective contract dental hygienist is part of the team of local oral health professionals recruited through a "Request for Qualifications" that was coordinated with the Purchasing and Contract Services Department; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee or the Director of the San Antonio Metropolitan Health District or his designee, is authorized to execute a professional service renewal agreement for

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Head Start Dental Services with Michelle Landrum, R.D.H. for the term June 1, 2010 through March 31, 2013, at the hourly compensation and contract ceiling of $38.00 per hour, not to exceed $108,832.00 over the term of the contract. 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 $18,000.00 was previously appropriated through July 31, 2010. There is no change to the budget. The remaining balance of $90,832.00 for the remainder of the contract will be contingent upon funding from the Head Start Program. Fund 2602236011 entitled "Head Start Dental" is hereby designated for use in the accounting for the fiscal transaction of this agreement and will be disbursed as follows through July 31, 2010:

IO	Text	GL	FY 2010
136000000464	Head Start San Antonio and Bexar County (DCI)	5201040	$15,000.00
136000000463	Early Head Start-Parent Child Incorporated	5201040	$3,000.00

Payment is authorized to Michelle Landrum, R.D.H. as agreed in the agreement.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 3rd day of June, 2010.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Michael Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 29

Name:	5, 6, 7, 8, 11, 12, 13, 14, 15, 18A, 19, 20, 21, 22B, 22C, 22D, 23B, 24, 25, 26, 27A, 27B, 28B, 28C, 28E, 29, 31, 32, 33
Date:	06/03/2010
Time:	09:22:09 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a professional service renewal agreement for Head Start Dental Services with Michelle Landrum, R.D.H. for the term June 1, 2010 through March 31, 2013, at the hourly compensation and contract ceiling of $38.00 per hour, up to $108,832.00 over the term of the contract. [Sharon De La Garza, Assistant City Manager; Dr. Fernando A. Guerra, Director, Health]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				x
Elisa Chan	District 9	x					
John G. Clamp	District 10		x			x	

STATE OF TEXAS	§	**CITY OF SAN ANTONIO**
	§	**PROFESSIONAL HEALTH CARE**
COUNTY OF BEXAR	§	**SERVICES AGREEMENT**
		Public Health Dental Hygienist

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), by and through the San Antonio Metropolitan Health District (SAMHD), and Michelle Landrum, R.D.H. (hereinafter referred to as "Contractor"), both of which may be referred to herein collectively as the "Parties".

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

I. DEFINITIONS

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

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

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

"Director" shall mean the Director of the San Antonio Metropolitan Health District (SAMHD).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on June 1, 2010 and terminate on March 31, 2013.

2.2 The City shall have the option to renew and extend the term of this Agreement for two periods, with each period being one year in length.

2.3 Contractor agrees and understands that City has projected costs for this Agreement and that City expects to pay all obligations of this Agreement from projected revenue sources, but that all obligations of City are subject to annual appropriation by the U. S. Department of Health and Human Services, by and through the Head Start Program, and City Council in future years, after September 30, 2010. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Agreement, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, then this Agreement shall terminate and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be

considered a breach of this Agreement. Payment for services performed by Contractor through the effective date of termination shall be made pursuant to Article 7.6 herein.

2.4 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.

III. SCOPE OF SERVICES

3.1 Contractor shall perform preventative dental care, as would fall within the scope of dental hygiene practice, under general direction of a SAMHD assigned dentist within the SAMHD network of public health clinics, to diverse populations, with a primary focus on, but not limited to, women and children

