MH/vv
02/02/12
Item #12

AN ORDINANCE 2012-02-02-0068

AUTHORIZING THE SUBMISSION OF 21 GRANT APPLICATIONS AND RENEWALS AND THE ACCEPTANCE OF FUNDS UPON AWARD IN AN AMOUNT UP TO $14,170,721.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY FOR PUBLIC HEALTH FUNCTIONS OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR THE PERIOD OF JULY 1, 2012 THROUGH DECEMBER 31, 2013; AND APPROVING PROFESSIONAL SERVICE AGREEMENTS WITH THE SAN ANTONIO COUNCIL ON ALCOHOL & DRUG ABUSE, TEXANS STANDING TALL, COURTNEY DENTON AND THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER FOR THE DELIVERY OF PROGRAM SERVICES.

* * * * *

WHEREAS, as the public health authority for Bexar County, the San Antonio Metropolitan Health District (Metro Health) actively addresses the public health functions of policy development, health assessment, and health assurance; and

WHEREAS, to carry out these responsibilities, Metro Health operates evidenced based programs in various settings throughout the County; and

WHEREAS, these 21 annual awards support 202 grant funded positions to provide services to residents at public health settings and service locations located throughout the City and Bexar County; and

WHEREAS, with state grant support, Metro Health provides preventive health services, community education, limited clinical services to prevent communicable disease, environmental monitoring, emergency preparedness, disease control, supplemental nutrition programs, and dental health; and

WHEREAS, Metro Health receives approximately 36% of its total budget support through contract and grant awards from the State of Texas in both direct funding and federal pass-through funding; and

WHEREAS, since 2007, this support has been authorized by City Council through a block submission of state grant applications and renewals most recently on April 7, 2011 (Ordinance 2011-04-07-0262) as well as individual actions; and

WHEREAS, Metro Health will request approximately $14,170,721.00 in funding from the Texas Department of State Health Services (TDSHS) and the Texas Commission on Environmental Quality (TCEQ) through this ordinance; and

WHEREAS, service delivery and personnel complement needs are anticipated to remain consistent with adopted FY 2012 resources; and

WHEREAS, to fulfill contractual obligations of the San Antonio Tobacco Prevention and Control Coalition grant, Metro Health has traditionally entered into professional services agreements with community organizations and consultants to: provide educational outreach in the community, monitor and evaluate the work of the program, and support development and expansion of the tobacco coalition and build long-term programming sustainability as well as provide evaluation services mandated by the grant; and

WHEREAS, this ordinance will approve agreements with the following for the provision of services for the San Antonio Tobacco Prevention and Control Coalition grant: the San Antonio Council on Alcohol & Drug Abuse (SACADA), $115,500.00; Texans Standing Tall (TST) $147,000.00; and Ms. Courtney Denton, $65,000.00; and

WHEREAS, in addition this ordinance approves an agreement in order to fulfill contractual obligations of the Title V Maternal & Child Health Block grant for dental services, with the University of Texas Health Science Center (UTHSCSA) Dental School ($160,000.00) to provide dental services for children that are either uninsured or underinsured and require comprehensive dental treatment that is beyond the scope of services provided by the Metro Health dental program; **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 (SAMHD) or his designee is authorized to submit 21 grant applications and renewals and accept funds upon award in an amount up to $14,170,721.00 from the Texas Department of State Health Services (TDSHS) and the Texas Commission on Environmental Quality (TCEQ) through direct funding and federal pass-through grants and contracts for core public health functions of the SAMHD for the period of July 1, 2012 through December 31, 2013. If additional funds are awarded to a program during the grant period listed, the City Manager or her designee or the Director of the SAMHD or his designee is authorized to accept additional funds in an amount up to 20% of the total amount initially awarded to the program. A copy of each grant application which is incorporated herein for all purposes is on file with the SAMHD and a program synopsis is attached and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The City Manager or her designee or the Director of the SAMHD or his designee is authorized to execute any and all necessary documents and grant contracts to effectuate the applications and acceptance of the grants referenced in Section 1 of this ordinance. The City Manager or her designee or the Director of the SAMHD or his designee is further authorized to execute contract amendments pertaining to these contracts in the following instances a) carry-over funds, when ascertained and approved by the funding agency through a revised notice of award; b) line item budget revisions authorized by the funding agency; c) modifications to the performance measures authorized by the funding agency and listed in the contracts so long as the terms of the amendment stay within the general parameters of the intent of the grant; d) no cost extensions; e) amendments which will provide supplemental grant funds to a program by the funding agency in an amount up to 20% of the total amount initially awarded to the program; f) reimbursement increases of administrative funds for each participant served; g) amendments funding one time equipment purchases or defined program services; and h) changes in state regulations mandated by the funding agency.

SECTION 3. Fund 26016000 entitled "Texas Department of State Health Service" and Fund 26008000 entitled "TCEQ" are hereby designated for use in accounting for the fiscal transaction in the acceptance of these grants and the sum of up to $14,170,721.00 will be appropriated in said fund. The proposed budget attached hereto and incorporated herein for all purposes as **Attachment I** is approved. A formal final budget for each contract which will include Internal Order numbers and General Ledger numbers will be submitted by the department upon award.

SECTION 4. A proposed personnel complement of 202 full time positions is attached hereto as **Attachment I** is hereby approved. Should funding be awarded, the personnel complement is approved.

SECTION 5. The City Manager or her designee or the Director of the SAMHD or his designee is authorized to execute Professional Service Agreements with the San Antonio Council on Alcohol & Drug Abuse, $115,000.00; Texans Standing Tall, $147,000.00; Courtney Denton, $65,000.00; and the University of Texas Health Science Center, $160,000.00 for the delivery of program services. Copies of the agreements in substantially final form are attached hereto and incorporated herein for all purposes as **Attachments II through V**.

SECTION 6. If awarded, payment is authorized to the following upon issuance of purchase orders: San Antonio Council on Alcohol & Drug Abuse, $115,000.00; Texans Standing Tall, $147,000.00; Courtney Denton, $65,000.00; and the University of Texas Health Science Center, $160,000.00.

SECTION 7. 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 8. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 2nd day of February, 2012.

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 - 12

Name:	6, 7, 9, 10, 11, 12, 13, 14A, 14B, 14C, 14D, 14E, 14F, 16, 17, 18, 19, 20, 22A, 22B, 22C
Date:	02/02/2012
Time:	10:31:09 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the submission of 21 grant applications and renewals and the acceptance of funds upon award in an amount up to $14,170,721.00 from the Texas Department of State Health Services and the Texas Commission on Environmental Quality for public health functions of the San Antonio Metropolitan Health District for the period of July 1, 2012 through December 31, 2013 and approving associated professional service contracts. [Sharon De La Garza, Assistant City Manager; Dr. Thomas L. Schlenker, Director of Public Health]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10	x					

Attachment I

Attachment I

SAMHD State and Federal Pass Through Grants for FY 13

Area		Description	Summary	START	END	Proposed Amount	Proposed FTEs	Authorized Positions
Community Health	Federal Pass Through	WIC	Women, Infants & Children (WIC) provides nutritious food, nutrition education, and breastfeeding promotion and support to qualified pregnant, breastfeeding and postpartum women and their infants and children less than five years of age. In addition, funds provided by TDSHS for the WIC program supports a contract in the amount of $15,000.00 for a certified lactation consultant.	10/1	9/30	$ 7,187,448	132	132
Environmental Safety	Federal Pass Through	PHEP Bioterrorism Preparedness	Public Health Emergency Preparedness (PHEP) funding supports the Metro Health's all-hazards emergency preparedness activities and additional Pandemic Influenza Preparedness activities. In conjunction with the Emergency Management Division, City/County First Responders, and local hospital systems, PHEP uses recent exercise outcomes to evaluate existing emergency plans and develop new response systems. This program and plan development is in collaboration with community resources and neighboring counties.	8/1	7/31	$ 1,208,654	12	12
Environmental Safety	State	Tobacco Community Coalition	Reduce disease, disability, and death related to tobacco use by preventing the initiation of tobacco use, promoting quitting, eliminating nonsmokers' exposure to second hand smoke	9/1	8/31	$ 1,106,173	4	4
Community Health	Federal Pass Through	TDSHS Immunization Local	Local Immunizations Program works to eliminate barriers, expand immunization delivery, and establish consistent policies to immunize pre-school age children. The goal of the program is to prevent, control, and eliminate indigenous vaccine-preventable diseases by providing immunizations and applying epidemiologic principles and outbreak control measures in San Antonio and Bexar County.	9/1	8/31	$ 725,549	11	11
Environmental Safety	Federal Pass Through	STD/HIV (Federal)	STD Support Program conducts disease investigation and counseling to control and prevent the spread of sexually transmitted diseases such as syphilis, HIV, gonorrhea, and Chlamydia. The program provides diagnosis, treatment and partner notification.	1/1	12/31	$ 664,166	9	9
Environmental Safety	State	TB Prevention and Control State	TB Prevention and Control Program is one of two annual contracts to investigate, diagnose and manage suspected or confirmed cases of tuberculosis. TB services are available to residents and visitors of Bexar County. In addition, this activity will receive approximately $8,800.00 from patient co-payments and Medicaid reimbursements.	9/1	8/31	$ 395,604	3	3
Environmental Safety	Federal Pass Through	PHEP Cities Readiness Initiative'	Cities Readiness Initiative (CRI) is a program to enhance the planning efforts of local response partners who will have access to the equipment, supplies and medications of the Strategic National Stockpile (SNS). Specifically, CRI provides initial funding for the planning stage to coordinate SNS response activities among the surrounding counties comprising the Metropolitan Service Area. CRI provides the framework to build a response system that allows for the City's increased population during daytime hours, and for standardization of bioterrorism response planning efforts among Bexar, Atascosa, Wilson, Guadalupe, Comal, Kendall, Bandera, and Medina counties. The planning activities include standardizing Point of Dispensing selection, adopting dispensing procedures, dispensing medical materials to treatment centers, controlling SNS inventory, public information and security, as well as uniform coordination of training, exercising and evaluation, and tactical communication, command and control.	8/1	7/31	$ 290,848	3	3
Environmental Safety	Federal Pass Through	TB Special Team Project (Federal)	Special TB Team Program is one of two annual contracts providing patient home visits for directly observed therapy. This consists of administration of anti-tuberculosis medications to patients at home, work and school, and directly observing medication ingestion to ensure compliance with physicians' orders as required by law.	1/1	12/31	$ 322,891	6	6
Community Health	Federal Pass Through	Local Public Health (Triple 0)	Local Public Health Service Program (Triple O) funding supports core public health activities that include community-based Chronic Disease Prevention programming, health education, and community health planning.	9/1	8/31	$ 248,662	4	4

SAMHD State and Federal Pass Through Grants for FY 13

Environmental Safety	Federal Pass Through	PHEP Lab	Public Health Preparedness Laboratory funding under this grant contract is used primarily for the Metro Health Biosafety Level Three (BSL-3) Laboratory opened in 2005. Staff in this facility can rapidly identify terrorist threat agents including smallpox, anthrax, plague, and tularemia, as well as influenza, food borne illnesses and other diseases.	8/1	7/31	$ 256,076	2	2
Environmental Safety	State	HIV/AIDS Surveillance - State	*HIV Surveillance Program* enables compliance with a state law that requires HIV and AIDS cases to be reported to the local public health agency. Metro Health's HIV Surveillance Program compiles disease reports from community healthcare providers, laboratories, and hospitals through chart reviews in providers' offices and in hospitals for adult HIV/AIDS disease. Statistical reports are developed and forwarded to the TDSHS central office in Austin. These reports are also used for local analysis of HIV/AIDS disease trends and evaluation of the effectiveness of various local programs	9/1	8/31	$ 241,283	4	4
Community Health	Federal Pass Through	Title V Dental Fee for Service	Title V-Dental contract provides funding for preventative dental services to children ages 0-21 who do not qualify for Medicaid or CHIP. SAMHD provides all enrollment and intake activities related to the grant, while the University of Texas Health Science Center San Antonio Dental School is the subcontractor for direct patient care.	9/1	8/31	$ 220,000	1	1
Environmental Safety	State	TCEQ PM 2.5	The Public Center for Environmental Health (PCEH) was established to protect the environment of residents in San Antonio. Since air quality has a potential health impact, air monitoring and follow up measures to address the problems identified are important public health efforts. The Texas Commission on Environmental Quality (TCEQ), has contracted with the City of San Antonio for PCEH to manage four local air monitoring efforts. Through the first contract, PCEH will operate and maintain a lead air monitor located at Stinson Airport. The second contract PCEH operates and maintains whole air sampling monitors. The third contract with TCEQ supports work by PCEH to operate, maintain and validate data from air particulate matter monitors. The fourth contract operates a continuous air monitoring station that measures ozone and nitrous oxides as well as associated meteorological parameters. PCEH processes, catalogs and delivers all samples collected seven (7) days a week (365) days a year to the SAMHD Laboratory for analysis.	9/1	9/1	$ 113,300	1.05	1
Environmental Safety	State	TCEQ Lead Monitoring		9/1	8/31	$ 41,609	0.45	0
Environmental Safety	State	TCEQ Lake Calaveras		9/1	8/31	$ 46,310	0.5	0
Environmental Safety	State	TCEQ Whole Air Monitoring		9/1	8/31	$ 536,652	4.8	5
Environmental Safety	State	Milk Group	Milk Sample Lab Testing Program analyzes approximately 5,000 milk samples per year from processing plants located in San Antonio and the surrounding TDSHS Region 8 area. Samples are processed within 48 to 72 hours after collection and tested for bacteria, pasteurization, antibiotics, and excess water	9/1	8/31	$ 66,000	0	0
Environmental Safety	State	CPS Laboratory Response Network - I	Provides competency based training to laboratory personnel on proper packaging and shipping of specimens for healthcare workers who respond to public health emergencies	7/1	6/30	$ 35,688	1	1
Environmental Safety	State	Flu Surveillance	Also known as Infectious Diseases Program funds influenza surveillance activities conducted by Metro health	9/1	8/31	$ 5,500	0	
Community Health	State	TDSHS - Texas Healthy Babies Initiati	Expands an existing community coalition, the Healthy Families Network, which implements the HOPES Project (Healthy Outcomes through Perinatal Education and Support). HOPES provides case management to women who have just experienced a perinatal loss, Prematurity, low birth-weight birth or infant birth defect/abnormality	12/1	8/31	$ 220,000	0.65	1
Environmental Safety	Federal Pass Through	Healthy Homes & Lead Poisoning Prevention	Funding supports management of lead poisoned children, education to various groups about healthy homes and lead poisoning, and home assessments	9/1	8/31	$238,308	3	3
						$ 14,170,721	202	202

Attachment II

PROFESSIONAL SERVICES AGREEMENT FOR THE SAN ANTONIO TOBACCO PREVENTION AND CONTROL COALITION WITH THE SAN ANTONIO COUNCIL ON ALCOHOL AND DRUG ABUSE

STATE OF TEXAS	§	**CITY OF SAN ANTONIO**
	§	
COUNTY OF BEXAR	§	**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "Metro Health"), acting by and through its City Manager or designee, pursuant to Ordinance No. _____ passed and approved on February 2, 2012, and the San Antonio Council on Alcohol and Drug Abuse by and through its Executive Director, Abigail Garza Moore (hereafter referred to as "SACADA"), 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.

"SACADA" is defined in the preamble of this Agreement and has an address of "AT&T Building, 7500 U.S. Highway 90 W., Suite 100, W., San Antonio, Texas 78227 with an Employer Identification Number of 74-1340188 and includes its successors.

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

"SA-TPCC" shall be defined as the San Antonio Tobacco Prevention and Control Coalition.

"Tobacco Program staff" shall be defined as those persons hired by Metro Health for the purpose of day-to-day program oversight with funding from the Texas Department of State Health Services (DSHS).

"CEW" shall be defined as the Community Evaluation Workgroup, the team of coalition members and sub-contractors that collect, organize and report data related to the work of the program and coalition.

"TDSHS" shall be defined as the Texas Department of State Health Services, the agency that funds, oversees the statewide grant, tobacco prevention and control programming, and evaluation efforts.

"SAO," shall be defined as the Texas State Auditor's Office.

"OIG," shall be defined as the Office of the Inspector General.

"CGUS," shall be defined as the Comptroller General of the United States.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 1, 2012 and terminate on August 31, 2013.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

2.3 City will have the option to renew and extend the term of this Agreement once for a term of one year, subject to acceptance by SACADA. The renewal or extension will be evidenced by passage of a subsequent City ordinance.

2.4 SACADA further agrees and understands that the City expects to pay all obligations of this Agreement from cooperative agreement funding. Accordingly, if cooperative agreement funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor SACADA will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

2.5 The parties agree and understand that the receipt and allocation of additional funding, as well as revised reporting and accounting requirements in order to comply with grant requirements, will necessitate the execution of an Amendment to this Agreement consistent with Section XVI below, and the parties shall cooperate to execute such Amendment.

III. SCOPE OF SERVICES

3.1 SACADA agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 All work performed by SACADA hereunder shall be performed to the satisfaction of Director of City's San Antonio Metropolitan Health District. 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 SACADA, 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 SACADA'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, subject to Sec. 7.4.

3.3 SACADA shall select specific individuals as primary, secondary and/or youth coalition coordinator representatives to the SA-TPCC. More than one representative may participate in the coalition concurrently, but at least one representative will be present at coalition meetings and relevant planning sessions. This participation is required for coordination of SA-TPCC activities including but not limited to community assessment, strategic planning, outreach, evaluation planning, and other events. SACADA will supply contact information to

SA-TPCC and Metro Health staff regarding both representatives and both representatives will be tasked by SACADA to ensure full representation and participation of SACADA. In the event that there is a change in the individuals assigned by SACADA as representative(s) to the SA-TPCC, SACADA will notify SA-TPCC and Metro Health staff within 5 business days of the time such change has taken place.

3.4 SACADA shall comply with the guidelines regarding the use of the Metro Health and City names and logos, and will also comply with and identity guidelines determined for the SA-TPCC once developed.

3.5 SACADA will submit detailed monthly activity reports to the SA-TPCC CEW and Metro Health for the purposes of program evaluation and reporting. SACADA will supply the reports in the format requested by the SA-TPCC to the CEW by the 8th calendar day of each month to report performance measures for the preceding month. In addition, SACADA will provide any other progress reports or summaries requested by the SA-TPCC as needed.

3.6 SACADA representative(s) and the Youth Coalition Coordinator will attend and participate in any required DSHS technical assistance training sessions or statewide coalition meetings as directed by DSHS or SA-TPCC. Costs to attend these meetings is identified in a comprehensive budget, which is affixed hereto and incorporated herein for all purposes as Attachment II, and compensated according to the terms of this Agreement.

3.7 In addition to the above mentioned items from Section III, SACADA shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City at all times affixed hereto and incorporated herein for all purposes as Attachment I.

IV. COMPENSATION TO SACADA

4.1 In consideration of SACADA's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay SACADA an amount not to exceed one hundred one hundred fifteen thousand and five hundred dollars ($115,500.00) as total compensation, which is budgeted for such payment, as set forth in comprehensive budget which is affixed hereto and incorporated herein for all purposes as Attachment III, and compensated according to the terms of this Agreement.

4.2 No additional fees or expenses of SACADA shall be charged by SACADA nor be payable by City. The parties hereby agree that all compensable expenses of SACADA have been provided for in the total payment to SACADA as specified in section 4.1 above. Total payments to SACADA cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to SACADA following written approval of the final work products and services by Director. City shall not be obligated or liable

under this Agreement to any party, other than SACADA, for the payment of any monies or the provision of any goods or services.

4.4 SACADA agrees to submit invoices each month showing documented itemized costs and in-kind expenses to the City associated with this Agreement. Reimbursement of eligible expenses, as determined by the City, shall be made monthly according to standard procedures followed by City, as requested upon receipt of billing invoices from SACADA. Invoices shall be due on a monthly basis eight (8) calendar days after the end of each monthly reporting period.

4.4.1 With every invoice submitted, SACADA shall attach a brief monthly summary describing the activities being reimbursed in relation to the funding:

A. The name and location where SACADA's activities take place as a result of City funding,
B. Activities that SACADA's staff or representatives are performing in those locations,
C. The names of staff, interns or volunteers directly involved in these activities,
D. Attach copies of sign in sheets and/or agenda of any and all meetings or presentations associated with this funding,
E. Attach anything else Contractor or City believes will be helpful in documenting reimbursed activities, such as photographs, brochures, etc.

4.4.2 SACADA understands that it shall submit detailed monthly activity reports of SA-TPCC program measures addressed through its activities by no later than the 8th business day of the following month as based upon the minimum requirements agreed upon by the Parties, which is affixed hereto and incorporated herein for all purposes as Attachment I. This report will be submitted electronically using forms designated by SA-TPCC to Tobacco Program Staff and the designated representative of the CEW. Non submittal or late submittal of required monthly activity reports or the supporting documents that go with the report are grounds for delaying reimbursement of corresponding invoices or possible rejection of said invoices should the activity reports be submitted more than 30 days following the end of the monthly reporting period. Additionally, SACADA agrees to be fully subject to the FY13 Department of State Health Services Contract Special and General Provisions for Substance Abuse Contracts which are affixed hereto and incorporated herein for all purposes as Attachment II.

4.4.3 SACADA understands that due to the requirements of the funding agency, invoices submitted for reimbursement that are received by the City more than 30 calendar days following the end of the monthly reporting period may be rejected by City or the Funder and not be subject to reimbursement.

4.4.4. SACADA understands that documentation of a minimum 20% in-kind expense over the life of this Agreement is a requirement for payment associated with this Agreement. SACADA further understands that the format for said documentation of in-kind expenses is set at

the discretion of Tobacco Program staff. SACADA further understands that it will provide suitable in-kind as approved by the City and TDSHS. Should any in-kind be disallowed by City or TDSHS, SACADA will submit either acceptable documentation or allowable in-kind from alternate sources.

4.5 Due to the requirements of the funding agency, an invoice documenting final expenses associated with the Agreement shall be submitted to the City by no later than Monday, September 10, 2013. Additional documentation requirements of costs and documented in-kind expenses associated with this Agreement may be amended by Tobacco Program staff as needed. All services required under this Agreement shall be performed to City's satisfaction, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder shall not be paid until required reports, data, and documentation have been received and approved by the City.

V. OWNERSHIP OF DOCUMENTS

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

5.2 SACADA 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.

VI. RECORDS RETENTION

6.1 SACADA and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City, TDSHS, SAO, OIG and CGUS and any of their authorized representatives at their respective offices, at all reasonable times and as often as may be deemed necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City, TDSHS, SAO, OIG, CGUS and any of their authorized representatives.

6.2 SACADA shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, SACADA shall retain the records until the resolution of such litigation or other such questions. SACADA acknowledges and agrees that City, TDSHS, SAO, OIG, CGUS and any of their authorized representatives shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require SACADA to return said documents

to City prior to or at the conclusion of said retention.

6.3 SACADA shall notify City, immediately, in the event SACADA receives any requests for information from a third party, which pertain to the documentation and records referenced herein. SACADA understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should SACADA default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. SACADA shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SACADA 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. City shall also have the right to offset the cost of said new Agreement with a new contractor against SACADA's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets
7.4.2 Failing to perform or failing to comply with any covenant herein required
7.4.3 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 Regardless of how this Agreement is terminated, SACADA shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by SACADA, or provided to SACADA, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by SACADA in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at SACADA's sole cost and expense. Payment of compensation due or to become due to SACADA is conditioned upon delivery of all such documents, if requested.

7.7 Due to the requirements of the funding agency, by no later than close of business on Monday, September 10, 2013, SACADA 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 SACADA to submit its claims by no later than close of business on Monday, September 10, 2013 shall negate any liability on the part of City and constitute a **Waiver** by SACADA of any and all right or claims to collect moneys that SACADA may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue SACADA 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 of San Antonio
Director of Health
San Antonio Metropolitan Health District
332 W. Commerce, Suite 307

With a copy to:
Tobacco Coalition Program
Richard E. Jackson, MPA
San Antonio Metropolitan Health District
332 W. Commerce, Suite 303

San Antonio, Texas 78205 San Antonio, Texas 78205

If intended for Contractor, to:
San Antonio Council on Alcohol and Drug Abuse
Attn: Abigail Moore
7500 US Hwy 90 West, AT&T Building 1, Suite 100
San Antonio, TX 78227

IX. ASSURANCES AND CERTIFICATIONS

9.1 SACADA certifies by execution of this Agreement to the following:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;

b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;

d) it is not subject to an outstanding judgment in a suit against SACADA for collection of the balance of a debt;

e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with SACADA;

f) that no person who has an ownership or controlling interest in SACADA or who is an agent or managing employee of SACADA has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;

g) neither it, nor its principals have within the three(3)-year period preceding this Agreement, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;

h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and

i) neither it, nor its principals within a three(3)-year period preceding this Agreement has had one or more public transaction (federal, state or local) terminated for cause or default.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, SACADA shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "*San Antonio Tobacco Prevention and Control Coalition*" 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 Health Department. 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 by changes in statutory law and court decisions. . In no instance will City or SACADA allow modification whereupon City or SACADA may incur increased risk.

10.3 SACADA's financial integrity is of interest to the City; therefore, subject to SACADA's right to maintain reasonable deductibles in such amounts as are approved by the City, SACADA shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SACADA'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:

TYPE	AMOUNTS
1. Workers' Compensation Employers' Liability	Statutory Limits $500,000/$500,000/$500,000
2. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

c. Products/completed operations d. Personal Injury e. Contractual Liability	
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence.
* If Applicable	

10.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions in order to show compliance with the above insurance requirements (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). SACADA 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. SACADA shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: San Antonio Metro Health District
332 West Commerce St, San Antonio, Texas 78205

10.5 SACADA agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- 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;
- Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of the City.

10.6 Within ten (10) calendar days of a suspension, cancellation or non-renewal of coverage, SACADA shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend SACADA'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 Nothing herein contained shall be construed as limiting in any way the extent to which SACADA may be held responsible for payments of damages, as determined by a court of

competent jurisdiction to persons or property resulting from SACADA's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that SACADA'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.

10.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

XI. INDEMNIFICATION

11.1 SACADA 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 or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, 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 SACADA's negligent activities under this AGREEMENT, including any acts or omissions of SACADA, any agent, officer, director, representative, employee, SACADA or subcontractor of SACADA, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all 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. SACADA shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or SACADA known to SACADA related to or arising out of SACADA's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at SACADA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SACADA of any of its obligations under this paragraph.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 SACADA shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees, student interns, volunteers, vendors or subcontractors of SACADA. SACADA, its employees, student interns or subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon that SACADA intends to use the following subcontractors in the performance of this Agreement:

none. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director of Health prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of SACADA. City shall in no event be obligated to any third party, including any subcontractor of SACADA, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, SACADA 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, SACADA shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor SACADA, assignee, transferee or subcontractor.

12.5 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 SACADA 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 SACADA 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 SACADA shall in no event release SACADA from any obligation under the terms of this Agreement, nor shall it relieve or release SACADA from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 SACADA covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that SACADA 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 contractors; that the doctrine of respondent superior shall not apply as between City and SACADA, its officers, agents, employees, contractors, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and SACADA. 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 SACADA under this Agreement and that the SACADA has no authority to bind the City.

XIV. NONDISCRIMINATION POLICY

14.1 Non-discrimination. As a condition of entering into this agreement, SACADA represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IILC.1 of the SBEDA Ordinance. As part of such compliance, SACADA shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall SACADA retaliate against any person for reporting instances of such discrimination. SACADA shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. SACADA understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of SACADA from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. SACADA shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

XV. CONFLICT OF INTEREST

15.1 SACADA 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.

15.2 Pursuant to the subsection above, SACADA 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. SACADA further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

16.1 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the City

and SACADA. The Director may execute contract amendments on behalf of City in the following circumstances a) no cost extensions up to two years, b) budget adjustments authorized by the Director so long as the total dollar amount of the budget remains unchanged, c) modifications to the performance measures listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and d) changes in state or federal regulations mandated by the funding agency.

XVII. SEVERABILITY

17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

18.1 SACADA warrants and certifies that SACADA 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.

XIX. COMPLIANCE

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

19.2 SACADA shall grant access to the City, TDSHS, SAO, OIG and CGUS and any of their authorized representatives the right of access to inspect the work and the premises on which any work is performed, and the right to audit in accordance with the Access and Inspection Article in theFY13 Department of State Health Services Contract General Provisions for Substance Abuse Contracts.

XX. NONWAIVER OF PERFORMANCE

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change,

modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 **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.**

21.2 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.

XXII. LEGAL AUTHORITY

22.1 Each signer of this Agreement, for either City or SACADA, represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of either City or SACADA and to bind either City or SACADA to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

23.1 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.

XXIV. CAPTIONS

24.1 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.

XXV. DEBARMENT

25.1 SACADA certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

25.2 SACADA shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals

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

XXVI. ELECTRONIC VERSION SAME AS ORIGINAL

26.1 City understands that this document is executed in multiple originals in hardcopy format, which will be placed in the sole possession of City after execution hereof, SACADA will scan the fully-executed hardcopy document as a portable document file (.pdf) for storage in accordance with SACADA' records retention requirements without retaining the hardcopy. City stipulates that the terms of the electronically stored, fully-executed original of this document may be enforced in the same manner as the hardcopy counterparts (to be in City's possession) and that it waives any requirement that any hardcopy counterpart be produced to prove authentication for any purpose.

XXVII. LOBBYING

27.1 SACADA certifies by execution of this Agreement to the following: SACADA shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, SACADA shall not use funds paid under this Agreement, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Agreement exceeds $100,000 of federal funds, SACADA shall file with the contract manager assigned to the FY 13 Program Attachment included at all times affixed hereto and incorporated herein for all purposes as Attachment IV. a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of SACADA in connection with this Agreement, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom SACADA has an agreement. SACADA shall file the declaration, certification, and disclosure at the time of application for this Agreement; upon execution of this Agreement unless SACADA previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. SACADA shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the FY 13 Program Attachment. SACADA shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28.29.1.

XXVIII. ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to this the _____ day of _____, 2012.

CITY OF SAN ANTONIO	**SAN ANTONIO COUNCIL ON ALCOHOL AND DRUG ABUSE**
_____	_____
Thomas L. Schlenker, M.D., M.P.H. Director of Health	Abigail G. Moore Executive Director
_____	_____
Date	Date

Approved as to Form:

_____

Michael D. Bernard
City Attorney

ATTACHMENT I

SCOPE OF SERVICES
San Antonio Council on Alcohol and Drug Abuse and SA-TPCC Collaboration
Contract Period: September 1, 2012 - August 31, 2013

Work Plan:

Objective 1: Conduct youth outreach and education regarding tobacco use prevention. (Strategic Plan Goal 1 and 5)			
	Activity/Task	**Measure/Outcome**	**Start & End Dates**
1.1	Disseminate tobacco prevention messages and materials to youth in community venues and events	List of sites and dates; 50 presentations or alternative activities scheduled; 50 presentations or alternative activities; 2,900 youth receiving information	Scheduled by: ongoing basis 50% complete: Feb 2013 100% complete: Aug 2013
1.2	Conduct presentations in community centers, city wide events, schools, churches, for youth regarding the dangers of tobacco use, tobacco prevention techniques, and tobacco cessation resources	List of sites and dates; presentations scheduled; 50 presentations delivered; 800 youth attending presentations; 4000 youth receiving information	Scheduled by: ongoing basis 50% complete: Feb 2013 100% complete: Aug 2013
1.3	Deliver evidence based tobacco use prevention curricula to youth including TATU (Teens Against Tobacco Use), Spotlight on Smokeless (SOS) and ASPIRE curricula.	List of sites and dates of education course series scheduled; course series conducted; 350 youth receiving education; 350 youth receiving information	Scheduled by: ongoing basis 50% complete: Feb 2013 100% complete: Aug 2013
1.4	SACADA will recruit and transport 10 youth to participate in the 2013 Teen Tobacco-Free Leadership Summit (date and location TBA)	10 youth recruited; 10 youth participating in alternative activities; 2 adults participating in alternative activities	Recruited by: Oct 2012 Completed by: Feb 2013
1.5	Lead Tobacco Free Kids Day activities for SA-TPCC in March 2013 -- Train and coordinate with youth organizations across the county to conduct TFKD activities	15 organizations recruited; 10 organizations committed; 10 events scheduled; 10 events conducted; youth participating in alternative activities	Orgs. recruited by: Jan 2013 Events scheduled by: Jan 2013 Events conducted by: Mar 31, 2013

1.6	Recruit and transport 10 youth and 2 adult sponsors to attend the "Say What!" Teen Tobacco Summit sponsored by the Texas School Safety Center in the summer of 2013.	10 youth recruited; 10 youth attend or participate in alternative activities; 2 adults sponsors recruited; 2 adults sponsors attend/ participating in alternative activities	Youth recruited by: Apr 2013 Adults recruited by: Apr 2013 Completed by: Jul 2013
1.7	The Youth Coalition will have tasks that include: - Continue to recruit for the new HYPE Youth Coalition and recruit middle and high school youth to participate in activities linked to the DSHS branded "Say What!" youth movement in collaboration with Texas State University, Texas School Safety Center (TxSSC). - Contacting all school districts in Bexar County to inquire about coordination and inclusion of middle and high school students in the Youth Coalition and to gain buy-in for the Youth Tobacco Survey. - Coalition's youth coordinator staff participates in two (2) online Youth Engagement Initiative training workshops offered by the TxSSC and must be completed by August 31, 2013. - Attend 2 Coalition Contractor meetings in Austin during FY 2013 to learn Youth Engagement Initiative strategies. - Conduct youth driven media messaging that raises awareness of the HYPE Youth Coalition and reinforces the DSHS statewide media campaign to include: letters to the Editor, articles in local school papers, newsletters, live appearances, etc. - Report local media activities to DSHS quarterly through the SA-TPCC. Reports are due the 15th following the quarter being reported. - Youth coalition members will learn about how to be a health advocate including letter writing to state/federal legislators and visits to local political leaders, School Boards, School Health Advisory Committees - Collaborate with SA-TPCC and other local organizations to implement these tasks. - Collaborate with local Law Enforcement and School Based Police to implement an Operation Store Front/Alert study and project for the youth in the coalition. - Learn to facilitate TATU curriculum for elementary school youth - Complete ASPIRE online program for youth coalition members.	12 coalition meetings conducted/ 12 presentations youth participating in coalition meetings: 500 youth participating in alternative activities 50 youth attending presentations 50youth receiving information 10 new comm. Agreements 20 renewed comm.agreements 5 Evidence of School District outreach 3 presentations to school district officials 550 adults attending presentations 6 school organizations contacted (PTA, School Health Advisory Councils, etc.) Note: other performance measures will be tracked through other activities in the work plan Report Cards for Store Alert reported Quarterly to DSHS	Conducted: Jan-Aug 2013

Objective 2: Conduct adult outreach regarding tobacco use prevention and cessation. (Strategic Plan Goal 3, 4, and 5)			
	Activity/Task	**Measure/Outcome**	**Start & End Dates**
2.1	Disseminate tobacco prevention messages and materials to adults through various community venues and events	Quarterly recap of list of sites and dates; 50 presentations or alternative activities 50 presentations or alternative activities conducted; ; 4000 adults receiving information	Scheduled by: ongoing basis 50% complete: Feb 2013 100% complete: Aug 2013
2.2	Conduct presentations in community centers, churches, city health fair events, schools, school boards, health advisory committees , and universities for adults regarding the dangers of tobacco use, tobacco prevention techniques, and tobacco cessation resources	Quarterly recap of list of sites and dates; 50 presentations scheduled; 50 presentations delivered; 550 adults attending presentations; 550 adults receiving information	Scheduled by: ongoing basis 50% complete: Feb 2013 100% complete: Aug 2013
2.3	Engage adults to participate in activities regarding the dangers of tobacco use, tobacco prevention techniques, and tobacco cessation resources	Quarterly recap of list of sites and dates; 50 activities scheduled; 50 activities conducted; 250 adults participating in alternative activities; 250 adults receiving information	Scheduled by: ongoing basis 50% complete: Feb 2013 100% complete: Aug 2013

Objective 3: Participate in San Antonio Tobacco Prevention & Control Coalition capacity building. (Strategic Plan Goal 6)			
	Activity/Task	**Measure/Outcome**	**Start & End Dates**
3.1	Participate in 8 regular coalition meetings to report performance and progress	8 Meeting sign-in sheets; 8 Meetings attended	Sep 1, 2012- Aug 31, 2013
3.2	Participate in SA-TPCC Coalition Steering Committee	4 Meeting sign-in sheets; 4 Meetings attended	Sep 1, 2012- Aug 31, 2013
3.3	Refer/identify organizations to enter into community agreements with SA-TPCC to the Coalition Coordinator	10 organizations recruited/ referred	Sep 1, 2012- Aug 31, 2013
3.4	Send staff to attend the 2013 "Say What!" Teen Tobacco Summit to represent SACADA, in addition to youth attendance identified in Objective 1.6	2 SACADA staff or volunteers attend conference	July 2013
3.5	Send Youth Coalition Coordinator and required staff to 2 Coalition Contractor meetings in Austin during FY 2013 to learn Youth Engagement Initiative strategies Contractor meetings in Austin during FY 2013 to learn Youth Engagement Initiative strategies	Number of Staff attending	Sep 1, 2012- May 31, 2013

Performance Measure Requirements:

TDSHS Measure	Sept-Nov	Dec-Feb	March - May	June-Aug	TOTAL
1. Number of renewed written community agreements	5	5	5	5	20
2. Number of new written community agreements	0	5	5	0	10
3. Number of cessation consultations with health care providers	0	0	0	0	0
4. Number of work site cessation services consultations	0	0	0	0	0
5. Number of adults receiving information	1000	500	2000	500	4000
6. Number of youth receiving information	1500	500	1500	500	4000
7. Number of tobacco prevention presentations	15	10	15	10	50
8. Number of adults attending tobacco presentations	150	125	150	125	550
9. Number of youth attending tobacco presentations	300	50	400	50	800
10. Number of tobacco media contacts	2	1	2	0	5
11. Number of tobacco media awareness activities	5	5	5	5	20
12. Number of adults involved in tobacco alternative activities	75	50	75	50	250
13. Number of youth involved in tobacco alternative activities	1000	250	1500	250	3000
14. Number of environmental regulatory and/or legal strategies implemented or changed	0	0	0	0	0
15. Number of youth receiving education/skills training	75	75	150	50	350
16. Number of people receiving coalition training	10	10	10	10	40

TDSHS Performance Measure Definitions:

New written community agreements: This strategy aims to enhance the ability of the community to more effectively provide tobacco prevention, cessation, and secondhand smoke strategies through community mobilization and empowerment. Report the net increase in the number of written agreements made with community organizations.

Renewed written community agreements: Report the number of written community agreements that are submitted from organizations and individuals that had submitted one in previous years.

Adults receiving information: This strategy provides awareness and knowledge of tobacco use, abuse, and addiction and its harmful effects on individuals, families and communities and provides awareness of available programs and services to adults. Information can be disseminated through brochures, pamphlets, resource directories, newsletters, literature and information about available resources. Report the number of adults who received written literature/information.

Youth receiving information: This strategy provides awareness and knowledge of tobacco use, abuse, and addiction and its harmful effects on individuals, families and communities and provides awareness of available programs and services to youths. Information can be disseminated through written communication such as brochures, pamphlets, resource directories, newsletters, literature and information about available resources. Report the number of youths who received written literature/information.

Tobacco presentations: This strategy provides awareness and knowledge of tobacco use and its harmful effects on individuals, families and communities as well as provides education on prevention, media awareness, cessation, second hand smoke issues, effective policy strategies and state tobacco laws. Presentations must be at least 30 minutes in duration. Report the number of tobacco presentations conducted.

Adults attending tobacco presentations: Report the number of adults who attend tobacco presentations.

Youth attending tobacco presentations: Report the number of adults who attend tobacco presentations.

Adults involved in alternative activities: Activities under this strategy are designed to encourage and foster bonding with peers, family, and community. This strategy provides adults the opportunity to take part in educational, cultural, and recreational and work-oriented tobacco-free activities with young people and adults involved in tobacco prevention programming. Report the number of new adults involved in alternative activities.

Youth involved in alternative activities: Activities under this strategy are designed to assist participants in mastering new skills and promote a sense of belonging, bonding and leadership with peers, family, and community. This strategy provides for the participation in activities that exclude alcohol, tobacco and other drugs. This strategy provides participants the opportunity to take part in educational, leadership, cultural, recreational and work-oriented tobacco-free activities. Report the number of new youths involved in alternative activities.

Youth receiving education/skills training: Approaches/activities under this strategy are aimed to increase protective factors, foster resiliency, decrease risk factors and affect critical life and social skills relative to tobacco use and related problems of the participant and/or family members. Education/skills training is designed to promote and develop life skills, decision-making and problem solving skills, as well as to provide accurate information about the harmful effects of tobacco use, abuse and addiction. Sessions follow a structured research-based curriculum, build on skills in a sequential manner, and offer culturally and developmentally appropriate objectives for the target population. Prevention education through this strategy is presented only in a community-based setting. Report the number of new youths receiving community-based education services.

Coalition Training: Conducting tobacco prevention mobilization strategies by training community stakeholders, coalitions, volunteers and service providers.

Media Contact: Number of contacts made with San Antonio area media providers regarding tobacco prevention, cessation, and second hand smoke or tobacco health disparities through events, strategies, policies or media purchases that support the mission of the SA-TPCC.

Media Awareness Activities: Placements in broadcast, online or printed media, such as spots on television and radio, newspapers, street banners, websites, magnetic signs on vehicles. Publishing individual themed campaigns (prevention, cessation, and second hand smoke and health disparities) through various media outlets for each month.

ATTACHMENT II

SPECIAL PROVISIONS

The San Antonio Council on Alcohol and Drug Abuse (Subrecipient) agrees and understands that funds for this project come in whole or in part from a grant made available through the Texas Department of State Health Services (TDSHS). The subrecipient understands that the San Antonio Metropolitan Health District (Metro Health) is the direct grantee of funds and must adhere to grant requirements imposed by TDSHS. The subrecipient understands that as a subrecipient of these funds it must comply with timelines and requirements in coordination with Metro Health in order to meet grant requirements.

As such, the subrecipient agrees that it will comply with all applicable monitoring, reporting and documentation requirements, as well as terms and conditions from TDSHS, including but not limited to those articulated below:

I. Standard Terms and Conditions

1.1 Generally: Metro Health as grantee must comply with all terms and conditions outlined in its grant award, including grant policy terms and conditions contained in applicable Grant Policy Statements from the Texas Department of State Health Services (TDSHS) and the Department of Health and Human Services (HHS), and requirements imposed by specific program and grant administration regulations, as applicable. Subrecipients must comply with all requirements for subrecipients and cooperate with all monitoring procedures and provide required reporting and documentation to support Metro Health's requirements under the grant award. In addition to the standard terms and conditions of award, subrecipients receiving funds must abide by the general terms and conditions set out below.

1.2 Civil Rights Obligations: Recipients and subrecipients of State or Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and the Age Discrimination Act of 1975 (prohibiting age discrimination in the provision of services). For further information and technical assistance, please contact the HHS Office for Civil Rights at (202) 619-0403, OCRmail@hhs.gov, or http://www.hhs.gov/ocr/civilrights/.

1.3 Documentation of Expenses and in-kind match: The grantee may use its own expense and financial documentation systems and procedures provided it observes the provisions of the following sections in the Office of Management and Budget (OMB) Circular A-110, and 45 CFR Part 92:

- Federal cost principles regarding the allowability of costs specific to the subrecipient's organization type:
  - The allowability of costs incurred by State, local, or federally-recognized Indian tribal governments (the City of San Antonio or Bexar County) is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State,

Local, and Indian tribal Governments," available at: http://www.whitehouse.gov/omb/circulars_a087_2004

- The allowability of costs incurred by non-profit organizations (such as the American Lung Association and American Heart Association) is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations," available at: http://www.whitehouse.gov/omb/circulars_a122_2004
- The allowability of costs incurred by institutions of higher education (such Trinity University and UTSA) is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions," available at: http://www.whitehouse.gov/omb/circulars_a021_2004
- The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR , Part 74, "Principles of Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals," available at: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=5ce80adfb5e0caef1c156560c5fd2885&rgn=div9&view=text&node=45:1.0.1.1.35.6.11.3.11&idno=45

- Fiscal Year 2013 DSHS Contract General Provisions for Substance Abuse Contracts attached or provided electronically
- TDSHS Contractor's Financial Procedures Manual @ http://www.dshs.state.tx.us/contracts/docs/CFPM-9-1-2012.doc

1.3.1 City of San Antonio and SA-TPCC program staff will review documentation of subrecipient expenses and in-kind and will make the final judgment as to whether additional information is required to achieve compliance with the items listed in 1.3 above. Subrecipients will make corrections that are required to fulfill those requirements.

1.3.2 Should any of the provisions for documentation of expenses and in-kind match listed under 1.3 change as a result of City of San Antonio Finance Office ruling or a ruling by the Texas Department of State Health Services of the Auditor's Office of the State of Texas, the subrecipient will be notified as quickly as possible and given assistance in making necessary adjustments.

1.4 Lobbying: Federal law prohibits award recipients and sub-contractors from using State or Federal funds for lobbying Congress or a Federal agency, or to influence legislation or appropriations pending before the Congress or any State or local legislature.

This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered lobbying. That is lobbying for or against pending legislation, as well as indirect or grass roots lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal, state, or local levels to urge support of, or oppositions to, pending legislative proposals is prohibited.

Recipients of grants and cooperative agreements need to be careful to prevent grant funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and grass roots activities that relate to specific legislation, recipients of grant funds should give close attention to isolating and separating the appropriate use of grant funds from non-grant funds.

II. Audit Requirements

2.1 A grantee, such as Metro Health, that expends $500,000.00 or more in a year in State or Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133, Audit of States, Local Governments, and Non-Profit Organizations.

2.2 Subrecipients receiving grant funds must also meet the same requirements of OMB Circular A-133 (if the total Federal or State grant funds received exceed $500,000.00). In instances of noncompliance with Federal law and regulations, the subrecipient must take appropriate corrective action within six months after receipt of the audit. OMB Circular A-133 may be found at:
http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf

2.3 If a subrecipient is not required to have a program-specific audit, Metro Health is still required to perform adequate monitoring of subrecipient activities. Subrecipients shall cooperate with all such activities. Additionally, as a condition of accepting funding, it is noted that the subrecipient agrees to permit City or independent auditors to have access to subrecipient records and financial records as necessary.

III. Reporting Requirements

3.1 Metro Health must report on subrecipient activities as specified below, and subrecipient agrees to cooperate with Metro Health in providing information as necessary for Metro Health to comply with the following requirements:

Subrecipients must submit monthly invoices, performance measure reports, and supporting documentation to Metro Health, containing the following information:

A. The prescribed reporting form reports all spending, in-kind expenses, and the performance measures achieved for the previous month. The form shall be filled out monthly and emailed electronically to the City no later than the 5th business day of the following month. The pages requiring signatures may be printed out by the subcontractor, signed and scanned and sent to the City separately. Each page requires two signatures.
B. All required documentation for reimbursable expenses, in-kind expenses and performance measures must be scanned with the invoice and sent electronically to the City by the 5th working day of the following month.

C. Individual items submitted for reimbursement on the invoice, for in-kind expenses or inclusion in the performance measures must directly reference attached documentation in order for it to be accepted.
D. The requirements for documentation are found in the documents listed in 1.3 above and 4.2 below. In many cases the state requirements are stricter than the federal requirements. As a rule, if requirements in one document are different from similar requirements in the other State and Federal requirements, the requirement that is the strictest will apply. Also, in some cases, the State regulations are silent. In that instance, the federal regulations take precedence.
E. The following attachments shall be used by subrecipients in order to assess and document expenses:
    i. Appendix A – Examples of Time Sheets for personnel reimbursed by grant funding. This is customized for each subrecipient and provided electronically by SA-TPCC staff. Other time sheet forms may be used provided the same information is captured.
    ii. Appendix B – The request for reimbursement invoice / in-kind cost submission / performance measures form. This is customized for each subrecipient and provided electronically by SA-TPCC staff.
    iii. Appendix C – The SA-TPCC Activity Tracking Form, which is to be used as a cover sheet with supporting materials to document health fairs, presentations, and other events.
    iv. Appendix D – The In-Kind Contribution Form is to be used to document in-kind personnel and other in-kind expenses that are included on the invoice. It should be used as a cover sheet for in-kind documentation. When used to document in-kind personnel time, the hourly value of the employee's time is to be used. This includes salary and fringe benefits.

3.2 Subrecipient agrees to provide any and all information necessary for Metro Health to complete required monitoring as required by TDSHS and the City of San Antonio. The following attachments are documents that will be used by Metro Health to monitor compliance of the subrecipient with the parameters of the contract and with the State and Federal administrative requirements as listed above in 1.3 and shown below as (D) through (I):

A. Appendix E: The Subcontractor Fiscal Systems Checklist. This checklist will be reviewed with the subrecipient at least once at the beginning of the grant year. Follow-up will be pursued in the event of discovery of non-compliance.
B. Appendix F: The On-Site Monitoring Review Form. This will be used to document meetings with subrecipients and track progress of issues to be resolved.
C. Appendix G: The Agency Certification File is the depository of all organizational/corporate documents for each contractor, vendor, delegate agency, grantee or subrecipient under contract with Metro Health. The assigned Contract Delegate is responsible for maintaining all updated and listed information and documents for each subrecipient. New copies of all of the listed documents shall be provided to Metro Health by no later than 5 months into the new fiscal year.