3.2 Contractor's specific duties and responsibilities under the contract shall include:

3.2.1 Providing preventative and therapeutic dental care as prescribed by supervising dentist including, but not limited to: dental prophylaxis, fluoride application, sealant placement, full mouth periodontal debridement and scaling and root planning;
3.2.2 Providing for the safety and welfare of patients during the delivery of dental services;
3.2.3 Exposing and developing radiographs as prescribed by dentist;
3.2.4 Conducting oral examinations and charting findings;
3.2.5 Providing general oral health information including oral hygiene instructions, nutritional counseling, and anticipatory guidance to patients and caregivers;
3.2.6 Collaborating with SAMHD dental staff to develop, implement and participate in community outreach programs;
3.2.7 Maintaining high standards of care and quality control provided in a productive and courteous manner;
3.2.8 Maintaining dental treatment equipment, instruments and supplies;
3.2.9 Assisting dentists during dental treatment;
3.2.10 Conferring with patients, families, and other dental care providers;
3.2.11 Maintaining updated and accurate patient records including information regarding dental and medical history, treatment plan and;
3.2.12 Abiding by SAMHD requirements for licensing, credentialing, and the quality improvement process, including outside audits;
3.2.13 Committing to pre-designated and approved clinical coverage by 15th day of preceding month;
3.2.14 Arriving at the beginning of the each scheduled clinic session and departing at the end of each clinic session; and
3.2.15 Invoicing the City for work performed.

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.

3.4 Contractor and Director or his designee shall engage in an annual quality assurance evaluation for the purpose of: 1) maintaining the highest standards of clinical care, appropriate for the public health program; 2) ensuring compliance with clinical licensure regulations and Medicaid guidelines and recommendations; and 3) other matters of interest raised by Contractor or Director.

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, activities, duties and responsibilities set forth in this Agreement, City agrees to pay Contractor a fee of $38 per hour up to an amount not to exceed One hundred eight thousand eight hundred thirty two dollars ($108,832.00) for the term of this Agreement.

4.2 City and Contractor agree that reimbursement for eligible services shall be made within thirty (30) days after the date on which City receives an invoice, with appropriate documentation as required by City, from Contractor for said services.

4.3 City and Contractor agree that the City will provide the clinical staff support and supplies necessary for Contractor to manage patient care.

4.4 City and Contractor understand and agree that all Medicaid and third party insurances will be billed by the SAMHD for clinical services at SAMHD facilities and that all revenues received by the SAMHD for said billing shall be the property of City.

4.5 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 further agrees to accept reimbursement from the City as set forth in Article 4.1 above as payment in full for the services provided and shall seek no additional reimbursement for the services from the patient.

4.7 City agrees to pay Contractor for hours that Contractor is scheduled to work if said scheduled hours are cancelled with less than twenty-four (24) hours notice.

4.8 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City other than as specified in Article 4.1 or 4.7 above.

V. OWNERSHIP OF DOCUMENTS

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

5.2 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 Contract shall be the subject of any copyright or proprietary claim by Contractor.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Director of SAMHD, unless required to do so by a court of competent jurisdiction. SAMHD shall be notified of such request as set forth in Article VIII, Section 8.14 of this Contract.

5.3 Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the limitations imposed thereunder regarding transfer of information, any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Contract is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor. Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Contractor further agrees to comply with the Health Insurance Portability and Accountability Act (HIPAA). Contractor has entered 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.

VI. RECORD REQUESTS

6.1 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. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Contract 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 City or by Contractor upon thirty (30) calendar days written notice to the other party, 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 XI. 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 Article 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 fifteen (15) calendar 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 fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement.

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

7.4.2 Performing unsatisfactorily as determined by Director

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 Within forty-five (45) calendar days of 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. Failure by Contractor to submit its claims within said forty-five (45) 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.

7.7 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.

7.8 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 San Antonio Metropolitan Health District, Director 332 W. Commerce, Suite 307 San Antonio, Texas 78205

If intended for Contractor, to:

Michelle Landrum, R.D.H.
6309 Capriola
Austin, Texas 78245

IX. CONFIDENTIALITY

9.1 Contractor shall establish a method to secure the confidentiality of records and other information that Contractor may have access to, in accordance with applicable Federal statutes, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA), State and Local laws, regulations, and rules.

9.2 Contractor shall comply and shall cause its employees and/or subcontractors performing services hereunder to comply with applicable provisions of HIPAA to the extent such law and regulations apply regarding patient and medical record confidentiality.

9.3 Nothing contained herein shall limit the CITY's right of access to documents produced or maintained in accordance with this Contract.

X. INSURANCE REQUIREMENTS

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the San Antonio Metropolitan Health District, which shall be clearly labeled "Public Health Dental Hygienist" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's San Antonio Metropolitan Health District. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Dental Malpractice Liability	$200,000 per claim/$600,000 aggregate; to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Director, San Antonio Metropolitan Health District
P.O. Box 839966
San Antonio, Texas 78283-3966

10.5 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.7 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

10.9 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

10.11 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 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.

12.2 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 any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of 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.

XIII. INDEPENDENT CONTRACTOR

13.1 Contractor covenants and agrees that he or she 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 respondent 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, partners 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.

XIV. CONFLICT OF INTEREST

14.1 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 partner or a parent or subsidiary business entity.

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

XV. AMENDMENTS

15.1 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, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVI. SEVERABILITY

16.1 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 Contract 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.

XVII. LICENSES/CERTIFICATIONS

17.1 Contractor warrants 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.

XVIII. COMPLIANCE

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

XIX. NONWAIVER OF PERFORMANCE

19.1 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 XV. 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.

XX. LAW APPLICABLE

20.1 **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.**

20.2 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.

XXI. LEGAL AUTHORITY

21.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

22.1 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.

XXIII. CAPTIONS

23.1 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.

———INTENTIONALLY LEFT BLANK———

XXIV. ENTIRE CONTRACT

24.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other Contracts, 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 XV. Amendments. This Agreement shall supercede any and all prior written and oral agreements between the City and Contractor.

EXECUTED and **AGREED** to this the ____ day of _____, 20__.

CITY OF SAN ANTONIO
San Antonio Metropolitan Health District

_____
Fernando A. Guerra, M.D., M.P.H.
Director of Health

CONTRACTOR

_____
Michelle Landrum, B.S., R.D.H.
Public Health Dental Hygienist

ATTEST:

_____
Leticia M. Vacek
City Clerk

_____
Date

Approved as to Form:

_____
Michael D. Bernard
City Attorney

Attachment I - Business Associate Agreement

This Business Associate Agreement ("Agreement") dated June 1, 2010 (the "Effective Date"), is entered into by and between the City of San Antonio ("Health Care Provider") and Michelle Landrum, B.S., R.D.H. ("Business Associate").

WHEREAS, Health Care Provider is receiving and Business Associate is providing services ("Business Arrangement") that may require Business Associate to access health information that is protected by state and/or federal law;

WHEREAS, Business Associate and Health Care Provider desire that Business Associate obtain access to such information in accordance with the terms specified herein;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Definitions.** Unless otherwise specified in this Business Associate Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms shall have the definitions as set forth herein below:

> "Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information as codified in 45 CFR Parts 160 and 164.
>
> "Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information as codified in 45 CFR Parts 160 and 164.
>
> "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term in the Privacy Standards and in the Security Standards.

2. **Business Associate Obligations.** Business Associate may receive from Health Care Provider health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or the Security Standards if the PHI were used or disclosed by Health Care Provider in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

3. **Use of PHI.** Business Associate may use PHI only (i) for the purpose of performing services for Health Care Provider as such services are defined in Business Arrangement, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Health Care Provider shall retain all rights in the PHI not granted herein.

4. **Disclosure of PHI.** Business Associate may disclose PHI as necessary to perform its obligations under the Business Arrangement and as permitted by law, provided that Business Associate shall in such case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to immediately notify Health Care Provider of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards or the Security Standards; and (c) obtain reasonable assurances that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. In addition, Business Associate may disclose PHI as required by law. If Business Associate discloses PHI received from Health Care Provider, or created or received by Business Associate on behalf of Health Care Provider, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Health Care Provider any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Health Care Provider in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI in violation of this Agreement.

5. **Individual Rights.** If Business Associate maintains a Designated Record Set on behalf of Health Care Provider, Business Associate shall (a) permit an individual to inspect or copy PHI contained in that set about the individual under conditions and limitations required under 45 CFR § 164.524, as it may be amended from time to time, and (b) amend PHI maintained by Business Associate as requested by Health Care Provider. Business Associate shall respond to any request from Health Care Provider for access by an individual within five (5) days of such request and shall make any amendment requested by Health Care Provider within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Business Associate shall accommodate an individual's right to have access to PHI about the individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 CFR § 164.526, as it may be amended from time to time, unless the regulation provides for a denial or an exception expressly applies. Health Care Provider shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Health Care Provider within five (5) days of receipt of any request for access or amendment by an individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set.