The following federal regulations (D-F) may be found at the following URL:
http://www.dshs.state.tx.us/grants/law-reg.shtm

D. OMB Circular A-87, "Cost Principles for State, Local, and Indian tribal Governments"
E. OMB Circular A-122, "Cost Principles for Non-Profit Organizations"
F. OMB Circular A-21, "Cost Principles for Educational Institutions"
G. Appendix E of 45 CFR, Part 74, "Principles of Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals"

H. Fiscal Year 2013 DSHS Contract General Provisions for Substance Abuse Contracts attached or provided electronically.
I. TDSHS Contractor's Financial Procedures Manual @ http://www.dshs.state.tx.us/contracts/docs/CFPM-9-1-2012.doc

ATTACHMENT II

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General Provisions for Substance Abuse Contracts
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Fiscal Year 2012 Department of State Health Services Contract
General Provisions for Substance Abuse Contracts
(Core/Subrecipient)

ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the Department's rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The Department rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document, if any, (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department and shall provide any other information requested by the Department in the format required by DSHS. Failure to submit any required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.04 **Client Financial Eligibility.** Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 1.05 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, this Contract will be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit will be Travis County, Texas.

Section 1.06 **Applicable Laws and Regulations Regarding Funding Sources.** Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars, the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Governor's Budget, Planning and Policy Division. UGMA and UGMS can be located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §__.14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be

located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

Section 1.07 **Statutes and Standards of General Applicability.** Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion: 1) Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a); 4) the Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.; 5) Age Discrimination Act of 1975, 42 USC §§ 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246; 9) Tex. Lab. Code Chapter 21; 10) Food Stamp Act of 1977 (7 USC § 200 et seq.; 11) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations; 12) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse; 13) Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR Part 2, relating to confidentiality of alcohol and drug abuse patient records; 14) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and 15) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
b) Immigration Reform and Control Act of 1986, 8 USC § 1324a, regarding employment verification;
c) Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
d) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
e) Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-28, which limits the political activity of employees whose employment is funded with federal funds;
f) Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
g) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
h) Texas Workers' Compensation Act, Tex. Lab. Code Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
i) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
j) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin. Code Chapter 96 regarding safety standards for handling blood borne pathogens;
k) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
l) environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for

Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;" 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961; 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234); 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.; 6) Federal Water Pollution Control Act, 33 USC §1251 et seq.; 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j; 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.; 9) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§7401 et seq.; 10) Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271 et seq.) related to protecting certain rivers system; and 11) Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;

m) Intergovernmental Personnel Act of 1970 (42 USC §§4278-4763) regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F);
n) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
o) Davis-Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally-assisted construction subagreements;
p) National Historic Preservation Act of 1966, §106 (16 USC § 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
q) financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations;"
r) Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
s) Executive Order, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of the Contract; and
t) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a federal grant or cooperative agreement, additional state or federal requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference. Contractor may obtain a copy of any applicable Notice of Grant Award from the contract manager assigned to the Program Attachment.

Section 1.08 **Applicability of General Provisions to Interagency and Interlocal Contracts.** Certain sections or portions of sections of these General Provisions will not apply to Contractors that are State agencies or units of local government; and certain additional provisions will apply to such Contractors.

a) The following sections or portions of sections of these General Provisions will not apply to interagency or interlocal contracts:
   1) Hold Harmless and Indemnification, Section 13.19;
   2) Independent Contractor, Section 12.15 (delete the third sentence in its entirety; delete the word "employees" in the fourth sentence; the remainder of the section applies);
   3) Insurance, Section 12.03;
   4) Liability Coverage, Section 12.05;

5) Fidelity Bond, Section 12.04;
6) Historically Underutilized Businesses, Section 12.10 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity);
7) Debt to State and Corporate Status, Section 3.01;
8) Application of Payment Due, Section 3.02; and
9) Article XV Claims against the Department (This Article is inapplicable to interagency contracts only).

b) The following additional provisions will apply to interagency contracts:
1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov. Code Chapter 771;
2) The Parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the affected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder; and
3) DSHS certifies that it has the authority to enter into this Contract granted in Tex. Health & Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.

c) The following additional provisions will apply to interlocal contracts:
1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Gov. Code Chapter 791;
2) Payments made by DSHS to Contractor will be from current revenues available to DSHS; and
3) Each Party represents that it has been authorized to enter into this Contract.

d) Contractor agrees that Contract Revision Requests (pursuant to the Contractor's Request for Revision to Certain Contract Provisions section), when signed by a duly authorized representative of Contractor, will be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing body.

Section 1.09 **Civil Rights Policies and Complaints.** Upon request, Contactor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (10) calendar days after Contractor's receipt of the claim. Notice must be directed to –

HHSC Civil Rights Office
701 W. 51st St., Mail Code W206
Austin, Texas 78751
Toll-free phone (888) 388-6332
Phone (512) 438-4313
TTY Toll-free (877) 432-7232
Fax (512) 438-5885

Section 1.10 **Licenses, Certifications, Permits, Registrations and Approvals.** Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all

licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

ARTICLE II SERVICES

Section 2.01 **Education to Persons in Residential Facilities.** If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and who are twenty-two (22) years of age or younger, have access to educational services as required by Tex. Educ. Code § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by Tex. Educ. Code § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor's residential facility.

Section 2.02 **Disaster Services.** In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or as a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas: community evacuation; health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Contractor shall carry out disaster services in the manner most responsive to the needs of the emergency, be cost-effective, and be least intrusive on Contractor's primary services.

Section 2.03 **Consent to Medical Care of a Minor.** If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, Contractor shall not provide treatment of a minor unless informed consent to treatment is obtained pursuant to Tex. Fam. Code Chapter 32, relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with Tex. Fam. Code Chapter 32, federal law supersedes state law.

Section 2.04 **Telemedicine Medical Services.** Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using a protocol approved by Contractor's medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

a) clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
b) contraindication considerations for telemedicine use;
c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
e) use by credentialed licensed providers providing clinical care within the scope of their licenses;
f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
g) priority in scheduling the system for clinical care of individuals;
h) quality oversight and monitoring of satisfaction of the individuals served; and
i) management of information and documentation for telemedicine services that ensures timely access to

accurate information between the two sites.
Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under Rule § 448.911.

Section 2.05 **Fees for Personal Health Services.** Contractor may develop a system and schedule of fees for personal health services in accordance with the provisions of Tex. Health & Safety Code § 12.032, DSHS Rule §1.91 covering Fees for Personal Health Services, and other applicable laws or grant requirements. The amount of a fee must not exceed the actual cost of providing the services. No client may be denied a service due to inability to pay.

Section 2.06 **Cost Effective Purchasing of Medications.** If medications are funded under this Contract, Contractor shall make needed medications available to clients at the lowest possible prices and use the most cost effective medications purchasing arrangement possible.

Section 2.07 **Services and Information for Persons with Limited English Proficiency.** Contractor shall take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities. Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter. Contractor shall make every effort to avoid use of any persons under the age of eighteen (18) or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

ARTICLE III FUNDING

Section 3.01 **Debt to State and Corporate Status.** Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State's office. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 3.02 **Application of Payment Due.** Contractor agrees that any payments due under this Contract will be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

Section 3.03 **Use of Funds.** Contractor shall expend Department funds only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

Section 3.04 **Use for Match Prohibited.** Contractor shall not use funds provided through this Contract for matching purposes in securing other funding unless directed or approved by the Department in writing.

Section 3.05 **Program Income.** Gross income directly generated from Department funds through a project

or activity performed under a Program Attachment and/or earned only as a result of a Program Attachment during the term of the Program Attachment are considered program income. Unless otherwise required under the terms of the grant funding this Contract, Contractor shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of program income to further the program objectives of the state or federal statute under which the Program Attachment was made, and Contractor shall spend the program income on the same Program Attachment project in which it was generated. Contractor shall identify and report this income in accordance with the Compliance and Reporting Article of these General Provisions, the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm and the provisions of the Program Attachment(s). Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Contractor shall refund program income not expended in the term in which it is earned to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified in this Contract.

Section 3.06 **Nonsupplanting.** Contractor shall not supplant (i.e., use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract) but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity. Contractor shall make a good faith effort to maintain its current level of support. Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS

Section 4.01 **Payment Methods.** Except as otherwise provided by the provisions of the Program Attachment(s), the payment method for each Program Attachment will be one of the following methods:

a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and acceptable submission of a request for reimbursement; or
b) unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service, as stated in the Program Attachment(s) and acceptable submission of all required documentation, forms and/or reports.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless otherwise specified in the Program Attachment(s) or permitted under the Third Party Payors section of this Article, Contractor shall submit requests for reimbursement or payment monthly within thirty (30) calendar days following the end of the month covered by the bill. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

Section 4.03 **Final Billing Submission.** Unless otherwise provided by the Department, Contractor shall submit a reimbursement or payment request as a final close-out bill not later than sixty (60) calendar days following the end of the term of the Program Attachment for goods received and services rendered during the term. If necessary to meet this deadline, Contractor may submit reimbursement or payment requests by facsimile transmission. Reimbursement or payment requests received in DSHS's offices more than sixty (60) calendar days following the end of the applicable term will not be paid. Consideration of requests for an exception will be made on a case-by-case basis, subject to the availability of funding, and only for an extenuating circumstance, such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations or causes damage or destruction of a place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement

must be submitted for review and approval to the DSHS Accounting Section.

Section 4.04 **Working Capital Advance.** If allowed under this Contract, a single one-time working capital advance per term of the Program Attachment may be granted at the Department's discretion. Contractor must submit documentation to the contract manager assigned to the Program Attachment to justify the need for a working capital advance. Contractor shall liquidate the working capital advance as directed by the Department. The requirements for the documentation justifying the need for an advance and the directions for liquidating the advance are found in the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

Section 4.05 **Financial Status Reports (FSRs).** Except as otherwise provided in these General Provisions or in the terms of the Program Attachment(s), for contracts with categorical budgets, Contractor shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term for Department review and financial assessment. Contractor shall submit the final FSR no later than sixty (60) calendar days following the end of the applicable term.

Section 4.06 **Third Party Payors.** A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided. Third party payors include, but are not limited to, commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in this Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. Contractor shall (a) enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs, and bill those programs for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients who are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted, in which case the thirty (30)-day requirement in the Billing Submission section will be extended until all such appeals have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

ARTICLE V TERMS AND CONDITIONS OF PAYMENT

Section 5.01 **Prompt Payment.** Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments and reimbursements are contingent upon a signed Contract and will not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment or reimbursement only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (Tex. Gov. Code Chapter 2251). Contractor shall comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department will not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance are subject to audit or review by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures, disallowed costs, or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the

date(s) due. Department may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 **Condition Precedent to Requesting Payment.** Contractor shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including any advance payments from Department.

Section 5.04 **Acceptance as Payment in Full.** Except as permitted in the Fees for Personal Health Services section of the Services Article of these General Provisions or under 25 Tex. Admin. Code § 444.413, Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients or participants, and Contractor shall not seek additional reimbursement or payment for services or goods from clients or participants or charge a fee or make a profit with respect to the Contract. A fee or profit is considered to be an amount in excess of actual allowable costs that are incurred in conducting an assistance program.

ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS

Section 6.01 **Allowable Costs.** For services satisfactorily performed, and sufficiently documented, pursuant to this Contract, DSHS will reimburse Contractor for allowable costs. Contractor must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. DSHS will determine whether costs submitted by Contractor are allowable and eligible for reimbursement. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within thirty (30) calendar days of the date of this written notice. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220); and UGMS, as applicable	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization	48 CFR Part 31,	OMB Circular A-	UGMS and applicable

other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	133 and UGMS	Federal awarding agency common rule

A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

Section 6.02 **Independent Single or Program-Specific Audit.** If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in federal funds awarded, Contractor shall have a single audit or program-specific audit in accordance with the Office of Management and Budget (OMB) Circ. No. A-133, the Single Audit Act of 1984, P L 98-502, 98 Stat. 2327, and the Single Audit Act Amendments of 1996, P L 104-156, 110 Stat. 1396. The $500,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in state funds awarded, Contractor must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Contractors whose expenditures meet or exceed the federal and/or state expenditure thresholds stated above shall follow the guidelines in OMB Circular A-133 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Contractor to complete the Single Audit Determination Registration Form. If Contractor fails to complete the Single Audit Determination Form within thirty (30) calendar days after notification by OIG to do so, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every five (5) years and shall not use the same lead auditor or coordinating audit partner (having primary responsibility for the audit) to conduct the independent audit for more than five (5) consecutive years.

Section 6.03 **Submission of Audit.** Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Contractor shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347
Health and Human Services Commission

Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

If Contractor fails to submit the audit report as required by the Independent Single or Program-Specific Audit

section within thirty (30) calendar days of receipt by Contractor of an audit report, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract.

ARTICLE VII CONFIDENTIALITY

Section 7.01 **Maintenance of Confidentiality.** Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and client records that contain protected health information (PHI), and any other information that discloses confidential personal information or identifies any client served by DSHS, in accordance with applicable federal and state laws, rules and regulations, including but not limited to 7 CFR Part 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Tex. Health & Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Tex. Occ. Code Chapters 56 and 159 and all applicable rules and regulations.

Section 7.02 **Department Access to PHI and Other Confidential Information.** Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program, and for purposes permitted under applicable state and federal confidentiality and privacy laws.

Section 7.03 **Exchange of Client-Identifying Information.** Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Tex. Health & Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable laws or rules. Contractor shall disclose information described in Tex. Health & Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Tex. Health & Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 7.04 **Security of Patient or Client Records.** Contractor shall maintain patient and client records in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if care or treatment is transferred to another DSHS-funded contractor.

Section 7.05 **HIV/AIDS Model Workplace Guidelines.** If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, Policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Tex. Health & Safety Code § 85.112-114. A link to the Model Workplace Guidelines can be found at http://www.dshs.state.tx.us/hivstd/policy/policies.shtm.

ARTICLE VIII RECORDS RETENTION

Section 8.01 **Retention.** Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.1(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the Department upon Department's request for at least four (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

ARTICLE IX ACCESS AND INSPECTION

Section 9.01 **Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor shall make available to the Department information collected, assembled or maintained by Contractor relative to this Contract for the Department to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

Section 9.02 **State Auditor's Office.** Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 9.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon

examination of Contractor's records or during an inspection of Contractor's site(s) will be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to resolve the deficiency. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance Article of these General Provisions.

ARTICLE X NOTICE REQUIREMENTS

Section 10.01 **Child Abuse Reporting Requirement.** This section applies to mental health and substance abuse contractors and contractors for the following public health programs: Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD); Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and Women, Infants and Children (WIC) Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Tex. Fam. Code Chapter 261 relating to investigations of reports of child abuse and neglect. Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. Contractor shall use the DSHS Child Abuse Reporting Form as required by the Department located at www.dshs.state.tx.us/childabusereporting. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 10.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the contract manager assigned to the Program Attachment significant incidents involving substantial disruption of Contractor's program operation, or affecting or potentially affecting the health, safety or welfare of Department-funded clients or participants within seventy-two (72) hours of discovery.

Section 10.03 **Litigation.** Contractor shall notify the contract manager assigned to the Program Attachment of litigation related to or affecting this Contract and to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, including environmental and civil rights matters, professional liability, and employee litigation. Notification must include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 10.04 **Action Against the Contractor.** Contractor shall notify the contract manager assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three (3) working days of the suspension or termination. Such notification must include the reason for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the contract; and the contract or case reference number. If Contractor, as an organization, has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information within three (3) working days of the surrender, suspension or revocation to the contract manager assigned to the Program Attachment by submitting a one-page description that includes the reason(s) for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the license action; and a license or case reference number.

Section 10.05 **Insolvency.** Contractor shall notify in writing the contract manager assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of

determination that Contractor is insolvent or incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify in writing the contract manager assigned to the Program Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by Contractor's governing body.

Section 10.06 **Misuse of Funds and Performance Malfeasance.** Contractor shall report to the contract manager assigned to the Program Attachment, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the HHS Office of Inspector General at http://www.oig.hhs.gov/fraud/hotline/ no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

Section 10.07 **Criminal Activity and Disciplinary Action.** Contractor affirms that no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the contract manager assigned to the Program Attachment if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that would constitute a criminal offense equal to or greater than a Class A misdemeanor or if such activity would reasonably constitute grounds for disciplinary action by a state or federal regulatory authority, or has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Contractor shall not permit any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed by DSHS.

Section 10.08 **Retaliation Prohibited.** Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

Section 10.09 **Documentation.** Contractor shall maintain appropriate documentation of all notices required under these General Provisions.

ARTICLE XI ASSURANCES AND CERTIFICATIONS

Section 11.01 **Certification.** Contractor certifies by execution of this Contract to the following:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;
b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
g) neither it, nor its principals have within the three(3)-year period preceding this Contract, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;
h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
i) neither it, nor its principals within a three(3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Section 11.02 **Child Support Delinquencies.** As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 11.03 **Authorization.** Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and

to provide such additional information as may be required.

Section 11.04 **Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Section 11.05 **Ineligibility to Receive the Contract.** (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 11.06 **Antitrust.** Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Section 11.07 **Initiation and Completion of Work.** Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 12.01 **Responsibilities and Restrictions Concerning Governing Body, Officers and Employees.** Contractor and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not-for-profit organizations. Each member of Contractor's governing body shall be accountable for all funds and materials received from Department. The responsibility of Contractor's governing body shall also include accountability for compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff. Staff members, including the executive director, shall not serve as voting members of Contractor's governing body. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Tex. Gov. Code Chapter 573) to the member of the governing body or the officer or any employee authorized to

employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two (2) years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers and employees of Contractor's subcontractors. Ignorance of any Contract provisions or other requirements contained or referred to in this Contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 12.02 **Management and Control Systems**. Contractor shall comply with all the requirements of the Department's Contractor's Financial Procedures Manual, and any of its subsequent amendments, which is available at the Department's web site: http://www.dshs.state.tx.us/contracts/cfpm.shtm. Contractor shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met. Contractor shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in Department's Contractor's Financial Procedures Manual. Those requirements and procedures include, at a minimum, the following:

a) financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
b) financial management systems that include accurate accounting records that are accessible and identify the source and application of funds provided under each Program Attachment of this Contract, and original source documentation substantiating that costs are specifically and solely allocable to the Program Attachment and are traceable from the transaction to the general ledger; and
c) effective internal and budgetary controls; comparison of actual costs to budget; determination of reasonableness, allowableness, and allocability of costs; timely and appropriate audits and resolution of any findings; billing and collection policies; and a mechanism capable of billing and making reasonable efforts to collect from clients and third parties.

Section 12.03 **Insurance.** Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds. Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the contract manager assigned to the Program Attachment to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 12.04 **Fidelity Bond**. For the benefit of DSHS, Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to $100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance must provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment. The bond or insurance acquired under this section must include coverage for third party property and include DSHS as a loss payee or equivalent designation. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the fidelity bond or insurance.

Section 12.05 **Liability Coverage.** For the benefit of DSHS, Contractor shall at all times maintain liability insurance coverage, referred to in Tex. Gov. Code § 2261.102, as "director and officer liability coverage" or similar coverage for all persons in management or governing positions within Contractor's organization or with management or governing authority over Contractor's organization (collectively "responsible persons"). Contractor shall maintain copies of liability policies on site for inspection by DSHS and shall submit copies of

policies to DSHS upon request. This section applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department in the event an actionable act or omission by a responsible person damages Department's interests. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the insurance.

Section 12.06 **Overtime Compensation.** Except as provided in this section, Contractor shall not use any of the funds provided by this Contract to pay the premium portion of overtime. Contractor shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any

compensation paid to an individual in addition to the employee's normal rate of pay for hours worked in excess of normal working hours. Funds provided under this Contract may be used to pay the premium portion of overtime only under the following conditions: 1) with the prior written approval of DSHS; 2) temporarily, in the case of an emergency or an occasional operational bottleneck; 3) when employees are performing indirect functions, such as administration, maintenance, or accounting; 4) in performance of tests, laboratory procedures, or similar operations that are continuous in nature and cannot reasonably be interrupted or otherwise completed; or 5) when lower overall cost to DSHS will result.

Section 12.07 **Program Site.** Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 12.08 **Cost Allocation Plan.** Contractor shall submit a Cost Allocation Plan in the format provided in the Department's Contractor's Financial Procedures Manual to the Department's Contract Oversight and Support Section, at Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, or by email to mailto:coscap@dshs.state.tx.us no later than the 60th calendar day after the effective date of the Contract, except when a Contractor has a current Cost Allocation Plan on file with the Department. Contractor shall implement and follow the applicable Cost Allocation Plan. If Contractor's plan is the same as in the previous year, by signing this Contract, Contractor certifies that its current Cost Allocation Plan for the current year is the same as that submitted to DSHS for the previous year. If the Cost Allocation Plan changes during the Contract term, Contractor shall submit a new Cost Allocation Plan to the Contract Oversight and Support Section within thirty (30) calendar days after the effective date of the change. Cost Allocation Plans must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

Section 12.09 **No Endorsement.** Other than stating the fact that Contractor has a contract with DSHS, Contractor and its subcontractors are prohibited from publicizing the contractual relationship between Contractor and DSHS, and from using the Department's name, logo or website link in any manner that is intended, or that could be perceived, as an endorsement or sponsorship by DSHS or the State of Texas of Contractor's organization, program, services or product, without the express written consent of DSHS.

Section 12.10 **Historically Underutilized Businesses (HUBs).** If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Program Attachment, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Tex. Gov. Code Chapter 2161 and 34 Tex. Admin. Code § 20.14 et seq. Contractors may obtain a list of HUBs at http://www.window.state.tx.us/procurement/prog/hub. If Contractor has filed a HUB subcontracting plan, the

plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval from the Department's HUB Coordinator of the revised plan before proposed changes will be effective under this Contract. Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity, in accordance with 34 Tex. Admin. Code § 20.16(c).

Section 12.11 **Buy Texas.** Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Tex. Gov. Code § 2155.4441.

Section 12.12 **Contracts with Subrecipient and Vendor Subcontractors.** Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into a subrecipient agreement equaling or exceeding $100,000, Contractor shall obtain written approval from DSHS. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan. Contractor shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.

Contracts with all subcontractors, whether vendor or subrecipient, must be in writing and include the following:

(a) name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
(b) a detailed description of the services to be provided;
(c) measurable method and rate of payment and total not-to-exceed amount of the contract;
(d) clearly defined and executable termination clause; and
(e) beginning and ending dates that coincide with the dates of the applicable Program Attachment(s) or that cover a term within the beginning and ending dates of the applicable Program Attachment(s).

Contractor is responsible to DSHS for the performance of any subcontractor. Contractor shall not contract with a subcontractor, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs; or if the subcontractor would be ineligible under the following sections of these General Provisions: Ineligibility to Receive the Contract section (Assurances and Certifications Article); or the Conflict of Interest of Transactions Between Related Parties sections (General Terms Article).

Section 12.13 **Status of Subcontractors.** Contractor shall require all subcontractors to certify that they are not delinquent on any repayment agreements; have not had a required license or certification revoked; and have not had a contract terminated by the Department. Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three (3) years any license issued by the Department.

Section 12.14 **Incorporation of Terms in Subrecipient Subcontracts.** Contractor shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor), (1) the certifications stated in the Assurances and Certifications Article; (2) the requirements in the Conflicts of Interest section and the Transaction Between Related Parties section of the General Terms Article; and (3) a provision granting to DSHS, SAO, OIG, and the Comptroller General of the United States, and any of their representatives, the right of access to inspect

the work and the premises on which any work is performed, and the right to audit the subcontractor in accordance with the Access and Inspection Article in these General Provisions. Each subrecipient subcontract contract must also include a copy of these General Provisions and a copy of the Statement of Work and any other provisions in the Program Attachment(s) applicable to the subcontract. Contractor shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor. No provision of this Contract creates privity of contract between DSHS and any subcontractor of Contractor.

Section 12.15 **Independent Contractor.** Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture participants or agents will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 12.16 **Authority to Bind.** The person or persons signing this Contract on behalf of Contractor, or representing themselves as signing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 12.17 **Tax Liability.** Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. If the Department discovers that Contractor has failed to remain current on a liability to the IRS, this Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. If the Contract is terminated under this section, the Department will not enter into a contract with Contractor for three (3) years from the date of termination.

Section 12.18 **Notice of Organizational Change.** Contractor shall submit written notice to the contract manager assigned to the Program Attachment within ten (10) business days of any change to the Contractor's name; contact information; key personnel, officer, director or partner; organizational structure, such as merger, acquisition or change in form of business; legal standing; or authority to do business in Texas. A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the Amendments section of these General Provisions.

Section 12.19 **Quality Management.** Contractor shall comply with quality management requirements as directed by the Department.

Section 12.20 **Equipment (Including Controlled Assets) Purchases.** Equipment means an article of nonexpendable, tangible personal property having a useful lifetime of more than one year and an acquisition cost of $5,000 or more, and "controlled assets." Controlled assets include firearms regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more: desktop and laptop computers, non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Contractors on a cost reimbursement payment method shall inventory all equipment. Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter of the Program Attachment must be submitted to the contract manager assigned to the Program Attachment.

Section 12.21 **Supplies.** Supplies are defined as consumable items necessary to carry out the services under this Contract including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

Section 12.22 **Changes to Equipment List.** All items of equipment purchased with funds under this Contract must be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment. Contractor shall submit to the contract manager assigned to the Program Attachment, a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, Department will acknowledge its approval by means of a written amendment or by written acceptance of Contractor's Contract Revision Request, as appropriate.

Section 12.23 **Property Inventory and Protection of Assets.** Contractor shall maintain an inventory of equipment and property described in the Other Intangible Property section of Article XIII and submit an annual cumulative report of the equipment and other property on Form GC-11 (Contractor's Property Inventory Report) to the Department's Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than October 15th of each year. The report is located on the DSHS website at http://www.dshs.state.tx.us/contracts/forms.shtm. Contractor shall maintain, repair, and protect assets under this Contract to assure their full availability and usefulness. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained under this Contract, Contractor shall use the proceeds to repair or replace those assets.

Section 12.24 **Bankruptcy.** In the event of bankruptcy, Contractor shall sever Department property, equipment, and supplies in possession of Contractor from the bankruptcy, and title must revert to Department. If directed by DSHS, Contractor shall return all such property, equipment and supplies to DSHS. Contractor shall ensure that its subcontracts, if any, contain a specific provision requiring that in the event the subcontractor's bankruptcy, the subcontractor must sever Department property, equipment, and supplies in possession of the subcontractor from the bankruptcy, and title must revert to Department, who may require that the property, equipment and supplies be returned to DSHS.

Section 12.25 **Title to Property.** At the conclusion of the contractual relationship between the Department and Contractor, for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

Section 12.26 **Property Acquisitions.** Department funds must not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

Section 12.27 **Disposition of Property.** Contractor shall follow the procedures in the American Hospital Association's (AHA's) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersede or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than $5,000. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than $5,000) will be controlled by the requirements of UGMS. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes

inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than $5,000, Contractor shall request disposition approval and instructions in writing from the contract manager assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor shall ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

Section 12.28 **Closeout of Equipment.** At the end of the term of a Program Attachment that has no additional renewals or that will not be renewed (Closeout) or when a Program Attachment is otherwise terminated, Contractor shall submit to the contract manager assigned to the Program Attachment, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment. All equipment purchased with Department funds must be secured by Contractor at the time of Closeout or termination of the Program Attachment and must be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at Contractor's expense.

Section 12.29 **Assets as Collateral Prohibited.** Contractors on a cost reimbursement payment method shall not encumber equipment purchased with Department funds without prior written approval from the Department.

ARTICLE XIII GENERAL TERMS

Section 13.01 **Assignment.** Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 13.02 **Lobbying.** Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Contract exceeds $100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Contract; upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

Section 13.03 **Conflict of Interest.** Contractor represents to the Department that it and its -subcontractors, if any, do not have nor shall Contractor or its subcontractors knowingly acquire or retain, any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the Department or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

Section 13.04 **Transactions Between Related Parties.** Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR § 215.42, and UGMS.

Section 13.05 **Intellectual Property.** Tex. Health & Safety Code § 12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

a) "Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.
b) For purposes of this Contract intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use is "work made for hire." DSHS owns works made for hire unless it agrees otherwise by contract. To the extent that title and interest to any such work may not, by operation of law, vest in DSHS, or such work may not be considered a work made for hire, Contractor irrevocably assigns the rights, title and interest therein to DSHS. DSHS has the right to obtain and hold in its name any and all patents, copyrights, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.
c) If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and

irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any intellectual property developed under this Contract, including any subcontract; and (2) any rights of copyright to which a Contractor purchases ownership with contract funds. Contractor shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment must be to the effect that "This publication was made possible by grant number _____ from (federal awarding agency)" or "The project described was supported by grant number _____ from (federal awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency)."

d) If the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.

e) If the results of the contract performance are subject to copyright law, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Program Attachment.

Section 13.06 **Other Intangible Property.** At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs, software licenses, etc. Contractor shall inventory all such non-copyrightable intangible property. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision will survive the termination or expiration of this Contract.

Section 13.07 **Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 13.08 **Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract will be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

Section 13.09 **Successors.** This Contract will be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 13.10 **Headings.** The articles and section headings used in this Contract are for convenience of reference only and will not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 13.11 **Parties.** The Parties represent to each other that they are entities fully familiar with

transactions of the kind reflected by the contract documents, and are capable of understanding the terminology and meaning of their terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 13.12 **Survivability of Terms.** Termination or expiration of this Contract or a Program Attachment for any reason will not release either Party from any liabilities or obligations in this Contract that (a) the Parties have expressly agreed will survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

Section 13.13 **Direct Operation.** At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by Contractor.

Section 13.14 **Customer Service Information.** If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Tex. Gov. Code Chapter 2114 regarding Customer Service surveys.

Section 13.15 **Amendment.** The Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this Contract must be in writing and agreed to by both Parties, except as otherwise specified in the Contractor's Notification of Change to Certain Contract Provisions section or the Contractor's Request for Revision to Certain Contract Provisions section of this Article. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the contract manager assigned to the Program Attachment; and if a budget revision or amendment is requested during the last quarter of the Contract or Program Attachment term, as applicable, Contractor's written justification must include a reason for the delay in making the request. Revision or other amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform or produce, and DSHS will not pay for the performance or production of, different or additional goods, services, work or products except pursuant to an amendment of this Contract that is executed in compliance with this section; and DSHS will not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Article.

Section 13.16 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to this Contract without a written amendment or the Department's prior approval:

a) contractor's contact person and contact information;
b) contact information for key personnel, as stated in Contractor's response to the Solicitation Document, if any;
c) cumulative budget transfers that exceed 10% among direct cost categories, other than the equipment category, of cost reimbursement contract Program Attachments <u>of less than $100,000</u>, provided that the total budget amount is unchanged;
d) minor corrections or clarifications to the Contract language that in no way alter the scope of work, objectives or performance measures; and
e) a change in Contractor's share of the budget concerning non-DSHS funding other than program income and match, regardless of the amount of the change, provided that in changing the budget, Contractor is not supplanting DSHS funds.

Contractor within ten (10) calendar days shall notify in writing the contract manager assigned to the Program Attachment of any change enumerated in this section. The notification may be by letter, fax or email. Cumulative budget line item transfers of 10% or less among direct cost categories, other than equipment, of

cost reimbursement contracts of any amount do not require written amendment or prior approval or notification.

Section 13.17 **Contractor's Request for Revision of Certain Contract Provisions.** A Contractor's Revision Request is an alternative method for amending certain specified provisions of this Contract that is initiated by Contractor, but must be approved by DSHS. The following amendments to this Contract may be made through a Contractor's Revision Request, rather than through the amendment process described in the Amendment section of this Article:

a) cumulative budget transfers among direct cost categories, other than the equipment category, that exceed 10% of Program Attachments of $100,000 or more, provided that the total budget amount is unchanged;
b) budget transfer to other categories of funds for direct payment to trainees for training allowances;
c) change in clinic hours or location;
d) change in the equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget;
e) changes in the equipment category of a previously approved equipment budget (other than acquisition of additional equipment, which requires an amendment to this Contract); and
f) changes specified in applicable OMB Circular cost principles as requiring prior approval, regardless of dollar threshold (e.g., foreign travel expenses, overtime premiums, membership fees.

In order to request a revision of any of the enumerated provisions, Contractor shall obtain a Contract Revision Request form from the DSHS website available at http://www.dshs.state.tx.us/grants/forms.shtm, and complete the form as directed by the Department. Two copies of the completed form must be signed by Contractor's representative who is authorized to sign contracts on behalf of Contractor, and both original, signed forms must be submitted to the contract manager assigned to the Program Attachment. Any approved revision will not be effective unless signed by the DSHS Director of the Client Services Contracting Unit. A separate Contractor Revision Request is required for each Program Attachment to be revised. Circumstances of a requested contract revision may indicate the need for an amendment described in the Amendment section of this Article rather than a contract revision amendment under this section.

Section 13.18 **Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

Section 13.19 **Hold Harmless and Indemnification.** Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments; and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

Section 13.20 **Waiver.** Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract will not constitute a waiver of either Party's rights under this Contract.

Section 13.21 **Electronic and Information Resources Accessibility and Security Standards.** As required by 1 Tex. Admin. Code Chapters 213 and 206, as a state agency, DSHS must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1

Tex. Admin. Code Chapter 213 and Website Accessibility Standards/Specifications specified in 1 Tex. Admin. Code Chapter 206 (collectively EIR Standards) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If performance under this Contract includes the development, modification or maintenance of a website or other electronic and information resources for DSHS or for the public on behalf of DSHS, Contractor certifies that the website or other electronic and information resources comply with the EIR Standards. Contractor further certifies that any network hardware or software purchased or provided under this Contract has undergone independent certification testing for known and relevant vulnerabilities, in accordance with rules adopted by Department of Information Resources.

Section 13.22 **Force Majeure.** Neither Party will be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of any such cause of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other by any reasonable method (phone, email, etc.) and, as soon as practicable, must submit written notice with proof of receipt, of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

Section 13.23 **Interim Contracts.** The Parties agree that the Contract and/or any of its Program Attachments will automatically continue as an "Interim Contract" beyond the expiration date of the term of the Contract or Program Attachment(s), as applicable, under the following circumstances: (1) on or shortly prior to the expiration date of the Contract or Program Attachment, there is a state of disaster declared by the Governor that affects the ability or resources of the DSHS contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract or Program Attachment; and (2) DSHS makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. DSHS will notify Contractor promptly in writing if such a determination is made. The notice will specify whether DSHS is extending the Contract or Program Attachment for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Program Attachment for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how DSHS will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

Section 13.24 **Cooperation and Communication.** Contractor shall cooperate with Department staff and, as applicable, other DSHS contractors, and shall promptly comply with requests from DSHS for information or responses to DSHS inquiries concerning Contractor's duties or responsibilities under this Contract.

ARTICLE XIV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 14.01 **Actions Constituting Breach of Contract.** Actions or inactions that constitute breach of contract include, but are not limited to, the following:

a) failure to properly provide the services and/or goods purchased under this Contract;
b) failure to comply with any provision of this Contract, including failure to comply with all applicable statutes, rules or regulations;

c) failure to pay refunds or penalties owed to the Department;
d) failure to comply with a repayment agreement with the Department or agreed order issued by the Department;
e) failure by Contractor to provide a full accounting of funds expended under this Contract;
f) discovery of a material misrepresentation in any aspect of Contractor's application or response to the Solicitation Document;
g) any misrepresentation in the assurances and certifications in Contractor's application or response to the Solicitation Document or in this Contract; or
h) Contractor is on or is added to the Excluded Parties List System (EPLS).

Section 14.02 **General Remedies and Sanctions.** The Department will monitor Contractor for both programmatic and financial compliance. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more remedies or sanctions for each item of noncompliance and will determine remedies or sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies or sanctions in this section does not relieve Contractor of any obligations under this Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

a) terminate this Contract or a Program Attachment of this Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty (30) calendar days before the effective date of the termination in a notice of termination, except for circumstances that require immediate termination as described in the Emergency Action section of this Article. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. Contractor shall not make any claim for payment or reimbursement for services provided from the effective date of termination;
b) suspend all or part of this Contract. Suspension is an action taken by the Department in which the Contractor is notified to temporarily (1) discontinue performance of all or part of the Contract, and/or (2) discontinue incurring expenses otherwise allowable under the Contract as of the effective date of the suspension, pending DSHS's determination to terminate or amend the Contract or permit the Contractor to resume performance and/or incur allowable expenses. Contractor shall not bill DSHS for services performed during suspension, and Contractor's costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;
c) deny additional or future contracts with Contractor;
d) reduce the funding amount for failure to 1) provide goods and services as described in this Contract or consistent with Contract performance expectations, 2) achieve or maintain the proposed level of service, 3) expend funds appropriately and at a rate that will make full use of the award, or 4) achieve local match, if required;
e) disallow costs and credit for matching funds, if any, for all or part of the activities or action not in compliance;

f) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
g) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
h) declare this Contract void upon the Department's determination that this Contract was obtained fraudulently or upon the Department's determination that this Contract was illegal or invalid from this Contract's inception and demand repayment of any funds paid under this Contract;
i) request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
j) delay execution of a new contract or contract renewal with Contractor while other imposed or proposed sanctions are pending resolution;
k) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more frequent or more extensive monitoring will be performed by Department than would routinely be conducted;
l) require Contractor to obtain technical or managerial assistance;
m) establish additional prior approvals for expenditure of funds by Contractor;
n) require additional or more detailed, financial and/or programmatic reports to be submitted by Contractor;
o) demand repayment from Contractor when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices, or failure to comply with Contract terms;
p) pursue a claim for damages as a result of breach of contract;
q) require Contractor to prohibit any employee or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any employee, volunteer, officer or governing body member, if the employee, volunteer, officer or member of the governing body has been indicted or convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as reasonably determined by DSHS;
r) withhold any payments to Contractor to satisfy any recoupment, liquidated damages, match insufficiency, or any penalty (if the penalty is permitted by statute) imposed by DSHS, and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
s) reduce the Contract term;
t) recoup improper payments when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices or failure to comply with Contract terms;
u) assess liquidated damages;
v) demand repayment of an amount equal to the amount of any match Contractor failed to provide, as determined by DSHS;
w) impose other remedies, sanctions or penalties permitted by statute.

Section 14.03 **Notice of Remedies or Sanctions.** Department will formally notify Contractor in writing when a remedy or sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the remedies and sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies and sanctions imposed. Other than in the case of repayment or recoupment, Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response must state how Contractor shall correct the noncompliance (corrective action plan) or demonstrate in writing that the findings on which the remedies or sanction(s) are based are either invalid or do not warrant the remedies or sanction(s). If Department determines that a remedy or sanction is warranted, unless the remedy or sanction is subject to review under a federal or state statute, regulation, rule, or guideline, Department's decision is final. Department will provide written notice to Contractor of Department's decision. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the approved corrective action plan. If DSHS determines that repayment is warranted, DSHS will issue a demand letter to Contractor for repayment. If full repayment is not received within the time limit stated in the demand letter, and if recoupment is available, DSHS will recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

Section 14.04 **Emergency Action.** In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny future contract awards, or delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An "emergency" is defined as the following:

a) Contractor is noncompliant and the noncompliance has a direct adverse effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or using resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures; or
b) Contractor is expending funds inappropriately.

Whether Contractor's conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

ARTICLE XV CLAIMS AGAINST THE DEPARTMENT

Section 15.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Tex. Gov. Code Chapter 2260 and implemented in Department Rules §§ 4.11-4.24 will be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 15.02 **Notice.** Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice must also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Tex. Gov. Code Chapter 2260, subchapter C.

Section 15.03 **Sole Remedy.** The contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches

of contract by DSHS if the Parties are unable to resolve their disputes under this Article.

Section 15.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract will be considered a waiver of sovereign immunity to suit.

Section 15.05 **Performance Not Suspended.** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

ARTICLE XVI TERMINATION AND TEMPORARY SUSPENSION

Section 16.01 **Expiration of Contract or Program Attachment(s).** Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations stated in each Program Attachment will end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article.

Section 16.02 **Effect of Termination.** Termination is the permanent withdrawal of Contractor's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor's costs resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable, to DSHS or another entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or the Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS, and except as provided in the Survivability of Terms section of the General Terms Article. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information will survive this Contract.

Section 16.03 **Acts Not Constituting Termination.** Termination does not include the Department's (1) withdrawal of funds awarded on the basis of Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a program attachment; (3) refusal to extend a program attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; (4) non-renewal of a contract or program attachment at Department's sole discretion; or (5) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 16.04 **Termination or Temporary Suspension Without Cause.**

a) Either Party may terminate this Contract or a Program Attachment, as applicable, with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract or Program Attachment that involves residential client services, Contractor shall give the Department at least ninety (90) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.

b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
c) DSHS may temporarily suspend or terminate this Contract or a Program Attachment if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendments to the Appropriations Act, health and human services consolidations, or any disruption of current appropriated funding for this Contract or Program Attachment. Contractor will be notified in writing of any termination or temporary suspension or of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor shall discontinue performance under the Contract as of the effective date of the suspension, for the duration of the suspension.
d) Department may terminate this Contract or a Program Attachment immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 16.05 **Termination For Cause.** Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

a) Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary for the performance or oversight of this Contract;
c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;
d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under this Contract or exercise adequate control over expenditures or assets;
e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;
f) Department determines that this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements or statement(s) of work or Solicitation Document on which this Contract is based in violation of Tex. Gov. Code § 2155.004; or Department determines that Contractor was ineligible to receive this Contract under Tex. Gov. Code §§ 2155.006 or 2261.053 related to certain disaster response contracts;
g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:
    1) Contractor fails to make payments for debts;
    2) Contractor makes an assignment for the benefit of its creditors;
    3) Contractor admits in writing its inability to pay its debts generally as they become due;
    4) if judgment for the payment of money in excess of $50,000 (that is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment, or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, or (d) if the execution is stayed, within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required

under Generally Accepted Accounting Principles;

5) a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its issuance;
6) Contractor is adjudicated bankrupt or insolvent;
7) Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, or consents to the filing of any case or petition against it under any such law;
8) any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge of the sequestration;
9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, and the petition is not dismissed within thirty (30) calendar days; or
10) Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property;

h) Contractor's management system does not meet the UGMS management standards; or
i) Any required license, certification, permit, registration or approval required to conduct Contractor's business or to perform services under this Contract is not obtained or is revoked, is surrendered, expires, is not renewed, is inactivated or is suspended.

Section 16.06 **Notice of Termination.** Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor shall attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

ARTICLE XVII VOID, SUSPENDED, AND TERMINATED CONTRACTS

Section 17.01 **Void Contracts.** Department may void this Contract upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 17.02 **Effect of Void, Suspended, or Involuntarily Terminated Contract.** A Contractor who has been a party to a contract with DSHS that has been found to be void, or is suspended, or is terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until, in the case of suspension or termination, the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to repayment.

Section 17.03 **Appeals Rights.** Pursuant to Tex. Gov. Code § 2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Tex. Gov. Code Chapter 2001.

ARTICLE XVIII CLOSEOUT

Section 18.01 **Cessation of Services At Closeout.** Upon expiration of this Contract or Program Attachment, as applicable, (and any renewals of this Contract or Program Attachment) on its own terms, Contractor shall cease services under this Contract or Program Attachment; and shall cooperate with DSHS to the fullest extent

possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, Contractor shall immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also shall completely cease providing services under this Contract or Program Attachment by the date specified in the termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of this Contract or Program Attachment, or incur any additional expenses once this Contract or Program Attachment is terminated or has expired. Upon termination, expiration (with no renewal) or non-renewal of this Contract or a Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 18.02 **Administrative Offset.** The Department has the right to administratively offset amounts owed by Contractor against billings.

Section 18.03 **Deadline for Closeout.** Contractor shall submit all financial, performance, and other Closeout reports required under this Contract within sixty (60) calendar days after the Contract or Program Attachment end date. Unless otherwise provided under the Final Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract or Program Attachment end date.

Section 18.04 **Payment of Refunds.** Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 18.05 **Disallowances and Adjustments.** The Closeout of this Contract or Program Attachment does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

ATTACHMENT II

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(2012 Subrecipient)

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ARTICLE XIX PROVISIONS GENERALLY APPLICABLE TO SUBSTANCE ABUSE CONTRACTS

Section 19.01 **Quality Management Plan (QMP) and Quality Improvement.** As required by the Quality Management section of these General Provisions, Contractor shall comply with the requirements stated in this section relating to Contractor's Quality Management Process. Contractor shall-

a) develop and implement a QMP that conforms with Standards of Care Rule § 448.504, and make the QMP available to DSHS upon request. The QMP must be developed no later than the end of the first quarter of the Program Attachment term. Contractor shall update and revise the QMP each biennium or sooner, if necessary. Contractor's governing body shall review and approve the initial QMP, within the first quarter of the Program Attachment term, and each updated and revised QMP thereafter. The QMP must describe Contractor's methods to measure, assess, and improve-
   1) implementation of evidence-based practices and research-based approaches to service delivery;
   2) client/participant satisfaction with the services provided by Contractor;
   3) service capacity and access to services;
   4) client/participant continuum of care; and
   5) accuracy of data reported to the state.

b) participate in data verification activities as defined and scheduled by the state, including, but not limited to performing self-audits; submitting self-audit results and supporting documentation for the state's desk reviews; and participating in the state's onsite or desk reviews.

c) submit plan of improvement or corrective action plan and supporting documentation as requested by DSHS.

d) participate in and actively pursue QMP activities that support performance and outcomes improvement.

e) respond to consultation recommendations by DSHS, which may include but are not limited to the following:
   1) staff training;
   2) self-monitoring activities guided by DSHS, including use of quality management tools to self-identify compliance issues; and
   3) monitoring of performance reports in the DSHS electronic clinical management system.

Section 19.02 **Treatment Peer Review.** A staff member of treatment or Outreach, Screening, Assessment and Referral (OSAR) Contractormay be selected for participation in the independent treatment peer review required by the Substance Abuse Prevention and Treatment (SAPT) Block Grant. If a member of Contractor's staff is selected to be a reviewer, Contractor shall ensure that the staff member participates in the treatment peer review process.

Section 19.03 **Disaster Substance Abuse Services.** In accordance with the Disaster Services section of these General Provisions, Contractor may be required to assist in mitigating the psychological trauma experienced by victims, survivors, and responders to a disaster. Contractor may assist the individual or family in returning to a normal (pre-disaster) level of functioning and assist in decreasing the psychological and physical effects of acute and/or prolonged stress. In the event clients already receiving substance abuse services are affected, Contractor may work with the affected individuals in conjunction with the individual's current support system.

Contractor shall develop policies and procedures to address response and recovery for substance abuse programs. Contractor's responsibilities include, but are not limited to the following:

a) for treatment and OSAR Contractors, enter, and update as necessary, into CBMHS, the the names and twenty-four (24)-hour contact information of Contractor's Risk Manager or Safety Officer and at least two professional staff trained in mental health, substance abuse, or crisis counseling, one of whom may be the

Contractor's Risk Manager or Safety Officer, as disaster contacts

b) for treatment and OSAR Contractors, submit disaster substance abuse services policies and procedures if requested by DSHS;

c) collaborate with DSHS and local preparedness, response and recovery efforts. OSAR staff shall assist in coordinating the disaster/incident response among substance abuse treatment providers, community mental health and emergency disaster service organizations, such as, emergency shelters and food banks. OSAR staff shall facilitate outreach to substance abuse clients and their families and ensure they are provided access to individual and group counseling, education, assessment, referral and community support;

d) assign employees to assist DSHS to meet staffing needs for shelters, morgues, schools, hospitals, Disaster Recovery Centers, community support centers, death notifications, mass inoculations sites, and other necessary services during local, state or federal emergencies;

e) contract with DSHS to provide FEMA-funded Crisis Counseling, Assistance and Training Program(s) (CCATP) after federal declarations as appropriate. CCATP services include housing, hiring and co-managing CCATP Team(s), as appropriate, and are described at http://www.fema.gov/pdf/media/factsheets/2009/dad_crisis_counseling.pdf; and

f) participate in disaster substance abuse education training programs as necessary.

Section 19.04 **Abuse, Neglect, Exploitation.** Contractor shall develop and implement written policies and procedures, and take all steps necessary, to protect the health, safety and welfare of its clients and participants. Contractor shall notify appropriate authorities of any allegations of abuse, neglect, or exploitation as required by Rule § 448.703. Additionally, licensed treatment facility Contractors shall verbally report all allegations of participant or client abuse, neglect, and exploitation to the Department's **Substance Abuse Investigations Division at (800) 832-9623** immediately, submit appropriate documentation within twenty-four (24) hours, and maintain adequate evidence demonstrating the Department's receipt of such documentation. The complaint form is located on the DSHS website at http://www.dshs.state.tx.us/HFP/complain_ntc_subabuse.shtm. All other Contractors shall notify the DSHS Substance Abuse Contracts Management Unit within 24 hours that the appropriate authorities have been notified of the allegations of abuse, neglect or exploitation and shall maintain for DSHS inspection, appropriate documentation and adequate evidence demonstrating receipt of the notification by the proper authorities. Contractor shall develop and implement written policies and procedures for employees, subcontractors, employees of subcontractors, and volunteers to report actual or suspected abuse, neglect, or exploitation to an immediate supervisor (or to another supervisor if the immediate supervisor is the subject of the report) within 48 hours of becoming aware of the actual or suspected abuse, neglect or exploitation.

Section 19.05 **Charitable Choice (Faith-Based Organizations).** As applicable, Contractor shall comply with 42 USC § 300x-65 and 42 CFR part 54 (42 CFR §§ 54.8(c) (4) and 54.8(b)), Charitable Choice provisions and regulations. If Contractor identifies itself as a faith-based or religious organization, Contractor shall post a notice to advise all clients and potential clients (collectively, "clients") that if the client objects to the religious character of Contractor's organization, the client has the right to be referred to another DSHS-funded contractor that is not faith-based or that has a different religious orientation. Contractor shall use the model notice provided in Appendix A of 42 CFR Part 54. Within a reasonable period of time after a client's request for referral, Contractor shall make the referral to another DSHS-funded contractor, and shall ensure that the client receives the alternative services within a reasonable period of time. Contractor shall further ensure that the alternative DSHS-funded contractor is accessible to the client and has the capability to provide appropriate services, and that the services are of a value not less than the value of the services the client would have received from Contractor.