6. **Accounting of Disclosures.** Business Associate shall make available to Health Care Provider in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Health Care Provider's request. Such accounting must be provided without cost to the individual or to Health Care Provider if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Health Care

Provider and the Health Care Provider informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting shall be provided as long as Business Associate maintains PHI.

7. **Withdrawal of Consent or Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and (i) the individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

8. **Reporting of Disclosures of Protected Health Information in violation of HIPAA.** Business Associate shall, within five (5) days of becoming aware of a disclosure of PHI or EPHI in violation of this Agreement by Business Associate, (its officers, directors, employees, contractors, or agents,) or by a third party to which Business Associate disclosed PHI, report such disclosure in writing to the Covered Entity and the remedial action taken or proposed to be taken with respect to such use or disclosure. Business Associate shall take all commercially reasonable action to mitigate any harm caused by inappropriate disclosure.

9. **Reporting Breaches of Protected Health Information in violation of HITECH.**

9.1 Business Associate shall secure PHI (including data in motion, data at rest, data in use and data disposed), created by Business Associate, or accessed, maintained, retained, modified, recorded, stored, destroyed, or otherwise held, used, or disclosed by Business Associate, on behalf of Covered Entity, by encrypting such ePHI in accordance with the Department of Health and Human Services Guidance at htpp://www.hhs.gov/ocr/privacy ("HHS Guidance") and the National Institute of Standards and Technologies ("NIST") at http://www.csrc.nist.gov/ to render such information unusable, unreadable, or indecipherable to unauthorized individuals. Business Associate understands and agrees that ePHI is encrypted as specified in the HIPAA Security Rule by the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key and such confidential process or key that might enable decryption has not been breached. To avoid a breach of the confidential process or key, these decryption tools shall be stored by Business Associate on a device or at a location separate from the data that are used to encrypt or decrypt.

9.2 In the event that Business Associate uses a method other than encryption or an encryption algorithm that is not specified in the Guidance or NIST Standards and Technologies to secure the ePHI as referenced above, such ePHI shall be considered to be "unsecured" in accordance with HITECH.

9.3 Under HITECH, a breach occurs when there is an unauthorized acquisition, access, use or disclosure of unsecured PHI, including ePHI, which compromises the security or privacy of the PHI/ePHI. A breach compromises the security or privacy of PHI/ePHI if it poses a significant risk of financial, reputational, or other harm to the individual whose PHI/ePHI was compromised.

9.4 Business Associate agrees to:

(1) implement a system to detect breaches of PHI/ePHI within Business Associate's business;

(2) maintain written documentation with respect to all suspected and confirmed breaches for six (6) years;

(3) provide access to such documentation to Covered Entity upon request; and to submit documentation on breaches to HHS as required by HITECH on an annual basis;

(4) develop breach notification policies and procedures;

(5) train workforce members on, and have sanctions for failure to comply with, these policies and procedures;

(6) allow workforce members to file complaints regarding these policies and procedures or a failure to comply with them, and refrain from intimidating or retaliatory acts towards its workforce members;

9.5 In the event that there is a breach of unsecured PHI/ePHI, Business Associate agrees to:

(1) notify Covered Entity on the first day that a breach is known to Business Associate, or by exercising reasonable diligence, would have been known to Business Associate;

(2) provide Covered Entity, to the extent possible, with the identity of each individual whose unsecured PHI/ePHI has been, or is reasonably believed to have been, breached;

(3) cooperate in conducting a risk assessment, as instructed by, and under the direction of , Covered Entity, to determine whether the privacy or security of individuals' PHI/ePHI was compromised as a result of the breach,

(4) mitigate any harm to individuals whose PHI/ePHI has been breached;

9.6 Business Associate shall comply with the HIPAA obligations of Section 8 above related to unauthorized use and disclosures of PHI.

9.7 Business Associate shall destroy all paper, film, or other hard copy media by shredding or destruction, and destroy electronic media by clearing, purging or destruction consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization, such that the PHI cannot be retrieved.