Section 19.06 **Qualified Service Organization/Business Associate (QSO/BA) Agreement.** For the purposes of this section, definitions of terms related to QSOs are found in 42 CFR pt 2, and for terms related to BAs, in 45 CFR pts 160 and 164. The parties agree that this Contract serves as a QSO/BA Agreement ("this Agreement") under which Contractor, as a Program, may disclose patient-identifying information as defined by 42 CFR pt 2 to

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DSHS as a QSO, and under which Contractor, as a Covered Entity, may disclose protected health information as defined by 45 CFR pt 164 (PHI) to DSHS as a BA. Contractor is disclosing the patient-identifying information and PHI to DSHS so that DSHS as QSO/BA can provide services related to payment to Contractor for client services under the Contract, and to providing an electronic clinical management system for use by Contractor to maintain and store client records.

a) Provisions Applicable to the Parties' HIPAA BA Relationship:

1) Obligations and Activities of DSHS as a BA:

A. BA agrees to not use or disclose PHI other than as permitted or required by this Agreement or as "Required by Law."

B. BA agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

C. BA agrees to 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.

D. BA agrees to report to Contractor any use or disclosure of the PHI not provided for by this Agreement of which BA becomes aware.

E. BA agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by BA on behalf of, Contractor agrees to the same restrictions and conditions that apply through this Agreement to BA with respect to such information.

F. BA agrees to make 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 BA on behalf of, Contractor available to Contractor or to the Secretary, in a time and manner to be mutually agreed to by Contractor and BA or in a time and manner designated by the Secretary for purposes of the Secretary determining Contractor's compliance with the Privacy Rule.

G. BA agrees to document disclosures of PHI as would be required for Contractor to respond to a request by an individual for an accounting of disclosures of PHI under 45 CFR §164.528.

H. BA agrees to provide to Contractor or an individual, in a time and manner to be mutually agreed to by BA and Contractor, information collected in accordance with paragraph G above, to permit Contractor to respond to a request by an individual for an accounting of disclosures of PHI in under 45 CFR §164.528.

2) Permitted Uses and Disclosures by the DSHS:

Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Contractor as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Contractor or the minimum necessary policies and procedures of Contractor.

3) Obligations of and Permissible Requests by Contractor:

A. Contractor shall notify BA of any limitation(s) in Contractor's notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.

B. Contractor shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Contractor.

4) Term and Termination of this Agreement:

A. Term. The obligations of the Parties under this Agreement shall terminate when all of the PHI created or received by BA on behalf of Contractor is destroyed, or if it is infeasible to destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

B. Termination of this Agreement for Cause. Upon Contractor's knowledge of a material breach by BA, Contractor shall -

i. provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement if BA does not cure the breach or end the violation within the time specified by Contractor;

ii. immediately terminate this Agreement if BA has breached a material term of this Agreement and cure is not possible; or

iii. if neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination of this Agreement.

i. Except as provided in paragraph B above ("Termination of this Agreement for Cause"), upon termination of this Agreement, for any reason, BA shall destroy all PHI received from Contractor, or created or received by BA on behalf of Contractor. This provision will apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI.

ii. If BA determines that destroying the PHI is infeasible, BA shall provide to Contractor notification of the conditions that make destruction infeasible. If Contractor agrees that destruction of PHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the destruction infeasible, for so long as BA maintains such PHI.

5) Miscellaneous Provisions:

A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section in effect or as amended.

B. Amendment. The Parties agree to amend this Agreement as necessary for Contractor to comply with the requirements of the Privacy Rule and HIPAA.

C. Survival. The respective rights and obligations of BA in subsection a), paragraph 1. of this Agreement titled "Obligations and Activities of DSHS as BA" shall survive the termination of this Agreement.

D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Contractor to comply with the Privacy Rule.

b) Provision Applicable to DSHS as a QSO: As a QSO, DSHS acknowledges that in receiving, storing, processing or otherwise dealing with any patient records associated with an alcohol or drug abuse treatment program, DSHS is fully bound by the 42 CFR pt 2 regulations. DSHS affirms that, if necessary, it will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Section 19.07 **SAPT Grant Requirements.** Contractor shall comply with the requirements of the SAPT Block Grant, including the restrictions on expenditure of grant funds, stated in 45 CFR § 96.135 and the Notice of Grant Award. Contractor shall not expend funds under this Contract on the following activities:

a) to provide inpatient hospital services, except as provided in 45 CFR § 96.135(c);
b) to make cash payments to intended recipients of health services;
c) to purchase or improve land, purchase, construct or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;
d) to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
e) to provide financial assistance to any entity other than a public or non-profit private entity;
f) to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, except under a needle exchange program approved by the U.S. Surgeon General of Public Health Services; or
g) for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or the state legislature, except in presentation to the Congress or the state legislative body itself.

Additionally, none of the funds provided under this Contract may be used to pay the salary of an individual at a rate in excess of Level I of the federal Executive Schedule.

Section 19.08 **Persons on Probation or Parole.** Contractor shall notify the contract manager assigned to the

Program Attachment immediately of any of its employees, volunteers or subcontractors who are on parole or probation if the employee, volunteer or subcontractor provides or will provide direct client or participant services or who has or may have direct contact with clients or participants. Contractor shall maintain copies of all notices required under this section for DSHS review. Unless otherwise directed by the Department, Contractor shall ensure that any person who is on probation or parole is prohibited from performing direct client services or from having direct contact with clients or participants during any investigation undertaken by DSHS concerning a person who is on parole or probation.

Section 19.09 **Performance Measures Definitions**. Contractor shall comply with the performance measures definitions and minimum performance outcomes as specified by the Department. If revisions to the performance measures definitions and/or minimum performance outcomes are required as a result of elimination or modification of substance abuse service types, Contractor shall comply with the revised definitions and/or outcomes upon notice from DSHS.

ARTICLE XX This article is reserved for future use.

ARTICLE XXI SUBSTANCE ABUSE TREATMENT SERVICES

Section 21.01 **Priority Populations for Substance Abuse Treatment Programs.** The Department has established priority populations for treatment in accordance with SAPT Block Grant regulations and state designation. Treatment Contractors shall give preference for treatment services in the following order of priority:

a) pregnant injecting drug users;
b) pregnant substance abusers; and
c) injecting drug users.

Contractor shall establish screening procedures to identify members of priority populations and admit them before all others, in priority order. When space is not available in Contractor's Program Service Area, Contractor shall guarantee successful and timely referral to another suitable DSHS-funded contractor. Contractors shall accept applicants from every region in the state when space is available. If two applicants are of equal priority status, preference may be given to an applicant living in Contractor's Program Service Area. Each OSAR and treatment Contractor shall include a statement in all its brochures, and shall post a notice in its lobby, concerning the priority population admission requirements.

Section 21.02 **Texas Department of Family and Protective Services (DFPS).** Contractors funded to provide youth and adult treatment services shall serve financially eligible clients referred by the DFPS. Such referrals shall receive priority admission behind the priority populations listed in the Priority Populations for Treatment Programs section. When space is not available, Contractor shall guarantee successful and timely referral of financially eligible clients referred by DFPS to another suitable DSHS-funded treatment or OSAR contractor.

Section 21.03 **Licensing.** Contractors that provide chemical dependency treatment as defined by Tex. Health and Safety Code Chapter 464 shall hold an active treatment license issued by the Department or be exempt from licensure. The failure to obtain a required license, or revocation, surrender or suspension of Contractor's license, or Contractor's ceasing to provide services, shall constitute grounds for termination of the Contract or other remedies the Department deems appropriate. To add a newly licensed site to the Contract, Contractor must submit a request to the contract manager assigned to the Program Attachment for a clinic number after a treatment license has been issued. Contractor shall use the clinic number request form located on the DSHS website at http://www.dshs.state.tx.us/sa/forms/default.shtm. Contractor shall not provide services under the Contract until the licensed site has been approved by DSHS and an amendment to the Contract has been executed.

Section 21.04 **Youth Treatment.** Treatment Contractors that provide youth treatment services shall comply with

the Rule regarding Financial Eligibility and Third Party Payment. If services for a client are covered by private insurance or a third party payor, but Contractor is not eligible for reimbursement by a client's private insurance or third party payor, Contractor shall refer the client to a treatment program that is approved by the client's private insurance or third party payor for services and reimbursement.

a) If the approved treatment program refuses treatment services to the client and documents that refusal, Contractor may provide treatment services and bill the Department provided-
   1) the refusal, including insurance or third party payor and approved treatment program, is documented in the client file;
   2) the client meets the Diagnostic Statistical Manual IV diagnostic criteria for substance abuse/dependence; and
   3) the client's treatment for residential care is approved by the designated OSAR contractor, if applicable.

b) If client's private insurance or third party payor would cover or approves partial or full payment for treatment services, Contractor may bill the Department for the non-reimbursed costs, including the deductible, provided -
   1) the client's parent refuses to file a claim with the private insurance or third party payor, or refuses to pay either the deductible or the non-reimbursed portion of the cost of treatment, and Contractor has obtained a signed statement from the parent that the parent refuses to pay, and Contractor has received approval from the DSHS substance abuse program services clinical coordinator to bill for the deductible or non-reimbursed portion of the cost;
   2) the client's parent cannot afford to pay the deductible and/or the non-reimbursed portion of the cost of treatment; or
   3) the family has an adjusted income at or below 200% of the Federal poverty guidelines.

   If a client has exhausted all insurance coverage and requires continued treatment, Contractor may provide the continued treatment services and bill the Department as long as the client meets b)1) or b)2) above.

c) If a client's parent, who does not have insurance or other third party coverage for the client's treatment services, can afford, but refuses, to pay for those services, Contractor may bill the Department for the cost of the client's treatment, if Contractor has obtained a signed statement from the parent that the parent refuses to pay and Contractor has received approval from DSHS to bill for the cost of the services.

Section 21.05 **Client Placement Criteria.** OSAR Contractors and treatment Contractors shall use Department client placement criteria as a guide for directing clients to the appropriate services and for authorization of residential treatment admissions. Contractor shall comply with the Client Placement Criteria Guidelines established by the Department.

Section 21.06 **Treatment Services Provided by Electronic Means.** Contractor shall ensure that if treatment services are provided by electronic means under Rule § 448.911, the services are delivered in accordance with the Telemedicine Medical Services provision of these General Provisions, except that approval and oversight responsibilities attributed to a contractor's medical director shall instead be attributed to Contractor's Licensed Chemical Dependency Counselor or Qualified Credentialed Counselor who is responsible for treatment program oversight.

Section 21.07 **Waiting Lists.** For all individuals who cannot be immediately admitted to treatment services, treatment Contractor shall make a waiting list entry in CMBHS that details the service type the individual is waiting for and the priority population designation of the individual. Upon admission, treatment Contractor shall close the waiting list entry, indicating the date of admission as the waiting list end date. Treatment Contractor shall ensure, either directly or through referral, that individuals waiting for admission receive interim services. Treatment Contractor shall document weekly contact with all individuals on its waiting list. Treatment Contractor shall have a written policy on waiting list management that defines why and how individuals are removed from the

waiting list for any purpose other than admission to treatment.

ARTICLE XXII PREVENTION AND INTERVENTION SERVICES

Section 22.01 **Prevention and Rural Border Intervention Program Requirements.** Prevention and Rural Border Intervention Contractors shall use the curriculum designated in the Program Attachment. Any adjustment to the provision of services, including a change in curriculum or county in which it is delivered, requires written amendment of the Contract.

Section 22.02 **Indicated Prevention.** Contractors that provide indicated prevention program services shall provide services to individuals who are showing warning signs of substance abuse and/or high risk problem behaviors. Indicated prevention services include -

a) indicated prevention screening;
b) indicated prevention assessment;
c) indicated prevention service plan; and
d) indicated prevention counseling.

Indicated Prevention Contractors shall use forms approved by DSHS to collect information and shall comply with requirements of Rules § 447.110 (e) and § 447.113 related to documentation of each indicated prevention screening, assessment, referral and follow-up.

Section 22.03 **Curriculum-Based Prevention Programs.** Contractors providing prevention services shall administer Department-approved pre- and post-tests to program participants. Outcomes must be reported in CMBHS in accordance with Article XXIII below.

Section 22.04 **Application of Chapter 448 Rules to Prevention and Intervention Contractors.** Contractors providing prevention and intervention services shall comply, as applicable, with the Rules § 448.504 relating to Quality Management and § 448.509 (d-f) relating to Incident Reporting. Contractors providing prevention and intervention services shall comply with DSHS Rules § 448.510 governing client transportation and § 448.603 governing training. Any reference to clients in these sections of the Rules also means prevention/intervention program participants. Additionally, any reference to facilities in these sections of the Rules also means prevention/intervention programs.

Section 22.05 **Confidentiality.** Prevention and intervention Contractors shall securely store, and maintain privacy and confidentiality of, information and records concerning participants and their family members that identify any individual as a person with a substance abuse problem or that relate to referrals for medical, health, or other DSHS-funded services, in accordance with Article VII (Confidentiality) of these General Provisions, and Rule § 448.210 (Confidentiality). Contractor shall ensure that all its employees and volunteers are aware of the requirements under this section.

Section 22.06 **Policies and Procedures.** Contractor shall maintain the additional policies and procedures as required by Rule § 444.303 and make them available for inspection by DSHS. Each Contractor shall develop and implement a policy and age-appropriate procedures to protect the rights of children, families and adults participating in a prevention or intervention program. All participants have the right to be free from abuse, neglect and exploitation; be treated with dignity and respect; and make a complaint to Contractor or the Department at any time. Participants receiving individualized services in an intervention or indicated prevention program also have the right to refuse or accept services after being informed of services and responsibilities, including program goals and objectives, rules and regulations, and participants' rights. Contractor shall maintain documentation showing that participants receiving individualized services in an intervention or indicated prevention program have received the required information and agreed to participate in the program. Each Contractor shall establish and demonstrate

active use of written agreements (memoranda of understanding) with available substance abuse providers and other mental health, health care, and social services providers to meet the needs of the clients/participants and family members. Agreements to coordinate services must be established in writing, be renewed annually (through signature or other documented contact), include names of the organizations entering into the agreement, services or activities each organization will provide, signatures of authorized representatives, and dates of action and expiration.

ARTICLE XXIII CLINICAL MANAGEMENT FOR BEHAVIORAL HEALTH SERVICES (CMBHS) SYSTEM

Section 23.01 **CMBHS.** The CMBHS is considered the official record of documentation by the Department. Contractor shall use the CMBHS time frames specified by the Department. Contractor shall use the Department-specified functionality of the CMBHS in its entirety. Contractor shall submit all bills and reports to the Department through the CMBHS, unless otherwise instructed.

Section 23.02 **Resources.** Contractor shall ensure that Contractor has appropriate Internet access and an adequate number of computers of sufficient capabilities to use the CMBHS. Equipment purchased with Department funds must be inventoried, maintained in working order, and secured.

Section 23.03 **Security Administrator.** Contractor shall designate a Security Administrator and a back-up Security Administrator. The Security Administrator is required to implement and maintain a system for management of user accounts/user roles to ensure that all the CMBHS user accounts are current. Contractor shall have a security policy that ensures adequate system security and protection of confidential information. Contractor shall notify the CMBHS Help-desk within 10 business days of any change to the designated Security Administrator or the back-up Security Administrator.

Section 23.04 **Security Violations and Accounts Updates.** Contractor shall notify the contract manager assigned to the Program Attachment immediately if a security violation is detected, or if Contractor has any reason to suspect that the security or integrity of the CMBHS data has been or may be compromised in any way. Contractor shall immediately block access to CMBHS of any person who should no longer have access to CMBHS, due to severance of employment with Contractor or otherwise, or immediately modify access when there is a change in a user's job responsibilities that affects the user's need for access to CMBHS, and update records on a daily basis to reflect any changes in account status.

Section 23.05 **Electronic Transfer of Information.** Contractor shall establish and maintain adequate internal controls, security, and oversight for the approval and electronic transfer of information regarding payments and reporting requirements. Contractor certifies that the electronic payment requests and reports transmitted will contain true, accurate, and complete information.

Section 23.06 **Access.** The Department reserves the right to limit or deny access to the CMBHS by Contractor at any time for any reason deemed appropriate by the Department.

Section 23.07 **Components.** If required by the Program Attachment to use the CMBHS, Contractor shall use the CMBHS components/functionality specified below, in accordance with the Department's instructions. DSHS anticipates making updates to the current CMBHS components/functionality, and Contractor shall use the updated components/functionality when directed by DSHS to do so.

All Contractors:

a) Add/Update Staff
b) Document/Maintain Credentials

c) Assign Roles
d) Provider/Location Details

Treatment Contractors:

a) Client Profile
b) Screening
c) Financial Eligibility Assessment
d) Assessment (Initial, Update, Service End, and Discharge)
e) Admission and Discharge
f) Request for Authorization
g) Service Begin
h) Treatment Plan/Treatment Plan Review
i) Detoxification Intake Report
j) Detoxification Service End Report
k) Detoxification Discharge Report
l) Detoxification Plan
m) Discharge Plan
n) Discharge Summary
o) Discharge Follow-up
p) Consent/Revoke Consent
q) Referral and Referral Follow-up
r) Referral List
s) Day Rate Attendance Record
t) Progress Note
u) Psycho-educational Note
v) Administrative Note
w) Medication Order, Medication List, and Medication Service
x) Provider Census
y) Wait List
z) Setup Residential Services
aa) Daily Capacity Report
bb) Service End
cc) Lab Results (Drug Screen)
dd) Client Payments
ee) Contracts
ff) Financial Status Report (if applicable)
gg) Invoice (if applicable)
hh) Advance (if applicable)
ii) Pending Claims
jj) Submitted Claims
kk) Services Offered
ll) Administrative Action List
mm) Client Reservations
nn) Consent Release Request List
oo) Assign/Reassign Clinician

OSAR Contractors:

a) Client Profile
b) Screening
c) Assessment (Initial, Update)
d) Referral and Referral Follow-up
e) Referral List

f) Consent/Revoke Consent
g) Daily Capacity Report
h) Financial Status Report
i) Invoices
j) Advance (if applicable)
k) Service Plan
l) Administrative Notes
m) Authorization Approval
n) Regional Provider Census
o) Wait List
p) Financial Eligibility Assessment
q) Progress Note
r) Contracts
s) Client Reservations
t) Administrative Action List
u) Measures
v) Consent Release Request List
w) Reassign Case Manager
x) Open Case
y) Close Case

HEI Contractors:

a) Client Profile
b) HEI Screening
c) Assessment (Case Management)
d) Service Plan & Service Plan Review
e) Open Case
f) Progress Note (HEI Case Management Note, Case Management Note)
g) Psycho-educational Note
h) Referral and Referral Follow-up
i) Referral List
j) Consent/Revoke Consent
k) Measures
l) Financial Status Report
m) Invoices
n) Advances (if applicable)
o) Lab Results
p) Services Offered
q) Close Case
r) Consent Release Request List
s) Reassign Case Manager

HIV Contractors:

a) Client Profile
b) Clinician's Notes
c) Referral
d) Referral Follow-up
e) Consent/Revoke Consent
f) Measures
g) Invoices

h) Advance (if applicable)
i) Financial Status Report
j) Service Offered
k) Consent Release Request List

COPSD Contractors:

a) Client Profile
b) Screening
c) Financial Eligibility Assessment
d) Assessment (Initial, Update, Service End, and Discharge)
e) Admission and Discharge
~~f)~~ Service Begin
g) Treatment Plan and Treatment Plan Reviews
h) Discharge Plan
i) Discharge Summary
j) Discharge Follow-up
k) Referral and Referral Follow-up
l) Referral List
m) Consent/Revoke Consent
n) Progress Notes
o) Psycho-educational Note
p) Administrative Note
q) Pending Claims
r) Submitted Claims
s) Service End
t) Client Payments
u) Contracts
v) Services Offered
w) Administrative Action List
x) Consent Release Request List
y) Assign/Reassign Clinician

PPI Contractors:

a) Client Profile
b) PPI Screening
c) Open Case
d) Service Plan & Service Plan Review
e) Administrative Note
f) Progress Note
g) Psycho-educational Note (if applicable)
h) Referral
i) Referral Follow-up
j) Referral List
k) Consent/Revoke Consent
l) Measures
m) Financial Status Report
n) Invoice
o) Advances (if applicable)

p) Curriculum Measures (if applicable)
q) Close Case
r) Services Offered
s) Consent Release Request List
t) Reassign Case Manager

YPU, YPS, YPI Contractors:

a) Measures
b) Financial Status Reports
c) Invoice
d) Advances (if applicable)
f) Curriculum Measures
g) Services Offered

RBI Contractors

a) Intervention Performance Measures
b) Financial Status Report
c) Invoice
d) Referral
e) Referral Follow-up
f) Client Profile
g) Demographics of Participants Receiving Prevention Education
h) Client Consent for Intervention Strategies

Other Contractors. Unless otherwise specified in this Contract, all other Contractors shall use the following additional CMBHS components/functionality:

a) Measures
b) Financial Status Report
c) Invoice
d) Advance
e) Referral
f) Referral Follow-up
f) Curriculum Measures (if applicable)

Section 23.08 **Drug Courts.** Treatment Contractors in jurisdictions with drug courts as defined by Tex. Health and Safety Code Chapter 469 will be monitored based on referral sources in the CMBHS for effectiveness of collaboration with drug courts.

Section 23.09 **Youth Services.** Youth treatment Contractors will be monitored through the CMBHS on efforts to obtain referrals of adolescents before the adolescents reach the juvenile justice system with the goal of increasing the proportion of juvenile clients not involved in the juvenile justice system.

Section 23.10 **OSAR Contractor Referrals.** OSAR Contractors will be monitored through the CMBHS on the effectiveness of outreach efforts as measured by the diversity of the sources that refer clients to each OSAR Contractor.

Section 23.11 **General Network Monitoring.** The Department and Contractor shall participate in network monitoring of their respective networks.

Section 23.12 **Contractor Network Responsibilities.** Contractor's network monitoring must include troubleshooting or assistance with Contractor-owned Wide Area Networks (WANs), Local Area Networks

(LANs), router switches, network hubs or other equipment and Contractor's Internet Service Provider (ISP). Contractor shall maintain responsibility for local server/network hardware. Contractor shall communicate and enforce network security policies and procedures to end-users and be responsible for data backup, restore, and contingency planning functions for all local data. Contractor shall -

a) create, delete, and modify end-user LAN-based accounts;
b) change/reset user local passwords as necessary;
c) administer security adds/changes and deletes for the CMBHS;
d) install, maintain, monitor, and support Contractor LANs and WANs; and
e) select, purchase service from, and monitor performance of ISP.

Section 23.13 **Customer Support and Training.** The Department will provide support for the CMBHS, including problem tracking and problem resolution. The Department will provide telephone numbers for Contractors to obtain access to expert assistance for CMBHS-related problem resolution. The Department will provide initial CMBHS training. Contractor shall provide subsequent ongoing end-user training.

ARTICLE XXIV MISCELLANEOUS FINANCIAL REQUIREMENTS FOR SUBSTANCE ABUSE CONTRACTS

Section 24.01 **Match and Program Income.** Unless waived in writing by the Department or unless the Program Attachment specifically states otherwise, Contractor shall contribute as match an amount equal to at least the percentage stated in the Program Attachment. Contractor shall report match on each Financial Status Report or as directed by DSHS. If the match ratio requirement is not met by the beginning of the last three months of the term of the Program Attachment, DSHS may withhold or reduce payments to satisfy match insufficiency or demand a refund of the amount of the match insufficiency. In accordance with Section 3.05 of these General Provisions (Program Income), Contractor shall report program income. Contractor shall not use program income as match without prior approval of the contract manager assigned to the Program Attachment.

Section 24.02 **Administrative Discharge.** The Department may administratively discharge any active treatment client for which fifty (50) calendar days have elapsed since the last billing end date for the client.

Section 24.03 **Billing for Treatment and Payment Restrictions.** Treatment Contractors shall bill for treatment services pursuant to Rules governing billing for treatment services. Treatment Contractors may bill for only one intensity of service and service type (either outpatient or residential) per client per day, and a treatment Contractor shall not bill for an intensity of service and service type if another DSHS-funded treatment contractor is providing and billing DSHS for another intensity of service and service type; except that Contractor may provide and bill the Department for pharmacotherapy or co-occurring psychiatric and substance use disorder services, or ambulatory detoxification for a client at the same time Contractor or another DSHS-funded contractor provides and bills the Department for outpatient or residential services. If two contractors provide services to the same client under this exception, the contractors must coordinate services and both contractors must document the service coordination.

Section 24.04 **Financial Status Reports for Substance Abuse Contracts.** For contracts with categorical budgets, Contractor shall submit quarterly FSRs through the CMBHS by the [last working day of the month following the quarter being reported for Department review and financial assessment. All other requirements of the Financial Status Reports section of these General Provisions apply.

Section 24.05 **NorthSTAR.** If Contractor is also a NorthSTAR-contracted provider, Contractor shall bill only NorthSTAR for any covered services delivered to NorthSTAR-eligible individuals, subject to its NorthSTAR contract and NorthSTAR provider manual. All Contractors that are not NorthSTAR-contracted providers shall

refer all NorthSTAR financially eligible individuals to the NorthSTAR Behavioral Health Organization (BHO) at (888) 800-6799 or an appropriate NorthSTAR-contracted provider. Contractors may obtain information on NorthSTAR at http://www.dshs.state.tx.us/mhsa/northstar/northstar.shtm. For emergency services needed by NorthSTAR-eligible clients outside of the NorthSTAR service area, Contractors shall facilitate referral to an appropriate emergency care provider. If the client is eligible or enrolled in NorthSTAR, the emergency care provider must be instructed by Contractor to notify the NorthSTAR BHO within twenty-four (24) hours of admission, as a condition of reimbursement from the NorthSTAR BHO.

Section 24.06 **Moving Funds Between Program Attachments.** Contractor shall not expend funds from one Program Attachment to provide and bill DSHS for services in another Program Attachment without DSHS approval and a written contract amendment.

Section 24.07 **Contract Reconciliation.** If Contractor is required to annually reconcile multi-year contracts, Contractor, within sixty (60) calendar days after the end of each year of this Contract, shall submit to the contract manager assigned to the Program Attachment all financial and reconciliation reports required by Department in forms as determined by Department.

Section 24.08 **Interpreter Services for Hearing Impaired Persons.** When interpreter services for a hearing impaired person are needed, Contractor shall notify the contact manager assigned to the Program Attachment prior to submitting the Request for Interpreter Services Form (Form). Contractor shall follow the instructions for completing the Form when making a request for interpreter services. Contractor shall request interpreter services for actual hours, days, and times necessary for effective communication only during delivery of client services. To avoid incurring unnecessary interpreter fees and expenses, Contractor shall notify the interpreter services contractor immediately if interpreting services will not be needed due to appointment cancellation or otherwise. Failure to provide notification to the interpreter services contractor that interpreter services will not be needed less than 48 hours before the scheduled interpreter services session will result in costs to DSHS for billings by the interpreter services contractor for the unused services, travel expenses, etc. Contractor may be required to submit to DSHS a percentage of the costs incurred by DSHS if the Contractor failed to immediately notify the interpreter services contractor that the client's appointment had been cancelled or because Contractor failed to cancel interpreter services that could reasonably be expected to be unnecessary; for example, Contractor scheduled multiple interpreter sessions, but when the client failed to keep the initial appointment, Contractor did not cancel the multiple interpreter sessions.

ATTACHMENT III

BUDGET
San Antonio Council on Alcohol and Drug Abuse and SA-TPCC Collaboration
Contract Period: September 1, 2012 - August 31, 2013

Description	Unit Cost	Quantity	Item Total
PERSONNEL			**$ 70183.00**
Moore, Abigail - Executive Director This position is responsible for overall administration of the project, budgeting, design, implementation, strategic planning, media awareness, community relations, capacity building, overall compliance, training and supervision of the Metro project staff.	Salary: $11,700 (18% FTE) Fringe: 23% of salary cost = $ $ 2,691. Fringe includes: FICA, Medicare, State unemployment taxes, Worker's Comp insurance, Health, Dental and Life insurance, Retirement plan		$ 14391.00
Velazquez, Maria - Tobacco Prev. Spec. This position is responsible for conducting all activities that contribute to meeting the objectives of this project. This includes disseminating information and outreach materials and contacts for Bexar county, doing prevention presentations for adults and youth. Assure involvement and outreach to school organizations such as PTA, School Health Advisory Councils, etc.	Salary: $8,000 (50% FTE) Fringe: 10% of salary cost = $800 Fringe includes: FICA, Medicare, State unemployment taxes, Worker's Comp insurance, Health, Dental and Life insurance, Retirement plan		$ 8800.00
Youth Coalition Staff: Gyna Juarez-HYPE; Youth Coalition Coordinator , Vicky Adams, Victor Lucero, and Grace Stafford, and Briggs Rescke. Lead/train youth in counter-marketing activities, media literacy, Store Alert projects, and school district based law enforcement activities. Assure Coalition representation with Teen Ambassador and other advisory boards. Link Youth Coalition to the DSHS branded "Say What!" youth movement in collaboration with Texas State University, Texas School Safety Center (TxSSC).	Salary: $ 46,992.00 Salary and Fringe vary by staff person		$ 46,992.00
TRAVEL - LOCAL *			**$ $1,000.00**
Local mileage to attend coalition meetings and perform activities, 330 miles per month for 10 months (3300 miles)	$0.555/mile	1818 miles	$ 1000.00

TRAVEL - OUTSIDE SAN ANTONIO *			**$ 8415.04**
Youth attendance at the 2013 Teen Tobacco-Free Leadership Summit (date locations TBA) Registration: $ 0 Transportation: $275 for group ($22.92 ea) Lodging: cost included in registration fee Local Transport: n/a Per Diem: $36/person	$$ 58.92.00/person	10 people	$ $ 589.20
Adult sponsors at the 2013 Teen Tobacco-Free Leadership Summit (date locations TBA) Registration: $ 0 /person Transportation: incl. in youth transp. cost Lodging: cost included in registration fee Local Transport: n/a Per Diem: $36/person	$$ 58.92/person	2 people	$ 117.84
SACADA staff attendance at the 2013 the DSHS branded "Say What!" youth movement in collaboration with Texas State University, Texas School Safety Center (TxSSC). Registration: $400/person (incl meals/lodging) Transportation: incl. in youth transp. cost Lodging: cost included in registration fee Local Transport: n/a Per Diem: $36/person during transport	$503.00/person	2 persons	$ 1006.00
Youth attendance at the 2013 the DSHS branded "Say What!" youth movement in collaboration with Texas State University, Texas School Safety Center (TxSSC). Registration: $400/person (incl meals/lodging) Transportation: $800.00 for group ($67.00 ea) Lodging: cost included in registration fee Local Transport: n/a Per Diem: $36/person during transport	$503./person	10 people	$ 5,030.00
Send Youth Coalition Coordinator and required staff to 2 Coalition Contractor meetings in Austin during FY 2013 to learn Youth Engagement Initiative strategies Mileage: 185 miles @ .555 x 2 meetings= $ 206 Lodging: $97.50/ with Tax night x 2 nights x 2 meetings $390.00.00 Per Diem: $120 x 2 meetings= 240	$ 836.00 / person	2 people	$ 1672.00
OTHER OPERATING & WORK PLAN COSTS			**$ 23901.96**
Supplies for Tobacco Free Kids day events: banners, materials for alternative activities, bouncers	$500/site	10 sites	$ 5,000
Printing of brochures, $0.33 each x 3603			$ 1189.00

Materials for Red Ribbon activities: Support bus charter/rental to Red Ribbon event, $250 ea x 30 buses = $ 7,500.00; Adult & Youth promotional items: $2 ea x 722 items = $1444; T-shirts: $6 ea x 62 = $ 370.00;			$ 9,314.00
Youth Coalition activities: youth mini conference, youth media training activities, coalition building supplies Curriculum Delivery Support: Stipends and supplies			$ 5110.94 $ 3288.00
Indirect Cost: Admin salaries, fringe, and costs incurred to support the objectives of the grant programs.			**$12,000.00**
SUBTOTAL DIRECT COSTS			**$ 115,500.00**
TOTAL COSTS			**$ 115,500.00**

* Note: Mileage reimbursement rate is dependent on federal and state rate changes.

In-kind match required: 20% of total budget = $ 22,000.00

IN-KIND BUDGET

San Antonio Council on Alcohol and Drug Abuse and SA-TPCC Collaboration
Contract Period: September 1, 2012 - August 31, 2013

Description	Unit Cost	Quantity	Item Total
IN-KIND: PERSONNEL			**$ -**
none			
IN-KIND: TRAVEL - LOCAL			**$ -**
none			
IN-KIND: TRAVEL - OUTSIDE SAN ANTONIO			**$ -**
none			
IN-KIND: OTHER OPERATING & WORK PLAN COSTS			**$ 22,000.00**
Services for Red Ribbon concert tobacco activities: lighting, sound, volunteer labor			$ 5,500.00
Tobacco Free Kids Day events: $200 per site x 10 sites			$ 1,000.00
Volunteer labor for Tobacco Free Kids Day events: $10/hour labor value x 18 hrs/person x 6 volunteers per site x 10 sites			$ 7,500.00
Coalition membership volunteer hours: $10/hour labor value x 610 hours collectively			$ 9,100.00
TOTAL IN-KIND COSTS			**$ 23,100.00**

Note: Office space may only be counted if leased, not owned.

Total budget request =	**$ 115,500.00**	
Required 20% in-kind match =	**$ 23,100.00**	
Proposed match (amount/percentage) =	**$ 23,100.00**	**20.00%**

ATTACHMENT IV

PROGRAM ATTACHMENT - TCC – PAGE 1
CONTRACT NO.2012-039693
PROGRAM ATTACHMENT NO. 001
PURCHASE ORDER NO. 0000377955
CONTRACTOR: CITY OF SAN ANTONIO
DSHS PROGRAM: Tobacco Community Coalition (SA/TCC) Tobacco Community Coalition (SA/TCC)
TERM: 09/01/2011 THRU: 08/31/2012
SECTION I. STATEMENT OF WORK
A. PURPOSE:

The Tobacco Prevention and Control Coalitions (TPCC) prevent and reduce the illegal and harmful use of tobacco products in communities across Texas (with a particular emphasis on reduction in youth use) by promoting and conducting community-based and environmental universal prevention strategies that have an impact on the social, cultural, political, and economic processes of the community. Coalitions broaden support for projects and increase credibility, provide volunteers for activities, and maximize the power of participating groups through joint action. Coalitions are especially important when engaging in broad community actions to change public policy. The Centers for Disease Control and Prevention (CDC) document, *Best Practices for Comprehensive Tobacco Control Program,* October 2007, specified that the community coalition programs include activities that increase the number of organizations and individuals involved in planning education and training programs, use State and local counter-marketing campaigns to place pro-health messages on tobacco control, promote the adoption of public and private tobacco control policies, and monitor program implementation.
The Contractor shall provide a 25% match (in-kind or monetary) for programmatic activities such as local media, administration or operating costs. The Contractor shall serve as a member of, and manage, the Tobacco Prevention and Control Coalition (Coalition) and shall ensure that the Coalition implements the activities funded under this Program Attachment. The Coalition will implement steps of the Strategic Prevention Framework (SPF) in the targeted county by convening a County Epidemiological/Evaluation Workgroup (CEW) to develop a County Epidemiological Report, mobilizing the Coalition, developing a strategic plan and implementing evidence-based strategies and evaluating activities that are designed to address tobacco use and tobacco-related health consequences.
The Contractor shall ensure that the Coalition conducts activities in Section III. Program Service Area of this Program Attachment that meets the following goals:
Goal 1: Prevent tobacco use among young people
Goal 2: Promote compliance and support adequate enforcement of federal, state and local tobacco laws
Goal 3: Increase cessation among young people and adults
Goal 4: Eliminate exposure to secondhand smoke
Goal 5: Reduce tobacco use among populations with the highest burden of tobacco-related health disparities
Goal 6: Develop and maintain statewide capacity for comprehensive tobacco prevention and control
B. SERVICE REQUIREMENTS:
The Contractor shall ensure that the Coalition conducts the following activities:
1. Contractor shall submit all documents identified below to the Substance Abuse mailbox (SA mailbox) at SubstanceAbuse.Contracts@dshs.state.tx.us by the required due dates.
2. Conduct an annual needs assessment that determines the tobacco use and related health consequences and tobacco-related health disparities within the targeted community in Section III, Program Service Area stated

below. Conduct a community resource assessment that identifies existing strengths and assets of community tobacco prevention and control and substance abuse prevention programs and other services in the targeted

community in Section III, Program Service Area stated below. Convene a CEW to conduct the needs and resource assessment and prepare a County Epidemiological Assessment Report. The County Epidemiological Assessment Report is due to DSHS on June 15, 2012.
3. Hire a professional evaluator for evaluation of the Coalition's processes and outcomes and lead the CEW processes. Seven to ten percent (7% to 10%) of the contract amount shall be allocated to the local evaluation. The Contractor shall ensure that the DSHS evaluation deliverables are met.
4. Coordinate with DSHS surveillance contractors to enhance the implementation of statewide [Behavioral Risk Factor Surveillance System (BRFSS), and Youth Tobacco Survey (YTS)] youth and adult surveys in the target community. The Contractor shall contact all school districts in target community to promote the implementation of the YTS.
5. Conduct tobacco prevention mobilization strategies to include key tasks that may include, but are not limited to, convening meetings of community leaders and stakeholders; building coalitions by entering into written community agreements concerning cooperative efforts for preventing and reducing tobacco use; training community stakeholders, coalitions and service providers; organizing agency networks; leveraging resources; and engaging stakeholders to help sustain the activities.
6. Ensure that multiple sectors of the community are involved to enhance community efforts to promote and deliver comprehensive effective tobacco prevention and control activities. a. Involve and assist community groups that are representative of the ethnic, geographic, and socio-economic diversity in the target community.
b. Involve and assist community groups that are at high-risk for tobacco-related health disparities.
c. Involve youth in planning and implementation of Coalition comprehensive tobacco prevention and control activities.
d. Involve local institutions of higher learning, junior colleges, and trade schools for planning and implementation of Coalition comprehensive tobacco prevention and control activities. Provide DSHS College Tobacco Survey data to local institutions.
e. Involve local law enforcement, Education Service Centers (ESCSs), Prevention Resource Centers (PRCs), community substance abuse prevention, intervention, and treatment providers, local school districts, civic/volunteer organizations, faith-based groups, businesses, and local media for planning and implementation of Coalition comprehensive tobacco prevention and control activities. 7. Develop and implement a culturally appropriate strategic plan that outlines and details a plan for the comprehensive community-based tobacco prevention and control activities, including evidence-based prevention, enforcement, cessation, tobacco-related health disparities and secondhand smoke strategies. The strategic plan shall include a sustainability plan for the Coalition. The strategic plan shall address all goal areas of the DSHS Tobacco Prevention and Control Program 2008 – 2013 strategic plan. The strategic plan is due to DSHS on August 15, 2012.
8. Develop measurable project goals and objectives for the strategic plan that are directly related to the target community in Section III, Program Service Area stated below, that impact those goals and are designed to prevent and reduce the prevalence and incidence of the use of tobacco products and related consequences.
9. Select and implement culturally appropriate tobacco prevention and control strategies including environmental policies, programs, and/or practices and direct service activities that are proven to be effective in research settings and communities for each of the goal areas.

a. Implementation strategies shall primarily be logically linked to high-risk target populations identified in the needs assessment.

b. Environmental strategies shall be linked to CDCs MAPPS strategies. a. **Media**
b. **Access**
c. **Point** of Purchase/Promotion
d. **Price**
e. Social Support and Servicesc. Implement sustainability plan and cultural competency plan strategies reported to DSHS in FY2011. 10. Convene local high school age youth groups to engage youth in changing social norms, and exposing pro-tobacco influences following CDC's Best Practices for Comprehensive Tobacco Control Programs User Guide, Youth Engagement, State and Community Interventions Category.

a. All school districts in the Coalition's target county (s) must be contacted for participation in the youth engagement initiative.
b. Youth groups shall be linked to the DSHS branded "Say What!" youth movement in collaboration with Texas State University, Texas School Safety Center (TxSSC).
c. Youth interventions shall include counter-marketing and media advocacy and be linked to the DSHS statewide media campaign messages. 1) Provide media literacy for involved youth.
2) Conduct public awareness activities such as press releases, local events, and health promotion activities.

3) Youth interventions shall focus on social norm change for the environment rather than the individual.
11. Youth interventions shall involve youth in local policy work at the school and/or community level to:
a. Educate local school boards and School Health Advisory Committees regarding tobacco-free laws and policies.
b. Collaborate with local law enforcement and school-based police to restrict minors' access to tobacco products.
c. Conduct monthly Store Alert Project activities and reporting. Report Store Alert Report Card findings to DSHS quarterly.

12. Ensure Coalition is represented by a Teen Ambassador(s) on the Youth Advisory Board, Texas Teen Ambassadors.
13. The Contractor shall make travel arrangements for, register, and send youth participants and sponsors (2 adults and 10 youth) to one regional Tobacco-Free Teen Leadership Summit sponsored by the TxSSC. The Contractor shall pay for the participants' travel expenses to attend the Tobacco-Free Teen Leadership Summit.
14. The Contractor shall make travel arrangements for, register, and send youth participants and sponsors (2 adults and 10 youth) to the state "Say What!" Teen Tobacco Summit sponsored by the TxSSC in the summer of 2012. The Contractor shall pay for the participants' travel expenses to attend the "Say What!" Teen Tobacco Summit.
15. Conduct local activities to educate the public on the benefits of remaining tobacco-free during Texas Tobacco-Free Kids Day, World No Tobacco Day, and Great American Smokeout.
a. Coordinate Tobacco Free Kids Day promotion and activities with statewide events sponsored by TxSSC.
b. Report all Tobacco Free Kids Day activities conducted by the Coalition to TxSSC. 16. Conduct local media activities (i.e. radio, television, cable, billboards, newspaper, promotional items or merchandise) that raise awareness of the Coalition and reinforce the DSHS statewide media campaign messages. (The Contractor shall not conduct individual media campaigns). A minimum of 15% of the Program Attachment shall be spent on local media activities. Report local media activities to DSHS quarterly. Reports are due the 15th following the quarter being reported.

C. TRAINING:

The Contractor shall make travel arrangement for, and send a minimum of one (1) Coalition member and 2 Coalition staff members to two TPCC Contractor meetings in Austin to be held in Fall 2011 and Spring 2012. The Contractor shall pay for the participants' travel expenses to Austin.

The Contractor shall make travel arrangements for, and send a minimum of one (1) Coalition youth coordinator to the two Coalition Contractor meetings in Austin to receive training in Youth Engagement Initiative strategies. The Contractor shall pay for the participants' travel expenses to Austin. Coalition youth coordinator must complete training in Youth Engagement Initiative strategies by August 31, 2012.

The Contractor shall ensure that the Coalition's youth coordinator staff participates in two (2) online Youth Engagement Initiative training workshops offered by the TxSSC. Coalition's youth coordinator staff participation in online Youth Engagement Initiative training workshops must be completed by August 31, 2012.

The Contractor shall ensure that the Coalition staff and community stakeholders participate in four (4) SPF trainings (One sustainability training is required) provided by the DSHS prevention training contractor. The Coalition shall also ensure that Coalition staff receive technical assistance in local application of the SPF process. Coalition staff and community stakeholder participation in SPF trainings must be completed by August 31, 2012.

The Contractor shall ensure that the Coalition evaluator participate in the quarterly evaluation team training provided by the state. Coalition evaluator's participation in quarterly evaluation team training must be completed by August 31, 2012.

D. OTHER REQUIREMENTS:

Contractor shall comply with the following:

- Education Code, §38.006;
- Government Code, §403.105; §§556.0055, §§ 556.006;
- Health & Safety Code, §12.011, 161.081-161.0901, 161.251-161.257,161.301-302; and
- Penal Code, §§48.01-48.015

E. REPORTING REQUIREMENTS:

Contractor's duty to submit documents survives the termination or expiration of this Program Attachment. **Report Name**	**Due Date**
Financial Status Report (FSR)	Due last business day of the month following the end of each quarter of the Program Attachment term. * *Final Financial Status Report (FSR) due within 60 days after Program Attachment end date*
Performance Measures	15th of the month following the month being reported
CMBHS Security Attestation Form	September 15, 2011 & March 15, 2012
Closeout documents	Annual Reports due 60 days after Program Attachment end date.
County Epidemiological Assessment Report	June 15, 2012
Strategic Plan	August 15, 2012
Local Media Activities	December 15, 2011, March 15, 2012, June 15, 2012, September 15, 2012

Valerie G Vela

From: City Manager
Sent: Tuesday, January 17, 2012 8:19 AM
To: Caroline Rush
Subject: FW: Open Records Center Update:: W004705-120611
Follow Up Flag: Follow up
Flag Status: Red

Good morning Caroline!

Here is an ORR.

Thanks,

Carmen

Carmen White, MPA
Management Intern
City Manager's Office
City of San Antonio
P: 210-207-3940
E: carmen.white@sanantonio.gov

From: Kelly Walls [mailto:bluestari@aol.com]
Sent: Sunday, January 15, 2012 2:35 PM
To: Joe Angelo; Erik Walsh; City Manager; Sheryl Sculley; Pat DiGiovanni; Mayor Julian Castro; Mayor Julian Castro; Council District 1; Council District 2; Council District 3; Council District 4; Council District 5; Council District 6; Council District 7; Council District 8; Council District 9; Council District 10; Jan Suche-Nevitt; Vincent Davis; Vincent Medley; Gary Hendel; Jeanne Saadi; Jeanne Martinez; Elizabeth Kalmykov; Ellen Jefferson; Ellen Lockwood; Renee Nank; Anne Baumgartner; Barbara Martino; Carol Raymond; Rosie Garza; Janice MacRossin; Jessie Degollado; ACSAB Mona Thaxton
Cc: John Bachman; Jo Ellen Cockroft; Amanda Evrard; RodBowles; Emily Tidwell; RhondaGueringer; Renee Fenn; Hillarie Michaelson; Jim and Peanie Smith; Deanna Lee; AAPAW@yahoogroups.com; Rachel Battaglia; Debra I; Robyn Katz; Lourdes Campos; Shanna Reyes; Gavin Nichols; ACSAB Rita Brautigam; ACSAB Bill White; ACSAB John Bellet; Charles Pruski; David D Garza; ACSAB Randy Murdock; Sallie Scott; Greg Harman; Katie Boggs; Joe Conger; Tracy Voss; Krista Best; La Trenda; Marilyn Litt
Subject: Re: Open Records Center Update:: W004705-120611

Joe,

All I can say is that you are an ass. A response such as yours is a matter of public record. You are showing your true colors.

Your remark is typical of an individual who thinks he is above the law - as most of ACS management thinks they are.

Comments such as the one you made below will do wonders to boost your sincerity quota next time you decide to run for public office.

This is an ORR for all records which indicate you are in compliance with Section 829 of the Texas Health and Safety Code.

Kelly

On Jan 15, 2012, at 1:20 PM, Joe Angelo <Joe.Angelo@sanantonio.gov> wrote:

> Trembling.
>
> Sent from my iPad
>
> On Jan 15, 2012, at 12:31 PM, "John Bachman" <jabachman@earthlink.net> wrote:
>
> > Kelly let me know if they actually file the ORR and you get confirmation. He will probably ignore it. If not request through the official channel or tell me and I will. once you get them or get to review them let me know if you need help. I have a few still in on citations and information on Honey and Marley. I or deanna are going to get records on bite cases and dangerous dog determinations. It is obvious from the figures in the kens 5 article in Nov and the statistics they are killing most of the animals accused of being dangereous. Hundreds per month.
> >
> > He will probably start watching what he writes in emails now.
> >
> > -----Original Message-----

From: Kelly Walls <bluestari@aol.com>

Sent: Jan 14, 2012 5:08 PM

To: Joe Angelo <Joe.Angelo@sanantonio.gov>

Cc: Jo Ellen Cockroft <sagreatdane@aol.com>, John Bachman <jabachman@earthlink.net>, Amanda Evrard <amanda.evrard@gmail.com>, RodBowles <rodbowles1@gmail.com>, Emily Tidwell <emmytsa@yahoo.com>, RhondaGueringer <rhondagueringer@yahoo.com>, Renee Fenn <reneefenn2002@yahoo.com>, Hillarie Michaelson <hill.michaelson@gmail.com>, Jim and Peanie Smith <force5_sailor@sbcglobal.net>

Subject: Re: Open Records Center Update:: W004705-120611

ACS is not ethical, Joe..ACS is not ethical

For the sake of argument, if your 60% is true, 40% murdered by ACS, Joe...40% murdered by ACS

I am about to bust you for probably over 1,000 criminal violations and you still ignore the illegal activity.

Let's go ahead and request all emails sent/received by/to you for the period of September 1, 2011 to January 14, 2012.

Any other ACS criminal or unconstitutional issues you feel need to whitewash over?

On Jan 14, 2012, at 4:37 PM, Joe Angelo <Joe.Angelo@sanantonio.gov> wrote:

> 60% Kelly....60%.....
>
> Sent from my iPad
>
> On Jan 14, 2012, at 4:09 PM, "Kelly Walls" <bluestari@aol.com> wrote:
>
>> Joe,
>>
>> If ACS didn't have such a lousy record for manipulating numbers, we may have cause to really rejoice. ACS constantly manipulates the asilomar numbers. So I doubt this number is true.
>>
>> To support my statement, I hereby request all the records of all animals ACS had during this period of almost 60% live release. If I don't find any manipulation of the numbers, I will publicly apologize to you.
>>
>> Also provide all the records for each animal adopted out by ACS for the month of November and December as well as the records of those animals returned to ACS through today.
>>
>> I can guarantee your returns will affect your "benchmark" status.
>>
>> Really too early for you to claim benchmark status. One month not a benchmark makes. When you sustain this number for 12 consecutive months, then you can use the term benchmark.
>>
>> Regardless, your response is typical of ignoring ACS' illegal and unethical activities.
>>
>> I will be be excited when ACS has ethical leadership.
>>
>> Kelly
>>
>> Sent from my skeptical iPhone
>>
>> On Jan 14, 2012, at 2:53 PM, Joe Angelo <Joe.Angelo@sanantonio.gov> wrote:
>>
>>> Almost 60% live release - isn't that WONDERFUL!!!

We are all VERY excited about these AMAZING results!!! And we know you are as well.

Sent from my iPad

On Jan 14, 2012, at 2:48 PM, "Kelly Walls" <bluestari@aol.com<mailto:bluestari@aol.com>> wrote:

It seems as if the new "benchmark" for live release is breaking state law.

Joe, let's see how many criminal offenses ACS has committed.

Please provide copies of all sterilization agreements between ACS and every group, shelter, or individual to whom ACS has released an animal since January 1, 2009 to January 14, 2011.

Also provide documentation from the vet that the dogs she did not spay/neuter were too small for surgery. State law requires she provides this information to ACS.

Thank you.

Kelly

Begin forwarded message:

From: "Joellen Cockroft" <<mailto:JCockroft@ImagineHomesSA.com>JCockroft@ImagineHomesSA.com<mailto:JCockroft@ImagineHomesSA.com>>

Date: January 5, 2012 12:37:14 PM CST

To: "City of San Antonio - Open Government" <<mailto:SanAntonioTX@mycusthelp.com>SanAntonioTX@mycusthelp.com<mailto:SanAntonioTX@mycusthelp.com>>, "Lisa A. Norwood" <<mailto:Lisa.Norwood@sanantonio.gov>Lisa.Norwood@sanantonio.gov<mailto:Lisa.Norwood@sanantonio.gov>>

Cc: "Joe Angelo" <<mailto:Joe.Angelo@sanantonio.gov>Joe.Angelo@sanantonio.gov<mailto:Joe.Angelo@sanantonio.gov>>

Subject: RE: Open Records Center Update:. W004705-120611

Really?? 4 months is too young to sterilize and according to the intake dates on 187825,187828,187829 they would now be 7 months old! According to her recent response to the adopters of A189742 – ACS was doing all sterilizations for her group.

Please do additional ORR's on the current medical status and ownership of

A187825

A187828

A187829

A184151

I would think she knows where she took A184151 to be neutered – so this should be very easy to reproduce or call the vet to confirm. I am sure this is something she is capable of doing – unless he never made it to the vet to be neutered. Then simple communication to his adopter can confirm this.

So as it stands -- ACS has release 5 dogs to a rescue group that have been adopted out to the general public that are unsterilized. Hopefully you will not be releasing any other unsterilized animals to her until she can provide proof that they have been spayed / neutered according to state mandate Chapter 828,Healh and Safety Code. This is extremely counterproductive and negligent of ACS.....

Thank you,

Jo Ellen

Attachment III

Attachment III

PROFESSIONAL SERVICES AGREEMENT FOR THE SAN ANTONIO TOBACCO PREVENTION AND CONTROL COALITION WITH TEXANS STANDING TALL

STATE OF TEXAS	§	**CITY OF SAN ANTONIO**
	§	
COUNTY OF BEXAR	§	**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), on behalf of the San Antonio Metropolitan Health District (hereinafter referred to as "Metro Health"); acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on February 2, 2012 and Texans Standing Tall (TST) by and through its Executive Director, Nicole Holt or her successor, 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.

"TST" is defined in the preamble of this Agreement and has an address of "2211 S. IH 35, Ste 201, Austin, Texas 78704 with an Employer Identification Number of 20-0793087 and includes its successors.

"TDSHS" shall be defined as the Texas Department of State Health Services, the agency that funds, oversees the statewide grant, tobacco prevention and control programming, and evaluation efforts.

"SA-TPCC" shall be defined as the San Antonio Tobacco Prevention and Control Coalition Program.

"TPCC Grant" shall be defined as the TDSHS Tobacco Program Community Coalitions Grant Contract which is the funding source for this contract.

"Tobacco Program staff" shall be defined as those persons hired by Metro Health for the purpose of day-to-day program oversight with funding from the Texas Department of State Health Services.

"SAO," shall be defined as the Texas State Auditor's Office.

"OIG," shall be defined as the Office of the Inspector General.

"CGUS," shall be defined as the Comptroller General of the United States.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 1, 2012 and terminate on August 31, 2013.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

2.3 City will have the option to renew and extend the term of this Agreement once for a term of one year, subject to acceptance by TST. The renewal or extension will be evidenced by passage of a subsequent City ordinance.

2.4 TST further agrees and understands that the City expects to pay all obligations of this Agreement from the TPCC Grant. Accordingly, if TPCC Grant funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor TST will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

III. SCOPE OF SERVICES

3.1 TST agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 TST agrees to perform the following specific services:

3.2.1 Select and hire a Coalition Coordinator and a Health Educator as its employees, based on criteria established in coordination and consultation with Metro Health and Tobacco Program Staff, for SA-TPCC within 60 days following execution of this Agreement;

3.2.2 Supervise the Coalition Coordinator's and Health Educator's activities, with an opportunity for input and feedback from Metro Health and Tobacco Program Staff regarding performance;

3.2.3 Oversee and facilitate the activities of the coalition in accordance with the TPCC Grant;

3.2.4 Contribute to performance of grant performance measures as directed by TST based on agreement with Metro Health and Tobacco Program Staff;

3.2.5 Schedule and conduct tobacco education, prevention, and cessation presentations;

3.2.6 Secure written community agreements for SA-TPCC – both renewed and new – to meet grant requirements, and provide regular updates regarding status of agreements to Metro Health;

3.2.7 Provide additional technical assistance to SA-TPCC and Tobacco Program Staff through at least four training sessions regarding the Strategic Prevention Framework, coalition development, sustainability and/or other subjects as mutually agreed upon by TST and Tobacco Program Staff to satisfy TDSHS requirements and Coalition needs;

3.2.8 Ensure coalition advancement and/or participation in implementation of environmental strategies;

3.2.9 Keep records, utilizing sign-in sheets or other industry-standard methods, for numbers of youth and adults receiving training, information or attending presentations ;

3.2.10 Outreach to the media in collaboration with Tobacco Program Staff for the purposes of enhancing the SA-TPCC Coalition population based targeting efforts ;

3.2.11 Participate in and/or conduct media awareness activities for the purposes of enhancing SA-TPCC efforts in collaboration with Tobacco Program Staff ;

3.2.12 Support and/or participate in coordination of tobacco use prevention observation days (Great American Smoke Out, Tobacco Free Kids Day, World No Tobacco Day, and others if selected) for the purposes of maximizing the SA-TPCC Coalition's community efforts ;

3.2.13 Coordinate regularly scheduled SA-TPCC coalition meetings and support or enable working groups (sub-committees) as appropriate to enhance the efforts of the coalition ;

3.2.14 Provide reports to City consistent with requirements for TPCC Grant reporting systems;

3.2.15 Provide information and documentation to City as needed for the purposes of grant reporting to TDSHS on the project.

3.3 The Coalition Coordinator will coordinate all activities with approval from TST's Management and Tobacco Program staff. Following execution of this agreement, the Parties shall consult with each other by no later than September 15, 2012, to establish specific duties and timelines of acceptable services and activities for the Coalition Coordinator and the health educator as listed above in 3.2 to be used as criteria for performance of this scope of services by TST. Upon completion of this timeline, the Parties stipulate it shall become part of this Agreement. Additionally, TST agrees to be fully subject to applicable subcontractor provisions as outlined in the FY13 Department of State Health Services Contract General Provisions for Substance Abuse Contracts included at all times affixed hereto and incorporated herein for all purposes as Attachment II.

3.4 All work performed by TST hereunder shall be performed to the satisfaction of the Director or his designee, whose approval shall not be unreasonably withheld. 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 TST, 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 TST'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, subject to Sec. 7.4.

3.5 TST shall comply with the guidelines regarding the use of the SA-TPCC, Metro Health and City names and logos as provided by City and Tobacco Program Staff, and will also comply with branding and identity guidelines determined for the SA-TPCC.

3.6 TST will submit detailed monthly activity reports to the Tobacco Program Manager or her designate for the purposes of program evaluation and reporting. TST will supply the reports in the format requested by the Tobacco Program Manager or her designee by the 5th business day of each month to report performance for the preceding month unless otherwise negotiated with or determined

by Tobacco Program staff. In addition, TST will provide any other progress reports or summaries requested by the SA-TPCC as needed.

3.7 The Coalition Coordinator and health educator retained by TST will attend and participate in any TDSHS technical assistance training sessions or statewide coalition meetings as directed by TDSHS. Costs to attend and participate in these meetings shall be covered by the compensation provided to TST by this contract.

3.8 Metro Health agrees to provide work space, computer, phone, email and internet services for the Coalition Coordinator and health educator. Additionally, Metro Health agrees to provide copier access, office supplies and other appropriate working materials. The Coalition Coordinator and health educator shall observe the City's Administrative Directives concerning communications, e-mail and internet usage while located within City property and using City equipment.

3.9 TST acknowledges and agrees that any and all of the employees of TST, wherever located, while engaged in the performance of any work required under this Agreement shall be considered employees of TST only, and not of the City or Metro Health, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of TST.

IV. COMPENSATION TO TST

4.1 In consideration of TST's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay TST an amount not to exceed one hundred forty seven thousand and no/100ths dollars ($147,000.00).

4.2 No additional fees or expenses of TST shall be charged by TST nor be payable by City. The parties hereby agree that all compensable expenses of TST have been provided for in the total payment to TST as specified in section 4.1 above. Total payments to TST cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City, which approval shall not be unreasonably withheld. The approval official shall be the Director or his designee. Payment will be made to TST following written approval of the final work products and services by Director or his designee. City shall not be obligated or liable under this Agreement to any party, other than TST, for the payment of any monies or the provision of any goods or services.

4.4 TST agrees to submit invoices to the City each month associated with this Agreement. Payments will be made monthly to TST in twelve equal installments of $12,250.00 upon receipt of billing invoices and documentation from TST. Invoices will be due on a monthly basis five (5) business days after the end of each monthly reporting period.

4.4.1 With every invoice submitted, TST shall attach a brief monthly narrative describing in detail the activities of the Coalition Coordinator and Health Educator in relation to the SA-TPCC:

A. The name and physical location of where TST's activities take place as a result of City funding,

B. Activities that TST's staff or representatives are performing in those locations,

C. The names of any Tobacco Program Staff, Metro Health Staff, interns, volunteers or other entities directly involved in these activities,

D. Provide copies of sign in sheets and/or agendas of any and all meetings or presentations associated with this funding,

E. Attach anything else TST or City believes will be helpful in documenting reimbursed activities, such as photographs, brochures, etc.

4.4.2 TST understands that it shall collaborate with Tobacco Program staff to review monthly progress reports on an ongoing basis and assist in gathering of performance measures from the Coalition. Performance measures for FY 2013 for SA-TPCC will be issued by DSHS in the FY 13 Program Attachment included at all times affixed hereto and incorporated herein for all purposes as Attachment I and TST will be responsible for an amount mutually agreed upon with Metro Health Tobacco Staff no later than Sept 1, 2013. Performance measures achieved under the direction of the Coordinator shall be submitted to Tobacco Program Staff on a monthly basis by the 5th working day of the following month.

4.4.3 TST understands that due to the requirements of the funding agency, invoices submitted for reimbursement that are received by the City more than 30 calendar days following the end of the monthly reporting period may be rejected by City or the funding agency and not be subject to reimbursement.

4.5 Due to the requirements of the funding agency, the final invoice associated with the Agreement shall be submitted to the City by no later than Tuesday, September 10, 2013.

4.6 Additional documentation requirements of in-kind expenses associated with this Agreement may be amended by Tobacco Program staff as needed.

4.7 Should a special project be identified, which does not fall within the scope of services set out within this Agreement, the Parties agree that a separate Agreement may be executed which sets out a mutually agreed upon rate and scope of services for that project.

4.8 All services required under this Agreement shall be performed and fully documented to City's satisfaction, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder shall not be paid until required reports, data, and documentation have been received and approved by the City.

V. OWNERSHIP OF DOCUMENTS

5.1 In accordance with Texas law, TST 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, TST agrees that no such local government records produced by or on the behalf of TST pursuant to this Contract shall be the subject of any copyright or proprietary claim by TST.

5.2 TST 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. TST further agrees to turn over to City all such records upon termination of this Contract. TST 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, unless required to do so by a court of competent jurisdiction. Metro Health shall be notified of such request as set forth in Article VIII of this Contract.

5.3 Any and all writings, documents or information in whatsoever form and character produced by TST 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 TST. TST 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.

VI. RECORDS RETENTION

6.1 TST and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City, TDSHS, SAO, OIG and CGUS and any of their authorized representatives at their respective offices, at all reasonable times and as often as may be deemed necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City, TDSHS, SAO, OIG, CGUS and any of their authorized representatives.

6.2 TST shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, TST shall retain the records until the resolution of such litigation or other such questions. TST acknowledges and agrees that City, TDSHS, SAO, OIG, CGUS and any of their authorized representatives shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require TST to return said documents to City prior to or at the conclusion of said retention.

6.3 TST shall notify City, immediately, in the event TST receives any requests for information from a third party, which pertain to the documentation and records referenced herein. TST understands and agrees that City will process and handle all such requests.

6.4 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 TST receives inquiries regarding documents within its possession pursuant to this Agreement, TST 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 TST shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of TST'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 Agreement term as stated in Article II Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should TST default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. TST shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If TST 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. City shall also have the right to offset the cost of said new Agreement with a new contractor against TST's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets
7.4.2 Failing to perform or failing to comply with any covenant herein required
7.4.3 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 Regardless of how this Agreement is terminated, TST shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by TST, or provided to TST, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by TST in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at TST's sole cost and expense. Payment of compensation due or to become due to TST is conditioned upon delivery of all such documents, if requested.

7.7 Due to the requirements of the funding agency, by no later than close of business on Monday, September 6, 2013, TST 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 TST to submit its claims by no later than close of business on Monday, September 6, 2013 shall negate any liability on the part of City and constitute a **Waiver** by TST of any and all right or claims to collect moneys that TST may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue TST 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 of San Antonio
Director of Health
San Antonio Metropolitan Health District
332 W. Commerce, Suite 307

With a copy to:
Tobacco Coalition Program
Richard E. Jackson, MPA
San Antonio Metropolitan Health District
332 W. Commerce, Suite 303

San Antonio, Texas 78205 San Antonio, Texas 78205

If intended for TST, to:
Nicole Holt, Executive Director
2211 S. IH-35, Suite 201
Texans Standing Tall
Austin, TX 78741

IX. ACCOUNT OF FUNDS BY TST

9.1 TST understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of funds provided under this Agreement.

9.2 TST agrees to maintain records that shall provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. TST further agrees:

(A) that maintenance of said records shall be in compliance with all terms, provisions and requirements of this Agreement and with all generally accepted accounting principles; and

(B) that TST's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

9.3 As set forth in Article VI of this Agreement, TST agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter collectively referred to as "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion services. City shall have access to the records at all times upon reasonable notice.

9.4 City agrees to provide TST written notice regarding any expenditure by TST that the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice shall provide TST thirty (30) days from receipt of said notice to cure the deficiency or refund to City any sum of money paid by City to TST determined to:

(A) have not been spent by TST strictly in accordance with the terms of this Agreement; or

(B) not be supported by adequate documentation to fully justify the expenditure.

9.5 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in section 7.4 above as a result of any auditing or monitoring by City, TST shall refund such amount to City within thirty (30) business days of City's written request therefore wherein the amount disallowed or disapproved shall be specified. For purposes of this Agreement, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees.

9.6 Upon execution of this Agreement or at any time during the term of this Agreement, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health District may review and approve all TST systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If TST expends $250,000.00 or more of City dollars, then during the term of this Agreement, the TST shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of TST'S fiscal year or termination of this Agreement, whichever is earlier. TST understands and agrees to furnish the San Antonio Metropolitan Health District with a copy of the audit report within a period not to exceed fifteen (15) days after approval of the report by the TST Board of Trustees. If the amount of funds to be paid to TST in Article IV of this Agreement is $250,000.00 or more, then the TST further agrees to provide a line item in its budget for a financial statement audit prepared by an independent certified public accountant. If the City determines, in its sole discretion, that TST is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the TST pay for such audit from non-City resources. If TST expends less than $250,000.00 of City dollars, then during the term of this Agreement, the TST shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of TST's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by TST attesting to the correctness of said financial statement.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, TST shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District, which shall be clearly labeled "Professional Services Agreement with Texans Standing Tall" in the Description of Operations block of the Certificate. The 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature 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 whereby City may incur increased risk.

10.3 TST's financial integrity is of interest to the City; therefore, subject to TST's right to maintain reasonable deductibles in such amounts as are approved by the City, TST shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at TST's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by

companies authorized 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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

10.4 TST agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of TST herein, and provide a certificate of insurance and endorsement that names the TST and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto 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). TST 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. TST shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: San Antonio Metropolitan Health District
332 West Commerce St.
San Antonio, Texas 78205

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide 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.

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, TST shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend TST'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.

10.8 In addition to any other remedies the City may have upon TST'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 TST to stop work hereunder, and/or withhold any payment(s) which become due to TST hereunder until TST demonstrates compliance with the requirements hereof.

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

10.10 It is agreed that TST'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.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

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

XI. INDEMNIFICATION

11.1 **TST 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 TST'S activities under this CONTRACT including any acts or omissions of TST, any agent, officer, director, representative, employee, TST or subcontractor of TST, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TST 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. TST shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or TST known to TST related to or arising out of TST's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TST's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TST 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 TST in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. TST 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 TST fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and TST 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 TST, 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 TST or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 TST shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees, student interns or subcontractors of TST. TST, its employees, student interns or subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon that TST intends to use the following subcontractors in the performance of this Agreement: none. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of TST. City shall in no event be obligated to any third party, including any subcontractor of TST, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, TST 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, TST shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor TST, assignee, transferee or subcontractor.

12.5 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 TST 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 TST 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 TST shall in no event release TST from any obligation under the terms of this Agreement, nor shall it relieve or release TST from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 TST covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that TST shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and TST, 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 ventures between City and TST. 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 TST under this Agreement and that the TST has no authority to bind the City. Furthermore, TST acknowledges that it is responsible for any and all taxes, including, without limitation, federal and state income taxes, and all employment taxes on all amounts paid to TST hereunder.

XIV. NONDISCRIMINATION POLICY

14.1 Non-discrimination. As a condition of entering into this agreement, TST represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under

Section IILC.1 of the SBEDA Ordinance. As part of such compliance, TST shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall TST retaliate against any person for reporting instances of such discrimination. TST shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. TST understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of TST from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. TST shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

XV. CONFLICT OF INTEREST

15.1 TST 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.

15.2 Pursuant to the subsection above, TST 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. TST further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

16.1 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the City and TST. The Director may execute contract amendments on behalf of City in the following circumstances a) no cost extensions up to two years, b) budget adjustments authorized by the Director so long as the total dollar amount of the budget remains unchanged, c) modifications to the performance measures listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and d) changes in state or federal regulations mandated by the funding agency.

XVII. SEVERABILITY

17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

18.1 TST warrants and certifies that TST 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.

XIX. CONFIDENTIALITY

19.1 Consistent with Section 6.4 above, the Parties agree to maintain in confidence all information pertaining to this Agreement or other information and materials prepared for, provided by, or obtained from either party including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. The Parties shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information, provided that a party's obligation shall not apply to information that: is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30 days of disclosure; is already in the recipient's possession at the time of disclosure thereof; is or later becomes part of the public domain through no fault of the receiving party; is received from a third party having no obligations of confidentiality to the disclosing party; or is independently developed by the receiving party. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, the disclosing party shall give prior written notice that such disclosure is required with a full and complete description regarding such requirement. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

XX. INJUNCTIVE RELIEF

20.1 All parties hereby acknowledge that they have or may have access to certain confidential information, which constitutes valuable, special and unique property. All parties hereby agree that, for violation of any of the provisions of this Agreement, all parties, shall, in addition to any other rights and remedies available hereunder, at law or otherwise, be entitled to an injunction to be issued by any court of competent jurisdiction enjoining and restraining the violating party from

commitment of any violation of this Agreement. All parties hereby consent to the issuance of such injunction. Nothing herein shall be construed as prohibiting all parties from pursuing any other remedies available for any breach or threatened breach including the recovery of damages.

XXI. COMPLIANCE

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

21.2 TST shall grant access to the City, TDSHS, SAO, OIG and CGUS and any of their authorized representatives the right of access to inspect the work and the premises on which any work is performed, and the right to audit in accordance with the Access and Inspection Article in the FY13 Department of State Health Services Contract General Provisions for Substance Abuse Contracts, included at all times affixed hereto and incorporated herein for all purposes as Attachment II.

XXII. NONWAIVER OF PERFORMANCE

22.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIII. LAW APPLICABLE

23.1 **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.**

23.2 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.

XXIV. LEGAL AUTHORITY

24.1 Each signer of this Agreement, for either City or TST, represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of either City or TST and to bind either City or TST to all of the terms, conditions, provisions and obligations herein contained.

XXV. PARTIES BOUND

25.1 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.

XXVI. CAPTIONS

26.1 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.

XXVII. DEBARMENT

27.1 TST certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

27.2 TST shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof, TST learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXVIII. ASSURANCES AND CERTIFICATIONS

28.1 TST agrees and certifies by execution of this Agreement that:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;

b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;

d) it is not subject to an outstanding judgment in a suit against TST for collection of the balance of a debt;

e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with TST;

f) no person who has an ownership or controlling interest in TST or who is an agent or managing employee of TST has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;

g) neither it, nor its principals have within the three(3)-year period preceding this Agreement, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining,

attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;

h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and

i) neither it, nor its principals within a three(3)-year period preceding this Agreement has had one or more public transaction (federal, state or local) terminated for cause or default.

XXIX. LOBBYING

29.1 TST agrees and certifies by execution of this Agreement to the following: TST shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, TST shall not use funds paid under this Agreement, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Agreement exceeds $100,000 of federal funds, TST shall file with the contract manager assigned to Attachment I, FY 13 Program Attachment, a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of TST in connection with this Agreement, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom TST has an agreement. TST shall file the declaration, certification, and disclosure at the time of application for this Agreement; upon execution of this Agreement unless TST previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. TST shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the FY 13 Program Attachment included at all times affixed hereto and incorporated herein for all purposes as Attachment I. TST shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28.29.1.

XXX. ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to this the _____ day of _____, 2012.

CITY OF SAN ANTONIO	**TEXANS STANDING TALL**
_____	_____
Thomas L. Schlenker, M.D., M.P.H. Director of Health	Nicole Holt Executive Director

Approved as to Form:

_____
Michael D. Bernard
City Attorney

ATTACHMENT I

PROGRAM ATTACHMENT - TCC – PAGE 1
CONTRACT NO.2012-039693
PROGRAM ATTACHMENT NO. 001
PURCHASE ORDER NO. 0000377955
CONTRACTOR: CITY OF SAN ANTONIO
DSHS PROGRAM: Tobacco Community Coalition (SA/TCC) Tobacco Community Coalition (SA/TCC)
TERM: 09/01/2011 THRU: 08/31/2012
SECTION I. STATEMENT OF WORK
A. PURPOSE:

The Tobacco Prevention and Control Coalitions (TPCC) prevent and reduce the illegal and harmful use of tobacco products in communities across Texas (with a particular emphasis on reduction in youth use) by promoting and conducting community-based and environmental universal prevention strategies that have an impact on the social, cultural, political, and economic processes of the community. Coalitions broaden support for projects and increase credibility, provide volunteers for activities, and maximize the power of participating groups through joint action. Coalitions are especially important when engaging in broad community actions to change public policy. The Centers for Disease Control and Prevention (CDC) document, *Best Practices for Comprehensive Tobacco Control Program,* October 2007, specified that the community coalition programs include activities that increase the number of organizations and individuals involved in planning education and training programs, use State and local counter-marketing campaigns to place pro-health messages on tobacco control, promote the adoption of public and private tobacco control policies, and monitor program implementation.
The Contractor shall provide a 25% match (in-kind or monetary) for programmatic activities such as local media, administration or operating costs. The Contractor shall serve as a member of, and manage, the Tobacco Prevention and Control Coalition (Coalition) and shall ensure that the Coalition implements the activities funded under this Program Attachment. The Coalition will implement steps of the Strategic Prevention Framework (SPF) in the targeted county by convening a County Epidemiological/Evaluation Workgroup (CEW) to develop a County Epidemiological Report, mobilizing the Coalition, developing a strategic plan and implementing evidence-based strategies and evaluating activities that are designed to address tobacco use and tobacco-related health consequences.
The Contractor shall ensure that the Coalition conducts activities in Section III. Program Service Area of this Program Attachment that meets the following goals:
Goal 1: Prevent tobacco use among young people
Goal 2: Promote compliance and support adequate enforcement of federal, state and local tobacco laws
Goal 3: Increase cessation among young people and adults
Goal 4: Eliminate exposure to secondhand smoke
Goal 5: Reduce tobacco use among populations with the highest burden of tobacco-related health disparities
Goal 6: Develop and maintain statewide capacity for comprehensive tobacco prevention and control
B. SERVICE REQUIREMENTS:
The Contractor shall ensure that the Coalition conducts the following activities:
1. Contractor shall submit all documents identified below to the Substance Abuse mailbox (SA mailbox) at SubstanceAbuse.Contracts@dshs.state.tx.us by the required due dates.
2. Conduct an annual needs assessment that determines the tobacco use and related health consequences and tobacco-related health disparities within the targeted community in Section III, Program Service Area stated

below. Conduct a community resource assessment that identifies existing strengths and assets of community tobacco prevention and control and substance abuse prevention programs and other services in the targeted

community in Section III, Program Service Area stated below. Convene a CEW to conduct the needs and resource assessment and prepare a County Epidemiological Assessment Report. The County Epidemiological Assessment Report is due to DSHS on June 15, 2012.
3. Hire a professional evaluator for evaluation of the Coalition's processes and outcomes and lead the CEW processes. Seven to ten percent (7% to 10%) of the contract amount shall be allocated to the local evaluation. The Contractor shall ensure that the DSHS evaluation deliverables are met.
4. Coordinate with DSHS surveillance contractors to enhance the implementation of statewide [Behavioral Risk Factor Surveillance System (BRFSS), and Youth Tobacco Survey (YTS)] youth and adult surveys in the target community. The Contractor shall contact all school districts in target community to promote the implementation of the YTS.
5. Conduct tobacco prevention mobilization strategies to include key tasks that may include, but are not limited to, convening meetings of community leaders and stakeholders; building coalitions by entering into written community agreements concerning cooperative efforts for preventing and reducing tobacco use; training community stakeholders, coalitions and service providers; organizing agency networks; leveraging resources; and engaging stakeholders to help sustain the activities.
6. Ensure that multiple sectors of the community are involved to enhance community efforts to promote and deliver comprehensive effective tobacco prevention and control activities. a. Involve and assist community groups that are representative of the ethnic, geographic, and socio-economic diversity in the target community.
b. Involve and assist community groups that are at high-risk for tobacco-related health disparities.
c. Involve youth in planning and implementation of Coalition comprehensive tobacco prevention and control activities.
d. Involve local institutions of higher learning, junior colleges, and trade schools for planning and implementation of Coalition comprehensive tobacco prevention and control activities. Provide DSHS College Tobacco Survey data to local institutions.
e. Involve local law enforcement, Education Service Centers (ESCSs), Prevention Resource Centers (PRCs), community substance abuse prevention, intervention, and treatment providers, local school districts, civic/volunteer organizations, faith-based groups, businesses, and local media for planning and implementation of Coalition comprehensive tobacco prevention and control activities. 7. Develop and implement a culturally appropriate strategic plan that outlines and details a plan for the comprehensive community-based tobacco prevention and control activities, including evidence-based prevention, enforcement, cessation, tobacco-related health disparities and secondhand smoke strategies. The strategic plan shall include a sustainability plan for the Coalition. The strategic plan shall address all goal areas of the DSHS Tobacco Prevention and Control Program 2008 – 2013 strategic plan. The strategic plan is due to DSHS on August 15, 2012.
8. Develop measurable project goals and objectives for the strategic plan that are directly related to the target community in Section III, Program Service Area stated below, that impact those goals and are designed to prevent and reduce the prevalence and incidence of the use of tobacco products and related consequences.
9. Select and implement culturally appropriate tobacco prevention and control strategies including environmental policies, programs, and/or practices and direct service activities that are proven to be effective in research settings and communities for each of the goal areas.

a. Implementation strategies shall primarily be logically linked to high-risk target populations identified in the needs assessment.
b. Environmental strategies shall be linked to CDCs MAPPS strategies. a. **M**edia
b. **A**ccess
c. **P**oint of Purchase/Promotion
d. **P**rice
e. **S**ocial Support and Services. Implement sustainability plan and cultural competency plan strategies reported to DSHS in FY2011. 10. Convene local high school age youth groups to engage youth in changing social norms,

and exposing pro-tobacco influences following CDC's Best Practices for Comprehensive Tobacco Control Programs User Guide, Youth Engagement, State and Community Interventions Category.

a. All school districts in the Coalition's target county (s) must be contacted for participation in the youth engagement initiative.
b. Youth groups shall be linked to the DSHS branded "Say What!" youth movement in collaboration with Texas State University, Texas School Safety Center (TxSSC).
c. Youth interventions shall include counter-marketing and media advocacy and be linked to the DSHS statewide media campaign messages. 1) Provide media literacy for involved youth.
2) Conduct public awareness activities such as press releases, local events, and health promotion activities.

3) Youth interventions shall focus on social norm change for the environment rather than the individual.
11. Youth interventions shall involve youth in local policy work at the school and/or community level to:
a. Educate local school boards and School Health Advisory Committees regarding tobacco-free laws and policies.
b. Collaborate with local law enforcement and school-based police to restrict minors' access to tobacco products.
c. Conduct monthly Store Alert Project activities and reporting. Report Store Alert Report Card findings to DSHS quarterly.

12. Ensure Coalition is represented by a Teen Ambassador(s) on the Youth Advisory Board, Texas Teen Ambassadors.
13. The Contractor shall make travel arrangements for, register, and send youth participants and sponsors (2 adults and 10 youth) to one regional Tobacco-Free Teen Leadership Summit sponsored by the TxSSC. The Contractor shall pay for the participants' travel expenses to attend the Tobacco-Free Teen Leadership Summit.
14. The Contractor shall make travel arrangements for, register, and send youth participants and sponsors (2 adults and 10 youth) to the state "Say What!" Teen Tobacco Summit sponsored by the TxSSC in the summer of 2012. The Contractor shall pay for the participants' travel expenses to attend the "Say What!" Teen Tobacco Summit.
15. Conduct local activities to educate the public on the benefits of remaining tobacco-free during Texas Tobacco-Free Kids Day, World No Tobacco Day, and Great American Smokeout.
a. Coordinate Tobacco Free Kids Day promotion and activities with statewide events sponsored by TxSSC.
b. Report all Tobacco Free Kids Day activities conducted by the Coalition to TxSSC. 16. Conduct local media activities (i.e. radio, television, cable, billboards, newspaper, promotional items or merchandise) that raise awareness of the Coalition and reinforce the DSHS statewide media campaign messages. (The Contractor shall not conduct individual media campaigns). A minimum of 15% of the Program Attachment shall be spent on local media activities. Report local media activities to DSHS quarterly. Reports are due the 15th following the quarter being reported.

C. TRAINING:
The Contractor shall make travel arrangement for, and send a minimum of one (1) Coalition member and 2 Coalition staff members to two TPCC Contractor meetings in Austin to be held in Fall 2011 and Spring 2012. The Contractor shall pay for the participants' travel expenses to Austin.
The Contractor shall make travel arrangements for, and send a minimum of one (1) Coalition youth coordinator to the two Coalition Contractor meetings in Austin to receive training in Youth Engagement Initiative strategies. The Contractor shall pay for the participants' travel expenses to Austin. Coalition youth coordinator must complete training in Youth Engagement Initiative strategies by August 31, 2012. The Contractor shall ensure that the Coalition's youth coordinator staff participates in two (2) online Youth Engagement Initiative training workshops offered by the TxSSC. Coalition's youth coordinator staff participation in online Youth Engagement Initiative training workshops must be completed by August 31, 2012.

The Contractor shall ensure that the Coalition staff and community stakeholders participate in four (4) SPF trainings (One sustainability training is required) provided by the DSHS prevention training contractor. The Coalition shall also ensure that Coalition staff receive technical assistance in local application of the SPF process. Coalition staff and community stakeholder participation in SPF trainings must be completed by August 31, 2012.

The Contractor shall ensure that the Coalition evaluator participate in the quarterly evaluation team training provided by the state. Coalition evaluator's participation in quarterly evaluation team training must be completed by August 31, 2012.

D. OTHER REQUIREMENTS:

Contractor shall comply with the following:

- Education Code, §38.006;
- Government Code, §403.105; §§556.0055, §§ 556.006;
- Health & Safety Code, §12.011, 161.081-161.0901, 161.251-161.257,161.301-302; and
- Penal Code, §§48.01-48.015

E. REPORTING REQUIREMENTS:

Contractor's duty to submit documents survives the termination or expiration of this Program Attachment.

Report Name	**Due Date**
Financial Status Report (FSR)	Due last business day of the month following the end of each quarter of the Program Attachment term. * *Final Financial Status Report (FSR) due within 60 days after Program Attachment end date*
Performance Measures	15th of the month following the month being reported
CMBHS Security Attestation Form	September 15, 2011 & March 15, 2012
Closeout documents	Annual Reports due 60 days after Program Attachment end date.
County Epidemiological Assessment Report	June 15, 2012
Strategic Plan	August 15, 2012
Local Media Activities	December 15, 2011, March 15, 2012, June 15, 2012, September 15, 2012

ATTACHMENT II

Fiscal Year 2012 Department of State Health Services Contract
General Provisions for Substance Abuse Contracts
(Core/Subrecipient)

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Fiscal Year 2012 Department of State Health Services Contract
General Provisions for Substance Abuse Contracts
(Core/Subrecipient)

ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the Department's rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The Department rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document, if any, (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department and shall provide any other information requested by the Department in the format required by DSHS. Failure to submit any required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.04 **Client Financial Eligibility.** Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 1.05 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, this Contract will be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit will be Travis County, Texas.

Section 1.06 **Applicable Laws and Regulations Regarding Funding Sources.** Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars, the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Governor's Budget, Planning and Policy Division. UGMA and UGMS can be located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §__.14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be

located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

Section 1.07 **Statutes and Standards of General Applicability.** Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion: 1) Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a); 4) the Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.; 5) Age Discrimination Act of 1975, 42 USC §§ 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246; 9) Tex. Lab. Code Chapter 21; 10) Food Stamp Act of 1977 (7 USC § 200 et seq.; 11) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations; 12) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse; 13) Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR Part 2, relating to confidentiality of alcohol and drug abuse patient records; 14) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and 15) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
b) Immigration Reform and Control Act of 1986, 8 USC § 1324a, regarding employment verification;
c) Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
d) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
e) Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-28, which limits the political activity of employees whose employment is funded with federal funds;
f) Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
g) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
h) Texas Workers' Compensation Act, Tex. Lab. Code Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
i) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
j) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin. Code Chapter 96 regarding safety standards for handling blood borne pathogens;
k) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
l) environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for

Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;" 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961; 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234); 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.; 6) Federal Water Pollution Control Act, 33 USC §1251 et seq.; 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j; 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.; 9) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§7401 et seq.; 10) Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271 et seq.) related to protecting certain rivers system; and 11) Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;

m) Intergovernmental Personnel Act of 1970 (42 USC §§4278-4763) regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F);
n) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
o) Davis-Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally-assisted construction subagreements;
p) National Historic Preservation Act of 1966, §106 (16 USC § 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
q) financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations;"
r) Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
s) Executive Order, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of the Contract; and
t) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a federal grant or cooperative agreement, additional state or federal requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference. Contractor may obtain a copy of any applicable Notice of Grant Award from the contract manager assigned to the Program Attachment.

Section 1.08 **Applicability of General Provisions to Interagency and Interlocal Contracts.** Certain sections or portions of sections of these General Provisions will not apply to Contractors that are State agencies or units of local government; and certain additional provisions will apply to such Contractors.

a) The following sections or portions of sections of these General Provisions will not apply to interagency or interlocal contracts:
   1) Hold Harmless and Indemnification, Section 13.19;
   2) Independent Contractor, Section 12.15 (delete the third sentence in its entirety; delete the word "employees" in the fourth sentence; the remainder of the section applies);
   3) Insurance, Section 12.03;
   4) Liability Coverage, Section 12.05;

5) Fidelity Bond, Section 12.04;
6) Historically Underutilized Businesses, Section 12.10 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity);
7) Debt to State and Corporate Status, Section 3.01;
8) Application of Payment Due, Section 3.02; and
9) Article XV Claims against the Department (This Article is inapplicable to interagency contracts only).

b) The following additional provisions will apply to interagency contracts:
1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov. Code Chapter 771;
2) The Parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the affected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder; and
3) DSHS certifies that it has the authority to enter into this Contract granted in Tex. Health & Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.

c) The following additional provisions will apply to interlocal contracts:
1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Gov. Code Chapter 791;
2) Payments made by DSHS to Contractor will be from current revenues available to DSHS; and
3) Each Party represents that it has been authorized to enter into this Contract.

d) Contractor agrees that Contract Revision Requests (pursuant to the Contractor's Request for Revision to Certain Contract Provisions section), when signed by a duly authorized representative of Contractor, will be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing body.

Section 1.09 **Civil Rights Policies and Complaints.** Upon request, Contactor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (10) calendar days after Contractor's receipt of the claim. Notice must be directed to –

HHSC Civil Rights Office
701 W. 51st St., Mail Code W206
Austin, Texas 78751
Toll-free phone (888) 388-6332
Phone (512) 438-4313
TTY Toll-free (877) 432-7232
Fax (512) 438-5885

Section 1.10 **Licenses, Certifications, Permits, Registrations and Approvals.** Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all

licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

ARTICLE II SERVICES

Section 2.01 **Education to Persons in Residential Facilities.** If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and who are twenty-two (22) years of age or younger, have access to educational services as required by Tex. Educ. Code § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by Tex. Educ. Code § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor's residential facility.

Section 2.02 **Disaster Services.** In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or as a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas: community evacuation; health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Contractor shall carry out disaster services in the manner most responsive to the needs of the emergency, be cost-effective, and be least intrusive on Contractor's primary services.

Section 2.03 **Consent to Medical Care of a Minor.** If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, Contractor shall not provide treatment of a minor unless informed consent to treatment is obtained pursuant to Tex. Fam. Code Chapter 32, relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with Tex. Fam. Code Chapter 32, federal law supersedes state law.

Section 2.04 **Telemedicine Medical Services.** Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using a protocol approved by Contractor's medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

a) clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
b) contraindication considerations for telemedicine use;
c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
e) use by credentialed licensed providers providing clinical care within the scope of their licenses;
f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
g) priority in scheduling the system for clinical care of individuals;
h) quality oversight and monitoring of satisfaction of the individuals served; and
i) management of information and documentation for telemedicine services that ensures timely access to

accurate information between the two sites.
Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under Rule § 448.911.

Section 2.05 **Fees for Personal Health Services.** Contractor may develop a system and schedule of fees for personal health services in accordance with the provisions of Tex. Health & Safety Code § 12.032, DSHS Rule §1.91 covering Fees for Personal Health Services, and other applicable laws or grant requirements. The amount of a fee must not exceed the actual cost of providing the services. No client may be denied a service due to inability to pay.

Section 2.06 **Cost Effective Purchasing of Medications.** If medications are funded under this Contract, Contractor shall make needed medications available to clients at the lowest possible prices and use the most cost effective medications purchasing arrangement possible.

Section 2.07 **Services and Information for Persons with Limited English Proficiency.** Contractor shall take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities. Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter. Contractor shall make every effort to avoid use of any persons under the age of eighteen (18) or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

ARTICLE III FUNDING

Section 3.01 **Debt to State and Corporate Status.** Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State's office. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 3.02 **Application of Payment Due.** Contractor agrees that any payments due under this Contract will be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

Section 3.03 **Use of Funds.** Contractor shall expend Department funds only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

Section 3.04 **Use for Match Prohibited.** Contractor shall not use funds provided through this Contract for matching purposes in securing other funding unless directed or approved by the Department in writing.

Section 3.05 **Program Income.** Gross income directly generated from Department funds through a project

or activity performed under a Program Attachment and/or earned only as a result of a Program Attachment during the term of the Program Attachment are considered program income. Unless otherwise required under the terms of the grant funding this Contract, Contractor shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of program income to further the program objectives of the state or federal statute under which the Program Attachment was made, and Contractor shall spend the program income on the same Program Attachment project in which it was generated. Contractor shall identify and report this income in accordance with the Compliance and Reporting Article of these General Provisions, the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm and the provisions of the Program Attachment(s). Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Contractor shall refund program income not expended in the term in which it is earned to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified in this Contract.

Section 3.06 **Nonsupplanting.** Contractor shall not supplant (i.e., use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract) but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity. Contractor shall make a good faith effort to maintain its current level of support. Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS

Section 4.01 **Payment Methods.** Except as otherwise provided by the provisions of the Program Attachment(s), the payment method for each Program Attachment will be one of the following methods:

a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and acceptable submission of a request for reimbursement; or
b) unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service, as stated in the Program Attachment(s) and acceptable submission of all required documentation, forms and/or reports.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless otherwise specified in the Program Attachment(s) or permitted under the Third Party Payors section of this Article, Contractor shall submit requests for reimbursement or payment monthly within thirty (30) calendar days following the end of the month covered by the bill. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

Section 4.03 **Final Billing Submission.** Unless otherwise provided by the Department, Contractor shall submit a reimbursement or payment request as a final close-out bill not later than sixty (60) calendar days following the end of the term of the Program Attachment for goods received and services rendered during the term. If necessary to meet this deadline, Contractor may submit reimbursement or payment requests by facsimile transmission. Reimbursement or payment requests received in DSHS's offices more than sixty (60) calendar days following the end of the applicable term will not be paid. Consideration of requests for an exception will be made on a case-by-case basis, subject to the availability of funding, and only for an extenuating circumstance, such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations or causes damage or destruction of a place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement

must be submitted for review and approval to the DSHS Accounting Section.

Section 4.04 **Working Capital Advance.** If allowed under this Contract, a single one-time working capital advance per term of the Program Attachment may be granted at the Department's discretion. Contractor must submit documentation to the contract manager assigned to the Program Attachment to justify the need for a working capital advance. Contractor shall liquidate the working capital advance as directed by the Department. The requirements for the documentation justifying the need for an advance and the directions for liquidating the advance are found in the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

Section 4.05 **Financial Status Reports (FSRs).** Except as otherwise provided in these General Provisions or in the terms of the Program Attachment(s), for contracts with categorical budgets, Contractor shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term for Department review and financial assessment. Contractor shall submit the final FSR no later than sixty (60) calendar days following the end of the applicable term.

Section 4.06 **Third Party Payors.** A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided. Third party payors include, but are not limited to, commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in this Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. Contractor shall (a) enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs, and bill those programs for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients who are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted, in which case the thirty (30)-day requirement in the Billing Submission section will be extended until all such appeals have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

ARTICLE V TERMS AND CONDITIONS OF PAYMENT

Section 5.01 **Prompt Payment.** Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments and reimbursements are contingent upon a signed Contract and will not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment or reimbursement only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (Tex. Gov. Code Chapter 2251). Contractor shall comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department will not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance are subject to audit or review by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures, disallowed costs, or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the

date(s) due. Department may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 **Condition Precedent to Requesting Payment.** Contractor shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including any advance payments from Department.

Section 5.04 **Acceptance as Payment in Full.** Except as permitted in the Fees for Personal Health Services section of the Services Article of these General Provisions or under 25 Tex. Admin. Code § 444.413, Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients or participants, and Contractor shall not seek additional reimbursement or payment for services or goods from clients or participants or charge a fee or make a profit with respect to the Contract. A fee or profit is considered to be an amount in excess of actual allowable costs that are incurred in conducting an assistance program.

ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS

Section 6.01 **Allowable Costs.** For services satisfactorily performed, and sufficiently documented, pursuant to this Contract, DSHS will reimburse Contractor for allowable costs. Contractor must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. DSHS will determine whether costs submitted by Contractor are allowable and eligible for reimbursement. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within thirty (30) calendar days of the date of this written notice. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220); and UGMS, as applicable	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization	48 CFR Part 31,	OMB Circular A-	UGMS and applicable

other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	133 and UGMS	Federal awarding agency common rule

A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

Section 6.02 **Independent Single or Program-Specific Audit**. If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in federal funds awarded, Contractor shall have a single audit or program-specific audit in accordance with the Office of Management and Budget (OMB) Circ. No. A-133, the Single Audit Act of 1984, P L 98-502, 98 Stat. 2327, and the Single Audit Act Amendments of 1996, P L 104-156, 110 Stat. 1396. The $500,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in state funds awarded, Contractor must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Contractors whose expenditures meet or exceed the federal and/or state expenditure thresholds stated above shall follow the guidelines in OMB Circular A-133 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Contractor to complete the Single Audit Determination Registration Form. If Contractor fails to complete the Single Audit Determination Form within thirty (30) calendar days after notification by OIG to do so, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every five (5) years and shall not use the same lead auditor or coordinating audit partner (having primary responsibility for the audit) to conduct the independent audit for more than five (5) consecutive years.

Section 6.03 **Submission of Audit.** Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Contractor shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347
Health and Human Services Commission

Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

If Contractor fails to submit the audit report as required by the Independent Single or Program-Specific Audit

section within thirty (30) calendar days of receipt by Contractor of an audit report, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract.

ARTICLE VII CONFIDENTIALITY

Section 7.01 **Maintenance of Confidentiality.** Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and client records that contain protected health information (PHI), and any other information that discloses confidential personal information or identifies any client served by DSHS, in accordance with applicable federal and state laws, rules and regulations, including but not limited to 7 CFR Part 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Tex. Health & Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Tex. Occ. Code Chapters 56 and 159 and all applicable rules and regulations.

Section 7.02 **Department Access to PHI and Other Confidential Information.** Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program, and for purposes permitted under applicable state and federal confidentiality and privacy laws.

Section 7.03 **Exchange of Client-Identifying Information.** Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Tex. Health & Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable laws or rules. Contractor shall disclose information described in Tex. Health & Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Tex. Health & Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 7.04 **Security of Patient or Client Records.** Contractor shall maintain patient and client records in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if care or treatment is transferred to another DSHS-funded contractor.

Section 7.05 **HIV/AIDS Model Workplace Guidelines.** If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, Policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Tex. Health & Safety Code § 85.112-114. A link to the Model Workplace Guidelines can be found at http://www.dshs.state.tx.us/hivstd/policy/policies.shtm.

ARTICLE VIII RECORDS RETENTION

Section 8.01 **Retention.** Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.1(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the Department upon Department's request for at least four (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

ARTICLE IX ACCESS AND INSPECTION

Section 9.01 **Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor shall make available to the Department information collected, assembled or maintained by Contractor relative to this Contract for the Department to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

Section 9.02 **State Auditor's Office.** Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 9.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon

examination of Contractor's records or during an inspection of Contractor's site(s) will be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to resolve the deficiency. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance Article of these General Provisions.

ARTICLE X NOTICE REQUIREMENTS

Section 10.01 **Child Abuse Reporting Requirement.** This section applies to mental health and substance abuse contractors and contractors for the following public health programs: Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD); Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and Women, Infants and Children (WIC) Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Tex. Fam. Code Chapter 261 relating to investigations of reports of child abuse and neglect. Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. Contractor shall use the DSHS Child Abuse Reporting Form as required by the Department located at www.dshs.state.tx.us/childabusereporting. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 10.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the contract manager assigned to the Program Attachment significant incidents involving substantial disruption of Contractor's program operation, or affecting or potentially affecting the health, safety or welfare of Department-funded clients or participants within seventy-two (72) hours of discovery.

Section 10.03 **Litigation.** Contractor shall notify the contract manager assigned to the Program Attachment of litigation related to or affecting this Contract and to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, including environmental and civil rights matters, professional liability, and employee litigation. Notification must include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 10.04 **Action Against the Contractor.** Contractor shall notify the contract manager assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three (3) working days of the suspension or termination. Such notification must include the reason for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the contract; and the contract or case reference number. If Contractor, as an organization, has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information within three (3) working days of the surrender, suspension or revocation to the contract manager assigned to the Program Attachment by submitting a one-page description that includes the reason(s) for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the license action; and a license or case reference number.

Section 10.05 **Insolvency.** Contractor shall notify in writing the contract manager assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of

determination that Contractor is insolvent or incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify in writing the contract manager assigned to the Program Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by Contractor's governing body.

Section 10.06 **Misuse of Funds and Performance Malfeasance.** Contractor shall report to the contract manager assigned to the Program Attachment, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the HHS Office of Inspector General at http://www.oig.hhs.gov/fraud/hotline/ no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

Section 10.07 **Criminal Activity and Disciplinary Action.** Contractor affirms that no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the contract manager assigned to the Program Attachment if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that would constitute a criminal offense equal to or greater than a Class A misdemeanor or if such activity would reasonably constitute grounds for disciplinary action by a state or federal regulatory authority, or has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Contractor shall not permit any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed by DSHS.

Section 10.08 **Retaliation Prohibited.** Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

Section 10.09 **Documentation.** Contractor shall maintain appropriate documentation of all notices required under these General Provisions.