10. **Records and Audit.** Business Associate shall make available to Health Care Provider and to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Health Care Provider for the purpose of determining Health Care Provider's compliance with the Privacy Standards and the Security Standards or any other health oversight agency, in a timely a manner designated by Health Care Provider or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Health Care Provider immediately upon receipt by Business Associate of any and all requests served upon Business Associate for information or documents by or on behalf of any and all government authorities.

11. **Notice of Privacy Practices.** Health Care Provider shall provide to Business Associate its Notice of Privacy Practices ("Notice") when adopted and any amendments thereafter. Business Associate agrees that it will abide by the limitations of any Notice published by Health Care Provider of which it has knowledge. An amended Notice shall not affect permitted uses and disclosures on which Business Associate has relied prior to the receipt of such Notice.

12. **Confidentiality.** Business Associate shall take any steps required to (i) protect PHI from unauthorized uses or disclosures and (ii) maintain the confidentiality and integrity of PHI. Prior to any permitted disclosure of PHI, Business Associate shall require the person or entity to which it intends to disclose PHI to assume all of the same duties with respect to PHI that Business Associate has under this Agreement.

13. **Security.** Business Associate will: implement administrative, physical, and technical safeguards that reasonably and appropriate protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Health Care Provider; ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the information; and report any security incidents to the Health Care Provider, in accordance with the Security Standards.

14. **Term and Termination.**

14.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 12, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

14.2 Health Care Provider shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

14.3 Health Care Provider, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

(a) Business Associate shall fail to observe or perform any material covenant or agreement contained in this Agreement for ten (10) days after written notice thereof has been given to Business Associate by Health Care Provider; or

(b) A violation by Business Associate of any provision of the Privacy Standards, Security Standards, or other applicable federal or state privacy law.

14.4 Upon the termination of the Business Arrangement, either party may terminate this Agreement by providing written notice to the other party.

14.5 Upon termination of this Agreement for any reason, Business Associate agrees either to return to Health Care Provider or to destroy all PHI received from Health Care Provider or otherwise through the performance of services for Health Care Provider, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the covenants in this Agreement with respect to such PHI and shall comply

with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this Agreement shall be cause for Health Care Provider to terminate the Business Arrangement.

15. **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:

Health Care Provider:	**Business Associate**
City Clerk	Michelle Landrum, B.S., R.D.H.
City of San Antonio	6309 Capriola
P.O. Box 839966	Austin, Texas 78245
San Antonio, Texas 78283-3966	
AND	
City of San Antonio	
San Antonio Metropolitan Health District, Director	
332 W. Commerce, Suite 307	
San Antonio, Texas 78205	

16. **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.

15. **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, Health Care Provider shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Health Care Provider, without the prior approval of Business Associate.

16. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Health Care Provider 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 Business Arrangement or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangement 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.

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

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

19. **Indemnification.** BUSINESS ASSOCIATE WILL INDEMNIFY, DEFEND AND HOLD HEALTH CARE PROVIDER AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR SIMILAR BREACH BY RECIPIENTS ("CLAIM"). IF BUSINESS ASSOCIATE ASSUMES THE DEFENSE OF A CLAIM, HEALTH CARE PROVIDER SHALL HAVE THE RIGHT, AT ITS EXPENSE, TO PARTICIPATE IN THE DEFENSE OF SUCH CLAIM, AND BUSINESS ASSOCIATE SHALL NOT TAKE ANY FINAL ACTION WITH RESPECT TO SUCH CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF HEALTH CARE PROVIDER.

20. **Data Ownership**: Business Associate acknowledges that Business Associate has no ownership rights with respect to PHI provided by Covered Entity.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Health Care Provider:
CITY OF SAN ANTONIO
San Antonio Metropolitan Health District

_____
Fernando A. Guerra, MD, MPH
Director of Health

Business Associate:
Michelle Landrum, B.S., R.D.H.

_____
Michelle Landrum, B.S., R.D.H.

_____
Date

ATTEST:

_____
Leticia M. Vacek
City Clerk

_____
Date

APPROVED AS TO FORM:

_____
Michael D. Bernard
City Attorney