ARTICLE XI ASSURANCES AND CERTIFICATIONS

Section 11.01 **Certification.** Contractor certifies by execution of this Contract to the following:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;
b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
g) neither it, nor its principals have within the three(3)-year period preceding this Contract, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;
h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
i) neither it, nor its principals within a three(3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Section 11.02 **Child Support Delinquencies.** As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 11.03 **Authorization.** Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and

to provide such additional information as may be required.

Section 11.04 **Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Section 11.05 **Ineligibility to Receive the Contract.** (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 11.06 **Antitrust.** Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Section 11.07 **Initiation and Completion of Work.** Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 12.01 **Responsibilities and Restrictions Concerning Governing Body, Officers and Employees.** Contractor and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not-for-profit organizations. Each member of Contractor's governing body shall be accountable for all funds and materials received from Department. The responsibility of Contractor's governing body shall also include accountability for compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff. Staff members, including the executive director, shall not serve as voting members of Contractor's governing body. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Tex. Gov. Code Chapter 573) to the member of the governing body or the officer or any employee authorized to

employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two (2) years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers and employees of Contractor's subcontractors. Ignorance of any Contract provisions or other requirements contained or referred to in this Contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 12.02 **Management and Control Systems**. Contractor shall comply with all the requirements of the Department's Contractor's Financial Procedures Manual, and any of its subsequent amendments, which is available at the Department's web site: http://www.dshs.state.tx.us/contracts/cfpm.shtm. Contractor shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met. Contractor shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in Department's Contractor's Financial Procedures Manual. Those requirements and procedures include, at a minimum, the following:

a) financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
b) financial management systems that include accurate accounting records that are accessible and identify the source and application of funds provided under each Program Attachment of this Contract, and original source documentation substantiating that costs are specifically and solely allocable to the Program Attachment and are traceable from the transaction to the general ledger; and
c) effective internal and budgetary controls; comparison of actual costs to budget; determination of reasonableness, allowableness, and allocability of costs; timely and appropriate audits and resolution of any findings; billing and collection policies; and a mechanism capable of billing and making reasonable efforts to collect from clients and third parties.

Section 12.03 **Insurance.** Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds. Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the contract manager assigned to the Program Attachment to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 12.04 **Fidelity Bond**. For the benefit of DSHS, Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to $100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance must provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment. The bond or insurance acquired under this section must include coverage for third party property and include DSHS as a loss payee or equivalent designation. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the fidelity bond or insurance.

Section 12.05 **Liability Coverage.** For the benefit of DSHS, Contractor shall at all times maintain liability insurance coverage, referred to in Tex. Gov. Code § 2261.102, as "director and officer liability coverage" or similar coverage for all persons in management or governing positions within Contractor's organization or with management or governing authority over Contractor's organization (collectively "responsible persons"). Contractor shall maintain copies of liability policies on site for inspection by DSHS and shall submit copies of

policies to DSHS upon request. This section applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department in the event an actionable act or omission by a responsible person damages Department's interests. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the insurance.

Section 12.06 **Overtime Compensation.** Except as provided in this section, Contractor shall not use any of the funds provided by this Contract to pay the premium portion of overtime. Contractor shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any

compensation paid to an individual in addition to the employee's normal rate of pay for hours worked in excess of normal working hours. Funds provided under this Contract may be used to pay the premium portion of overtime only under the following conditions: 1) with the prior written approval of DSHS; 2) temporarily, in the case of an emergency or an occasional operational bottleneck; 3) when employees are performing indirect functions, such as administration, maintenance, or accounting; 4) in performance of tests, laboratory procedures, or similar operations that are continuous in nature and cannot reasonably be interrupted or otherwise completed; or 5) when lower overall cost to DSHS will result.

Section 12.07 **Program Site.** Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 12.08 **Cost Allocation Plan.** Contractor shall submit a Cost Allocation Plan in the format provided in the Department's Contractor's Financial Procedures Manual to the Department's Contract Oversight and Support Section, at Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, or by email to mailto:coscap@dshs.state.tx.us no later than the 60th calendar day after the effective date of the Contract, except when a Contractor has a current Cost Allocation Plan on file with the Department. Contractor shall implement and follow the applicable Cost Allocation Plan. If Contractor's plan is the same as in the previous year, by signing this Contract, Contractor certifies that its current Cost Allocation Plan for the current year is the same as that submitted to DSHS for the previous year. If the Cost Allocation Plan changes during the Contract term, Contractor shall submit a new Cost Allocation Plan to the Contract Oversight and Support Section within thirty (30) calendar days after the effective date of the change. Cost Allocation Plans must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

Section 12.09 **No Endorsement.** Other than stating the fact that Contractor has a contract with DSHS, Contractor and its subcontractors are prohibited from publicizing the contractual relationship between Contractor and DSHS, and from using the Department's name, logo or website link in any manner that is intended, or that could be perceived, as an endorsement or sponsorship by DSHS or the State of Texas of Contractor's organization, program, services or product, without the express written consent of DSHS.

Section 12.10 **Historically Underutilized Businesses (HUBs).** If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Program Attachment, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Tex. Gov. Code Chapter 2161 and 34 Tex. Admin. Code § 20.14 et seq. Contractors may obtain a list of HUBs at http://www.window.state.tx.us/procurement/prog/hub. If Contractor has filed a HUB subcontracting plan, the

plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval from the Department's HUB Coordinator of the revised plan before proposed changes will be effective under this Contract. Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity, in accordance with 34 Tex. Admin. Code § 20.16(c).

Section 12.11 **Buy Texas.** Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Tex. Gov. Code § 2155.4441.

Section 12.12 **Contracts with Subrecipient and Vendor Subcontractors.** Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into a subrecipient agreement equaling or exceeding $100,000, Contractor shall obtain written approval from DSHS. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan. Contractor shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.

Contracts with all subcontractors, whether vendor or subrecipient, must be in writing and include the following:

a) name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
b) a detailed description of the services to be provided;
c) measurable method and rate of payment and total not-to-exceed amount of the contract;
d) clearly defined and executable termination clause; and
e) beginning and ending dates that coincide with the dates of the applicable Program Attachment(s) or that cover a term within the beginning and ending dates of the applicable Program Attachment(s).

Contractor is responsible to DSHS for the performance of any subcontractor. Contractor shall not contract with a subcontractor, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs; or if the subcontractor would be ineligible under the following sections of these General Provisions: Ineligibility to Receive the Contract section (Assurances and Certifications Article); or the Conflict of Interest or Transactions Between Related Parties sections (General Terms Article).

Section 12.13 **Status of Subcontractors.** Contractor shall require all subcontractors to certify that they are not delinquent on any repayment agreements; have not had a required license or certification revoked; and have not had a contract terminated by the Department. Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three (3) years any license issued by the Department.

Section 12.14 **Incorporation of Terms in Subrecipient Subcontracts.** Contractor shall include in all its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor), (1) the certifications stated in the Assurances and Certifications Article; (2) the requirements in the Conflicts of Interest section and the Transaction Between Related Parties section of the General Terms Article; and (3) a provision granting to DSHS, SAO, OIG, and the Comptroller General of the United States, and any of their representatives, the right of access to inspect

the work and the premises on which any work is performed, and the right to audit the subcontractor in accordance with the Access and Inspection Article in these General Provisions. Each subrecipient subcontract contract must also include a copy of these General Provisions and a copy of the Statement of Work and any other provisions in the Program Attachment(s) applicable to the subcontract. Contractor shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor. No provision of this Contract creates privity of contract between DSHS and any subcontractor of Contractor.

Section 12.15 **Independent Contractor.** Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture participants or agents will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 12.16 **Authority to Bind.** The person or persons signing this Contract on behalf of Contractor, or representing themselves as signing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 12.17 **Tax Liability.** Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. If the Department discovers that Contractor has failed to remain current on a liability to the IRS, this Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. If the Contract is terminated under this section, the Department will not enter into a contract with Contractor for three (3) years from the date of termination.

Section 12.18 **Notice of Organizational Change.** Contractor shall submit written notice to the contract manager assigned to the Program Attachment within ten (10) business days of any change to the Contractor's name; contact information; key personnel, officer, director or partner; organizational structure, such as merger, acquisition or change in form of business; legal standing; or authority to do business in Texas. A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the Amendments section of these General Provisions.

Section 12.19 **Quality Management.** Contractor shall comply with quality management requirements as directed by the Department.

Section 12.20 **Equipment (Including Controlled Assets) Purchases.** Equipment means an article of nonexpendable, tangible personal property having a useful lifetime of more than one year and an acquisition cost of $5,000 or more, and "controlled assets." Controlled assets include firearms regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more: desktop and laptop computers, non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Contractors on a cost reimbursement payment method shall inventory all equipment. Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter of the Program Attachment must be submitted to the contract manager assigned to the Program Attachment.

Section 12.21 **Supplies.** Supplies are defined as consumable items necessary to carry out the services under this Contract including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

Section 12.22 **Changes to Equipment List.** All items of equipment purchased with funds under this Contract must be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment. Contractor shall submit to the contract manager assigned to the Program Attachment, a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, Department will acknowledge its approval by means of a written amendment or by written acceptance of Contractor's Contract Revision Request, as appropriate.

Section 12.23 **Property Inventory and Protection of Assets.** Contractor shall maintain an inventory of equipment and property described in the Other Intangible Property section of Article XIII and submit an annual cumulative report of the equipment and other property on Form GC-11 (Contractor's Property Inventory Report) to the Department's Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than October 15th of each year. The report is located on the DSHS website at http://www.dshs.state.tx.us/contracts/forms.shtm. Contractor shall maintain, repair, and protect assets under this Contract to assure their full availability and usefulness. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained under this Contract, Contractor shall use the proceeds to repair or replace those assets.

Section 12.24 **Bankruptcy.** In the event of bankruptcy, Contractor shall sever Department property, equipment, and supplies in possession of Contractor from the bankruptcy, and title must revert to Department. If directed by DSHS, Contractor shall return all such property, equipment and supplies to DSHS. Contractor shall ensure that its subcontracts, if any, contain a specific provision requiring that in the event the subcontractor's bankruptcy, the subcontractor must sever Department property, equipment, and supplies in possession of the subcontractor from the bankruptcy, and title must revert to Department, who may require that the property, equipment and supplies be returned to DSHS.

Section 12.25 **Title to Property.** At the conclusion of the contractual relationship between the Department and Contractor, for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

Section 12.26 **Property Acquisitions.** Department funds must not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

Section 12.27 **Disposition of Property.** Contractor shall follow the procedures in the American Hospital Association's (AHA's) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersede or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than $5,000. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than $5,000) will be controlled by the requirements of UGMS. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes

inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than $5,000, Contractor shall request disposition approval and instructions in writing from the contract manager assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor shall ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

Section 12.28 **Closeout of Equipment.** At the end of the term of a Program Attachment that has no additional renewals or that will not be renewed (Closeout) or when a Program Attachment is otherwise terminated, Contractor shall submit to the contract manager assigned to the Program Attachment, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment. All equipment purchased with Department funds must be secured by Contractor at the time of Closeout or termination of the Program Attachment and must be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at Contractor's expense.

Section 12.29 **Assets as Collateral Prohibited.** Contractors on a cost reimbursement payment method shall not encumber equipment purchased with Department funds without prior written approval from the Department.

ARTICLE XIII GENERAL TERMS

Section 13.01 **Assignment.** Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 13.02 **Lobbying.** Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Contract exceeds $100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Contract; upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

Section 13.03 **Conflict of Interest.** Contractor represents to the Department that it and its -subcontractors, if any, do not have nor shall Contractor or its subcontractors knowingly acquire or retain, any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the Department or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

Section 13.04 **Transactions Between Related Parties.** Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR § 215.42, and UGMS.

Section 13.05 **Intellectual Property.** Tex. Health & Safety Code § 12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

a) "Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.
b) For purposes of this Contract intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use is "work made for hire." DSHS owns works made for hire unless it agrees otherwise by contract. To the extent that title and interest to any such work may not, by operation of law, vest in DSHS, or such work may not be considered a work made for hire, Contractor irrevocably assigns the rights, title and interest therein to DSHS. DSHS has the right to obtain and hold in its name any and all patents, copyrights, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.
c) If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and

irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any intellectual property developed under this Contract, including any subcontract; and (2) any rights of copyright to which a Contractor purchases ownership with contract funds. Contractor shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment must be to the effect that "This publication was made possible by grant number _____ from (federal awarding agency)" or "The project described was supported by grant number _____ from (federal awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency)."

d) If the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.

e) If the results of the contract performance are subject to copyright law, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Program Attachment.

Section 13.06 **Other Intangible Property.** At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs, software licenses, etc. Contractor shall inventory all such non-copyrightable intangible property. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision will survive the termination or expiration of this Contract.

Section 13.07 **Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 13.08 **Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract will be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

Section 13.09 **Successors.** This Contract will be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 13.10 **Headings.** The articles and section headings used in this Contract are for convenience of reference only and will not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 13.11 **Parties.** The Parties represent to each other that they are entities fully familiar with

transactions of the kind reflected by the contract documents, and are capable of understanding the terminology and meaning of their terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 13.12 **Survivability of Terms.** Termination or expiration of this Contract or a Program Attachment for any reason will not release either Party from any liabilities or obligations in this Contract that (a) the Parties have expressly agreed will survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

Section 13.13 **Direct Operation.** At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by Contractor.

Section 13.14 **Customer Service Information.** If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Tex. Gov. Code Chapter 2114 regarding Customer Service surveys.

Section 13.15 **Amendment.** The Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this Contract must be in writing and agreed to by both Parties, except as otherwise specified in the Contractor's Notification of Change to Certain Contract Provisions section or the Contractor's Request for Revision to Certain Contract Provisions section of this Article. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the contract manager assigned to the Program Attachment; and if a budget revision or amendment is requested during the last quarter of the Contract or Program Attachment term, as applicable, Contractor's written justification must include a reason for the delay in making the request. Revision or other amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform or produce, and DSHS will not pay for the performance or production of, different or additional goods, services, work or products except pursuant to an amendment of this Contract that is executed in compliance with this section; and DSHS will not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Article.

Section 13.16 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to this Contract without a written amendment or the Department's prior approval:

a) contractor's contact person and contact information;
b) contact information for key personnel, as stated in Contractor's response to the Solicitation Document, if any;
c) cumulative budget transfers that exceed 10% among direct cost categories, other than the equipment category, of cost reimbursement contract Program Attachments <u>of less than $100,000</u>, provided that the total budget amount is unchanged;
d) minor corrections or clarifications to the Contract language that in no way alter the scope of work, objectives or performance measures; and
e) a change in Contractor's share of the budget concerning non-DSHS funding other than program income and match, regardless of the amount of the change, provided that in changing the budget, Contractor is not supplanting DSHS funds.

Contractor within ten (10) calendar days shall notify in writing the contract manager assigned to the Program Attachment of any change enumerated in this section. The notification may be by letter, fax or email. Cumulative budget line item transfers of 10% or less among direct cost categories, other than equipment, of

cost reimbursement contracts of any amount do not require written amendment or prior approval or notification.

Section 13.17 **Contractor's Request for Revision of Certain Contract Provisions.** A Contractor's Revision Request is an alternative method for amending certain specified provisions of this Contract that is initiated by Contractor, but must be approved by DSHS. The following amendments to this Contract may be made through a Contractor's Revision Request, rather than through the amendment process described in the Amendment section of this Article:

a) cumulative budget transfers among direct cost categories, other than the equipment category, that exceed 10% of Program Attachments of $100,000 or more, provided that the total budget amount is unchanged;
b) budget transfer to other categories of funds for direct payment to trainees for training allowances;
c) change in clinic hours or location;
d) change in the equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget;
e) changes in the equipment category of a previously approved equipment budget (other than acquisition of additional equipment, which requires an amendment to this Contract); and
f) changes specified in applicable OMB Circular cost principles as requiring prior approval, regardless of dollar threshold (e.g., foreign travel expenses, overtime premiums, membership fees.

In order to request a revision of any of the enumerated provisions, Contractor shall obtain a Contract Revision Request form from the DSHS website available at http://www.dshs.state.tx.us/grants/forms.shtm, and complete the form as directed by the Department. Two copies of the completed form must be signed by Contractor's representative who is authorized to sign contracts on behalf of Contractor, and both original, signed forms must be submitted to the contract manager assigned to the Program Attachment. Any approved revision will not be effective unless signed by the DSHS Director of the Client Services Contracting Unit. A separate Contractor Revision Request is required for each Program Attachment to be revised. Circumstances of a requested contract revision may indicate the need for an amendment described in the Amendment section of this Article rather than a contract revision amendment under this section.

Section 13.18 **Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

Section 13.19 **Hold Harmless and Indemnification.** Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments; and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

Section 13.20 **Waiver.** Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract will not constitute a waiver of either Party's rights under this Contract.

Section 13.21 **Electronic and Information Resources Accessibility and Security Standards.** As required by 1 Tex. Admin. Code Chapters 213 and 206, as a state agency, DSHS must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1

Tex. Admin. Code Chapter 213 and Website Accessibility Standards/Specifications specified in 1 Tex. Admin. Code Chapter 206 (collectively EIR Standards) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If performance under this Contract includes the development, modification or maintenance of a website or other electronic and information resources for DSHS or for the public on behalf of DSHS, Contractor certifies that the website or other electronic and information resources comply with the EIR Standards. Contractor further certifies that any network hardware or software purchased or provided under this Contract has undergone independent certification testing for known and relevant vulnerabilities, in accordance with rules adopted by Department of Information Resources.

Section 13.22 **Force Majeure.** Neither Party will be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of any such cause of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other by any reasonable method (phone, email, etc.) and, as soon as practicable, must submit written notice with proof of receipt, of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

Section 13.23 **Interim Contracts.** The Parties agree that the Contract and/or any of its Program Attachments will automatically continue as an "Interim Contract" beyond the expiration date of the term of the Contract or Program Attachment(s), as applicable, under the following circumstances: (1) on or shortly prior to the expiration date of the Contract or Program Attachment, there is a state of disaster declared by the Governor that affects the ability or resources of the DSHS contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract or Program Attachment; and (2) DSHS makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. DSHS will notify Contractor promptly in writing if such a determination is made. The notice will specify whether DSHS is extending the Contract or Program Attachment for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Program Attachment for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how DSHS will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

Section 13.24 **Cooperation and Communication.** Contractor shall cooperate with Department staff and, as applicable, other DSHS contractors, and shall promptly comply with requests from DSHS for information or responses to DSHS inquiries concerning Contractor's duties or responsibilities under this Contract.

ARTICLE XIV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 14.01 **Actions Constituting Breach of Contract.** Actions or inactions that constitute breach of contract include, but are not limited to, the following:

a) failure to properly provide the services and/or goods purchased under this Contract;
b) failure to comply with any provision of this Contract, including failure to comply with all applicable statutes, rules or regulations;

c) failure to pay refunds or penalties owed to the Department;
d) failure to comply with a repayment agreement with the Department or agreed order issued by the Department;
e) failure by Contractor to provide a full accounting of funds expended under this Contract;
f) discovery of a material misrepresentation in any aspect of Contractor's application or response to the Solicitation Document;
g) any misrepresentation in the assurances and certifications in Contractor's application or response to the Solicitation Document or in this Contract; or
h) Contractor is on or is added to the Excluded Parties List System (EPLS).

Section 14.02 **General Remedies and Sanctions.** The Department will monitor Contractor for both programmatic and financial compliance. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more remedies or sanctions for each item of noncompliance and will determine remedies or sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies or sanctions in this section does not relieve Contractor of any obligations under this Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

a) terminate this Contract or a Program Attachment of this Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty (30) calendar days before the effective date of the termination in a notice of termination, except for circumstances that require immediate termination as described in the Emergency Action section of this Article. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. Contractor shall not make any claim for payment or reimbursement for services provided from the effective date of termination;
b) suspend all or part of this Contract. Suspension is an action taken by the Department in which the Contractor is notified to temporarily (1) discontinue performance of all or part of the Contract, and/or (2) discontinue incurring expenses otherwise allowable under the Contract as of the effective date of the suspension, pending DSHS's determination to terminate or amend the Contract or permit the Contractor to resume performance and/or incur allowable expenses. Contractor shall not bill DSHS for services performed during suspension, and Contractor's costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;
c) deny additional or future contracts with Contractor;
d) reduce the funding amount for failure to 1) provide goods and services as described in this Contract or consistent with Contract performance expectations, 2) achieve or maintain the proposed level of service, 3) expend funds appropriately and at a rate that will make full use of the award, or 4) achieve local match, if required;
e) disallow costs and credit for matching funds, if any, for all or part of the activities or action not in compliance;

f) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
g) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
h) declare this Contract void upon the Department's determination that this Contract was obtained fraudulently or upon the Department's determination that this Contract was illegal or invalid from this Contract's inception and demand repayment of any funds paid under this Contract;
i) request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
j) delay execution of a new contract or contract renewal with Contractor while other imposed or proposed sanctions are pending resolution;
k) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more frequent or more extensive monitoring will be performed by Department than would routinely be conducted;
l) require Contractor to obtain technical or managerial assistance;
m) establish additional prior approvals for expenditure of funds by Contractor;
n) require additional or more detailed, financial and/or programmatic reports to be submitted by Contractor;
o) demand repayment from Contractor when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices, or failure to comply with Contract terms;
p) pursue a claim for damages as a result of breach of contract;
q) require Contractor to prohibit any employee or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any employee, volunteer, officer or governing body member, if the employee, volunteer, officer or member of the governing body has been indicted or convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as reasonably determined by DSHS;
r) withhold any payments to Contractor to satisfy any recoupment, liquidated damages, match insufficiency, or any penalty (if the penalty is permitted by statute) imposed by DSHS, and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
s) reduce the Contract term;
t) recoup improper payments when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices or failure to comply with Contract terms;
u) assess liquidated damages;
v) demand repayment of an amount equal to the amount of any match Contractor failed to provide, as determined by DSHS;
w) impose other remedies, sanctions or penalties permitted by statute.

Section 14.03 **Notice of Remedies or Sanctions.** Department will formally notify Contractor in writing when a remedy or sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the remedies and sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies and sanctions imposed. Other than in the case of repayment or recoupment, Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response must state how Contractor shall correct the noncompliance (corrective action plan) or demonstrate in writing that the findings on which the remedies or sanction(s) are based are either invalid or do not warrant the remedies or sanction(s). If Department determines that a remedy or sanction is warranted, unless the remedy or sanction is subject to review under a federal or state statute, regulation, rule, or guideline, Department's decision is final. Department will provide written notice to Contractor of Department's decision. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the approved corrective action plan. If DSHS determines that repayment is warranted, DSHS will issue a demand letter to Contractor for repayment. If full repayment is not received within the time limit stated in the demand letter, and if recoupment is available, DSHS will recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

Section 14.04 **Emergency Action.** In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny future contract awards, or delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An "emergency" is defined as the following:

a) Contractor is noncompliant and the noncompliance has a direct adverse effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or using resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures; or
b) Contractor is expending funds inappropriately.

Whether Contractor's conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

ARTICLE XV CLAIMS AGAINST THE DEPARTMENT

Section 15.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Tex. Gov. Code Chapter 2260 and implemented in Department Rules §§ 4.11-4.24 will be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 15.02 **Notice.** Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice must also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Tex. Gov. Code Chapter 2260, subchapter C.

Section 15.03 **Sole Remedy.** The contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches

of contract by DSHS if the Parties are unable to resolve their disputes under this Article.

Section 15.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract will be considered a waiver of sovereign immunity to suit.

Section 15.05 **Performance Not Suspended.** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

ARTICLE XVI TERMINATION AND TEMPORARY SUSPENSION

Section 16.01 **Expiration of Contract or Program Attachment(s).** Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations stated in each Program Attachment will end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article.

Section 16.02 **Effect of Termination.** Termination is the permanent withdrawal of Contractor's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor's costs resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable, to DSHS or another entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or the Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS, and except as provided in the Survivability of Terms section of the General Terms Article. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information will survive this Contract.

Section 16.03 **Acts Not Constituting Termination.** Termination does not include the Department's (1) withdrawal of funds awarded on the basis of Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a program attachment; (3) refusal to extend a program attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; (4) non-renewal of a contract or program attachment at Department's sole discretion; or (5) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 16.04 **Termination or Temporary Suspension Without Cause.**

a) Either Party may terminate this Contract or a Program Attachment, as applicable, with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract or Program Attachment that involves residential client services, Contractor shall give the Department at least ninety (90) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.

b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
c) DSHS may temporarily suspend or terminate this Contract or a Program Attachment if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendments to the Appropriations Act, health and human services consolidations, or any disruption of current appropriated funding for this Contract or Program Attachment. Contractor will be notified in writing of any termination or temporary suspension or of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor shall discontinue performance under the Contract as of the effective date of the suspension, for the duration of the suspension.
d) Department may terminate this Contract or a Program Attachment immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 16.05 **Termination For Cause.** Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

a) Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary for the performance or oversight of this Contract;
c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;
d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under this Contract or exercise adequate control over expenditures or assets;
e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;
f) Department determines that this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements or statement(s) of work or Solicitation Document on which this Contract is based in violation of Tex. Gov. Code § 2155.004; or Department determines that Contractor was ineligible to receive this Contract under Tex. Gov. Code §§ 2155.006 or 2261.053 related to certain disaster response contracts;
g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:
    1) Contractor fails to make payments for debts;
    2) Contractor makes an assignment for the benefit of its creditors;
    3) Contractor admits in writing its inability to pay its debts generally as they become due;
    4) if judgment for the payment of money in excess of $50,000 (that is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment, or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, or (d) if the execution is stayed, within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required

under Generally Accepted Accounting Principles;

5) a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its issuance;
6) Contractor is adjudicated bankrupt or insolvent;
7) Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, or consents to the filing of any case or petition against it under any such law;
8) any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge of the sequestration;
9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, and the petition is not dismissed within thirty (30) calendar days; or
10) Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property;

h) Contractor's management system does not meet the UGMS management standards; or
i) Any required license, certification, permit, registration or approval required to conduct Contractor's business or to perform services under this Contract is not obtained or is revoked, is surrendered, expires, is not renewed, is inactivated or is suspended.

Section 16.06 **Notice of Termination.** Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor shall attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

ARTICLE XVII VOID, SUSPENDED, AND TERMINATED CONTRACTS

Section 17.01 **Void Contracts.** Department may void this Contract upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 17.02 **Effect of Void, Suspended, or Involuntarily Terminated Contract.** A Contractor who has been a party to a contract with DSHS that has been found to be void, or is suspended, or is terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until, in the case of suspension or termination, the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to repayment.

Section 17.03 **Appeals Rights.** Pursuant to Tex. Gov. Code § 2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Tex. Gov. Code Chapter 2001.

ARTICLE XVIII CLOSEOUT

Section 18.01 **Cessation of Services At Closeout.** Upon expiration of this Contract or Program Attachment, as applicable, (and any renewals of this Contract or Program Attachment) on its own terms, Contractor shall cease services under this Contract or Program Attachment; and shall cooperate with DSHS to the fullest extent

possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, Contractor shall immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also shall completely cease providing services under this Contract or Program Attachment by the date specified in the termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of this Contract or Program Attachment, or incur any additional expenses once this Contract or Program Attachment is terminated or has expired. Upon termination, expiration (with no renewal) or non-renewal of this Contract or a Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 18.02 **Administrative Offset.** The Department has the right to administratively offset amounts owed by Contractor against billings.

Section 18.03 **Deadline for Closeout.** Contractor shall submit all financial, performance, and other Closeout reports required under this Contract within sixty (60) calendar days after the Contract or Program Attachment end date. Unless otherwise provided under the Final Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract or Program Attachment end date.

Section 18.04 **Payment of Refunds.** Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 18.05 **Disallowances and Adjustments.** The Closeout of this Contract or Program Attachment does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

ATTACHMENT II

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ATTACHMENT II

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ARTICLE XIX PROVISIONS GENERALLY APPLICABLE TO SUBSTANCE ABUSE CONTRACTS

Section 19.01 **Quality Management Plan (QMP) and Quality Improvement**. As required by the Quality Management section of these General Provisions, Contractor shall comply with the requirements stated in this section relating to Contractor's Quality Management Process. Contractor shall-

a) develop and implement a QMP that conforms with Standards of Care Rule § 448.504, and make the QMP available to DSHS upon request. The QMP must be developed no later than the end of the first quarter of the Program Attachment term. Contractor shall update and revise the QMP each biennium or sooner, if necessary. Contractor's governing body shall review and approve the initial QMP, within the first quarter of the Program Attachment term, and each updated and revised QMP thereafter. The QMP must describe Contractor's methods to measure, assess, and improve-
   1) implementation of evidence-based practices and research-based approaches to service delivery;
   2) client/participant satisfaction with the services provided by Contractor;
   3) service capacity and access to services;
   4) client/participant continuum of care; and
   5) accuracy of data reported to the state.
b) participate in data verification activities as defined and scheduled by the state, including, but not limited to performing self-audits; submitting self-audit results and supporting documentation for the state's desk reviews; and participating in the state's onsite or desk reviews.
c) submit plan of improvement or corrective action plan and supporting documentation as requested by DSHS.
d) participate in and actively pursue QMP activities that support performance and outcomes improvement.
e) respond to consultation recommendations by DSHS, which may include but are not limited to the following:
   1) staff training;
   2) self-monitoring activities guided by DSHS, including use of quality management tools to self-identify compliance issues; and
   3) monitoring of performance reports in the DSHS electronic clinical management system.

Section 19.02 **Treatment Peer Review.** A staff member of treatment or Outreach, Screening, Assessment and Referral (OSAR) Contractormay be selected for participation in the independent treatment peer review required by the Substance Abuse Prevention and Treatment (SAPT) Block Grant. If a member of Contractor's staff is selected to be a reviewer, Contractor shall ensure that the staff member participates in the treatment peer review process.

Section 19.03 **Disaster Substance Abuse Services.** In accordance with the Disaster Services section of these General Provisions, Contractor may be required to assist in mitigating the psychological trauma experienced by victims, survivors, and responders to a disaster. Contractor may assist the individual or family in returning to a normal (pre-disaster) level of functioning and assist in decreasing the psychological and physical effects of acute and/or prolonged stress. In the event clients already receiving substance abuse services are affected, Contractor may work with the affected individuals in conjunction with the individual's current support system.

Contractor shall develop policies and procedures to address response and recovery for substance abuse programs. Contractor's responsibilities include, but are not limited to the following:

a) for treatment and OSAR Contractors, enter, and update as necessary, into CBMHS, the the names and twenty-four (24)-hour contact information of Contractor's Risk Manager or Safety Officer and at least two professional staff trained in mental health, substance abuse, or crisis counseling, one of whom may be the

Contractor's Risk Manager or Safety Officer, as disaster contacts

b) for treatment and OSAR Contractors, submit disaster substance abuse services policies and procedures if requested by DSHS;

c) collaborate with DSHS and local preparedness, response and recovery efforts. OSAR staff shall assist in coordinating the disaster/incident response among substance abuse treatment providers, community mental health and emergency disaster service organizations, such as, emergency shelters and food banks. OSAR staff shall facilitate outreach to substance abuse clients and their families and ensure they are provided access to individual and group counseling, education, assessment, referral and community support;

d) assign employees to assist DSHS to meet staffing needs for shelters, morgues, schools, hospitals, Disaster Recovery Centers, community support centers, death notifications, mass inoculations sites, and other necessary services during local, state or federal emergencies;

e) contract with DSHS to provide FEMA-funded Crisis Counseling, Assistance and Training Program(s) (CCATP) after federal declarations as appropriate. CCATP services include housing, hiring and co-managing CCATP Team(s), as appropriate, and are described at http://www.fema.gov/pdf/media/factsheets/2009/dad_crisis_counseling.pdf; and

f) participate in disaster substance abuse education training programs as necessary.

Section 19.04 **Abuse, Neglect, Exploitation.** Contractor shall develop and implement written policies and procedures, and take all steps necessary, to protect the health, safety and welfare of its clients and participants. Contractor shall notify appropriate authorities of any allegations of abuse, neglect, or exploitation as required by Rule § 448.703. Additionally, licensed treatment facility Contractors shall verbally report all allegations of participant or client abuse, neglect, and exploitation to the Department's **Substance Abuse Investigations Division at (800) 832-9623** immediately, submit appropriate documentation within twenty-four (24) hours, and maintain adequate evidence demonstrating the Department's receipt of such documentation. The complaint form is located on the DSHS website at http://www.dshs.state.tx.us/HFP/complain_ntc_subabuse.shtm. All other Contractors shall notify the DSHS Substance Abuse Contracts Management Unit within 24 hours that the appropriate authorities have been notified of the allegations of abuse, neglect or exploitation and shall maintain for DSHS inspection, appropriate documentation and adequate evidence demonstrating receipt of the notification by the proper authorities. Contractor shall develop and implement written policies and procedures for employees, subcontractors, employees of subcontractors, and volunteers to report actual or suspected abuse, neglect, or exploitation to an immediate supervisor (or to another supervisor if the immediate supervisor is the subject of the report) within 48 hours of becoming aware of the actual or suspected abuse, neglect or exploitation.

Section 19.05 **Charitable Choice (Faith-Based Organizations).** As applicable, Contractor shall comply with 42 USC § 300x-65 and 42 CFR part 54 (42 CFR §§ 54.8(c) (4) and 54.8(b)), Charitable Choice provisions and regulations. If Contractor identifies itself as a faith-based or religious organization, Contractor shall post a notice to advise all clients and potential clients (collectively, "clients") that if the client objects to the religious character of Contractor's organization, the client has the right to be referred to another DSHS-funded contractor that is not faith-based or that has a different religious orientation. Contractor shall use the model notice provided in Appendix A of 42 CFR Part 54. Within a reasonable period of time after a client's request for referral, Contractor shall make the referral to another DSHS-funded contractor, and shall ensure that the client receives the alternative services within a reasonable period of time. Contractor shall further ensure that the alternative DSHS-funded contractor is accessible to the client and has the capability to provide appropriate services, and that the services are of a value not less than the value of the services the client would have received from Contractor.

Section 19.06 **Qualified Service Organization/Business Associate (QSO/BA) Agreement.** For the purposes of this section, definitions of terms related to QSOs are found in 42 CFR pt 2, and for terms related to BAs, in 45 CFR pts 160 and 164. The parties agree that this Contract serves as a QSO/BA Agreement ("this Agreement") under which Contractor, as a Program, may disclose patient-identifying information as defined by 42 CFR pt 2 to

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DSHS as a QSO, and under which Contractor, as a Covered Entity, may disclose protected health information as defined by 45 CFR pt 164 (PHI) to DSHS as a BA. Contractor is disclosing the patient-identifying information and PHI to DSHS so that DSHS as QSO/BA can provide services related to payment to Contractor for client services under the Contract, and to providing an electronic clinical management system for use by Contractor to maintain and store client records.

a) Provisions Applicable to the Parties' HIPAA BA Relationship:

1) Obligations and Activities of DSHS as a BA:

A. BA agrees to not use or disclose PHI other than as permitted or required by this Agreement or as "Required by Law."

B. BA agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

C. BA agrees to 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.

D. BA agrees to report to Contractor any use or disclosure of the PHI not provided for by this Agreement of which BA becomes aware.

E. BA agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by BA on behalf of, Contractor agrees to the same restrictions and conditions that apply through this Agreement to BA with respect to such information.

F. BA agrees to make 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 BA on behalf of, Contractor available to Contractor or to the Secretary, in a time and manner to be mutually agreed to by Contractor and BA or in a time and manner designated by the Secretary for purposes of the Secretary determining Contractor's compliance with the Privacy Rule.

G. BA agrees to document disclosures of PHI as would be required for Contractor to respond to a request by an individual for an accounting of disclosures of PHI under 45 CFR §164.528.

H. BA agrees to provide to Contractor or an individual, in a time and manner to be mutually agreed to by BA and Contractor, information collected in accordance with paragraph G above, to permit Contractor to respond to a request by an individual for an accounting of disclosures of PHI in under 45 CFR §164.528.

2) Permitted Uses and Disclosures by the DSHS:

Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Contractor as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Contractor or the minimum necessary policies and procedures of Contractor.

3) Obligations of and Permissible Requests by Contractor:

A. Contractor shall notify BA of any limitation(s) in Contractor's notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.

B. Contractor shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Contractor.

4) Term and Termination of this Agreement:

A. Term. The obligations of the Parties under this Agreement shall terminate when all of the PHI created or received by BA on behalf of Contractor is destroyed, or if it is infeasible to destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

B. Termination of this Agreement for Cause. Upon Contractor's knowledge of a material breach by BA, Contractor shall -

i. provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement if BA does not cure the breach or end the violation within the time specified by Contractor;

ii. immediately terminate this Agreement if BA has breached a material term of this Agreement and cure is not possible; or

iii. if neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination of this Agreement.

i. Except as provided in paragraph B above ("Termination of this Agreement for Cause"), upon termination of this Agreement, for any reason, BA shall destroy all PHI received from Contractor, or created or received by BA on behalf of Contractor. This provision will apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI.

ii. If BA determines that destroying the PHI is infeasible, BA shall provide to Contractor notification of the conditions that make destruction infeasible. If Contractor agrees that destruction of PHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the destruction infeasible, for so long as BA maintains such PHI.

5) Miscellaneous Provisions:

A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section in effect or as amended.

B. Amendment. The Parties agree to amend this Agreement as necessary for Contractor to comply with the requirements of the Privacy Rule and HIPAA.

C. Survival. The respective rights and obligations of BA in subsection a), paragraph 1. of this Agreement titled "Obligations and Activities of DSHS as BA" shall survive the termination of this Agreement.

D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Contractor to comply with the Privacy Rule.

b) Provision Applicable to DSHS as a QSO: As a QSO, DSHS acknowledges that in receiving, storing, processing or otherwise dealing with any patient records associated with an alcohol or drug abuse treatment program, DSHS is fully bound by the 42 CFR pt 2 regulations. DSHS affirms that, if necessary, it will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Section 19.07 **SAPT Grant Requirements.** Contractor shall comply with the requirements of the SAPT Block Grant, including the restrictions on expenditure of grant funds, stated in 45 CFR § 96.135 and the Notice of Grant Award. Contractor shall not expend funds under this Contract on the following activities:

a) to provide inpatient hospital services, except as provided in 45 CFR § 96.135(c);
b) to make cash payments to intended recipients of health services;
c) to purchase or improve land, purchase, construct or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;
d) to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
e) to provide financial assistance to any entity other than a public or non-profit private entity;
f) to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, except under a needle exchange program approved by the U.S. Surgeon General of Public Health Services; or
g) for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or the state legislature, except in presentation to the Congress or the state legislative body itself.

Additionally, none of the funds provided under this Contract may be used to pay the salary of an individual at a rate in excess of Level I of the federal Executive Schedule.

Section 19.08 **Persons on Probation or Parole.** Contractor shall notify the contract manager assigned to the

Program Attachment immediately of any of its employees, volunteers or subcontractors who are on parole or probation if the employee, volunteer or subcontractor provides or will provide direct client or participant services or who has or may have direct contact with clients or participants. Contractor shall maintain copies of all notices required under this section for DSHS review. Unless otherwise directed by the Department, Contractor shall ensure that any person who is on probation or parole is prohibited from performing direct client services or from having direct contact with clients or participants during any investigation undertaken by DSHS concerning a person who is on parole or probation.

Section 19.09 **Performance Measures Definitions**. Contractor shall comply with the performance measures definitions and minimum performance outcomes as specified by the Department. If revisions to the performance measures definitions and/or minimum performance outcomes are required as a result of elimination or modification of substance abuse service types, Contractor shall comply with the revised definitions and/or outcomes upon notice from DSHS.

ARTICLE XX This article is reserved for future use.

ARTICLE XXI SUBSTANCE ABUSE TREATMENT SERVICES

Section 21.01 **Priority Populations for Substance Abuse Treatment Programs.** The Department has established priority populations for treatment in accordance with SAPT Block Grant regulations and state designation. Treatment Contractors shall give preference for treatment services in the following order of priority:

a) pregnant injecting drug users;
b) pregnant substance abusers; and
c) injecting drug users.

Contractor shall establish screening procedures to identify members of priority populations and admit them before all others, in priority order. When space is not available in Contractor's Program Service Area, Contractor shall guarantee successful and timely referral to another suitable DSHS-funded contractor. Contractors shall accept applicants from every region in the state when space is available. If two applicants are of equal priority status, preference may be given to an applicant living in Contractor's Program Service Area. Each OSAR and treatment Contractor shall include a statement in all its brochures, and shall post a notice in its lobby, concerning the priority population admission requirements.

Section 21.02 **Texas Department of Family and Protective Services (DFPS).** Contractors funded to provide youth and adult treatment services shall serve financially eligible clients referred by the DFPS. Such referrals shall receive priority admission behind the priority populations listed in the Priority Populations for Treatment Programs section. When space is not available, Contractor shall guarantee successful and timely referral of financially eligible clients referred by DFPS to another suitable DSHS-funded treatment or OSAR contractor.

Section 21.03 **Licensing.** Contractors that provide chemical dependency treatment as defined by Tex. Health and Safety Code Chapter 464 shall hold an active treatment license issued by the Department or be exempt from licensure. The failure to obtain a required license, or revocation, surrender or suspension of Contractor's license, or Contractor's ceasing to provide services, shall constitute grounds for termination of the Contract or other remedies the Department deems appropriate. To add a newly licensed site to the Contract, Contractor must submit a request to the contract manager assigned to the Program Attachment for a clinic number after a treatment license has been issued. Contractor shall use the clinic number request form located on the DSHS website at http://www.dshs.state.tx.us/sa/forms/default.shtm. Contractor shall not provide services under the Contract until the licensed site has been approved by DSHS and an amendment to the Contract has been executed.

Section 21.04 **Youth Treatment.** Treatment Contractors that provide youth treatment services shall comply with

the Rule regarding Financial Eligibility and Third Party Payment. If services for a client are covered by private insurance or a third party payor, but Contractor is not eligible for reimbursement by a client's private insurance or third party payor, Contractor shall refer the client to a treatment program that is approved by the client's private insurance or third party payor for services and reimbursement.

a) If the approved treatment program refuses treatment services to the client and documents that refusal, Contractor may provide treatment services and bill the Department provided-
   1) the refusal, including insurance or third party payor and approved treatment program, is documented in the client file;
   2) the client meets the Diagnostic Statistical Manual IV diagnostic criteria for substance abuse/dependence; and
   3) the client's treatment for residential care is approved by the designated OSAR contractor, if applicable.
b) If client's private insurance or third party payor would cover or approves partial or full payment for treatment services, Contractor may bill the Department for the non-reimbursed costs, including the deductible, provided -
   1) the client's parent refuses to file a claim with the private insurance or third party payor, or refuses to pay either the deductible or the non-reimbursed portion of the cost of treatment, and Contractor has obtained a signed statement from the parent that the parent refuses to pay, and Contractor has received approval from the DSHS substance abuse program services clinical coordinator to bill for the deductible or non-reimbursed portion of the cost;
   2) the client's parent cannot afford to pay the deductible and/or the non-reimbursed portion of the cost of treatment; or
   3) the family has an adjusted income at or below 200% of the Federal poverty guidelines.

   If a client has exhausted all insurance coverage and requires continued treatment, Contractor may provide the continued treatment services and bill the Department as long as the client meets b)1) or b)2) above.
c) If a client's parent, who does not have insurance or other third party coverage for the client's treatment services, can afford, but refuses, to pay for those services, Contractor may bill the Department for the cost of the client's treatment, if Contractor has obtained a signed statement from the parent that the parent refuses to pay and Contractor has received approval from DSHS to bill for the cost of the services.

Section 21.05 **Client Placement Criteria.** OSAR Contractors and treatment Contractors shall use Department client placement criteria as a guide for directing clients to the appropriate services and for authorization of residential treatment admissions. Contractor shall comply with the Client Placement Criteria Guidelines established by the Department.

Section 21.06 **Treatment Services Provided by Electronic Means.** Contractor shall ensure that if treatment services are provided by electronic means under Rule § 448.911, the services are delivered in accordance with the Telemedicine Medical Services provision of these General Provisions, except that approval and oversight responsibilities attributed to a contractor's medical director shall instead be attributed to Contractor's Licensed Chemical Dependency Counselor or Qualified Credentialed Counselor who is responsible for treatment program oversight.

Section 21.07 **Waiting Lists.** For all individuals who cannot be immediately admitted to treatment services, treatment Contractor shall make a waiting list entry in CMBHS that details the service type the individual is waiting for and the priority population designation of the individual. Upon admission, treatment Contractor shall close the waiting list entry, indicating the date of admission as the waiting list end date. Treatment Contractor shall ensure, either directly or through referral, that individuals waiting for admission receive interim services. Treatment Contractor shall document weekly contact with all individuals on its waiting list. Treatment Contractor shall have a written policy on waiting list management that defines why and how individuals are removed from the

waiting list for any purpose other than admission to treatment.

ARTICLE XXII PREVENTION AND INTERVENTION SERVICES

Section 22.01 **Prevention and Rural Border Intervention Program Requirements.** Prevention and Rural Border Intervention Contractors shall use the curriculum designated in the Program Attachment. Any adjustment to the provision of services, including a change in curriculum or county in which it is delivered, requires written amendment of the Contract.

Section 22.02 **Indicated Prevention.** Contractors that provide indicated prevention program services shall provide services to individuals who are showing warning signs of substance abuse and/or high risk problem behaviors. Indicated prevention services include -

a) indicated prevention screening;
b) indicated prevention assessment;
c) indicated prevention service plan; and
d) indicated prevention counseling.

Indicated Prevention Contractors shall use forms approved by DSHS to collect information and shall comply with requirements of Rules § 447.110 (e) and § 447.113 related to documentation of each indicated prevention screening, assessment, referral and follow-up.

Section 22.03 **Curriculum-Based Prevention Programs.** Contractors providing prevention services shall administer Department-approved pre- and post-tests to program participants. Outcomes must be reported in CMBHS in accordance with Article XXIII below.

Section 22.04 **Application of Chapter 448 Rules to Prevention and Intervention Contractors.** Contractors providing prevention and intervention services shall comply, as applicable, with the Rules § 448.504 relating to Quality Management and § 448.509 (d-f) relating to Incident Reporting. Contractors providing prevention and intervention services shall comply with DSHS Rules § 448.510 governing client transportation and § 448.603 governing training. Any reference to clients in these sections of the Rules also means prevention/intervention program participants. Additionally, any reference to facilities in these sections of the Rules also means prevention/intervention programs.

Section 22.05 **Confidentiality.** Prevention and intervention Contractors shall securely store, and maintain privacy and confidentiality of, information and records concerning participants and their family members that identify any individual as a person with a substance abuse problem or that relate to referrals for medical, health, or other DSHS-funded services, in accordance with Article VII (Confidentiality) of these General Provisions, and Rule § 448.210 (Confidentiality). Contractor shall ensure that all its employees and volunteers are aware of the requirements under this section.

Section 22.06 **Policies and Procedures.** Contractor shall maintain the additional policies and procedures as required by Rule § 444.303 and make them available for inspection by DSHS. Each Contractor shall develop and implement a policy and age-appropriate procedures to protect the rights of children, families and adults participating in a prevention or intervention program. All participants have the right to be free from abuse, neglect and exploitation; be treated with dignity and respect; and make a complaint to Contractor or the Department at any time. Participants receiving individualized services in an intervention or indicated prevention program also have the right to refuse or accept services after being informed of services and responsibilities, including program goals and objectives, rules and regulations, and participants' rights. Contractor shall maintain documentation showing that participants receiving individualized services in an intervention or indicated prevention program have received the required information and agreed to participate in the program. Each Contractor shall establish and demonstrate

active use of written agreements (memoranda of understanding) with available substance abuse providers and other mental health, health care, and social services providers to meet the needs of the clients/participants and family members. Agreements to coordinate services must be established in writing, be renewed annually (through signature or other documented contact), include names of the organizations entering into the agreement, services or activities each organization will provide, signatures of authorized representatives, and dates of action and expiration.

ARTICLE XXIII CLINICAL MANAGEMENT FOR BEHAVIORAL HEALTH SERVICES (CMBHS) SYSTEM

Section 23.01 **CMBHS.** The CMBHS is considered the official record of documentation by the Department. Contractor shall use the CMBHS time frames specified by the Department. Contractor shall use the Department-specified functionality of the CMBHS in its entirety. Contractor shall submit all bills and reports to the Department through the CMBHS, unless otherwise instructed.

Section 23.02 **Resources.** Contractor shall ensure that Contractor has appropriate Internet access and an adequate number of computers of sufficient capabilities to use the CMBHS. Equipment purchased with Department funds must be inventoried, maintained in working order, and secured.

Section 23.03 **Security Administrator.** Contractor shall designate a Security Administrator and a back-up Security Administrator. The Security Administrator is required to implement and maintain a system for management of user accounts/user roles to ensure that all the CMBHS user accounts are current. Contractor shall have a security policy that ensures adequate system security and protection of confidential information. Contractor shall notify the CMBHS Help-desk within 10 business days of any change to the designated Security Administrator or the back-up Security Administrator.

Section 23.04 **Security Violations and Accounts Updates**. Contractor shall notify the contract manager assigned to the Program Attachment immediately if a security violation is detected, or if Contractor has any reason to suspect that the security or integrity of the CMBHS data has been or may be compromised in any way. Contractor shall immediately block access to CMBHS of any person who should no longer have access to CMBHS, due to severance of employment with Contractor or otherwise, or immediately modify access when there is a change in a user's job responsibilities that affects the user's need for access to CMBHS, and update records on a daily basis to reflect any changes in account status.

Section 23.05 **Electronic Transfer of Information.** Contractor shall establish and maintain adequate internal controls, security, and oversight for the approval and electronic transfer of information regarding payments and reporting requirements. Contractor certifies that the electronic payment requests and reports transmitted will contain true, accurate, and complete information.

Section 23.06 **Access.** The Department reserves the right to limit or deny access to the CMBHS by Contractor at any time for any reason deemed appropriate by the Department.

Section 23.07 **Components.** If required by the Program Attachment to use the CMBHS, Contractor shall use the CMBHS components/functionality specified below, in accordance with the Department's instructions. DSHS anticipates making updates to the current CMBHS components/functionality, and Contractor shall use the updated components/functionality when directed by DSHS to do so.

All Contractors:

a) Add/Update Staff
b) Document/Maintain Credentials

c) Assign Roles
d) Provider/Location Details

Treatment Contractors:

a) Client Profile
b) Screening
c) Financial Eligibility Assessment
d) Assessment (Initial, Update, Service End, and Discharge)
e) Admission and Discharge
f) Request for Authorization
g) Service Begin
h) Treatment Plan/Treatment Plan Review
i) Detoxification Intake Report
j) Detoxification Service End Report
k) Detoxification Discharge Report
l) Detoxification Plan
m) Discharge Plan
n) Discharge Summary
o) Discharge Follow-up
p) Consent/Revoke Consent
q) Referral and Referral Follow-up
r) Referral List
s) Day Rate Attendance Record
t) Progress Note
u) Psycho-educational Note
v) Administrative Note
w) Medication Order, Medication List, and Medication Service
x) Provider Census
y) Wait List
z) Setup Residential Services
aa) Daily Capacity Report
bb) Service End
cc) Lab Results (Drug Screen)
dd) Client Payments
ee) Contracts
ff) Financial Status Report (if applicable)
gg) Invoice (if applicable)
hh) Advance (if applicable)
ii) Pending Claims
jj) Submitted Claims
kk) Services Offered
ll) Administrative Action List
mm) Client Reservations
nn) Consent Release Request List
oo) Assign/Reassign Clinician

OSAR Contractors:

a) Client Profile
b) Screening
c) Assessment (Initial, Update)
d) Referral and Referral Follow-up
e) Referral List

f) Consent/Revoke Consent
g) Daily Capacity Report
h) Financial Status Report
i) Invoices
j) Advance (if applicable)
k) Service Plan
l) Administrative Notes
m) Authorization Approval
n) Regional Provider Census
o) Wait List
p) Financial Eligibility Assessment
q) Progress Note
r) Contracts
s) Client Reservations
t) Administrative Action List
u) Measures
v) Consent Release Request List
w) Reassign Case Manager
x) Open Case
y) Close Case

HEI Contractors:

a) Client Profile
b) HEI Screening
c) Assessment (Case Management)
d) Service Plan & Service Plan Review
e) Open Case
f) Progress Note (HEI Case Management Note, Case Management Note)
g) Psycho-educational Note
h) Referral and Referral Follow-up
i) Referral List
j) Consent/Revoke Consent
k) Measures
l) Financial Status Report
m) Invoices
n) Advances (if applicable)
o) Lab Results
p) Services Offered
q) Close Case
r) Consent Release Request List
s) Reassign Case Manager

HIV Contractors:

a) Client Profile
b) Clinician's Notes
c) Referral
d) Referral Follow-up
e) Consent/Revoke Consent
f) Measures
g) Invoices

h) Advance (if applicable)
i) Financial Status Report
j) Service Offered
k) Consent Release Request List

COPSD Contractors:

a) Client Profile
b) Screening
c) Financial Eligibility Assessment
d) Assessment (Initial, Update, Service End, and Discharge)
e) Admission and Discharge
~~f)~~ Service Begin
g) Treatment Plan and Treatment Plan Reviews
h) Discharge Plan
i) Discharge Summary
j) Discharge Follow-up
k) Referral and Referral Follow-up
l) Referral List
m) Consent/Revoke Consent
n) Progress Notes
o) Psycho-educational Note
p) Administrative Note
q) Pending Claims
r) Submitted Claims
s) Service End
t) Client Payments
u) Contracts
v) Services Offered
w) Administrative Action List
x) Consent Release Request List
y) Assign/Reassign Clinician

PPI Contractors:

a) Client Profile
b) PPI Screening
c) Open Case
d) Service Plan & Service Plan Review
e) Administrative Note
f) Progress Note
g) Psycho-educational Note (if applicable)
h) Referral
i) Referral Follow-up
j) Referral List
k) Consent/Revoke Consent
l) Measures
m) Financial Status Report
n) Invoice
o) Advances (if applicable)

p) Curriculum Measures (if applicable)
q) Close Case
r) Services Offered
s) Consent Release Request List
t) Reassign Case Manager

YPU, YPS, YPI Contractors:

a) Measures
b) Financial Status Reports
c) Invoice
d) Advances (if applicable)
f) Curriculum Measures
g) Services Offered

RBI Contractors

a) Intervention Performance Measures
b) Financial Status Report
c) Invoice
d) Referral
e) Referral Follow-up
f) Client Profile
g) Demographics of Participants Receiving Prevention Education
h) Client Consent for Intervention Strategies

Other Contractors. Unless otherwise specified in this Contract, all other Contractors shall use the following additional CMBHS components/functionality:

a) Measures
b) Financial Status Report
c) Invoice
d) Advance
e) Referral
f) Referral Follow-up
f) Curriculum Measures (if applicable)

Section 23.08 **Drug Courts.** Treatment Contractors in jurisdictions with drug courts as defined by Tex. Health and Safety Code Chapter 469 will be monitored based on referral sources in the CMBHS for effectiveness of collaboration with drug courts.

Section 23.09 **Youth Services.** Youth treatment Contractors will be monitored through the CMBHS on efforts to obtain referrals of adolescents before the adolescents reach the juvenile justice system with the goal of increasing the proportion of juvenile clients not involved in the juvenile justice system.

Section 23.10 **OSAR Contractor Referrals.** OSAR Contractors will be monitored through the CMBHS on the effectiveness of outreach efforts as measured by the diversity of the sources that refer clients to each OSAR Contractor.

Section 23.11 **General Network Monitoring.** The Department and Contractor shall participate in network monitoring of their respective networks.

Section 23.12 **Contractor Network Responsibilities.** Contractor's network monitoring must include troubleshooting or assistance with Contractor-owned Wide Area Networks (WANs), Local Area Networks

(LANs), router switches, network hubs or other equipment and Contractor's Internet Service Provider (ISP). Contractor shall maintain responsibility for local server/network hardware. Contractor shall communicate and enforce network security policies and procedures to end-users and be responsible for data backup, restore, and contingency planning functions for all local data. Contractor shall -

a) create, delete, and modify end-user LAN-based accounts;
b) change/reset user local passwords as necessary;
c) administer security adds/changes and deletes for the CMBHS;
d) install, maintain, monitor, and support Contractor LANs and WANs; and
e) select, purchase service from, and monitor performance of ISP.

Section 23.13 **Customer Support and Training.** The Department will provide support for the CMBHS, including problem tracking and problem resolution. The Department will provide telephone numbers for Contractors to obtain access to expert assistance for CMBHS-related problem resolution. The Department will provide initial CMBHS training. Contractor shall provide subsequent ongoing end-user training.

ARTICLE XXIV MISCELLANEOUS FINANCIAL REQUIREMENTS FOR SUBSTANCE ABUSE CONTRACTS

Section 24.01 **Match and Program Income.** Unless waived in writing by the Department or unless the Program Attachment specifically states otherwise, Contractor shall contribute as match an amount equal to at least the percentage stated in the Program Attachment. Contractor shall report match on each Financial Status Report or as directed by DSHS. If the match ratio requirement is not met by the beginning of the last three months of the term of the Program Attachment, DSHS may withhold or reduce payments to satisfy match insufficiency or demand a refund of the amount of the match insufficiency. In accordance with Section 3.05 of these General Provisions (Program Income), Contractor shall report program income. Contractor shall not use program income as match without prior approval of the contract manager assigned to the Program Attachment.

Section 24.02 **Administrative Discharge.** The Department may administratively discharge any active treatment client for which fifty (50) calendar days have elapsed since the last billing end date for the client.

Section 24.03 **Billing for Treatment and Payment Restrictions.** Treatment Contractors shall bill for treatment services pursuant to Rules governing billing for treatment services. Treatment Contractors may bill for only one intensity of service and service type (either outpatient or residential) per client per day, and a treatment Contractor shall not bill for an intensity of service and service type if another DSHS-funded treatment contractor is providing and billing DSHS for another intensity of service and service type; except that Contractor may provide and bill the Department for pharmacotherapy or co-occurring psychiatric and substance use disorder services, or ambulatory detoxification for a client at the same time Contractor or another DSHS-funded contractor provides and bills the Department for outpatient or residential services. If two contractors provide services to the same client under this exception, the contractors must coordinate services and both contractors must document the service coordination.

Section 24.04 **Financial Status Reports for Substance Abuse Contracts.** For contracts with categorical budgets, Contractor shall submit quarterly FSRs through the CMBHS by the [last working day of the month following the quarter being reported for Department review and financial assessment. All other requirements of the Financial Status Reports section of these General Provisions apply.

Section 24.05 **NorthSTAR.** If Contractor is also a NorthSTAR-contracted provider, Contractor shall bill only NorthSTAR for any covered services delivered to NorthSTAR-eligible individuals, subject to its NorthSTAR contract and NorthSTAR provider manual. All Contractors that are not NorthSTAR-contracted providers shall

refer all NorthSTAR financially eligible individuals to the NorthSTAR Behavioral Health Organization (BHO) at (888) 800-6799 or an appropriate NorthSTAR-contracted provider. Contractors may obtain information on NorthSTAR at http://www.dshs.state.tx.us/mhsa/northstar/northstar.shtm. For emergency services needed by NorthSTAR-eligible clients outside of the NorthSTAR service area, Contractors shall facilitate referral to an appropriate emergency care provider. If the client is eligible or enrolled in NorthSTAR, the emergency care provider must be instructed by Contractor to notify the NorthSTAR BHO within twenty-four (24) hours of admission, as a condition of reimbursement from the NorthSTAR BHO.

Section 24.06 **Moving Funds Between Program Attachments.** Contractor shall not expend funds from one Program Attachment to provide and bill DSHS for services in another Program Attachment without DSHS approval and a written contract amendment.

Section 24.07 **Contract Reconciliation.** If Contractor is required to annually reconcile multi-year contracts, Contractor, within sixty (60) calendar days after the end of each year of this Contract, shall submit to the contract manager assigned to the Program Attachment all financial and reconciliation reports required by Department in forms as determined by Department.

Section 24.08 **Interpreter Services for Hearing Impaired Persons.** When interpreter services for a hearing impaired person are needed, Contractor shall notify the contact manager assigned to the Program Attachment prior to submitting the Request for Interpreter Services Form (Form). Contractor shall follow the instructions for completing the Form when making a request for interpreter services. Contractor shall request interpreter services for actual hours, days, and times necessary for effective communication only during delivery of client services. To avoid incurring unnecessary interpreter fees and expenses, Contractor shall notify the interpreter services contractor immediately if interpreting services will not be needed due to appointment cancellation or otherwise. Failure to provide notification to the interpreter services contractor that interpreter services will not be needed less than 48 hours before the scheduled interpreter services session will result in costs to DSHS for billings by the interpreter services contractor for the unused services, travel expenses, etc. Contractor may be required to submit to DSHS a percentage of the costs incurred by DSHS if the Contractor failed to immediately notify the interpreter services contractor that the client's appointment had been cancelled or because Contractor failed to cancel interpreter services that could reasonably be expected to be unnecessary; for example, Contractor scheduled multiple interpreter sessions, but when the client failed to keep the initial appointment, Contractor did not cancel the multiple interpreter sessions.

Attachment IV

Attachment IV

PROFESSIONAL SERVICES AGREEMENT FOR THE SAN ANTONIO TOBACCO PREVENTION AND CONTROL COALITION FOR PUBLIC HEALTH PROGRAM EVALUATION SERVICES

STATE OF TEXAS	§	**CITY OF SAN ANTONIO**
	§	
COUNTY OF BEXAR	§	**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), acting by and through its Director of the San Antonio Metropolitan Health District (hereinafter referred to as "Metro Health"), and Courtney A. Denton (hereinafter referred to as "Consultant"), 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.

"Consultant" is defined in the preamble of this Agreement and has an address of "238 Allensworth, San Antonio, Texas 78209 with an Employer Identification Number of xxx-xx-9833.

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

"SA-TPCC" shall be defined as the San Antonio Tobacco Prevention and Control Coalition.

"TPCC Grant" shall be defined as the TDSHS Tobacco Program Community Coalitions Grant Contract which is the funding source for this agreement.

"Tobacco Program staff" shall be defined as those persons hired by Metro Health for the purpose of day-to-day program oversight with funding from the Texas Department of State Health Services (DSHS).

"CEW" shall be defined as the Community Evaluation Workgroup, the team of coalition members and sub-contractors that collect, organize and report data related to the work of the program and coalition.

"TDSHS" shall be defined as the Texas Department of State Health Services, the agency that

funds, oversees the statewide grant, tobacco prevention and control programming, and evaluation efforts.

"SAO," shall be defined as the Texas State Auditor's Office.

"OIG," shall be defined as the Office of the Inspector General.

"CGUS," shall be defined as the Comptroller General of the United States.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 1, 2012 and terminate on August 31, 2013.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

2.3 City will have the option to renew and extend the term of this Agreement once for a term of one year, subject to acceptance by Consultant. The renewal or extension will be evidenced by passage of a subsequent City ordinance.

2.4 Consultant further agrees and understands that the City expects to pay all obligations of this Agreement from the TPCC Grant. Accordingly, if TPCC Grant funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor Consultant will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 Consultant shall be present at all relevant coalition meetings and planning sessions. This participation is required for coordination of SA-TPCC activities including but not limited to community assessment, strategic planning, outreach, evaluation planning, and other events.

3.3 Consultant shall comply with the guidelines regarding the use of the Metro Health and City names and logos, and will also comply with branding and identity guidelines determined for the SA-TPCC.

3.4 Consultant will submit detailed monthly activity reports to Metro Health for the purposes of program evaluation and reporting. Consultant will supply the reports in the format requested by Metro Health by the 5th business day of each month to report performance for the preceding month. In addition, Consultant will provide any other progress reports or summaries requested by the SA-TPCC as needed.

3.5 Consultant will attend and participate in any TDSHS technical assistance training sessions or statewide coalition meetings as directed by TDSHS. Costs to attend and participate in these meetings shall be covered by the compensation provided to Consultant by this contract.

3.6 Other reasonable duties and responsibilities assigned by City or Metro Health staff to fulfill routine evaluation tasks and inquiries or in cases when TDSHS requires additional evaluation or data gathering activities.

3.7 Consultant shall be responsible for providing any and all software, hardware and equipment as necessary to perform his or her services, unless otherwise agreed upon by the Parties.

3.8 In addition to the above mentioned items from Section III, Consultant shall provide, oversee, administer, and carry out all services in a manner satisfactory to the City at all times affixed hereto and incorporated herein for all purposes as Attachment I. Additionally, Consultant agrees to be fully subject to applicable subcontractor provisions as outlined in the FY13 Department of State Health Services Contract General Provisions for Substance Abuse Contracts included at all times affixed hereto and incorporated herein for all purposes as Attachment II.

3.9 All work performed by Consultant 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 Consultant, 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 Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant'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 Consultant an amount not to exceed sixty-five-thousand dollars ($65,000.00) for the term of this Agreement.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.3 City and Consultant 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 Consultant for said services.

4.4 Consultant agrees to submit invoices to the City for each month associated with this Agreement. Payments will be made monthly to Consultant in twelve equal installments of $5,416.66

upon receipt of billing invoices from Consultant. Invoices will be due on a monthly basis five (5) business days after the end of each monthly reporting period.

4.4.1 With every invoice submitted, Consultant shall attach a brief monthly narrative generally describing progress of the Consultant during that month in regard to evaluation of the SA-TPCC project. Additionally, the Consultant shall attach the following to the invoices if they apply:

A. Activities the Consultant has participated in and their locations,

B. Attach copies of sign in sheets and/or agendae of any and all meetings or presentations associated with this agreement,

C. Documentation of any performance measures that are achieved through Consultant's activities,

D. Attach anything else Consultant or City believes will be helpful in documenting evaluation progress, such as photographs, brochures, etc.

4.4.2 Consultant understands that invoices and reports of any monthly activity of SA-TPCC program measures addressed through its activities shall be submitted by no later than the 5th business day of the following month as based upon the SA-TPCC performance measures, which is affixed hereto and incorporated herein for all purposes as Attachment I. This report will be submitted electronically using forms designated by SA-TPCC to Tobacco Program Staff and the designated representative of the CEW. Non submittal or late submittal of required monthly activity reports are grounds for delaying reimbursement of corresponding invoices or possible rejection of said invoices should the activity reports be submitted more than 30 days following the end of the monthly reporting period.

4.4.3 Consultant understands that due to the requirements of the funding agency, invoices submitted for reimbursement that are received by the City more than 30 calendar days following the end of the monthly reporting period may be rejected by City or the funding agency and not be subject to reimbursement.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by the Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 In accordance with Texas law, Consultant 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, Consultant agrees that no such local government records produced by or on the behalf of Consultant pursuant to this Contract shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant 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. Consultant further agrees to turn over to City all such records upon termination of this Contract. Consultant 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, unless required to do so by a court of competent jurisdiction. Metro Health shall be notified of such request as set forth in Article VIII of this Contract.

5.3 Any and all writings, documents or information in whatsoever form and character produced by Consultant 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 Consultant. Consultant 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.

VI. RECORD REQUESTS

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City, TDSHS, SAO, OIG and CGUS and any of their authorized representatives at their respective offices, at all reasonable times and as often as may be deemed necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City, TDSHS, SAO, OIG, CGUS and any of their authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City, TDSHS, SAO, OIG, CGUS and any of their authorized representatives shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

6.4 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 Consultant receives inquiries regarding documents within its possession pursuant to this Agreement, Consultant 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 Consultant shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Consultant'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 Consultant 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 Consultant 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. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant 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 Consultant 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, Consultant 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 Consultant 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 Consultant of any and all right or claims to

collect moneys that Consultant 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, Consultant shall cease all operations of work being performed by Consultant 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 Consultant 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 of San Antonio
Director of Health
San Antonio Metropolitan Health District
332 W. Commerce, Suite 307
San Antonio, Texas 78205

With a copy to:
Tobacco Coalition Program
Richard E. Jackson, MPA
San Antonio Metropolitan Health District
332 W. Commerce, Suite 303
San Antonio, Texas 78205

If intended for Consultant, to:

Courtney A. Denton
238 Allensworth
San Antonio, Texas 78209

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to Metro Health, which shall be clearly labeled "*San Antonio Tobacco Prevention and Control Evaluation*" in the Description of Operations block of the Certificate. The 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature 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 Metro

Health. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 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 whereby City may incur increased risk.

9.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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:

TYPE	AMOUNTS
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000

9.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

9.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto 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). Consultant 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. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio

San Antonio Metropolitan Health District
332 West Commerce
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- 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;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide 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.

9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant'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.

9.8 In addition to any other remedies the City may have upon Consultant'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 Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

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

9.10 It is agreed that Consultant'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.

9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

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

X. DEBARMENT

10.1 Consultant certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

10.2 Consultant shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof, Consultant learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XI. INDEMNIFICATION

11.1 Consultant 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 or 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 Consultant's activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents, employees, directors and representatives while in the exercise of 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, its officers, or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND City ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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. Consultant shall advise the City in writing within 24 hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant 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 Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant 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 Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant 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.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Except as otherwise stated herein, Consultant 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, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, 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 Consultant 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 Consultant 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 Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that he or she is an independent Consultant and not an officer, agent, servant or employee of City; that Consultant 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 Consultant, its officers, agents, employees, Consultants, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. 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 Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. CONFLICT OF INTEREST

14.1 Consultant 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 the City's 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, Consultant 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. Consultant 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 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the City and Consultant. The Director may execute contract amendments on behalf of City in the following circumstances a) extensions up to one year, b) modifications to the scope of service listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and c) changes in state or federal regulations mandated by the funding agency.

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 Consultant warrants and certifies that Consultant 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 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state, and local laws, rules, and regulations.

18.2 Consultant shall grant access to the City, TDSHS, SAO, OIG and CGUS and any of their authorized representatives the right of access to inspect the work and the premises on which any work is performed, and the right to audit in accordance with the Access and Inspection Article in FY13 Department of State Health Services Contract General Provisions for Substance Abuse Contracts, included at all times affixed hereto and incorporated herein for all purposes as Attachment II.

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 Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant 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.

XXIV. ASSURANCES AND CERTIFICATIONS

24.1 Consultant agrees and certifies by execution of this Agreement that:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;

b) neither it, nor its principals, are presently debarred, suspended, proposed for

debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);
c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
d) it is not subject to an outstanding judgment in a suit against Consultant for collection of the balance of a debt;
e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Consultant;
f) no person who has an ownership or controlling interest in Consultant or who is an agent or managing employee of Consultant has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
g) neither it, nor its principals have within the three(3)-year period preceding this Agreement, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;
h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
i) neither it, nor its principals within a three(3)-year period preceding this Agreement has had one or more public transaction (federal, state or local) terminated for cause or default.

XXV. LOBBYING

25.1 Consultant agrees and certifies by execution of this Agreement to the following: Consultant shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Consultant shall notuse funds paid under this Agreement, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification

of any contract (31 USC § 1352 and UGMS). If at any time this Agreement exceeds $100,000 of federal funds, Consultant shall file with the contract manager assigned to the FY 13 Program Attachment, included at all times affixed hereto and incorporated herein for all purposes as Attachment III, a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Consultant in connection with this Agreement, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Consultant has an agreement. Consultant shall file the declaration, certification, and disclosure at the time of application for this Agreement; upon execution of this Agreement unless Consultant previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Consultant shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the FY 13 Program Attachment. Consultant shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28.29.1.

XXVI. ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to this the ____ day of _____, 2012.

CITY OF SAN ANTONIO:

_____
Thomas L. Schlenker, M.D., M.P.H.
Director of Health

CONSULTANT:

_____
Courtney A. Denton

Approved as to Form:

_____
Michael D. Bernard
City Attorney

ATTACHMENT I

SCOPE OF SERVICES
Program Evaluation Services for San Antonio Tobacco Prevention & Control Coalition
Contract Period: September 1, 2012 – August 31, 2013

Objective 1: Lead the Community Evaluation Work Group (CEW) for the SA-TPCC.			
	Activity/Task	**Measure/Outcome**	**Start & End Dates**
1.1	Convene meetings and conference calls with CEW members as needed to conduct and plan community assessment and program evaluation activities	Meeting sign-in sheets; Meetings attended; Meeting notes	Sep 1, 2012- Aug 31, 2013
1.2	Delegate tasks to coalition members as needed to complete tasks of CEW	Tasks assigned; Tasks completed	Sep 1, 2012- Aug 31, 2013
1.3	Report and present CEW activities and findings to SA-TPCC members as needed or requested	Evaluation reports; Reports presented; Meeting sign-in sheets; Meetings attended	Sep 1, 2012- Aug 31, 2013
1.4	Participate in TDSHS statewide evaluation team meetings and conference calls – Quarterly 1-day meetings in Austin – Monthly telephone conference calls – Fall and Spring grantee meetings in Austin – Other scheduled calls/meetings as needed	Meeting sign-in sheets; Meetings attended	Sep 1, 2012- Aug 31, 2013
1.5	Participate in SA-TPCC strategic planning for 2013-2013 and sustainment of activities beyond grant funding	Meeting sign-in sheets; Meetings attended	Jun-Aug 2013

Objective 2: Conduct SA-TPCC program process and outcome evaluation and reporting for 2012-2013.			
	Activity/Task	**Measure/Outcome**	**Start & End Dates**
2.1	Revise program evaluation plan based on intervention plan for 2012-2013, priorities determined by the coalition and CEW, and findings and recommendations of 2012 community assessment	Plan revised and distributed to coalition members and TDSHS	Nov 15, 2012
2.2	Revise process evaluation data collection instruments as needed and distribute to coalition members	Data collection instruments	Nov 15, 2012
2.3	Coordinate SA-TPCC partners and CEW in the collection of process evaluation data from the pre-established key data sources	Completed process evaluation database	Sep 1, 2012- Aug 31, 2013
2.4	Collect and analyze performance information to prepare and submit quarterly evaluation reports on progress and sentinel markers to TDSHS	Completed quarterly program evaluation progress summaries	*Due Dates:* Qtr 1: Dec 5, 2012 Qtr 2: Mar 5, 2013 Qtr 3: Jun 5, 2013 Qtr 4: Sep 5, 2013
2.5	Complete and submit universal data display forms regarding program activities as specified	Completed data displays	TBA by TDSHS

	by TDSHS		
2.6	Assess delivery of program activities and provide input for changes when needed	Findings and recommendations reported	Sep 1, 2012-Aug 31, 2013
2.7	Prepare and deliver presentation of process and outcome evaluation to coalition and coordinating group members	Presentation of progress reports at coordinating group and coalition meetings	Aug 31, 2013

Objective 3: Conduct annual Bexar County community assessment of needs and resources regarding tobacco use, prevention, and control.			
	Activity/Task	**Measure/Outcome**	**Start & End Dates**
3.1	Gather and analyze existing San Antonio data regarding tobacco-related morbidity and mortality	Trends identified for each year and compared between years	Oct 2012-May 2013
3.2	Gather and analyze information to complete community assessment universal data display forms as specified by TDSHS	Data display forms completed	Oct 2012-May 2013
3.3	Compile summary of recommendations for action regarding youth and adult tobacco use and cessation and community capacity for tobacco control and programming in San Antonio based on assessment	Completed summary of recommendations	May 31, 2013
3.4	Prepare and deliver presentation of community assessment findings and recommendations to SA-TPCC members at coalition meeting	Presentation delivered at coalition meeting	Jun 2013
3.5	Prepare and submit completed reports and recommendations to TDSHS	Report submitted	Due by Jun 15, 2013

ATTACHMENT II

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General Provisions for Substance Abuse Contracts
(Core/Subrecipient)

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ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements of the Department's rules of general applicability and other applicable state and federal statutes, regulations, rules, and executive orders, as such statutes, regulations, rules, and executive orders currently exist and as they may be lawfully amended. The Department rules are located in the Texas Administrative Code, Title 25 (Rules). To the extent this Contract imposes a higher standard, or additional requirements beyond those required by applicable statutes, regulations, rules or executive orders, the terms of this Contract will control. Contractor further agrees that, upon notification from DSHS, Contractor shall comply with the terms of any contract provisions DSHS is required to include in its contracts under legislation effective at the time of the effective date of this Contract or during the term of this Contract.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document, if any, (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in Contractor's response to the Solicitation Document constitutes a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department and shall provide any other information requested by the Department in the format required by DSHS. Failure to submit any required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the Department.

Section 1.04 **Client Financial Eligibility.** Where applicable, Contractor shall use financial eligibility criteria, financial assessment procedures and standards developed by the Department to determine client eligibility.

Section 1.05 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, this Contract will be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit will be Travis County, Texas.

Section 1.06 **Applicable Laws and Regulations Regarding Funding Sources.** Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this Contract. Contractor agrees to comply with applicable laws, executive orders, regulations and policies, as well as Office of Management and Budget (OMB) Circulars, the Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov. Code Chapter 783, and Uniform Grant Management Standards (UGMS), as revised by federal circulars and incorporated in UGMS by the Governor's Budget, Planning and Policy Division. UGMA and UGMS can be located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor also shall comply with all applicable federal and state assurances contained in UGMS, Part III, State Uniform Administrative Requirements for Grants and Cooperative Agreements §__.14. If applicable, Contractor shall comply with the Federal awarding agency's Common Rule, and the U.S. Health and Human Services Grants Policy Statement, both of which may be

located through web links on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. For contracts funded by block grants, Contractor shall comply with Tex. Gov. Code Chapter 2105.

Section 1.07 **Statutes and Standards of General Applicability.** Contractor is responsible for reviewing and complying with all applicable statutes, rules, regulations, executive orders and policies. To the extent applicable to Contractor, Contractor shall comply with the following:

a) the following statutes, rules, regulations, and DSHS policy (and any of their subsequent amendments) that collectively prohibit discrimination, exclusion from or limitation of participation in programs, benefits or activities or denial of any aid, care, service or other benefit on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse, political belief or religion: 1) Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 USC §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794(a); 4) the Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.; 5) Age Discrimination Act of 1975, 42 USC §§ 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) U.S. Department of Labor, Equal Employment Opportunity E.O. 11246; 9) Tex. Lab. Code Chapter 21; 10) Food Stamp Act of 1977 (7 USC § 200 et seq.; 11) Executive Order 13279, 45 CFR Part 87 or 7 CFR Part 16 regarding equal treatment and opportunity for religious organizations; 12) Drug Abuse Office and Treatment Act of 1972, 21 USC §§ 1101 et seq., relating to drug abuse; 13) Public Health Service Act of 1912, §§ 523 and 527, 42 USC § 290dd-2, and 42 CFR Part 2, relating to confidentiality of alcohol and drug abuse patient records; 14) Title VIII of the Civil Rights Act of 1968, 42 USC §§ 3601 et seq., relating to nondiscrimination in housing; and 15) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
b) Immigration Reform and Control Act of 1986, 8 USC § 1324a, regarding employment verification;
c) Pro-Children Act of 1994, 20 USC §§ 6081-6084, and the Pro-Children Act of 2001, 20 USC § 7183, regarding the non-use of all tobacco products;
d) National Research Service Award Act of 1971, 42 USC §§ 289a-1 et seq., and 6601 (PL 93-348 and PL 103-43), regarding human subjects involved in research;
e) Hatch Political Activity Act, 5 USC §§ 1501-1508 and 7324-28, which limits the political activity of employees whose employment is funded with federal funds;
f) Fair Labor Standards Act, 29 USC §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 USC §§ 4701 et seq., as applicable, concerning minimum wage and maximum hours;
g) Tex. Gov. Code Chapter 469, pertaining to eliminating architectural barriers for persons with disabilities;
h) Texas Workers' Compensation Act, Tex. Lab. Code Chapters 401-406 and 28 Tex. Admin. Code Part 2, regarding compensation for employees' injuries;
i) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;
j) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin. Code Chapter 96 regarding safety standards for handling blood borne pathogens;
k) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;
l) environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for

Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;" 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961; 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234); 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq.; 6) Federal Water Pollution Control Act, 33 USC §1251 et seq.; 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j; 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.; 9) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §§7401 et seq.; 10) Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271 et seq.) related to protecting certain rivers system; and 11) Lead-Based Paint Poisoning Prevention Act (42 USC §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;

m) Intergovernmental Personnel Act of 1970 (42 USC §§4278-4763) regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F);
n) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;
o) Davis-Bacon Act (40 USC §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 USC § 874), and the Contract Work Hours and Safety Standards Act (40 USC §§ 327-333), regarding labor standards for federally-assisted construction subagreements;
p) National Historic Preservation Act of 1966, §106 (16 USC § 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974 (16 USC §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
q) financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations;"
r) Trafficking Victims Protection Act of 2000, Section 106(g) (22 USC § 7104);
s) Executive Order, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, if required by a federal funding source of the Contract; and
t) requirements of any other applicable state and federal statutes, executive orders, regulations, rules and policies.

If this Contract is funded by a federal grant or cooperative agreement, additional state or federal requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference. Contractor may obtain a copy of any applicable Notice of Grant Award from the contract manager assigned to the Program Attachment.

Section 1.08 **Applicability of General Provisions to Interagency and Interlocal Contracts.** Certain sections or portions of sections of these General Provisions will not apply to Contractors that are State agencies or units of local government; and certain additional provisions will apply to such Contractors.

a) The following sections or portions of sections of these General Provisions will not apply to interagency or interlocal contracts:
   1) Hold Harmless and Indemnification, Section 13.19;
   2) Independent Contractor, Section 12.15 (delete the third sentence in its entirety; delete the word "employees" in the fourth sentence; the remainder of the section applies);
   3) Insurance, Section 12.03;
   4) Liability Coverage, Section 12.05;

5) Fidelity Bond, Section 12.04;
6) Historically Underutilized Businesses, Section 12.10 (Contractor, however, shall comply with HUB requirements of other statutes and rules specifically applicable to that entity);
7) Debt to State and Corporate Status, Section 3.01;
8) Application of Payment Due, Section 3.02; and
9) Article XV Claims against the Department (This Article is inapplicable to interagency contracts only).

b) The following additional provisions will apply to interagency contracts:
1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Tex. Gov. Code Chapter 771;
2) The Parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the affected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder; and
3) DSHS certifies that it has the authority to enter into this Contract granted in Tex. Health & Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.

c) The following additional provisions will apply to interlocal contracts:
1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Tex. Gov. Code Chapter 791;
2) Payments made by DSHS to Contractor will be from current revenues available to DSHS; and
3) Each Party represents that it has been authorized to enter into this Contract.

d) Contractor agrees that Contract Revision Requests (pursuant to the Contractor's Request for Revision to Certain Contract Provisions section), when signed by a duly authorized representative of Contractor, will be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing body.

Section 1.09 **Civil Rights Policies and Complaints.** Upon request, Contactor shall provide the Health and Human Services Commission (HHSC) Civil Rights Office with copies of all Contractor's civil rights policies and procedures. Contractor shall notify HHSC's Office of Civil Rights of any civil rights complaints received relating to performance under this Contract no more than ten (10) calendar days after Contractor's receipt of the claim. Notice must be directed to –

HHSC Civil Rights Office
701 W. 51st St., Mail Code W206
Austin, Texas 78751
Toll-free phone (888) 388-6332
Phone (512) 438-4313
TTY Toll-free (877) 432-7232
Fax (512) 438-5885

Section 1.10 **Licenses, Certifications, Permits, Registrations and Approvals.** Contractor shall obtain and maintain all applicable licenses, certifications, permits, registrations and approvals to conduct its business and to perform the services under this Contract. Failure to obtain or any revocation, surrender, expiration, non-renewal, inactivation or suspension of any such license, certification, permit, registration or approval constitutes grounds for termination of this Contract or other remedies the Department deems appropriate. Contractor shall ensure that all its employees, staff and volunteers obtain and maintain in active status all

licenses, certifications, permits, registrations and approvals required to perform their duties under this Contract and shall prohibit any person who does not hold a current, active required license, certification, permit, registration or approval from performing services under this Contract.

ARTICLE II SERVICES

Section 2.01 **Education to Persons in Residential Facilities.** If applicable, Contractor shall ensure that all persons, who are housed in Department-licensed and/or -funded residential facilities and who are twenty-two (22) years of age or younger, have access to educational services as required by Tex. Educ. Code § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by Tex. Educ. Code § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor's residential facility.

Section 2.02 **Disaster Services.** In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or as a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas: community evacuation; health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Contractor shall carry out disaster services in the manner most responsive to the needs of the emergency, be cost-effective, and be least intrusive on Contractor's primary services.

Section 2.03 **Consent to Medical Care of a Minor.** If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, Contractor shall not provide treatment of a minor unless informed consent to treatment is obtained pursuant to Tex. Fam. Code Chapter 32, relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with Tex. Fam. Code Chapter 32, federal law supersedes state law.

Section 2.04 **Telemedicine Medical Services.** Contractor shall ensure that if Contractor or its subcontractor uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using a protocol approved by Contractor's medical director and using equipment that complies with the equipment standards as required by the Department. Procedures for providing telemedicine service must include the following requirements:

a) clinical oversight by Contractor's medical director or designated physician responsible for medical leadership;
b) contraindication considerations for telemedicine use;
c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
e) use by credentialed licensed providers providing clinical care within the scope of their licenses;
f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
g) priority in scheduling the system for clinical care of individuals;
h) quality oversight and monitoring of satisfaction of the individuals served; and
i) management of information and documentation for telemedicine services that ensures timely access to

accurate information between the two sites.
Telemedicine Medical Services does not include chemical dependency treatment services provided by electronic means under Rule § 448.911.

Section 2.05 **Fees for Personal Health Services.** Contractor may develop a system and schedule of fees for personal health services in accordance with the provisions of Tex. Health & Safety Code § 12.032, DSHS Rule §1.91 covering Fees for Personal Health Services, and other applicable laws or grant requirements. The amount of a fee must not exceed the actual cost of providing the services. No client may be denied a service due to inability to pay.

Section 2.06 **Cost Effective Purchasing of Medications.** If medications are funded under this Contract, Contractor shall make needed medications available to clients at the lowest possible prices and use the most cost effective medications purchasing arrangement possible.

Section 2.07 **Services and Information for Persons with Limited English Proficiency.** Contractor shall take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities. Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter. Contractor shall make every effort to avoid use of any persons under the age of eighteen (18) or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

ARTICLE III FUNDING

Section 3.01 **Debt to State and Corporate Status.** Pursuant to Tex. Gov. Code § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tex. Tax Code §§ 171.001 et seq.). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State's office. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 3.02 **Application of Payment Due.** Contractor agrees that any payments due under this Contract will be applied towards any debt of Contractor, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

Section 3.03 **Use of Funds.** Contractor shall expend Department funds only for the provision of approved services and for reasonable and allowable expenses directly related to those services.

Section 3.04 **Use for Match Prohibited.** Contractor shall not use funds provided through this Contract for matching purposes in securing other funding unless directed or approved by the Department in writing.

Section 3.05 **Program Income.** Gross income directly generated from Department funds through a project

or activity performed under a Program Attachment and/or earned only as a result of a Program Attachment during the term of the Program Attachment are considered program income. Unless otherwise required under the terms of the grant funding this Contract, Contractor shall use the addition alternative, as provided in UGMS § __.25(g)(2), for the use of program income to further the program objectives of the state or federal statute under which the Program Attachment was made, and Contractor shall spend the program income on the same Program Attachment project in which it was generated. Contractor shall identify and report this income in accordance with the Compliance and Reporting Article of these General Provisions, the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm and the provisions of the Program Attachment(s). Contractor shall expend program income during the Program Attachment term and may not carry forward to any succeeding term. Contractor shall refund program income not expended in the term in which it is earned to DSHS. DSHS may base future funding levels, in part, upon Contractor's proficiency in identifying, billing, collecting, and reporting program income, and in using it for the purposes and under the conditions specified in this Contract.

Section 3.06 **Nonsupplanting.** Contractor shall not supplant (i.e., use funds from this Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Contract) but rather shall use funds from this Contract to supplement existing state or local funds currently available for a particular activity. Contractor shall make a good faith effort to maintain its current level of support. Contractor may be required to submit documentation substantiating that a reduction in state or local funding, if any, resulted for reasons other than receipt or expected receipt of funding under this Contract.

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS

Section 4.01 **Payment Methods.** Except as otherwise provided by the provisions of the Program Attachment(s), the payment method for each Program Attachment will be one of the following methods:

a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and acceptable submission of a request for reimbursement; or
b) unit rate/fee-for-service. This payment method is based on a fixed price or a specified rate(s) or fee(s) for delivery of a specified unit(s) of service, as stated in the Program Attachment(s) and acceptable submission of all required documentation, forms and/or reports.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless otherwise specified in the Program Attachment(s) or permitted under the Third Party Payors section of this Article, Contractor shall submit requests for reimbursement or payment monthly within thirty (30) calendar days following the end of the month covered by the bill. Contractor shall maintain all documentation that substantiates billing submissions and make the documentation available to DSHS upon request.

Section 4.03 **Final Billing Submission.** Unless otherwise provided by the Department, Contractor shall submit a reimbursement or payment request as a final close-out bill not later than sixty (60) calendar days following the end of the term of the Program Attachment for goods received and services rendered during the term. If necessary to meet this deadline, Contractor may submit reimbursement or payment requests by facsimile transmission. Reimbursement or payment requests received in DSHS's offices more than sixty (60) calendar days following the end of the applicable term will not be paid. Consideration of requests for an exception will be made on a case-by-case basis, subject to the availability of funding, and only for an extenuating circumstance, such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations or causes damage or destruction of a place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement

must be submitted for review and approval to the DSHS Accounting Section.

Section 4.04 **Working Capital Advance.** If allowed under this Contract, a single one-time working capital advance per term of the Program Attachment may be granted at the Department's discretion. Contractor must submit documentation to the contract manager assigned to the Program Attachment to justify the need for a working capital advance. Contractor shall liquidate the working capital advance as directed by the Department. The requirements for the documentation justifying the need for an advance and the directions for liquidating the advance are found in the Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

Section 4.05 **Financial Status Reports (FSRs).** Except as otherwise provided in these General Provisions or in the terms of the Program Attachment(s), for contracts with categorical budgets, Contractor shall submit quarterly FSRs to Accounts Payable by the last business day of the month following the end of each quarter of the Program Attachment term for Department review and financial assessment. Contractor shall submit the final FSR no later than sixty (60) calendar days following the end of the applicable term.

Section 4.06 **Third Party Payors.** A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided. Third party payors include, but are not limited to, commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in this Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. Contractor shall (a) enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Contract that may be covered by those programs, and bill those programs for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients who are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted, in which case the thirty (30)-day requirement in the Billing Submission section will be extended until all such appeals have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

ARTICLE V TERMS AND CONDITIONS OF PAYMENT

Section 5.01 **Prompt Payment.** Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments and reimbursements are contingent upon a signed Contract and will not exceed the total amount of authorized funds under this Contract. Contractor is entitled to payment or reimbursement only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to this Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (Tex. Gov. Code Chapter 2251). Contractor shall comply with Tex. Gov. Code Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department will not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance are subject to audit or review by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures, disallowed costs, or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the

date(s) due. Department may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 **Condition Precedent to Requesting Payment.** Contractor shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including any advance payments from Department.

Section 5.04 **Acceptance as Payment in Full.** Except as permitted in the Fees for Personal Health Services section of the Services Article of these General Provisions or under 25 Tex. Admin. Code § 444.413, Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients or participants, and Contractor shall not seek additional reimbursement or payment for services or goods from clients or participants or charge a fee or make a profit with respect to the Contract. A fee or profit is considered to be an amount in excess of actual allowable costs that are incurred in conducting an assistance program.

ARTICLE VI ALLOWABLE COSTS AND AUDIT REQUIREMENTS

Section 6.01 **Allowable Costs.** For services satisfactorily performed, and sufficiently documented, pursuant to this Contract, DSHS will reimburse Contractor for allowable costs. Contractor must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Contract. DSHS will determine whether costs submitted by Contractor are allowable and eligible for reimbursement. If DSHS has paid funds to Contractor for unallowable or ineligible costs, DSHS will notify Contractor in writing, and Contractor shall return the funds to DSHS within thirty (30) calendar days of the date of this written notice. DSHS may withhold all or part of any payments to Contractor to offset reimbursement for any unallowable or ineligible expenditures that Contractor has not refunded to DSHS, or if financial status report(s) required under the Financial Status Reports section are not submitted by the due date(s). DSHS may take repayment (recoup) from funds available under this Contract in amounts necessary to fulfill Contractor's repayment obligations. Applicable cost principles, audit requirements, and administrative requirements include-

Applicable Entity	Applicable Cost Principles	Audit Requirements	Administrative Requirements
State, Local and Tribal Governments	OMB Circular A-87 (2 CFR, Part 225)	OMB Circular A-133 and UGMS	UGMS, OMB Circular A-102, and applicable Federal awarding agency common rule
Educational Institutions	OMB Circular A-21 (2 CFR, Part 220); and UGMS, as applicable	OMB Circular A-133	OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule; and UGMS, as applicable
Non-Profit Organizations	OMB Circular A-122 (2 CFR, Part 230)	OMB Circular A-133 and UGMS	UGMS; OMB Circular A-110 (2 CFR, Part 215) and applicable Federal awarding agency common rule
For-profit Organization	48 CFR Part 31,	OMB Circular A-	UGMS and applicable

other than a hospital and an organization named in OMB Circular A-122 (2 CFR Part, 230) as not subject to that circular.	Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal or state awarding agency	133 and UGMS	Federal awarding agency common rule

A chart of applicable Federal awarding agency common rules is located through a weblink on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. OMB Circulars will be applied with the modifications prescribed by UGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

Section 6.02 **Independent Single or Program-Specific Audit.** If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in federal funds awarded, Contractor shall have a single audit or program-specific audit in accordance with the Office of Management and Budget (OMB) Circ. No. A-133, the Single Audit Act of 1984, P L 98-502, 98 Stat. 2327, and the Single Audit Act Amendments of 1996, P L 104-156, 110 Stat. 1396. The $500,000 federal threshold amount includes federal funds passed through by way of state agency awards. If Contractor within Contractor's fiscal year expends a total amount of at least $500,000 in state funds awarded, Contractor must have a single audit or program-specific audit in accordance with UGMS, State of Texas Single Audit Circular. For-profit Contractors whose expenditures meet or exceed the federal and/or state expenditure thresholds stated above shall follow the guidelines in OMB Circular A-133 or UGMS, as applicable, for their program-specific audits. The HHSC Office of Inspector General (OIG) will notify Contractor to complete the Single Audit Determination Registration Form. If Contractor fails to complete the Single Audit Determination Form within thirty (30) calendar days after notification by OIG to do so, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS, which is accessible through a web link on the DSHS website at http://www.dshs.state.tx.us/contracts/links.shtm. Contractor shall procure audit services in compliance with this section, state procurement procedures, as well as with the provisions of UGMS. Contractor, unless Contractor is a state governmental entity, shall competitively re-procure independent single audit services at least every five (5) years and shall not use the same lead auditor or coordinating audit partner (having primary responsibility for the audit) to conduct the independent audit for more than five (5) consecutive years.

Section 6.03 **Submission of Audit.** Within thirty (30) calendar days of receipt of the audit reports required by the Independent Single or Program-Specific Audit section, Contractor shall submit one copy to the Department's Contract Oversight and Support Section, and one copy to the OIG, at the following addresses:

Department of State Health Services
Contract Oversight and Support, Mail Code 1326
P.O. Box 149347
Austin, Texas 78714-9347
Health and Human Services Commission

Office of Inspector General
Compliance/Audit, Mail Code 1326
P.O. Box 85200
Austin, Texas 78708-5200

If Contractor fails to submit the audit report as required by the Independent Single or Program-Specific Audit

section within thirty (30) calendar days of receipt by Contractor of an audit report, Contractor shall be subject to DSHS sanctions and remedies for non-compliance with this Contract.

ARTICLE VII CONFIDENTIALITY

Section 7.01 **Maintenance of Confidentiality.** Contractor must maintain the privacy and confidentiality of information and records received during or related to the performance of this Contract, including patient and client records that contain protected health information (PHI), and any other information that discloses confidential personal information or identifies any client served by DSHS, in accordance with applicable federal and state laws, rules and regulations, including but not limited to 7 CFR Part 246; 42 CFR Part 2; 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act [HIPAA]); Tex. Health & Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Tex. Occ. Code Chapters 56 and 159 and all applicable rules and regulations.

Section 7.02 **Department Access to PHI and Other Confidential Information.** Contractor shall cooperate with Department to allow Department to request, collect and receive PHI and other confidential information under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program, and for purposes permitted under applicable state and federal confidentiality and privacy laws.

Section 7.03 **Exchange of Client-Identifying Information.** Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Tex. Health & Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable laws or rules. Contractor shall disclose information described in Tex. Health & Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Tex. Health & Safety Code § 614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 7.04 **Security of Patient or Client Records.** Contractor shall maintain patient and client records in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient and client records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or a Program Attachment to this Contract, as applicable, or if care or treatment is transferred to another DSHS-funded contractor.

Section 7.05 **HIV/AIDS Model Workplace Guidelines.** If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, Policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Tex. Health & Safety Code § 85.112-114. A link to the Model Workplace Guidelines can be found at http://www.dshs.state.tx.us/hivstd/policy/policies.shtm.

ARTICLE VIII RECORDS RETENTION

Section 8.01 **Retention.** Contractor shall retain records in accordance with applicable state and federal statutes, rules and regulations. At a minimum, Contractor shall retain and preserve all other records, including financial records that are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of this Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, will apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex. Admin. Code Title 22, Part 9, § 165.1(b) and (c) or other applicable statutes, rules and regulations governing medical information. Contractor shall include this provision concerning records retention in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to this Contract are securely stored and are accessible by the Department upon Department's request for at least four (4) years from the date Contractor ceases business or from the date this Contract terminates, whichever is sooner. Contractor shall provide, and update as necessary, the name and address of the party responsible for storage of records to the contract manager assigned to the Program Attachment.

ARTICLE IX ACCESS AND INSPECTION

Section 9.01 **Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Comptroller General of the United States, OIG, and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted or client services are performed, and all records (including financial records, client and patient records, if any, and Contractor's personnel records and governing body personnel records), books, papers or documents related to this Contract; and the right to interview members of Contractor's governing body, staff, volunteers, participants and clients concerning the Contract, Contractor's business and client services. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract. The Department and HHSC will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor shall make available to the Department information collected, assembled or maintained by Contractor relative to this Contract for the Department to respond to requests that it receives under the Public Information Act. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

Section 9.02 **State Auditor's Office.** Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the SAO. Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor shall cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. The SAO's authority to audit funds will apply to Contract funds disbursed by Contractor to its subcontractors, and Contractor shall include this provision concerning the SAO's authority to audit and the requirement to cooperate, in any subcontract Contractor awards.

Section 9.03 **Responding to Deficiencies.** Any deficiencies identified by DSHS or HHSC upon

examination of Contractor's records or during an inspection of Contractor's site(s) will be conveyed in writing to Contractor. Contractor shall submit, by the date prescribed by DSHS, a resolution to the deficiency identified in a site inspection, program review or management or financial audit to the satisfaction of DSHS or, if directed by DSHS, a corrective action plan to resolve the deficiency. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance Article of these General Provisions.

ARTICLE X NOTICE REQUIREMENTS

Section 10.01 **Child Abuse Reporting Requirement.** This section applies to mental health and substance abuse contractors and contractors for the following public health programs: Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD); Family Planning (Titles V, X and XX); Primary Health Care; Maternal and Child Health; and Women, Infants and Children (WIC) Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Tex. Fam. Code Chapter 261 relating to investigations of reports of child abuse and neglect. Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. Contractor shall use the DSHS Child Abuse Reporting Form as required by the Department located at www.dshs.state.tx.us/childabusereporting. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 10.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the contract manager assigned to the Program Attachment significant incidents involving substantial disruption of Contractor's program operation, or affecting or potentially affecting the health, safety or welfare of Department-funded clients or participants within seventy-two (72) hours of discovery.

Section 10.03 **Litigation.** Contractor shall notify the contract manager assigned to the Program Attachment of litigation related to or affecting this Contract and to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, including environmental and civil rights matters, professional liability, and employee litigation. Notification must include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 10.04 **Action Against the Contractor.** Contractor shall notify the contract manager assigned to the Program Attachment if Contractor has had a contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within three (3) working days of the suspension or termination. Such notification must include the reason for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the contract; and the contract or case reference number. If Contractor, as an organization, has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information within three (3) working days of the surrender, suspension or revocation to the contract manager assigned to the Program Attachment by submitting a one-page description that includes the reason(s) for such action; the name and contact information of the local, state or federal department or agency or entity; the date of the license action; and a license or case reference number.

Section 10.05 **Insolvency.** Contractor shall notify in writing the contract manager assigned to the Program Attachment of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of

determination that Contractor is insolvent or incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify in writing the contract manager assigned to the Program Attachment of its plan to seek bankruptcy protection within three (3) working days of such action by Contractor's governing body.

Section 10.06 **Misuse of Funds and Performance Malfeasance.** Contractor shall report to the contract manager assigned to the Program Attachment, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Additionally, if this Contract is federally funded by the Department of Health and Human Services (HHS), Contractor shall report any credible evidence that a principal, employee, subcontractor or agent of Contractor, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Contractor shall make this report to the HHS Office of Inspector General at http://www.oig.hhs.gov/fraud/hotline/ no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place.

Section 10.07 **Criminal Activity and Disciplinary Action.** Contractor affirms that no person who has an ownership or controlling interest in the organization or who is an agent or managing employee of the organization has been placed on community supervision, received deferred adjudication, is presently indicted for or has been convicted of a criminal offense related to any financial matter, federal or state program or felony sex crime. Contractor shall notify in writing the contract manager assigned to the Program Attachment if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor providing services under this Contract has engaged in any activity that would constitute a criminal offense equal to or greater than a Class A misdemeanor or if such activity would reasonably constitute grounds for disciplinary action by a state or federal regulatory authority, or has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date that Contractor has knowledge or reason to believe such activity has taken place. Contractor shall not permit any person who engaged, or was alleged to have engaged, in an activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed by DSHS.

Section 10.08 **Retaliation Prohibited.** Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, regulation or standard to the Department, another state agency, or any federal, state or local law enforcement official.

Section 10.09 **Documentation.** Contractor shall maintain appropriate documentation of all notices required under these General Provisions.

ARTICLE XI ASSURANCES AND CERTIFICATIONS

Section 11.01 **Certification.** Contractor certifies by execution of this Contract to the following:

a) it is not disqualified under 2 CFR §376.935 or ineligible for participation in federal or state assistance programs;
b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency in accordance with 2 CFR Parts 376 and 180 (parts A-I), 45 CFR Part 76 (or comparable federal regulations);

c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor;
f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant;
g) neither it, nor its principals have within the three(3)-year period preceding this Contract, has been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public (federal, state or local) transaction or contract under a private or public transaction, violation of federal or state antitrust statutes (including those proscribing price-fixing between competitors, allocation of customers between competitors and bid-rigging), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or false claims, tax evasion, obstruction of justice, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contactor or its principals;
h) neither it, nor its principals is presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in subsection g) of this section; and
i) neither it, nor its principals within a three(3)-year period preceding this Contract has had one or more public transaction (federal, state or local) terminated for cause or default.

Contractor shall include the certifications in this Article, without modification (except as required to make applicable to the subcontractor), in all subcontracts and solicitations for subcontracts. Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the contract manager assigned to the Program Attachment. If Contractor's status with respect to the items certified in this Article changes during the term of this Contract, Contractor shall immediately notify the contract manager assigned to the Program Attachment.

Section 11.02 **Child Support Delinquencies.** As required by Tex. Fam. Code § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor shall maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 11.03 **Authorization.** Contractor certifies that it possesses legal authority to contract for the services described in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of Contractor to act in connection with this Contract and

to provide such additional information as may be required.

Section 11.04 **Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, service or anything of monetary value to a DSHS or HHSC official or employee in connection with this Contract.

Section 11.05 **Ineligibility to Receive the Contract.** (a) Pursuant to Tex. Gov. Code § 2155.004 and federal law, Contractor is ineligible to receive this Contract if this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements, statement(s) of work or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for Contractor has received compensation from DSHS for participation in the development, drafting or preparation of specifications, requirements or statement(s) of work for this Contract or in the Solicitation Document on which this Contract is based; (b) pursuant to Tex. Gov. Code §§ 2155.006 and 2261.053, Contractor is ineligible to receive this Contract, if Contractor or any person who would have financial participation in this Contract has been convicted of violating federal law, or been assessed a federal civil or administrative penalty, in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 24, 2005; (c) Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract under Tex. Gov. Code §§ 2155.004, 2155.006 or 2261.053, and acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 11.06 **Antitrust.** Pursuant to 15 USC § 1, et seq. and Tex. Bus. & Comm. Code § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding a bid with any competitor or any other person engaged in Contractor's line of business for the purpose of substantially lessening competition in such line of business.

Section 11.07 **Initiation and Completion of Work.** Contractor certifies that it shall initiate and complete the work under this Contract within the applicable time frame prescribed in this Contract.

ARTICLE XII GENERAL BUSINESS OPERATIONS OF CONTRACTOR

Section 12.01 **Responsibilities and Restrictions Concerning Governing Body, Officers and Employees.** Contractor and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not-for-profit organizations. Each member of Contractor's governing body shall be accountable for all funds and materials received from Department. The responsibility of Contractor's governing body shall also include accountability for compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing body shall ensure separation of powers, duties, and functions of governing body members and staff. Staff members, including the executive director, shall not serve as voting members of Contractor's governing body. No member of Contractor's governing body, or officer or employee of Contractor shall vote for, confirm or act to influence the employment, compensation or change in status of any person related within the second degree of affinity or the third degree of consanguinity (as defined in Tex. Gov. Code Chapter 573) to the member of the governing body or the officer or any employee authorized to

employ or supervise such person. This prohibition does not prohibit the continued employment of a person who has been continuously employed for a period of two (2) years prior to the election, appointment or employment of the officer, employee, or governing body member related to such person in the prohibited degree. These restrictions also apply to the governing body, officers and employees of Contractor's subcontractors. Ignorance of any Contract provisions or other requirements contained or referred to in this Contract will not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 12.02 **Management and Control Systems.** Contractor shall comply with all the requirements of the Department's Contractor's Financial Procedures Manual, and any of its subsequent amendments, which is available at the Department's web site: http://www.dshs.state.tx.us/contracts/cfpm.shtm. Contractor shall maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met. Contractor shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in Department's Contractor's Financial Procedures Manual. Those requirements and procedures include, at a minimum, the following:

a) financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
b) financial management systems that include accurate accounting records that are accessible and identify the source and application of funds provided under each Program Attachment of this Contract, and original source documentation substantiating that costs are specifically and solely allocable to the Program Attachment and are traceable from the transaction to the general ledger; and
c) effective internal and budgetary controls; comparison of actual costs to budget; determination of reasonableness, allowableness, and allocability of costs; timely and appropriate audits and resolution of any findings; billing and collection policies; and a mechanism capable of billing and making reasonable efforts to collect from clients and third parties.

Section 12.03 **Insurance.** Contractor shall maintain insurance or other means of repairing or replacing assets purchased with Department funds. Contractor shall repair or replace with comparable equipment any such equipment not covered by insurance that is lost, stolen, damaged or destroyed. If any insured equipment purchased with DSHS funds is lost, stolen, damaged or destroyed, Contractor shall notify the contract manager assigned to the Program Attachment to obtain instructions whether to submit and pursue an insurance claim. Contractor shall use any insurance proceeds to repair the equipment or replace the equipment with comparable equipment or remit the insurance proceeds to DSHS.

Section 12.04 **Fidelity Bond**. For the benefit of DSHS, Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to $100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance must provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment. The bond or insurance acquired under this section must include coverage for third party property and include DSHS as a loss payee or equivalent designation. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the fidelity bond or insurance.

Section 12.05 **Liability Coverage.** For the benefit of DSHS, Contractor shall at all times maintain liability insurance coverage, referred to in Tex. Gov. Code § 2261.102, as "director and officer liability coverage" or similar coverage for all persons in management or governing positions within Contractor's organization or with management or governing authority over Contractor's organization (collectively "responsible persons"). Contractor shall maintain copies of liability policies on site for inspection by DSHS and shall submit copies of

policies to DSHS upon request. This section applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department in the event an actionable act or omission by a responsible person damages Department's interests. Contractor shall notify, and obtain prior approval from, the DSHS Contract Oversight and Support Section before settling a claim on the insurance.

Section 12.06 **Overtime Compensation.** Except as provided in this section, Contractor shall not use any of the funds provided by this Contract to pay the premium portion of overtime. Contractor shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any

compensation paid to an individual in addition to the employee's normal rate of pay for hours worked in excess of normal working hours. Funds provided under this Contract may be used to pay the premium portion of overtime only under the following conditions: 1) with the prior written approval of DSHS; 2) temporarily, in the case of an emergency or an occasional operational bottleneck; 3) when employees are performing indirect functions, such as administration, maintenance, or accounting; 4) in performance of tests, laboratory procedures, or similar operations that are continuous in nature and cannot reasonably be interrupted or otherwise completed; or 5) when lower overall cost to DSHS will result.

Section 12.07 **Program Site.** Contractor shall provide services only in locations that are in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 12.08 **Cost Allocation Plan.** Contractor shall submit a Cost Allocation Plan in the format provided in the Department's Contractor's Financial Procedures Manual to the Department's Contract Oversight and Support Section, at Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, or by email to mailto:coscap@dshs.state.tx.us no later than the 60th calendar day after the effective date of the Contract, except when a Contractor has a current Cost Allocation Plan on file with the Department. Contractor shall implement and follow the applicable Cost Allocation Plan. If Contractor's plan is the same as in the previous year, by signing this Contract, Contractor certifies that its current Cost Allocation Plan for the current year is the same as that submitted to DSHS for the previous year. If the Cost Allocation Plan changes during the Contract term, Contractor shall submit a new Cost Allocation Plan to the Contract Oversight and Support Section within thirty (30) calendar days after the effective date of the change. Cost Allocation Plans must comply with the guidelines provided in the Department's Contractor's Financial Procedures Manual located at http://www.dshs.state.tx.us/contracts/cfpm.shtm.

Section 12.09 **No Endorsement.** Other than stating the fact that Contractor has a contract with DSHS, Contractor and its subcontractors are prohibited from publicizing the contractual relationship between Contractor and DSHS, and from using the Department's name, logo or website link in any manner that is intended, or that could be perceived, as an endorsement or sponsorship by DSHS or the State of Texas of Contractor's organization, program, services or product, without the express written consent of DSHS.

Section 12.10 **Historically Underutilized Businesses (HUBs).** If Contractor was not required to submit a HUB subcontracting plan and if subcontracting is permitted under this Program Attachment, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs in accordance with Tex. Gov. Code Chapter 2161 and 34 Tex. Admin. Code § 20.14 et seq. Contractors may obtain a list of HUBs at http://www.window.state.tx.us/procurement/prog/hub. If Contractor has filed a HUB subcontracting plan, the

plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval from the Department's HUB Coordinator of the revised plan before proposed changes will be effective under this Contract. Contractor shall make a good faith effort to subcontract with HUBs during the performance of this Contract and shall report HUB subcontract activity to the Department's HUB Coordinator by the 15th day of each month for the prior month's activity, if there was any such activity, in accordance with 34 Tex. Admin. Code § 20.16(c).

Section 12.11 **Buy Texas.** Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by Tex. Gov. Code § 2155.4441.

Section 12.12 **Contracts with Subrecipient and Vendor Subcontractors.** Contractor may enter into contracts with subrecipient subcontractors unless restricted or otherwise prohibited in a specific Program Attachment(s). Prior to entering into a subrecipient agreement equaling or exceeding $100,000, Contractor shall obtain written approval from DSHS. Contractor shall establish written policies and procedures for competitive procurement and monitoring of subcontracts and shall produce a subcontracting monitoring plan. Contractor shall monitor subrecipient subcontractors for both financial and programmatic performance and shall maintain pertinent records that must be available for inspection by DSHS. Contractor shall ensure that subcontractors are fully aware of the requirements placed upon them by state/federal statutes, rules, and regulations and by the provisions of this Contract.

Contracts with all subcontractors, whether vendor or subrecipient, must be in writing and include the following:

a) name and address of all parties and the subcontractor's Vendor Identification Number (VIN) or Employee Identification Number (EIN);
b) a detailed description of the services to be provided;
c) measurable method and rate of payment and a fixed-not-to-exceed amount of the contract;
d) clearly defined and executable termination clause; and
e) beginning and ending dates that coincide with the dates of the applicable Program Attachment(s) or that cover a term within the beginning and ending dates of the applicable Program Attachment(s).

Contractor is responsible to DSHS for the performance of any subcontractor. Contractor shall not contract with a subcontractor, at any tier, that is debarred, suspended, or excluded from or ineligible for participation in federal assistance programs; or if the subcontractor would be ineligible under the following sections of these General Provisions: Ineligibility to Receive the Contract section (Assurances and Certifications Article); or the Conflict of Interest or Transactions Between Related Parties sections (General Terms Article).

Section 12.13 **Status of Subcontractors.** Contractor shall require all subcontractors to certify that they are not delinquent on any repayment agreements; have not had a required license or certification revoked; and have not had a contract terminated by the Department. Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three (3) years any license issued by the Department.

Section 12.14 **Incorporation of Terms in Subrecipient Subcontracts.** Contractor shall include in its contracts with subrecipient subcontractors and solicitations for subrecipient subcontracts, without modification (except as required to make applicable to the subcontractor), (1) the certifications stated in the Assurances and Certifications Article; (2) the requirements in the Conflicts of Interest section and the Transaction Between Related Parties section of the General Terms Article; and (3) a provision granting to DSHS, SAO, OIG, and the Comptroller General of the United States, and any of their representatives, the right of access to inspect

the work and the premises on which any work is performed, and the right to audit the subcontractor in accordance with the Access and Inspection Article in these General Provisions. Each subrecipient subcontract contract must also include a copy of these General Provisions and a copy of the Statement of Work and any other provisions in the Program Attachment(s) applicable to the subcontract. Contractor shall ensure that all written agreements with subrecipient subcontractors incorporate the terms of this Contract so that all terms, conditions, provisions, requirements, duties and liabilities under this Contract applicable to the services provided or activities conducted by a subcontractor are passed down to that subcontractor. No provision of this Contract creates privity of contract between DSHS and any subcontractor of Contractor.

Section 12.15 **Independent Contractor.** Contractor is an independent contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture participants or agents will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 12.16 **Authority to Bind.** The person or persons signing this Contract on behalf of Contractor, or representing themselves as signing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 12.17 **Tax Liability.** Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. If the Department discovers that Contractor has failed to remain current on a liability to the IRS, this Contract will be subject to remedies and sanctions under this Contract, including immediate termination at the Department's discretion. If the Contract is terminated under this section, the Department will not enter into a contract with Contractor for three (3) years from the date of termination.

Section 12.18 **Notice of Organizational Change.** Contractor shall submit written notice to the contract manager assigned to the Program Attachment within ten (10) business days of any change to the Contractor's name; contact information; key personnel, officer, director or partner; organizational structure, such as merger, acquisition or change in form of business; legal standing; or authority to do business in Texas. A change in Contractor's name and certain changes in organizational structure require an amendment to this Contract in accordance with the Amendments section of these General Provisions.

Section 12.19 **Quality Management.** Contractor shall comply with quality management requirements as directed by the Department.

Section 12.20 **Equipment (Including Controlled Assets) Purchases.** Equipment means an article of nonexpendable, tangible personal property having a useful lifetime of more than one year and an acquisition cost of $5,000 or more, and "controlled assets." Controlled assets include firearms regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more: desktop and laptop computers, non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Contractors on a cost reimbursement payment method shall inventory all equipment. Contractor shall initiate the purchase of all equipment approved in writing by DSHS, in the first quarter of the Contract or Program Attachment term, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter of the Program Attachment must be submitted to the contract manager assigned to the Program Attachment.

Section 12.21 **Supplies.** Supplies are defined as consumable items necessary to carry out the services under this Contract including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

Section 12.22 **Changes to Equipment List.** All items of equipment purchased with funds under this Contract must be itemized in Contractor's equipment list as finally approved by the Department in the executed Contract. Any changes to the approved equipment list in the executed Contract must be approved in writing by Department prior to the purchase of equipment. Contractor shall submit to the contract manager assigned to the Program Attachment, a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, Department will acknowledge its approval by means of a written amendment or by written acceptance of Contractor's Contract Revision Request, as appropriate.

Section 12.23 **Property Inventory and Protection of Assets.** Contractor shall maintain an inventory of equipment and property described in the Other Intangible Property section of Article XIII and submit an annual cumulative report of the equipment and other property on Form GC-11 (Contractor's Property Inventory Report) to the Department's Contract Oversight and Support Section, Mail Code 1326, P.O. Box 149347, Austin, Texas 78714-9347, no later than October 15th of each year. The report is located on the DSHS website at http://www.dshs.state.tx.us/contracts/forms.shtm. Contractor shall maintain, repair, and protect assets under this Contract to assure their full availability and usefulness. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided or obtained under this Contract, Contractor shall use the proceeds to repair or replace those assets.

Section 12.24 **Bankruptcy.** In the event of bankruptcy, Contractor shall sever Department property, equipment, and supplies in possession of Contractor from the bankruptcy, and title must revert to Department. If directed by DSHS, Contractor shall return all such property, equipment and supplies to DSHS. Contractor shall ensure that its subcontracts, if any, contain a specific provision requiring that in the event the subcontractor's bankruptcy, the subcontractor must sever Department property, equipment, and supplies in possession of the subcontractor from the bankruptcy, and title must revert to Department, who may require that the property, equipment and supplies be returned to DSHS.

Section 12.25 **Title to Property.** At the conclusion of the contractual relationship between the Department and Contractor, for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to Department. Title may be transferred to any other party designated by Department. The Department may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Contractor.

Section 12.26 **Property Acquisitions.** Department funds must not be used to purchase buildings or real property. Any costs related to the initial acquisition of the buildings or real property are not allowable.

Section 12.27 **Disposition of Property.** Contractor shall follow the procedures in the American Hospital Association's (AHA's) "Estimated Useful Lives of Depreciable Hospital Assets" in disposing, at any time during or after the Contract term, of equipment purchased with the Department funds, except when federal or state statutory requirements supersede or when the equipment requires licensure or registration by the state, or when the acquisition price of the equipment is equal to or greater than $5,000. All other equipment not listed in the AHA reference (other than equipment that requires licensure or registration or that has an acquisition cost equal to or greater than $5,000) will be controlled by the requirements of UGMS. If, prior to the end of the useful life, any item of equipment is no longer needed to perform services under this Contract, or becomes

inoperable, or if the equipment requires licensure or registration or had an acquisition price equal to or greater than $5,000, Contractor shall request disposition approval and instructions in writing from the contract manager assigned to the Program Attachment. After an item reaches the end of its useful life, Contractor shall ensure that disposition of any equipment is in accordance with Generally Accepted Accounting Principles, and any applicable federal guidance.

Section 12.28 **Closeout of Equipment.** At the end of the term of a Program Attachment that has no additional renewals or that will not be renewed (Closeout) or when a Program Attachment is otherwise terminated, Contractor shall submit to the contract manager assigned to the Program Attachment, an inventory of equipment purchased with Department funds and request disposition instructions for such equipment. All equipment purchased with Department funds must be secured by Contractor at the time of Closeout or termination of the Program Attachment and must be disposed of according to the Department's disposition instructions, which may include return of the equipment to DSHS or transfer of possession to another DSHS contractor, at Contractor's expense.

Section 12.29 **Assets as Collateral Prohibited.** Contractors on a cost reimbursement payment method shall not encumber equipment purchased with Department funds without prior written approval from the Department.

ARTICLE XIII GENERAL TERMS

Section 13.01 **Assignment.** Contractor shall not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 13.02 **Lobbying.** Contractor shall comply with Tex. Gov. Code § 556.0055, which prohibits contractors who receive state funds from using those funds to pay lobbying expenses. Further, Contractor shall not use funds paid under this Contract, either directly or indirectly, to support the enactment, repeal, modification, or adoption of any law, regulation or policy at any level of government, or to pay the salary or expenses of any person related to any activity designed to influence legislation, regulation, policy or appropriations pending before Congress or the state legislature, or for influencing or attempting to influence an officer or employee of any federal or state agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 USC § 1352 and UGMS). If at any time this Contract exceeds $100,000 of federal funds, Contractor shall file with the contract manager assigned to the Program Attachment a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with this Contract, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall file the declaration, certification, and disclosure at the time of application for this Contract; upon execution of this Contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which any event occurs that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the contract manager assigned to the Program Attachment. Contractor shall also comply, as applicable, with the lobbying restrictions and requirements in 2 CFR Part 230 (OMB Circulars A-122), Appendix B paragraph 25; 2 CFR Part 225 (A-87) Appendix B section 24; 2 CFR §215.27 (A-110) and 2 CFR Part 220 (A-21) Appendix A, subsection J.17 and J.28. Contractor shall include this provision in any subcontracts.

Section 13.03 **Conflict of Interest.** Contractor represents to the Department that it and its -subcontractors, if any, do not have nor shall Contractor or its subcontractors knowingly acquire or retain, any financial or other interest that would conflict in any manner with the performance of their obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor (or subcontractor), its principal (or a member of the principal's immediate family), or any affiliate or subcontractor and the Department or HHSC, their commissioners or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees and subcontractors and their employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. If, at any time during the term of this Contract, Contractor or any of its subcontractors has a conflict of interest or potential conflict of interest, Contractor shall disclose the actual or potential conflict of interest to the contract manager assigned to the Program Attachment within ten (10) days of when Contractor becomes aware of the existence of the actual or potential conflict of interest. Contractor shall require each of its subcontractors to report to Contractor any conflict of interest or potential conflict of interest the subcontractor has or may have within ten (10) days of when the subcontractor becomes aware of the actual or potential conflict of interest.

Section 13.04 **Transactions Between Related Parties.** Contractor shall identify and report to DSHS any transactions between Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or immediately upon discovery. Contractor shall submit to the contract manager assigned to the Program Attachment the name, address and telephone number of the related party, how the party is related to Contractor and the work the related party will perform under this Contract. A related party is a person or entity related to Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of Contractor. Contractor shall comply with Tex. Gov. Code Chapter 573. Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 CFR part 74, OMB Circ. No. A-110, 2 CFR § 215.42, and UGMS.

Section 13.05 **Intellectual Property.** Tex. Health & Safety Code § 12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

a) "Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.
b) For purposes of this Contract intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use is "work made for hire." DSHS owns works made for hire unless it agrees otherwise by contract. To the extent that title and interest to any such work may not, by operation of law, vest in DSHS, or such work may not be considered a work made for hire, Contractor irrevocably assigns the rights, title and interest therein to DSHS. DSHS has the right to obtain and hold in its name any and all patents, copyrights, registrations or other such protections as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall give DSHS and the State of Texas, as well as any person designated by DSHS and the State of Texas, all assistance required to perfect the rights defined herein without charge or expense beyond those amounts payable to Contractor for goods provided or services rendered under this Contract.
c) If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and

irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any intellectual property developed under this Contract, including any subcontract; and (2) any rights of copyright to which a Contractor purchases ownership with contract funds. Contractor shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment must be to the effect that "This publication was made possible by grant number _____ from (federal awarding agency)" or "The project described was supported by grant number _____ from (federal awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency)."

d) If the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.

e) If the results of the contract performance are subject to copyright law, Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the contract manager assigned to the Program Attachment.

Section 13.06 **Other Intangible Property.** At the conclusion of the contractual relationship between Department and Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under this Contract or under any grant that funds this Contract, such as domain names, URLs, software licenses, etc. Contractor shall inventory all such non-copyrightable intangible property. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision will survive the termination or expiration of this Contract.

Section 13.07 **Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. The Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 13.08 **Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract will be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address specified by the Party to the other Party in writing or, if sent by certified mail, on the date of receipt.

Section 13.09 **Successors.** This Contract will be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 13.10 **Headings.** The articles and section headings used in this Contract are for convenience of reference only and will not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 13.11 **Parties.** The Parties represent to each other that they are entities fully familiar with

transactions of the kind reflected by the contract documents, and are capable of understanding the terminology and meaning of their terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 13.12 **Survivability of Terms.** Termination or expiration of this Contract or a Program Attachment for any reason will not release either Party from any liabilities or obligations in this Contract that (a) the Parties have expressly agreed will survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

Section 13.13 **Direct Operation.** At the Department's discretion, the Department may temporarily assume operations of a Contractor's program or programs funded under this Contract when the continued operation of the program by Contractor puts at risk the health or safety of clients and/or participants served by Contractor.

Section 13.14 **Customer Service Information.** If requested, Contractor shall supply such information as required by the Department to comply with the provisions of Tex. Gov. Code Chapter 2114 regarding Customer Service surveys.

Section 13.15 **Amendment.** The Parties agree that the Department may unilaterally reduce funds pursuant to the terms of this Contract without the written agreement of Contractor. All other amendments to this Contract must be in writing and agreed to by both Parties, except as otherwise specified in the Contractor's Notification of Change to Certain Contract Provisions section or the Contractor's Request for Revision to Certain Contract Provisions section of this Article. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the contract manager assigned to the Program Attachment; and if a budget revision or amendment is requested during the last quarter of the Contract or Program Attachment term, as applicable, Contractor's written justification must include a reason for the delay in making the request. Revision or other amendment requests may be granted at the discretion of DSHS. Except as otherwise provided in this Article, Contractor shall not perform or produce, and DSHS will not pay for the performance or production of, different or additional goods, services, work or products except pursuant to an amendment of this Contract that is executed in compliance with this section; and DSHS will not waive any term, covenant, or condition of this Contract unless by amendment or otherwise in compliance with this Article.

Section 13.16 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to this Contract without a written amendment or the Department's prior approval:

a) contractor's contact person and contact information;
b) contact information for key personnel, as stated in Contractor's response to the Solicitation Document, if any;
c) cumulative budget transfers that exceed 10% among direct cost categories, other than the equipment category, of cost reimbursement contract Program Attachments <u>of less than $100,000</u>, provided that the total budget amount is unchanged;
d) minor corrections or clarifications to the Contract language that in no way alter the scope of work, objectives or performance measures; and
e) a change in Contractor's share of the budget concerning non-DSHS funding other than program income and match, regardless of the amount of the change, provided that in changing the budget, Contractor is not supplanting DSHS funds.

Contractor within ten (10) calendar days shall notify in writing the contract manager assigned to the Program Attachment of any change enumerated in this section. The notification may be by letter, fax or email. Cumulative budget line item transfers of 10% or less among direct cost categories, other than equipment, of

cost reimbursement contracts of any amount do not require written amendment or prior approval or notification.

Section 13.17 **Contractor's Request for Revision of Certain Contract Provisions.** A Contractor's Revision Request is an alternative method for amending certain specified provisions of this Contract that is initiated by Contractor, but must be approved by DSHS. The following amendments to this Contract may be made through a Contractor's Revision Request, rather than through the amendment process described in the Amendment section of this Article:

a) cumulative budget transfers among direct cost categories, other than the equipment category, that exceed 10% of Program Attachments of $100,000 or more, provided that the total budget amount is unchanged;
b) budget transfer to other categories of funds for direct payment to trainees for training allowances;
c) change in clinic hours or location;
d) change in the equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget;
e) changes in the equipment category of a previously approved equipment budget (other than acquisition of additional equipment, which requires an amendment to this Contract); and
f) changes specified in applicable OMB Circular cost principles as requiring prior approval, regardless of dollar threshold (e.g., foreign travel expenses, overtime premiums, membership fees.

In order to request a revision of any of the enumerated provisions, Contractor shall obtain a Contract Revision Request form from the DSHS website available at http://www.dshs.state.tx.us/grants/forms.shtm, and complete the form as directed by the Department. Two copies of the completed form must be signed by Contractor's representative who is authorized to sign contracts on behalf of Contractor, and both original, signed forms must be submitted to the contract manager assigned to the Program Attachment. Any approved revision will not be effective unless signed by the DSHS Director of the Client Services Contracting Unit. A separate Contractor Revision Request is required for each Program Attachment to be revised. Circumstances of a requested contract revision may indicate the need for an amendment described in the Amendment section of this Article rather than a contract revision amendment under this section.

Section 13.18 **Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

Section 13.19 **Hold Harmless and Indemnification.** Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments; and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

Section 13.20 **Waiver.** Acceptance by either Party of partial performance or failure to complain of any action, non-action or default under this Contract will not constitute a waiver of either Party's rights under this Contract.

Section 13.21 **Electronic and Information Resources Accessibility and Security Standards.** As required by 1 Tex. Admin. Code Chapters 213 and 206, as a state agency, DSHS must procure products that comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1

Tex. Admin. Code Chapter 213 and Website Accessibility Standards/Specifications specified in 1 Tex. Admin. Code Chapter 206 (collectively EIR Standards) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If performance under this Contract includes the development, modification or maintenance of a website or other electronic and information resources for DSHS or for the public on behalf of DSHS, Contractor certifies that the website or other electronic and information resources comply with the EIR Standards. Contractor further certifies that any network hardware or software purchased or provided under this Contract has undergone independent certification testing for known and relevant vulnerabilities, in accordance with rules adopted by Department of Information Resources.

Section 13.22 **Force Majeure.** Neither Party will be liable for any failure or delay in performing all or some of its obligations, as applicable, under this Contract if such failure or delay is due to any cause beyond the reasonable control of such Party, including, but not limited to, extraordinarily severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order, or acts of God. The existence of any such cause of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the cause of the delay or failure no longer exists and, if applicable, for any reasonable period of time thereafter required to resume performance. A Party, within a period of time reasonable under the circumstances, must inform the other by any reasonable method (phone, email, etc.) and, as soon as practicable, must submit written notice with proof of receipt, of the existence of a force majeure event or otherwise waive the right as a defense to non-performance.

Section 13.23 **Interim Contracts.** The Parties agree that the Contract and/or any of its Program Attachments will automatically continue as an "Interim Contract" beyond the expiration date of the term of the Contract or Program Attachment(s), as applicable, under the following circumstances: (1) on or shortly prior to the expiration date of the Contract or Program Attachment, there is a state of disaster declared by the Governor that affects the ability or resources of the DSHS contract or program staff managing the Contract to complete in a timely manner the extension, renewal, or other standard contract process for the Contract or Program Attachment; and (2) DSHS makes the determination in its sole discretion that an Interim Contract is appropriate under the circumstances. DSHS will notify Contractor promptly in writing if such a determination is made. The notice will specify whether DSHS is extending the Contract or Program Attachment for additional time for Contractor to perform or complete the previously contracted goods and services (with no new or additional funding) or is purchasing additional goods and services as described in the Program Attachment for the term of the Interim Contract, or both. The notice will include billing instructions and detailed information on how DSHS will fund the goods or services to be procured during the Interim Contract term. The Interim Contract will terminate thirty (30) days after the disaster declaration is terminated unless the Parties agree to a shorter period of time.

Section 13.24 **Cooperation and Communication.** Contractor shall cooperate with Department staff and, as applicable, other DSHS contractors, and shall promptly comply with requests from DSHS for information or responses to DSHS inquiries concerning Contractor's duties or responsibilities under this Contract.

ARTICLE XIV BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE

Section 14.01 **Actions Constituting Breach of Contract.** Actions or inactions that constitute breach of contract include, but are not limited to, the following:

a) failure to properly provide the services and/or goods purchased under this Contract;
b) failure to comply with any provision of this Contract, including failure to comply with all applicable statutes, rules or regulations;

c) failure to pay refunds or penalties owed to the Department;
d) failure to comply with a repayment agreement with the Department or agreed order issued by the Department;
e) failure by Contractor to provide a full accounting of funds expended under this Contract;
f) discovery of a material misrepresentation in any aspect of Contractor's application or response to the Solicitation Document;
g) any misrepresentation in the assurances and certifications in Contractor's application or response to the Solicitation Document or in this Contract; or
h) Contractor is on or is added to the Excluded Parties List System (EPLS).

Section 14.02 **General Remedies and Sanctions.** The Department will monitor Contractor for both programmatic and financial compliance. The remedies and sanctions in this section are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of remedies or sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more remedies or sanctions for each item of noncompliance and will determine remedies or sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies or sanctions in this section does not relieve Contractor of any obligations under this Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the following actions:

a) terminate this Contract or a Program Attachment of this Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty (30) calendar days before the effective date of the termination in a notice of termination, except for circumstances that require immediate termination as described in the Emergency Action section of this Article. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert Contractor of the opportunity to request a hearing on the termination pursuant to Tex. Gov. Code Chapter 2105 regarding administration of Block Grants. Contractor shall not make any claim for payment or reimbursement for services provided from the effective date of termination;
b) suspend all or part of this Contract. Suspension is an action taken by the Department in which the Contractor is notified to temporarily (1) discontinue performance of all or part of the Contract, and/or (2) discontinue incurring expenses otherwise allowable under the Contract as of the effective date of the suspension, pending DSHS's determination to terminate or amend the Contract or permit the Contractor to resume performance and/or incur allowable expenses. Contractor shall not bill DSHS for services performed during suspension, and Contractor's costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;
c) deny additional or future contracts with Contractor;
d) reduce the funding amount for failure to 1) provide goods and services as described in this Contract or consistent with Contract performance expectations, 2) achieve or maintain the proposed level of service, 3) expend funds appropriately and at a rate that will make full use of the award, or 4) achieve local match, if required;
e) disallow costs and credit for matching funds, if any, for all or part of the activities or action not in compliance;

f) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
g) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
h) declare this Contract void upon the Department's determination that this Contract was obtained fraudulently or upon the Department's determination that this Contract was illegal or invalid from this Contract's inception and demand repayment of any funds paid under this Contract;
i) request that Contractor be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, and barred from participating in future contracting opportunities with the State of Texas;
j) delay execution of a new contract or contract renewal with Contractor while other imposed or proposed sanctions are pending resolution;
k) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more frequent or more extensive monitoring will be performed by Department than would routinely be conducted;
l) require Contractor to obtain technical or managerial assistance;
m) establish additional prior approvals for expenditure of funds by Contractor;
n) require additional or more detailed, financial and/or programmatic reports to be submitted by Contractor;
o) demand repayment from Contractor when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices, or failure to comply with Contract terms;
p) pursue a claim for damages as a result of breach of contract;
q) require Contractor to prohibit any employee or volunteer of Contractor from performing under this Contract or having direct contact with DSHS-funded clients or participants, or require removal of any employee, volunteer, officer or governing body member, if the employee, volunteer, officer or member of the governing body has been indicted or convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as reasonably determined by DSHS;
r) withhold any payments to Contractor to satisfy any recoupment, liquidated damages, match insufficiency, or any penalty (if the penalty is permitted by statute) imposed by DSHS, and take repayment from funds available under this Contract in amounts necessary to fulfill Contractor's payment or repayment obligations;
s) reduce the Contract term;
t) recoup improper payments when it is verified that Contractor has been overpaid, e.g., because of disallowed costs, payments not supported by proper documentation, improper billing or accounting practices or failure to comply with Contract terms;
u) assess liquidated damages;
v) demand repayment of an amount equal to the amount of any match Contractor failed to provide, as determined by DSHS;
w) impose other remedies, sanctions or penalties permitted by statute.

Section 14.03 **Notice of Remedies or Sanctions.** Department will formally notify Contractor in writing when a remedy or sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the remedies and sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the remedies and sanctions imposed. Other than in the case of repayment or recoupment, Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response must state how Contractor shall correct the noncompliance (corrective action plan) or demonstrate in writing that the findings on which the remedies or sanction(s) are based are either invalid or do not warrant the remedies or sanction(s). If Department determines that a remedy or sanction is warranted, unless the remedy or sanction is subject to review under a federal or state statute, regulation, rule, or guideline, Department's decision is final. Department will provide written notice to Contractor of Department's decision. If required by the Department, Contractor shall submit a corrective action plan for DSHS approval and take corrective action as stated in the approved corrective action plan. If DSHS determines that repayment is warranted, DSHS will issue a demand letter to Contractor for repayment. If full repayment is not received within the time limit stated in the demand letter, and if recoupment is available, DSHS will recoup the amount due to DSHS from funds otherwise due to Contractor under this Contract.

Section 14.04 **Emergency Action.** In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny future contract awards, or delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An "emergency" is defined as the following:

a) Contractor is noncompliant and the noncompliance has a direct adverse effect on the public or client health, welfare or safety. The direct adverse effect may be programmatic or financial and may include failing to provide services, providing inadequate services, providing unnecessary services, or using resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures; or
b) Contractor is expending funds inappropriately.

Whether Contractor's conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

ARTICLE XV CLAIMS AGAINST THE DEPARTMENT

Section 15.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Tex. Gov. Code Chapter 2260 and implemented in Department Rules §§ 4.11-4.24 will be used by DSHS and Contractor to attempt to resolve any breach of contract claim against DSHS.

Section 15.02 **Notice.** Contractor's claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov Code Chapter 2260, subchapter B. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice must also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Tex. Gov. Code Chapter 2260, subchapter C.

Section 15.03 **Sole Remedy.** The contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches

of contract by DSHS if the Parties are unable to resolve their disputes under this Article.

Section 15.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Tex. Gov. Code Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract will be considered a waiver of sovereign immunity to suit.

Section 15.05 **Performance Not Suspended.** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

ARTICLE XVI TERMINATION AND TEMPORARY SUSPENSION

Section 16.01 **Expiration of Contract or Program Attachment(s).** Except as provided in the Survivability of Terms section of the General Terms Article, Contractor's service obligations stated in each Program Attachment will end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause under this Article.

Section 16.02 **Effect of Termination.** Termination is the permanent withdrawal of Contractor's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor's costs resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. Upon termination of this Contract or Program Attachment, as applicable, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract or Program Attachment, as applicable, to DSHS or another entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract or the Program Attachment, as applicable, except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS, and except as provided in the Survivability of Terms section of the General Terms Article. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information will survive this Contract.

Section 16.03 **Acts Not Constituting Termination.** Termination does not include the Department's (1) withdrawal of funds awarded on the basis of Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a program attachment; (3) refusal to extend a program attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; (4) non-renewal of a contract or program attachment at Department's sole discretion; or (5) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 16.04 **Termination or Temporary Suspension Without Cause.**

a) Either Party may terminate this Contract or a Program Attachment, as applicable, with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract or Program Attachment that involves residential client services, Contractor shall give the Department at least ninety (90) calendar days prior written notice and shall submit a transition plan to ensure client services are not disrupted.

b) The Parties may terminate this Contract or a Program Attachment by mutual agreement.
c) DSHS may temporarily suspend or terminate this Contract or a Program Attachment if funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or health and human services agencies, amendments to the Appropriations Act, health and human services consolidations, or any disruption of current appropriated funding for this Contract or Program Attachment. Contractor will be notified in writing of any termination or temporary suspension or of any cessation of temporary suspension. Upon notification of temporary suspension, Contractor shall discontinue performance under the Contract as of the effective date of the suspension, for the duration of the suspension.
d) Department may terminate this Contract or a Program Attachment immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 16.05 **Termination For Cause.** Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

a) Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary for the performance or oversight of this Contract;
c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;
d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under this Contract or exercise adequate control over expenditures or assets;
e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;
f) Department determines that this Contract includes financial participation by a person who received compensation from DSHS to participate in developing, drafting or preparing the specifications, requirements or statement(s) of work or Solicitation Document on which this Contract is based in violation of Tex. Gov. Code § 2155.004; or Department determines that Contractor was ineligible to receive this Contract under Tex. Gov. Code §§ 2155.006 or 2261.053 related to certain disaster response contracts;
g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:
    1) Contractor fails to make payments for debts;
    2) Contractor makes an assignment for the benefit of its creditors;
    3) Contractor admits in writing its inability to pay its debts generally as they become due;
    4) if judgment for the payment of money in excess of $50,000 (that is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment, or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, or (d) if the execution is stayed, within the thirty (30)-day period or a longer period during which execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required

under Generally Accepted Accounting Principles;

5) a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its issuance;
6) Contractor is adjudicated bankrupt or insolvent;
7) Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, or consents to the filing of any case or petition against it under any such law;
8) any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge of the sequestration;
9) a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction then in effect, and the petition is not dismissed within thirty (30) calendar days; or
10) Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property;

h) Contractor's management system does not meet the UGMS management standards; or
i) Any required license, certification, permit, registration or approval required to conduct Contractor's business or to perform services under this Contract is not obtained or is revoked, is surrendered, expires, is not renewed, is inactivated or is suspended.

Section 16.06 **Notice of Termination.** Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor shall attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

ARTICLE XVII VOID, SUSPENDED, AND TERMINATED CONTRACTS

Section 17.01 **Void Contracts.** Department may void this Contract upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 17.02 **Effect of Void, Suspended, or Involuntarily Terminated Contract.** A Contractor who has been a party to a contract with DSHS that has been found to be void, or is suspended, or is terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until, in the case of suspension or termination, the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to repayment.

Section 17.03 **Appeals Rights.** Pursuant to Tex. Gov. Code § 2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Tex. Gov. Code Chapter 2001.

ARTICLE XVIII CLOSEOUT

Section 18.01 **Cessation of Services At Closeout.** Upon expiration of this Contract or Program Attachment, as applicable, (and any renewals of this Contract or Program Attachment) on its own terms, Contractor shall cease services under this Contract or Program Attachment; and shall cooperate with DSHS to the fullest extent

possible upon expiration or prior to expiration, as necessary, to ensure the orderly and safe transfer of responsibilities under this Contract to DSHS or another entity designated by DSHS. Upon receiving notice of Contract or Program Attachment termination or non-renewal, Contractor shall immediately begin to effect an orderly and safe transition of recipients of services to alternative service providers, as needed. Contractor also shall completely cease providing services under this Contract or Program Attachment by the date specified in the termination or non-renewal notice. Contractor shall not bill DSHS for services performed after termination or expiration of this Contract or Program Attachment, or incur any additional expenses once this Contract or Program Attachment is terminated or has expired. Upon termination, expiration (with no renewal) or non-renewal of this Contract or a Program Attachment, Contractor shall immediately initiate Closeout activities described in this Article.

Section 18.02 **Administrative Offset.** The Department has the right to administratively offset amounts owed by Contractor against billings.

Section 18.03 **Deadline for Closeout.** Contractor shall submit all financial, performance, and other Closeout reports required under this Contract within sixty (60) calendar days after the Contract or Program Attachment end date. Unless otherwise provided under the Final Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract or Program Attachment end date.

Section 18.04 **Payment of Refunds.** Any funds paid to Contractor in excess of the amount to which Contractor is finally determined to be entitled under the terms of this Contract constitute a debt to the Department and will result in a refund due, which Contractor shall pay within the time period established by the Department.

Section 18.05 **Disallowances and Adjustments.** The Closeout of this Contract or Program Attachment does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

ATTACHMENT II

SUBSTANCE ABUSE ADDITIONAL GENERAL PROVISIONS
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ARTICLE XIX PROVISIONS GENERALLY APPLICABLE TO SUBSTANCE ABUSE CONTRACTS

Section 19.01 **Quality Management Plan (QMP) and Quality Improvement.** As required by the Quality Management section of these General Provisions, Contractor shall comply with the requirements stated in this section relating to Contractor's Quality Management Process. Contractor shall-

a) develop and implement a QMP that conforms with Standards of Care Rule § 448.504, and make the QMP available to DSHS upon request. The QMP must be developed no later than the end of the first quarter of the Program Attachment term. Contractor shall update and revise the QMP each biennium or sooner, if necessary. Contractor's governing body shall review and approve the initial QMP, within the first quarter of the Program Attachment term, and each updated and revised QMP thereafter. The QMP must describe Contractor's methods to measure, assess, and improve-
   1) implementation of evidence-based practices and research-based approaches to service delivery;
   2) client/participant satisfaction with the services provided by Contractor;
   3) service capacity and access to services;
   4) client/participant continuum of care; and
   5) accuracy of data reported to the state.
b) participate in data verification activities as defined and scheduled by the state, including, but not limited to performing self-audits; submitting self-audit results and supporting documentation for the state's desk reviews; and participating in the state's onsite or desk reviews.
c) submit plan of improvement or corrective action plan and supporting documentation as requested by DSHS.
d) participate in and actively pursue QMP activities that support performance and outcomes improvement.
e) respond to consultation recommendations by DSHS, which may include but are not limited to the following:
   1) staff training;
   2) self-monitoring activities guided by DSHS, including use of quality management tools to self-identify compliance issues; and
   3) monitoring of performance reports in the DSHS electronic clinical management system.

Section 19.02 **Treatment Peer Review.** A staff member of treatment or Outreach, Screening, Assessment and Referral (OSAR) Contractormay be selected for participation in the independent treatment peer review required by the Substance Abuse Prevention and Treatment (SAPT) Block Grant. If a member of Contractor's staff is selected to be a reviewer, Contractor shall ensure that the staff member participates in the treatment peer review process.

Section 19.03 **Disaster Substance Abuse Services.** In accordance with the Disaster Services section of these General Provisions, Contractor may be required to assist in mitigating the psychological trauma experienced by victims, survivors, and responders to a disaster. Contractor may assist the individual or family in returning to a normal (pre-disaster) level of functioning and assist in decreasing the psychological and physical effects of acute and/or prolonged stress. In the event clients already receiving substance abuse services are affected, Contractor may work with the affected individuals in conjunction with the individual's current support system.

Contractor shall develop policies and procedures to address response and recovery for substance abuse programs. Contractor's responsibilities include, but are not limited to the following:

a) for treatment and OSAR Contractors, enter, and update as necessary, into CBMHS, the the names and twenty-four (24)-hour contact information of Contractor's Risk Manager or Safety Officer and at least two professional staff trained in mental health, substance abuse, or crisis counseling, one of whom may be the

Contractor's Risk Manager or Safety Officer, as disaster contacts

b) for treatment and OSAR Contractors, submit disaster substance abuse services policies and procedures if requested by DSHS;
c) collaborate with DSHS and local preparedness, response and recovery efforts. OSAR staff shall assist in coordinating the disaster/incident response among substance abuse treatment providers, community mental health and emergency disaster service organizations, such as, emergency shelters and food banks. OSAR staff shall facilitate outreach to substance abuse clients and their families and ensure they are provided access to individual and group counseling, education, assessment, referral and community support;
d) assign employees to assist DSHS to meet staffing needs for shelters, morgues, schools, hospitals, Disaster Recovery Centers, community support centers, death notifications, mass inoculations sites, and other necessary services during local, state or federal emergencies;
e) contract with DSHS to provide FEMA-funded Crisis Counseling, Assistance and Training Program(s) (CCATP) after federal declarations as appropriate. CCATP services include housing, hiring and co-managing CCATP Team(s), as appropriate, and are described at http://www.fema.gov/pdf/media/factsheets/2009/dad_crisis_counseling.pdf; and
f) participate in disaster substance abuse education training programs as necessary.

Section 19.04 **Abuse, Neglect, Exploitation.** Contractor shall develop and implement written policies and procedures, and take all steps necessary, to protect the health, safety and welfare of its clients and participants. Contractor shall notify appropriate authorities of any allegations of abuse, neglect, or exploitation as required by Rule § 448.703. Additionally, licensed treatment facility Contractors shall verbally report all allegations of participant or client abuse, neglect, and exploitation to the Department's **Substance Abuse Investigations Division at (800) 832-9623** immediately, submit appropriate documentation within twenty-four (24) hours, and maintain adequate evidence demonstrating the Department's receipt of such documentation. The complaint form is located on the DSHS website at http://www.dshs.state.tx.us/HFP/complain_ntc_subabuse.shtm. All other Contractors shall notify the DSHS Substance Abuse Contracts Management Unit within 24 hours that the appropriate authorities have been notified of the allegations of abuse, neglect or exploitation and shall maintain for DSHS inspection, appropriate documentation and adequate evidence demonstrating receipt of the notification by the proper authorities. Contractor shall develop and implement written policies and procedures for employees, subcontractors, employees of subcontractors, and volunteers to report actual or suspected abuse, neglect, or exploitation to an immediate supervisor (or to another supervisor if the immediate supervisor is the subject of the report) within 48 hours of becoming aware of the actual or suspected abuse, neglect or exploitation.

Section 19.05 **Charitable Choice (Faith-Based Organizations).** As applicable, Contractor shall comply with 42 USC § 300x-65 and 42 CFR part 54 (42 CFR §§ 54.8(c) (4) and 54.8(b)), Charitable Choice provisions and regulations. If Contractor identifies itself as a faith-based or religious organization, Contractor shall post a notice to advise all clients and potential clients (collectively, "clients") that if the client objects to the religious character of Contractor's organization, the client has the right to be referred to another DSHS-funded contractor that is not faith-based or that has a different religious orientation. Contractor shall use the model notice provided in Appendix A of 42 CFR Part 54. Within a reasonable period of time after a client's request for referral, Contractor shall make the referral to another DSHS-funded contractor, and shall ensure that the client receives the alternative services within a reasonable period of time. Contractor shall further ensure that the alternative DSHS-funded contractor is accessible to the client and has the capability to provide appropriate services, and that the services are of a value not less than the value of the services the client would have received from Contractor.

Section 19.06 **Qualified Service Organization/Business Associate (QSO/BA) Agreement.** For the purposes of this section, definitions of terms related to QSOs are found in 42 CFR pt 2, and for terms related to BAs, in 45 CFR pts 160 and 164. The parties agree that this Contract serves as a QSO/BA Agreement ("this Agreement") under which Contractor, as a Program, may disclose patient-identifying information as defined by 42 CFR pt 2 to

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DSHS as a QSO, and under which Contractor, as a Covered Entity, may disclose protected health information as defined by 45 CFR pt 164 (PHI) to DSHS as a BA. Contractor is disclosing the patient-identifying information and PHI to DSHS so that DSHS as QSO/BA can provide services related to payment to Contractor for client services under the Contract, and to providing an electronic clinical management system for use by Contractor to maintain and store client records.

a) Provisions Applicable to the Parties' HIPAA BA Relationship:

1) Obligations and Activities of DSHS as a BA:

A. BA agrees to not use or disclose PHI other than as permitted or required by this Agreement or as "Required by Law."

B. BA agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

C. BA agrees to 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.

D. BA agrees to report to Contractor any use or disclosure of the PHI not provided for by this Agreement of which BA becomes aware.

E. BA agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by BA on behalf of, Contractor agrees to the same restrictions and conditions that apply through this Agreement to BA with respect to such information.

F. BA agrees to make 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 BA on behalf of, Contractor available to Contractor or to the Secretary, in a time and manner to be mutually agreed to by Contractor and BA or in a time and manner designated by the Secretary for purposes of the Secretary determining Contractor's compliance with the Privacy Rule.

G. BA agrees to document disclosures of PHI as would be required for Contractor to respond to a request by an individual for an accounting of disclosures of PHI under 45 CFR §164.528.

H. BA agrees to provide to Contractor or an individual, in a time and manner to be mutually agreed to by BA and Contractor, information collected in accordance with paragraph G above, to permit Contractor to respond to a request by an individual for an accounting of disclosures of PHI in under 45 CFR §164.528.

2) Permitted Uses and Disclosures by the DSHS:

Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Contractor as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Contractor or the minimum necessary policies and procedures of Contractor.

3) Obligations of and Permissible Requests by Contractor:

A. Contractor shall notify BA of any limitation(s) in Contractor's notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.

B. Contractor shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Contractor.

4) Term and Termination of this Agreement:

A. Term. The obligations of the Parties under this Agreement shall terminate when all of the PHI created or received by BA on behalf of Contractor is destroyed, or if it is infeasible to destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

B. Termination of this Agreement for Cause. Upon Contractor's knowledge of a material breach by BA, Contractor shall -

i. provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement if BA does not cure the breach or end the violation within the time specified by Contractor;

ii. immediately terminate this Agreement if BA has breached a material term of this Agreement and cure is not possible; or

iii. if neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination of this Agreement.

i. Except as provided in paragraph B above ("Termination of this Agreement for Cause"), upon termination of this Agreement, for any reason, BA shall destroy all PHI received from Contractor, or created or received by BA on behalf of Contractor. This provision will apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI.

ii. If BA determines that destroying the PHI is infeasible, BA shall provide to Contractor notification of the conditions that make destruction infeasible. If Contractor agrees that destruction of PHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the destruction infeasible, for so long as BA maintains such PHI.

5) Miscellaneous Provisions:

A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section in effect or as amended.

B. Amendment. The Parties agree to amend this Agreement as necessary for Contractor to comply with the requirements of the Privacy Rule and HIPAA.

C. Survival. The respective rights and obligations of BA in subsection a), paragraph 1. of this Agreement titled "Obligations and Activities of DSHS as BA" shall survive the termination of this Agreement.

D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Contractor to comply with the Privacy Rule.

b) Provision Applicable to DSHS as a QSO: As a QSO, DSHS acknowledges that in receiving, storing, processing or otherwise dealing with any patient records associated with an alcohol or drug abuse treatment program, DSHS is fully bound by the 42 CFR pt 2 regulations. DSHS affirms that, if necessary, it will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Section 19.07 **SAPT Grant Requirements.** Contractor shall comply with the requirements of the SAPT Block Grant, including the restrictions on expenditure of grant funds, stated in 45 CFR § 96.135 and the Notice of Grant Award. Contractor shall not expend funds under this Contract on the following activities:

a) to provide inpatient hospital services, except as provided in 45 CFR § 96.135(c);
b) to make cash payments to intended recipients of health services;
c) to purchase or improve land, purchase, construct or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;
d) to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
e) to provide financial assistance to any entity other than a public or non-profit private entity;
f) to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, except under a needle exchange program approved by the U.S. Surgeon General of Public Health Services; or
g) for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or the state legislature, except in presentation to the Congress or the state legislative body itself.

Additionally, none of the funds provided under this Contract may be used to pay the salary of an individual at a rate in excess of Level I of the federal Executive Schedule.

Section 19.08 **Persons on Probation or Parole.** Contractor shall notify the contract manager assigned to the

Program Attachment immediately of any of its employees, volunteers or subcontractors who are on parole or probation if the employee, volunteer or subcontractor provides or will provide direct client or participant services or who has or may have direct contact with clients or participants. Contractor shall maintain copies of all notices required under this section for DSHS review. Unless otherwise directed by the Department, Contractor shall ensure that any person who is on probation or parole is prohibited from performing direct client services or from having direct contact with clients or participants during any investigation undertaken by DSHS concerning a person who is on parole or probation.

Section 19.09 **Performance Measures Definitions.** Contractor shall comply with the performance measures definitions and minimum performance outcomes as specified by the Department. If revisions to the performance measures definitions and/or minimum performance outcomes are required as a result of elimination or modification of substance abuse service types, Contractor shall comply with the revised definitions and/or outcomes upon notice from DSHS.

ARTICLE XX This article is reserved for future use.

ARTICLE XXI SUBSTANCE ABUSE TREATMENT SERVICES

Section 21.01 **Priority Populations for Substance Abuse Treatment Programs.** The Department has established priority populations for treatment in accordance with SAPT Block Grant regulations and state designation. Treatment Contractors shall give preference for treatment services in the following order of priority:

a) pregnant injecting drug users;
b) pregnant substance abusers; and
c) injecting drug users.

Contractor shall establish screening procedures to identify members of priority populations and admit them before all others, in priority order. When space is not available in Contractor's Program Service Area, Contractor shall guarantee successful and timely referral to another suitable DSHS-funded contractor. Contractors shall accept applicants from every region in the state when space is available. If two applicants are of equal priority status, preference may be given to an applicant living in Contractor's Program Service Area. Each OSAR and treatment Contractor shall include a statement in all its brochures, and shall post a notice in its lobby, concerning the priority population admission requirements.

Section 21.02 **Texas Department of Family and Protective Services (DFPS).** Contractors funded to provide youth and adult treatment services shall serve financially eligible clients referred by the DFPS. Such referrals shall receive priority admission behind the priority populations listed in the Priority Populations for Treatment Programs section. When space is not available, Contractor shall guarantee successful and timely referral of financially eligible clients referred by DFPS to another suitable DSHS-funded treatment or OSAR contractor.

Section 21.03 **Licensing.** Contractors that provide chemical dependency treatment as defined by Tex. Health and Safety Code Chapter 464 shall hold an active treatment license issued by the Department or be exempt from licensure. The failure to obtain a required license, or revocation, surrender or suspension of Contractor's license, or Contractor's ceasing to provide services, shall constitute grounds for termination of the Contract or other remedies the Department deems appropriate. To add a newly licensed site to the Contract, Contractor must submit a request to the contract manager assigned to the Program Attachment for a clinic number after a treatment license has been issued. Contractor shall use the clinic number request form located on the DSHS website at http://www.dshs.state.tx.us/sa/forms/default.shtm. Contractor shall not provide services under the Contract until the licensed site has been approved by DSHS and an amendment to the Contract has been executed.

Section 21.04 **Youth Treatment.** Treatment Contractors that provide youth treatment services shall comply with

the Rule regarding Financial Eligibility and Third Party Payment. If services for a client are covered by private insurance or a third party payor, but Contractor is not eligible for reimbursement by a client's private insurance or third party payor, Contractor shall refer the client to a treatment program that is approved by the client's private insurance or third party payor for services and reimbursement.

a) If the approved treatment program refuses treatment services to the client and documents that refusal, Contractor may provide treatment services and bill the Department provided-
   1) the refusal, including insurance or third party payor and approved treatment program, is documented in the client file;
   2) the client meets the Diagnostic Statistical Manual IV diagnostic criteria for substance abuse/dependence; and
   3) the client's treatment for residential care is approved by the designated OSAR contractor, if applicable.
b) If client's private insurance or third party payor would cover or approves partial or full payment for treatment services, Contractor may bill the Department for the non-reimbursed costs, including the deductible, provided -
   1) the client's parent refuses to file a claim with the private insurance or third party payor, or refuses to pay either the deductible or the non-reimbursed portion of the cost of treatment, and Contractor has obtained a signed statement from the parent that the parent refuses to pay, and Contractor has received approval from the DSHS substance abuse program services clinical coordinator to bill for the deductible or non-reimbursed portion of the cost;
   2) the client's parent cannot afford to pay the deductible and/or the non-reimbursed portion of the cost of treatment; or
   3) the family has an adjusted income at or below 200% of the Federal poverty guidelines.

   If a client has exhausted all insurance coverage and requires continued treatment, Contractor may provide the continued treatment services and bill the Department as long as the client meets b)1) or b)2) above.
c) If a client's parent, who does not have insurance or other third party coverage for the client's treatment services, can afford, but refuses, to pay for those services, Contractor may bill the Department for the cost of the client's treatment, if Contractor has obtained a signed statement from the parent that the parent refuses to pay and Contractor has received approval from DSHS to bill for the cost of the services.

Section 21.05 **Client Placement Criteria.** OSAR Contractors and treatment Contractors shall use Department client placement criteria as a guide for directing clients to the appropriate services and for authorization of residential treatment admissions. Contractor shall comply with the Client Placement Criteria Guidelines established by the Department.

Section 21.06 **Treatment Services Provided by Electronic Means.** Contractor shall ensure that if treatment services are provided by electronic means under Rule § 448.911, the services are delivered in accordance with the Telemedicine Medical Services provision of these General Provisions, except that approval and oversight responsibilities attributed to a contractor's medical director shall instead be attributed to Contractor's Licensed Chemical Dependency Counselor or Qualified Credentialed Counselor who is responsible for treatment program oversight.

Section 21.07 **Waiting Lists.** For all individuals who cannot be immediately admitted to treatment services, treatment Contractor shall make a waiting list entry in CMBHS that details the service type the individual is waiting for and the priority population designation of the individual. Upon admission, treatment Contractor shall close the waiting list entry, indicating the date of admission as the waiting list end date. Treatment Contractor shall ensure, either directly or through referral, that individuals waiting for admission receive interim services. Treatment Contractor shall document weekly contact with all individuals on its waiting list. Treatment Contractor shall have a written policy on waiting list management that defines why and how individuals are removed from the

waiting list for any purpose other than admission to treatment.

ARTICLE XXII PREVENTION AND INTERVENTION SERVICES

Section 22.01 **Prevention and Rural Border Intervention Program Requirements.** Prevention and Rural Border Intervention Contractors shall use the curriculum designated in the Program Attachment. Any adjustment to the provision of services, including a change in curriculum or county in which it is delivered, requires written amendment of the Contract.

Section 22.02 **Indicated Prevention.** Contractors that provide indicated prevention program services shall provide services to individuals who are showing warning signs of substance abuse and/or high risk problem behaviors. Indicated prevention services include -

a) indicated prevention screening;
b) indicated prevention assessment;
c) indicated prevention service plan; and
d) indicated prevention counseling.

Indicated Prevention Contractors shall use forms approved by DSHS to collect information and shall comply with requirements of Rules § 447.110 (e) and § 447.113 related to documentation of each indicated prevention screening, assessment, referral and follow-up.

Section 22.03 **Curriculum-Based Prevention Programs.** Contractors providing prevention services shall administer Department-approved pre- and post-tests to program participants. Outcomes must be reported in CMBHS in accordance with Article XXIII below.

Section 22.04 **Application of Chapter 448 Rules to Prevention and Intervention Contractors.** Contractors providing prevention and intervention services shall comply, as applicable, with the Rules § 448.504 relating to Quality Management and § 448.509 (d-f) relating to Incident Reporting. Contractors providing prevention and intervention services shall comply with DSHS Rules § 448.510 governing client transportation and § 448.603 governing training. Any reference to clients in these sections of the Rules also means prevention/intervention program participants. Additionally, any reference to facilities in these sections of the Rules also means prevention/intervention programs.

Section 22.05 **Confidentiality.** Prevention and intervention Contractors shall securely store, and maintain privacy and confidentiality of, information and records concerning participants and their family members that identify any individual as a person with a substance abuse problem or that relate to referrals for medical, health, or other DSHS-funded services, in accordance with Article VII (Confidentiality) of these General Provisions, and Rule § 448.210 (Confidentiality). Contractor shall ensure that all its employees and volunteers are aware of the requirements under this section.

Section 22.06 **Policies and Procedures.** Contractor shall maintain the additional policies and procedures as required by Rule § 444.303 and make them available for inspection by DSHS. Each Contractor shall develop and implement a policy and age-appropriate procedures to protect the rights of children, families and adults participating in a prevention or intervention program. All participants have the right to be free from abuse, neglect and exploitation; be treated with dignity and respect; and make a complaint to Contractor or the Department at any time. Participants receiving individualized services in an intervention or indicated prevention program also have the right to refuse or accept services after being informed of services and responsibilities, including program goals and objectives, rules and regulations, and participants' rights. Contractor shall maintain documentation showing that participants receiving individualized services in an intervention or indicated prevention program have received the required information and agreed to participate in the program. Each Contractor shall establish and demonstrate

active use of written agreements (memoranda of understanding) with available substance abuse providers and other mental health, health care, and social services providers to meet the needs of the clients/participants and family members. Agreements to coordinate services must be established in writing, be renewed annually (through signature or other documented contact), include names of the organizations entering into the agreement, services or activities each organization will provide, signatures of authorized representatives, and dates of action and expiration.

ARTICLE XXIII CLINICAL MANAGEMENT FOR BEHAVIORAL HEALTH SERVICES (CMBHS) SYSTEM

Section 23.01 **CMBHS.** The CMBHS is considered the official record of documentation by the Department. Contractor shall use the CMBHS time frames specified by the Department. Contractor shall use the Department-specified functionality of the CMBHS in its entirety. Contractor shall submit all bills and reports to the Department through the CMBHS, unless otherwise instructed.

Section 23.02 **Resources.** Contractor shall ensure that Contractor has appropriate Internet access and an adequate number of computers of sufficient capabilities to use the CMBHS. Equipment purchased with Department funds must be inventoried, maintained in working order, and secured.

Section 23.03 **Security Administrator.** Contractor shall designate a Security Administrator and a back-up Security Administrator. The Security Administrator is required to implement and maintain a system for management of user accounts/user roles to ensure that all the CMBHS user accounts are current. Contractor shall have a security policy that ensures adequate system security and protection of confidential information. Contractor shall notify the CMBHS Help-desk within 10 business days of any change to the designated Security Administrator or the back-up Security Administrator.

Section 23.04 **Security Violations and Accounts Updates**. Contractor shall notify the contract manager assigned to the Program Attachment immediately if a security violation is detected, or if Contractor has any reason to suspect that the security or integrity of the CMBHS data has been or may be compromised in any way. Contractor shall immediately block access to CMBHS of any person who should no longer have access to CMBHS, due to severance of employment with Contractor or otherwise, or immediately modify access when there is a change in a user's job responsibilities that affects the user's need for access to CMBHS, and update records on a daily basis to reflect any changes in account status.

Section 23.05 **Electronic Transfer of Information.** Contractor shall establish and maintain adequate internal controls, security, and oversight for the approval and electronic transfer of information regarding payments and reporting requirements. Contractor certifies that the electronic payment requests and reports transmitted will contain true, accurate, and complete information.

Section 23.06 **Access.** The Department reserves the right to limit or deny access to the CMBHS by Contractor at any time for any reason deemed appropriate by the Department.

Section 23.07 **Components.** If required by the Program Attachment to use the CMBHS, Contractor shall use the CMBHS components/functionality specified below, in accordance with the Department's instructions. DSHS anticipates making updates to the current CMBHS components/functionality, and Contractor shall use the updated components/functionality when directed by DSHS to do so.

All Contractors:

a) Add/Update Staff
b) Document/Maintain Credentials

c) Assign Roles
d) Provider/Location Details

Treatment Contractors:

a) Client Profile
b) Screening
c) Financial Eligibility Assessment
d) Assessment (Initial, Update, Service End, and Discharge)
e) Admission and Discharge
f) Request for Authorization
g) Service Begin
h) Treatment Plan/Treatment Plan Review
i) Detoxification Intake Report
j) Detoxification Service End Report
k) Detoxification Discharge Report
l) Detoxification Plan
m) Discharge Plan
n) Discharge Summary
o) Discharge Follow-up
p) Consent/Revoke Consent
q) Referral and Referral Follow-up
r) Referral List
s) Day Rate Attendance Record
t) Progress Note
u) Psycho-educational Note
v) Administrative Note
w) Medication Order, Medication List, and Medication Service
x) Provider Census
y) Wait List
z) Setup Residential Services
aa) Daily Capacity Report
bb) Service End
cc) Lab Results (Drug Screen)
dd) Client Payments
ee) Contracts
ff) Financial Status Report (if applicable)
gg) Invoice (if applicable)
hh) Advance (if applicable)
ii) Pending Claims
jj) Submitted Claims
kk) Services Offered
ll) Administrative Action List
mm) Client Reservations
nn) Consent Release Request List
oo) Assign/Reassign Clinician

OSAR Contractors:

a) Client Profile
b) Screening
c) Assessment (Initial, Update)
d) Referral and Referral Follow-up
e) Referral List

f) Consent/Revoke Consent
g) Daily Capacity Report
h) Financial Status Report
i) Invoices
j) Advance (if applicable)
k) Service Plan
l) Administrative Notes
m) Authorization Approval
n) Regional Provider Census
o) Wait List
p) Financial Eligibility Assessment
q) Progress Note
r) Contracts
s) Client Reservations
t) Administrative Action List
u) Measures
v) Consent Release Request List
w) Reassign Case Manager
x) Open Case
y) Close Case

HEI Contractors:

a) Client Profile
b) HEI Screening
c) Assessment (Case Management)
d) Service Plan & Service Plan Review
e) Open Case
f) Progress Note (HEI Case Management Note, Case Management Note)
g) Psycho-educational Note
h) Referral and Referral Follow-up
i) Referral List
j) Consent/Revoke Consent
k) Measures
l) Financial Status Report
m) Invoices
n) Advances (if applicable)
o) Lab Results
p) Services Offered
q) Close Case
r) Consent Release Request List
s) Reassign Case Manager

HIV Contractors:

a) Client Profile
b) Clinician's Notes
c) Referral
d) Referral Follow-up
e) Consent/Revoke Consent
f) Measures
g) Invoices

h) Advance (if applicable)
i) Financial Status Report
j) Service Offered
k) Consent Release Request List

COPSD Contractors:

a) Client Profile
b) Screening
c) Financial Eligibility Assessment
d) Assessment (Initial, Update, Service End, and Discharge)
e) Admission and Discharge
f) Service Begin
g) Treatment Plan and Treatment Plan Reviews
h) Discharge Plan
i) Discharge Summary
j) Discharge Follow-up
k) Referral and Referral Follow-up
l) Referral List
m) Consent/Revoke Consent
n) Progress Notes
o) Psycho-educational Note
p) Administrative Note
q) Pending Claims
r) Submitted Claims
s) Service End
t) Client Payments
u) Contracts
v) Services Offered
w) Administrative Action List
x) Consent Release Request List
y) Assign/Reassign Clinician

PPI Contractors:

a) Client Profile
b) PPI Screening
c) Open Case
d) Service Plan & Service Plan Review
e) Administrative Note
f) Progress Note
g) Psycho-educational Note (if applicable)
h) Referral
i) Referral Follow-up
j) Referral List
k) Consent/Revoke Consent
l) Measures
m) Financial Status Report
n) Invoice
o) Advances (if applicable)

p) Curriculum Measures (if applicable)
q) Close Case
r) Services Offered
s) Consent Release Request List
t) Reassign Case Manager

YPU, YPS, YPI Contractors:

a) Measures
b) Financial Status Reports
c) Invoice
d) Advances (if applicable)
f) Curriculum Measures
g) Services Offered

RBI Contractors

a) Intervention Performance Measures
b) Financial Status Report
c) Invoice
d) Referral
e) Referral Follow-up
f) Client Profile
g) Demographics of Participants Receiving Prevention Education
h) Client Consent for Intervention Strategies

Other Contractors. Unless otherwise specified in this Contract, all other Contractors shall use the following additional CMBHS components/functionality:

a) Measures
b) Financial Status Report
c) Invoice
d) Advance
e) Referral
f) Referral Follow-up
f) Curriculum Measures (if applicable)

Section 23.08 **Drug Courts.** Treatment Contractors in jurisdictions with drug courts as defined by Tex. Health and Safety Code Chapter 469 will be monitored based on referral sources in the CMBHS for effectiveness of collaboration with drug courts.

Section 23.09 **Youth Services.** Youth treatment Contractors will be monitored through the CMBHS on efforts to obtain referrals of adolescents before the adolescents reach the juvenile justice system with the goal of increasing the proportion of juvenile clients not involved in the juvenile justice system.

Section 23.10 **OSAR Contractor Referrals.** OSAR Contractors will be monitored through the CMBHS on the effectiveness of outreach efforts as measured by the diversity of the sources that refer clients to each OSAR Contractor.

Section 23.11 **General Network Monitoring.** The Department and Contractor shall participate in network monitoring of their respective networks.

Section 23.12 **Contractor Network Responsibilities.** Contractor's network monitoring must include troubleshooting or assistance with Contractor-owned Wide Area Networks (WANs), Local Area Networks

(LANs), router switches, network hubs or other equipment and Contractor's Internet Service Provider (ISP). Contractor shall maintain responsibility for local server/network hardware. Contractor shall communicate and enforce network security policies and procedures to end-users and be responsible for data backup, restore, and contingency planning functions for all local data. Contractor shall -

a) create, delete, and modify end-user LAN-based accounts;
b) change/reset user local passwords as necessary;
c) administer security adds/changes and deletes for the CMBHS;
d) install, maintain, monitor, and support Contractor LANs and WANs; and
e) select, purchase service from, and monitor performance of ISP.

Section 23.13 **Customer Support and Training.** The Department will provide support for the CMBHS, including problem tracking and problem resolution. The Department will provide telephone numbers for Contractors to obtain access to expert assistance for CMBHS-related problem resolution. The Department will provide initial CMBHS training. Contractor shall provide subsequent ongoing end-user training.

ARTICLE XXIV MISCELLANEOUS FINANCIAL REQUIREMENTS FOR SUBSTANCE ABUSE CONTRACTS

Section 24.01 **Match and Program Income.** Unless waived in writing by the Department or unless the Program Attachment specifically states otherwise, Contractor shall contribute as match an amount equal to at least the percentage stated in the Program Attachment. Contractor shall report match on each Financial Status Report or as directed by DSHS. If the match ratio requirement is not met by the beginning of the last three months of the term of the Program Attachment, DSHS may withhold or reduce payments to satisfy match insufficiency or demand a refund of the amount of the match insufficiency. In accordance with Section 3.05 of these General Provisions (Program Income), Contractor shall report program income. Contractor shall not use program income as match without prior approval of the contract manager assigned to the Program Attachment.

Section 24.02 **Administrative Discharge.** The Department may administratively discharge any active treatment client for which fifty (50) calendar days have elapsed since the last billing end date for the client.

Section 24.03 **Billing for Treatment and Payment Restrictions.** Treatment Contractors shall bill for treatment services pursuant to Rules governing billing for treatment services. Treatment Contractors may bill for only one intensity of service and service type (either outpatient or residential) per client per day, and a treatment Contractor shall not bill for an intensity of service and service type if another DSHS-funded treatment contractor is providing and billing DSHS for another intensity of service and service type; except that Contractor may provide and bill the Department for pharmacotherapy or co-occurring psychiatric and substance use disorder services, or ambulatory detoxification for a client at the same time Contractor or another DSHS-funded contractor provides and bills the Department for outpatient or residential services. If two contractors provide services to the same client under this exception, the contractors must coordinate services and both contractors must document the service coordination.

Section 24.04 **Financial Status Reports for Substance Abuse Contracts.** For contracts with categorical budgets, Contractor shall submit quarterly FSRs through the CMBHS by the [last working day of the month following the quarter being reported for Department review and financial assessment. All other requirements of the Financial Status Reports section of these General Provisions apply.

Section 24.05 **NorthSTAR.** If Contractor is also a NorthSTAR-contracted provider, Contractor shall bill only NorthSTAR for any covered services delivered to NorthSTAR-eligible individuals, subject to its NorthSTAR contract and NorthSTAR provider manual. All Contractors that are not NorthSTAR-contracted providers shall

refer all NorthSTAR financially eligible individuals to the NorthSTAR Behavioral Health Organization (BHO) at (888) 800-6799 or an appropriate NorthSTAR-contracted provider. Contractors may obtain information on NorthSTAR at http://www.dshs.state.tx.us/mhsa/northstar/northstar.shtm. For emergency services needed by NorthSTAR-eligible clients outside of the NorthSTAR service area, Contractors shall facilitate referral to an appropriate emergency care provider. If the client is eligible or enrolled in NorthSTAR, the emergency care provider must be instructed by Contractor to notify the NorthSTAR BHO within twenty-four (24) hours of admission, as a condition of reimbursement from the NorthSTAR BHO.

Section 24.06 **Moving Funds Between Program Attachments.** Contractor shall not expend funds from one Program Attachment to provide and bill DSHS for services in another Program Attachment without DSHS approval and a written contract amendment.

Section 24.07 **Contract Reconciliation.** If Contractor is required to annually reconcile multi-year contracts, Contractor, within sixty (60) calendar days after the end of each year of this Contract, shall submit to the contract manager assigned to the Program Attachment all financial and reconciliation reports required by Department in forms as determined by Department.

Section 24.08 **Interpreter Services for Hearing Impaired Persons.** When interpreter services for a hearing impaired person are needed, Contractor shall notify the contact manager assigned to the Program Attachment prior to submitting the Request for Interpreter Services Form (Form). Contractor shall follow the instructions for completing the Form when making a request for interpreter services. Contractor shall request interpreter services for actual hours, days, and times necessary for effective communication only during delivery of client services. To avoid incurring unnecessary interpreter fees and expenses, Contractor shall notify the interpreter services contractor immediately if interpreting services will not be needed due to appointment cancellation or otherwise. Failure to provide notification to the interpreter services contractor that interpreter services will not be needed less than 48 hours before the scheduled interpreter services session will result in costs to DSHS for billings by the interpreter services contractor for the unused services, travel expenses, etc. Contractor may be required to submit to DSHS a percentage of the costs incurred by DSHS if the Contractor failed to immediately notify the interpreter services contractor that the client's appointment had been cancelled or because Contractor failed to cancel interpreter services that could reasonably be expected to be unnecessary; for example, Contractor scheduled multiple interpreter sessions, but when the client failed to keep the initial appointment, Contractor did not cancel the multiple interpreter sessions.

ATTACHMENT III

PROGRAM ATTACHMENT - TCC – PAGE 1
CONTRACT NO.2012-039693
PROGRAM ATTACHMENT NO. 001
PURCHASE ORDER NO. 0000377955
CONTRACTOR: CITY OF SAN ANTONIO
DSHS PROGRAM: Tobacco Community Coalition (SA/TCC) Tobacco Community Coalition (SA/TCC)
TERM: 09/01/2011 THRU: 08/31/2012
SECTION I. STATEMENT OF WORK
A. PURPOSE:

The Tobacco Prevention and Control Coalitions (TPCC) prevent and reduce the illegal and harmful use of tobacco products in communities across Texas (with a particular emphasis on reduction in youth use) by promoting and conducting community-based and environmental universal prevention strategies that have an impact on the social, cultural, political, and economic processes of the community. Coalitions broaden support for projects and increase credibility, provide volunteers for activities, and maximize the power of participating groups through joint action. Coalitions are especially important when engaging in broad community actions to change public policy. The Centers for Disease Control and Prevention (CDC) document, *Best Practices for Comprehensive Tobacco Control Program,* October 2007, specified that the community coalition programs include activities that increase the number of organizations and individuals involved in planning education and training programs, use State and local counter-marketing campaigns to place pro-health messages on tobacco control, promote the adoption of public and private tobacco control policies, and monitor program implementation.

The Contractor shall provide a 25% match (in-kind or monetary) for programmatic activities such as local media, administration or operating costs. The Contractor shall serve as a member of, and manage, the Tobacco Prevention and Control Coalition (Coalition) and shall ensure that the Coalition implements the activities funded under this Program Attachment. The Coalition will implement steps of the Strategic Prevention Framework (SPF) in the targeted county by convening a County Epidemiological/Evaluation Workgroup (CEW) to develop a County Epidemiological Report, mobilizing the Coalition, developing a strategic plan and implementing evidence-based strategies and evaluating activities that are designed to address tobacco use and tobacco-related health consequences.

The Contractor shall ensure that the Coalition conducts activities in Section III. Program Service Area of this Program Attachment that meets the following goals:

Goal 1: Prevent tobacco use among young people
Goal 2: Promote compliance and support adequate enforcement of federal, state and local tobacco laws
Goal 3: Increase cessation among young people and adults
Goal 4: Eliminate exposure to secondhand smoke
Goal 5: Reduce tobacco use among populations with the highest burden of tobacco-related health disparities
Goal 6: Develop and maintain statewide capacity for comprehensive tobacco prevention and control

B. SERVICE REQUIREMENTS:

The Contractor shall ensure that the Coalition conducts the following activities:

1. Contractor shall submit all documents identified below to the Substance Abuse mailbox (SA mailbox) at SubstanceAbuse.Contracts@dshs.state.tx.us by the required due dates.
2. Conduct an annual needs assessment that determines the tobacco use and related health consequences and tobacco-related health disparities within the targeted community in Section III, Program Service Area stated

below. Conduct a community resource assessment that identifies existing strengths and assets of community tobacco prevention and control and substance abuse prevention programs and other services in the targeted

community in Section III, Program Service Area stated below. Convene a CEW to conduct the needs and resource assessment and prepare a County Epidemiological Assessment Report. The County Epidemiological Assessment Report is due to DSHS on June 15, 2012.
3. Hire a professional evaluator for evaluation of the Coalition's processes and outcomes and lead the CEW processes. Seven to ten percent (7% to 10%) of the contract amount shall be allocated to the local evaluation. The Contractor shall ensure that the DSHS evaluation deliverables are met.
4. Coordinate with DSHS surveillance contractors to enhance the implementation of statewide [Behavioral Risk Factor Surveillance System (BRFSS), and Youth Tobacco Survey (YTS)] youth and adult surveys in the target community. The Contractor shall contact all school districts in target community to promote the implementation of the YTS.
5. Conduct tobacco prevention mobilization strategies to include key tasks that may include, but are not limited to, convening meetings of community leaders and stakeholders; building coalitions by entering into written community agreements concerning cooperative efforts for preventing and reducing tobacco use; training community stakeholders, coalitions and service providers; organizing agency networks; leveraging resources; and engaging stakeholders to help sustain the activities.
6. Ensure that multiple sectors of the community are involved to enhance community efforts to promote and deliver comprehensive effective tobacco prevention and control activities. a. Involve and assist community groups that are representative of the ethnic, geographic, and socio-economic diversity in the target community.
b. Involve and assist community groups that are at high-risk for tobacco-related health disparities.
c. Involve youth in planning and implementation of Coalition comprehensive tobacco prevention and control activities.
d. Involve local institutions of higher learning, junior colleges, and trade schools for planning and implementation of Coalition comprehensive tobacco prevention and control activities. Provide DSHS College Tobacco Survey data to local institutions.
e. Involve local law enforcement, Education Service Centers (ESCSs), Prevention Resource Centers (PRCs), community substance abuse prevention, intervention, and treatment providers, local school districts, civic/volunteer organizations, faith-based groups, businesses, and local media for planning and implementation of Coalition comprehensive tobacco prevention and control activities. 7. Develop and implement a culturally appropriate strategic plan that outlines and details a plan for the comprehensive community-based tobacco prevention and control activities, including evidence-based prevention, enforcement, cessation, tobacco-related health disparities and secondhand smoke strategies. The strategic plan shall include a sustainability plan for the Coalition. The strategic plan shall address all goal areas of the DSHS Tobacco Prevention and Control Program 2008 – 2013 strategic plan. The strategic plan is due to DSHS on August 15, 2012.
8. Develop measurable project goals and objectives for the strategic plan that are directly related to the target community in Section III, Program Service Area stated below, that impact those goals and are designed to prevent and reduce the prevalence and incidence of the use of tobacco products and related consequences.
9. Select and implement culturally appropriate tobacco prevention and control strategies including environmental policies, programs, and/or practices and direct service activities that are proven to be effective in research settings and communities for each of the goal areas.

a. Implementation strategies shall primarily be logically linked to high-risk target populations identified in the needs assessment.
b. Environmental strategies shall be linked to CDCs MAPPS strategies. a. Media
b. Access
c. Point of Purchase/Promotion
d. Price
e. Social Support and Servicesc. Implement sustainability plan and cultural competency plan strategies reported to DSHS in FY2011. 10. Convene local high school age youth groups to engage youth in changing social norms,

and exposing pro-tobacco influences following CDC's Best Practices for Comprehensive Tobacco Control Programs User Guide, Youth Engagement, State and Community Interventions Category.

a. All school districts in the Coalition's target county (s) must be contacted for participation in the youth engagement initiative.
b. Youth groups shall be linked to the DSHS branded "Say What!" youth movement in collaboration with Texas State University, Texas School Safety Center (TxSSC).
c. Youth interventions shall include counter-marketing and media advocacy and be linked to the DSHS statewide media campaign messages. 1) Provide media literacy for involved youth.
2) Conduct public awareness activities such as press releases, local events, and health promotion activities.

3) Youth interventions shall focus on social norm change for the environment rather than the individual.
11. Youth interventions shall involve youth in local policy work at the school and/or community level to:
a. Educate local school boards and School Health Advisory Committees regarding tobacco-free laws and policies.
b. Collaborate with local law enforcement and school-based police to restrict minors' access to tobacco products.
c. Conduct monthly Store Alert Project activities and reporting. Report Store Alert Report Card findings to DSHS quarterly.

12. Ensure Coalition is represented by a Teen Ambassador(s) on the Youth Advisory Board, Texas Teen Ambassadors.
13. The Contractor shall make travel arrangements for, register, and send youth participants and sponsors (2 adults and 10 youth) to one regional Tobacco-Free Teen Leadership Summit sponsored by the TxSSC. The Contractor shall pay for the participants' travel expenses to attend the Tobacco-Free Teen Leadership Summit.
14. The Contractor shall make travel arrangements for, register, and send youth participants and sponsors (2 adults and 10 youth) to the state "Say What!" Teen Tobacco Summit sponsored by the TxSSC in the summer of 2012. The Contractor shall pay for the participants' travel expenses to attend the "Say What!" Teen Tobacco Summit.
15. Conduct local activities to educate the public on the benefits of remaining tobacco-free during Texas Tobacco-Free Kids Day, World No Tobacco Day, and Great American Smokeout.
a. Coordinate Tobacco Free Kids Day promotion and activities with statewide events sponsored by TxSSC.
b. Report all Tobacco Free Kids Day activities conducted by the Coalition to TxSSC. 16. Conduct local media activities (i.e. radio, television, cable, billboards, newspaper, promotional items or merchandise) that raise awareness of the Coalition and reinforce the DSHS statewide media campaign messages. (The Contractor shall not conduct individual media campaigns). A minimum of 15% of the Program Attachment shall be spent on local media activities. Report local media activities to DSHS quarterly. Reports are due the 15th following the quarter being reported.

C. TRAINING:
The Contractor shall make travel arrangement for, and send a minimum of one (1) Coalition member and 2 Coalition staff members to two TPCC Contractor meetings in Austin to be held in Fall 2011 and Spring 2012. The Contractor shall pay for the participants' travel expenses to Austin.
The Contractor shall make travel arrangements for, and send a minimum of one (1) Coalition youth coordinator to the two Coalition Contractor meetings in Austin to receive training in Youth Engagement Initiative strategies. The Contractor shall pay for the participants' travel expenses to Austin. Coalition youth coordinator must complete training in Youth Engagement Initiative strategies by August 31, 2012. The Contractor shall ensure that the Coalition's youth coordinator staff participates in two (2) online Youth Engagement Initiative training workshops offered by the TxSSC. Coalition's youth coordinator staff participation in online Youth Engagement Initiative training workshops must be completed by August 31, 2012.

The Contractor shall ensure that the Coalition staff and community stakeholders participate in four (4) SPF trainings (One sustainability training is required) provided by the DSHS prevention training contractor. The Coalition shall also ensure that Coalition staff receive technical assistance in local application of the SPF process. Coalition staff and community stakeholder participation in SPF trainings must be completed by August 31, 2012.

The Contractor shall ensure that the Coalition evaluator participate in the quarterly evaluation team training provided by the state. Coalition evaluator's participation in quarterly evaluation team training must be completed by August 31, 2012.

D. OTHER REQUIREMENTS:

Contractor shall comply with the following:

- Education Code, §38.006;
- Government Code, §403.105; §§556.0055, §§ 556.006;
- Health & Safety Code, §12.011, 161.081-161.0901, 161.251-161.257,161.301-302; and
- Penal Code, §§48.01-48.015

E. REPORTING REQUIREMENTS:

Contractor's duty to submit documents survives the termination or expiration of this Program Attachment. **Report Name**	**Due Date**
Financial Status Report (FSR)	Due last business day of the month following the end of each quarter of the Program Attachment term. * *Final Financial Status Report (FSR) due within 60 days after Program Attachment end date*
Performance Measures	15th of the month following the month being reported
CMBHS Security Attestation Form	September 15, 2011 & March 15, 2012
Closeout documents	Annual Reports due 60 days after Program Attachment end date.
County Epidemiological Assessment Report	June 15, 2012
Strategic Plan	August 15, 2012
Local Media Activities	December 15, 2011, March 15, 2012, June 15, 2012, September 15, 2012

Attachment V

STATE OF TEXAS	§	**PROFESSIONAL SERVICES**
	§	
COUNTY OF BEXAR	§	**AGREEMENT**

THIS PROFESIONAL SERVICES AGREEMENT (the Agreement) is made and entered into by and between the CITY OF SAN ANTONIO ("CITY"), a Texas Home Rule Municipality, on behalf of the San Antonio Metropolitan Health District ("HEALTH DISTRICT") pursuant to Ordinance No. _____, passed and approved on the 2nd day of February 2012, and the UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO (UTHSCSA) DENTAL SCHOOL on behalf of its Department of Developmental Dentistry. CITY and UTHSCSA shall collectively be referred to as "the Parties."

WITNESSETH

WHEREAS, CITY provides dental services for children at non-traditional setting such as Head Start and Early Head Start Centers and elementary schools; and

WHEREAS the Department of Developmental Dentistry is part of the UTHSCSA Dental School; and

WHEREAS, the CITY does not have the capacity or resources to meet the demand for dental services for children that require comprehensive dental treatment; and

WHEREAS, the CITY believes it is in the best interest of the CITY for UTHSCSA to provide children with quality dental care in an appropriate clinical and/or surgical environment;

NOW THEREFORE, in consideration of the mutual covenants and agreements stated herein, the Parties agree as follows:

ARTICLE I
PURPOSE

1.1 The purpose of this Agreement is to establish the terms and conditions under which UTHSCSA will provide CITY with certain specified dental health services for uninsured or underinsured children eligible for care through the Title V Maternal Child Health Block Grant for Dental Services. This Agreement shall also establish the CITY's and UTHSCSA's obligations, costs, and the manner and method of payment for provided services.

ARTICLE II
TERM

2.1 The term of this Agreement commences on September 1, 2012 and terminates on August 31, 2013. The Parties may mutually agree to a maximum of three (3) additional one-year renewal terms.

Either Party may terminate the contract by giving thirty (30) days written notice to the other Party.

2.2 UTHSCSA acknowledges 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 funding from the United States Department of Health and Human Services (HHS) and annual appropriation by the Texas Department of State Health Services. Accordingly, if HHS or Texas DSHS should fail to appropriate sums to pay any of City's obligations under the terms of this Agreement this Agreement shall terminate upon thirty (30) days written notice to UTHSCSA and neither UTHSCSA 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 UTHSCSA through the effective date of termination shall be made pursuant to Article VI herein.

ARTICLE III
DESIGNATED REPRESENTATIVES

3.1 UTHSCSA hereby appoints Kevin Donly, D.D.S., M.S., Chairman of the Department of Developmental Dentistry, as its designated representative with regard to the services to be performed herein. UTHSCSA may change its designated representative at any time and must provide CITY with written notice of the change pursuant to Article X, Section 11.01.

3.2 CITY hereby appoints Jennifer Bankler, D.D.S., Dental Health Program Coordinator, San Antonio Metropolitan Health District, as its designated representative with regard to the services to be performed herein. CITY may change its designated representative at any time and must provide UTHSCSA with written notice of the change pursuant to Article XI, Section 11.01.

ARTICLE IV
CITY'S OBLIGATIONS

4.1 In conjunction with its public health dental program activities, Metro Health will perform Title V eligibility screening and program intake documentation for children in need of dental care.

4.2 Metro Health will refer eligible children to UT Health Science Center Dental School, Pediatric Dental Clinics for further evaluation and treatment when appropriate.

4.3 CITY agrees to pay UTHSCSA for services provided as outlined in the DSHS Title V Fee Schedule.

ARTICLE V
UTHSCSA'S SERVICES

5.1 Upon referral by SAMHD, UTHSCSA shall:

5.1.1 Provide diagnostic and preventive care for each referred child and

determine treatment plan of care;

5.1.2 Determine the family's income eligibility for sliding scale/reduced fees based on the established protocol at the Ricardo Salinas Dental Clinic;

5.1.3 Waive all co-payments for procedures covered by the program and assess fees for non-covered procedures based on the established sliding scale based on family income;

5.1.4 Provide required dental treatment for each child in an outpatient setting through the Ricardo Salinas Dental Clinic and/or other facilities designated by the UT Health Science Center Dental School for pediatric dental patients;

5.1.5 Communicate on an ongoing basis with SAMHD Case Managers regarding treatment plan/plan of care for each referred through the program;

5.1.6 Adhere to all subcontractor requirements for DSHS Title V MCH subcontractors and provide related documentation upon request.

5.2 UTHSCSA understands and agrees that the services to be provided under this agreement are expected to have a total value of $200,000.00, but that the cumulative total for all invoices presented by UTHSCSA under this Agreement shall not exceed a total amount of $160,000.00.

5.3 All work performed by UTHSCSA hereunder shall be performed to the satisfaction of the Director of the SAMHD (Director). The determination made by the Director shall be final, binding, and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by UTHSCSA, which is not satisfactory to Director. CITY shall have the right to terminate this Agreement, in whole or in part, should UTHSCSA'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.

5.4 UTHSCSA and the 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 3) other matters of interest raised by UTHSCSA or the Director.

ARTICLE VI
CONSIDERATION

6.1 In consideration of UTHSCSA's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services, activities, duties and responsibilities set forth in this agreement, CITY agrees to pay UTHSCSA as set out below:

6.1.1 CITY shall pay an amount up to a maximum of $160,000.00.

6.1.2 The maximum amount to be paid by CITY and the cumulative total of all invoices

from UTHSCSA shall not exceed the amount of $160,000.00 (ONE HUNDRED SIXTY THOUSAND AND NO/100THS DOLLARS).

6.2 UTHSCSA shall submit patient receipts/encounter forms with detailed description of services rendered within 30 days from the date of service. CITY shall pay UTHSCSA within thirty days of receipt of the invoice.

ARTICLE VII
PAYMENT FOR SERVICES

7.1 UTHSCSA shall issue a monthly invoice to CITY addressed to the San Antonio Metropolitan Health District, Dental Health Services at 332 West Commerce, Suite 300, San Antonio, Texas 78205. Such invoice shall separately detail the amount of compensation due for services. CITY shall make its payment within thirty (30) days of receipt of each invoice. If any amount set out in any invoice is disputed by CITY, then CITY agrees to notify UTHSCSA in writing of the disputed amount, and the basis for the dispute, within fifteen (15) days of receipt of such invoice. The Parties agree that only the disputed amount may be retained by CITY until the disputed matter is resolved, and that the undisputed balance must be paid in accordance with the terms of this Section.

7.2 CITY and UTHSCSA will determine fees for additional services by mutual agreement through an amendment(s) of this Agreement. In the event the Parties agree that UTHSCSA is to provide additional services and also agree as to the basis for calculating the compensation for such services, the CITY agrees to pay for such services in accordance with the terms of this Agreement.

ARTICLE VIII
TERMINATION

8.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term or earlier termination pursuant to any of the provisions hereof.

8.2 TERMINATION BY NOTICE: The Agreement may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

8.3 TERMINATION FOR CAUSE: Should either party default in the performance of any of the terms or conditions of this Agreement, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this Agreement shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

8.4 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.

8.5 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), UTHSCSA shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this Agreement through the effective date of termination.

8.6 In the event that through action or no action initiated by the City of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of this contract and has no funds to do so from other sources, this contract may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send UTHSCSA written notice stating that the City of San Antonio failed to appropriate funds. Lack of funding is not and shall not be considered a breach of this Agreement.

ARTICLE IX
INDEPENDENT CONTRACTOR

9.1 It is expressly understood and agreed that UTHSCSA shall be responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

9.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.

9.3 Any and all of the employees of UTHSCSA, wherever located, while engaged in the performance of any work required by the CITY under this Agreement shall be considered employees of UTHSCSA only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the UTHSCSA.

ARTICLE X
INSURANCE

10.1 UTHSCSA and CITY each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to their respective employees.

ARTICLE XI
NO INDEMNIFICATION BY PARTIES

11.1 UTHSCSA and CITY acknowledge they are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *et. seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accidents, injuries or deaths.

ARTICLE XII
STATISTICS AND DOCUMENTATION

12.1 CITY and UTHSCSA will follow medical records standards in exchanging client care information. Applicable confidentiality statutory provisions and rules, including the Health Insurance Portability and Accountability Act (HIPAA) requirements.

ARTICLE XIII
AUDIT

13.1 UTHSCSA shall keep at all times during the term of this Agreement complete financial records documenting the services provided to City. Authorized representatives of CITY shall have the right to examine all financial records of UTHSCSA pertaining to the services rendered for CITY. The written request for an audit, which shall list with specificity all records CITY desires to examine during a particular audit, must be submitted to the Director of External Relations for the City of San Antonio and the UTHSCSA at least ten (10) days prior to the requested date of examination by CITY representatives. CITY agrees to provide UTHSCSA with a copy of City's final report regarding each audit within thirty (30) days of completion. UTHSCSA shall maintain all pertinent financial records for the term of this Agreement and for four (4) years after termination of this Agreement, or as required by law, whichever is longer.

ARTICLE XIV.
NOTICES

14.1 All notices to be given under this Agreement shall be in writing and shall either be personally delivered or sent by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below or at such other address as the Parties may designate.

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:

Contractor:

University of Texas Health Science Center
Dental School
Department of Developmental Dentistry
Attn: Dr. Kevin Donly, Chair
San Antonio, Texas 78220-3900

ARTICLE XV
ASSIGNMENT

15.1 Neither Party may assign its rights, privileges or obligations under this Agreement, in whole or in part, without the written consent of the other Party. Any attempt to assign without such approval shall be void.

ARTICLE XVI
LEGAL CONSTRUCTION

16.1 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 invalid, illegal, or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XVII
COMPLIANCE WITH LAWS AND ORDINANCES

17.1 The Parties hereby agree to comply with all federal, state, and local laws and ordinances applicable to the work or services to be performed under this Agreement.

ARTICLE XVIII
LICENSES/CERTIFICATIONS

18.1 UTHSCSA warrants and certifies that UTHSCSA faculty 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.

18.2 UTHSCSA faculty and any other person designated to provide services must carry an original of his/her license/credentials and shall present said license/credentials for posting at their designated work station under this agreement.

18.3 UTHSCSA faculty and any other person designated to provide services must have current CPR certification and have a hepatitis B vaccination or be made aware of its availability and has declined

it.

ARTICLE XIX
TEXAS LAW TO APPLY

19.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas. The Parties agree that venue for any action is proper in Bexar County, Texas.

ARTICLE XX
PRIOR AGREEMENTS SUPERSEDED

20.1 This Agreement constitutes the sole and only agreement of the Parties and supersedes all prior understandings or written or oral agreements between the Parties regarding the subject matter of the Agreement.

ARTICLE XXI
AMENDMENT

21.1 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the City and Consultant. The Director may execute contract amendments on behalf of City in the following circumstances a) extensions up to one year, b) modifications to the scope of service listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and c) changes in state or federal regulations mandated by the funding agency.

ARTICLE XXII
MULTIPLE COUNTERPARTS

22.1 This Agreement may be executed in several counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and such separate counterparts shall constitute but one and the same instrument.

ARTICLE XXIII
PARTIES BOUND

23.1 This Agreement shall be binding upon and inure only to the benefit of the Parties hereto and their respective successors and assigns where permitted by this Agreement. There are no third-party beneficiaries to this Agreement.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, this the _____ day of _____, 2012.

CITY OF SAN ANTONIO

Thomas Schlenker, M.D., M.P.H.
Director, San Antonio Metropolitan Health District

APPROVED AS TO FORM:

Michael D. Bernard
City Attorney

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO

Kenneth L. Kalkwarf, D.D.S., M.S.
Dean, UTHSCSA Dental School

H. Steve Lynch, Jr.
Executive VP for Business Affairs
Chief Financial Officer, UTHSCSA

William W. Dodge, D.D.S.
Vice Dean, UTHSCSA Dental School

Kevin Donly, D.D.S., M.S.,
Chair, Department of Developmental Dentistry
UTHSCSA Dental School